

TOLL FREE: 1-866-509-EICH(3424)
EMAIL: jeichelberger@pasen.gov
WEB: www.senatoreichelberger.com

- SENATE BOX 203030
ROOM 460
HARRISBURG, PA 17120-3030
(717) 787-5490
FAX: (717) 783-5192
- 309 ALLEGHENY STREET
HOLLIDAYSBURG, PA 16648
(814) 695-8386
FAX: (814) 695-8398
- 107 SOUTH RICHARD STREET
BEDFORD, PA 16648
(814) 623-5004
FAX: (814) 623-5044
- 201 LINCOLN WAY WEST, SUITE 102
MCCONNELLSBURG, PA 17233
(717) 485-3616
FAX: (717) 485-4207
- 612 PENNSYLVANIA AVENUE
HUNTINGDON, PA 16652
(814) 643-2583
FAX: (814) 643-2582



Senate of Pennsylvania

JOHN H. EICHELBERGER, JR.
30TH DISTRICT

COMMITTEES
LOCAL GOVERNMENT, CHAIRMAN
AGRICULTURE & RURAL AFFAIRS
COMMUNICATIONS & TECHNOLOGY
FINANCE
GAME & FISHERIES

OTHER ASSIGNMENTS
LOCAL GOVERNMENT COMMISSION
GOVERNOR'S ADVISORY COMMITTEE
ON PROBATION
ADVISORY COUNCIL FOR THE
HOLLIDAYSBURG VETERANS' HOME
FAMILY CAUCUS
SPORTSMEN'S CAUCUS
JOINT SENATE AND HOUSE PA FAIR CAUCUS
BIOTECHNOLOGY/LIFE SCIENCES CAUCUS
HUNGER CAUCUS
LEGISLATIVE TASK FORCE - DISTRIBUTION
AND USE OF METHADONE
SENATE FIREFIGHTERS AND
EMERGENCY SERVICES CAUCUS

The Honorable John Quigley, Acting Secretary
Department of Conservation and Natural Resources
Rachel Carson State Office Building
PO Box 8767
400 Market Street
Harrisburg, PA 17105-8767

May 29, 2009

RE: Lobbying By State Employees On State Budget Issues

Dear Secretary Quigley:

It has come to my attention that state park employees have been instructed by their managers to encourage park visitors to contact their state legislators and lobby for more funding for the Department of Conservation and Natural Resources. I believe that such conduct not only exposes the Commonwealth to potential civil liability, but also may be a breach of the proscriptions against political activity contained in Section 905.2 of The Civil Service Act, Governor's Executive Order 1980-18, and Chapter 15 the federal Hatch Act (pertaining to Political Activity of Certain State and Local Employees). It is also a waste of precious state resources at a time of great tribulation with regard to the state budget.

Of course, nothing precludes a government employee, on personal time and at personal expense, from contacting their legislator, as a private citizen. However, it is my opinion that these three sources of legal authority require that lobbying on matters of official interest must be conducted through officially established channels.

Secretary Quigley
May 29, 2009
Page #2

In the *Activity Guidelines for Civil Service Employees-Political Activities and Penalties* published by the PA Civil Service Commission it precludes lobbying on legislation where it states that an employee may not "Be politically active in connection with a question...such as a constitutional amendment, referendum, approval of a municipal ordinance, or any other question or issue of a similar character ... *while on duty or in uniform.*" (see, <http://www.scsc.state.pa.us/scsc/cwp/view.asp?a=377&q=126899>).

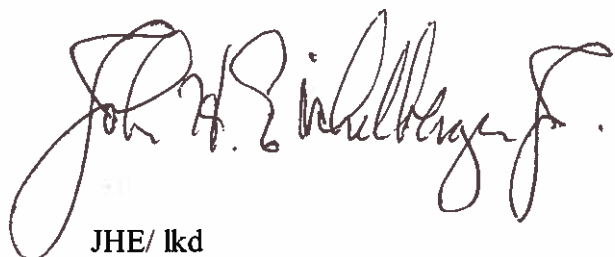
I believe it is clearly established under the Hatch Act that neither appropriated funds nor government resources may be used to lobby on legislative matters.

Finally, as to exposing the Commonwealth to liability with the misuse of state employees, the United States Court of Appeals For The Third Circuit in *Novosel v. Nationwide Ins. Co.*, 721 F.2d 894 (PA.1983), held that a state cannot condition public employment on a basis that infringes the employee's constitutionally protected interest in freedom of expression. In that case, an employee was found to have been wrongfully terminated for refusing to lobby on behalf of his employer's agenda. The court found inherent coercion in a situation where an employer tells an employee to lobby, noting "An important public policy is in fact implicated wherever the power to hire and fire is utilized to dictate the terms of employee political activities. In dealing with public employees, the cause of action arises directly from the Constitution."

I would ask that you immediately communicate to all park employees and all other state employees under your direction that lobbying activity on state time must stop and that no further use of state resources for political purposes will be tolerated.

Thank you for your attention to this critical matter.

Sincerely,



JHE/ lkd

c: The Honorable G. Rendell, Governor
Members of the Pennsylvania Senate
Members of the Pennsylvania House of Representatives