The Honorable Robert H. Brink  
Member, House of Delegates  
June 8, 2001  

You ask whether a classified state employee, serving at the deputy director level at a state facility within an agency of the executive branch, may lawfully serve in the General Assembly.

The qualifications to hold state office are set out in Article II, § 5 of the Constitution of Virginia, which provides:

The only qualification to hold any office of the Commonwealth or of its governmental units, elective by the people, shall be that a person must have been a resident of the Commonwealth for one year next preceding his election and be qualified to vote for that office, except as otherwise provided in this Constitution, and except that:

....

c) nothing in this Constitution shall limit the power of the General Assembly to prevent conflict of interests, dual officeholding, or other incompatible activities by elective or appointive officials of the Commonwealth or of any political subdivision.

I am not aware of any statute that specifically prohibits a classified state employee from serving as a member of the General Assembly. Article IV, § 4 contains the required qualifications for General Assembly members, and prohibits "[a]ny person holding a salaried office under the government of the Commonwealth" from serving as a member of the General Assembly. The Commission on Constitutional Revision recognized that the language of this provision is "vague and illogical" and that "[j]udicial interpretation [of this section] in the Virginia courts is almost non-existent." Therefore, "common sense suggests that it not be applied harshly or given sweeping and unrealistic interpretations."

Prior opinions of the Attorney General indirectly respond to your inquiry. A 1971 opinion concludes that "an employee of a college is an employee of a governmental agency and does not hold a salaried office under the government of the Commonwealth. Accordingly, the constitutional restrictions would not prohibit a community college professor from serving in the General Assembly." Two prior opinions conclude that an individual may serve in the General Assembly while holding a full-time position in a state college, and that there are no constitutional prohibitions disallowing the individual from receiving salary as a professor at a state college while serving as a member of the General Assembly. I concur with the conclusions of these prior opinions. The General Assembly
has enacted no statute that alters the conclusions of these opinions. The Supreme Court of Virginia has stated that "[t]he legislature is presumed to have had knowledge of the Attorney General’s interpretation of the statutes, and its failure to make corrective amendments evinces legislative acquiescence in the Attorney General’s view."\(^7\)

The Hatch Political Activity Act\(^8\) provides that, under certain limited conditions, a state or local officer or employee may not be a candidate for elective office, and by implication, may not serve in an elective office.\(^9\) In general, the Act applies to officers or employees of a state or local agency "whose principal employment is in connection with an activity which is financed in whole or in part by loans or grants made by the United States or a Federal agency."\(^10\) The Hatch Political Activity Act, by its own terms, does not apply to an individual who exercises no functions in connection with a federally financed activity. Thus, the Act’s prohibitions would apply only if the classified state employee, serving at the deputy director level at a state facility within an agency of the executive branch, exercises functions in connection with a federally financed activity.\(^11\)

Assuming the connection with a federally financed activity under the Hatch Political Activity Act is not present, it is my opinion that a classified state employee, serving at the deputy director level at a state facility within an agency of the executive branch, may be a candidate for and, if elected, serve in the General Assembly.

\(^1\)Section 2.1-639.35(B), a portion of the General Assembly Conflict of Interest Act, permits members of the General Assembly to have "contract[s] of regular employment" "with any governmental agency of the executive or judicial branches of state government" as a specific exception to the general contract prohibition of the Act.

\(^2\)See 1993 Op. Va. Att’y Gen. 27, 30 (explaining that public position is considered "office" if (1) position is created by Constitution or by statute and is for fixed term; (2) position is filled by election or appointment; and (3) position has designation or title, and law imposes public duties on person holding position); see also 1981-1982 Op. Va. Att’y Gen. 305.


\(^8\)5 U.S.C.A. §§ 1501 to 1508 (West 1996).


\(^10\)Section 1501(4) defines "state or local officer or employee" to mean "an individual employed by a State or local agency whose principal employment is in connection with an activity which is financed in whole or in part by loans or grants made by the United States or a Federal agency, but does not include—

"(A) an individual who exercises no functions in connection with that activity; or
"(B) an individual employed by an educational or research institution, establishment, agency, or system which is supported in whole or in part by a State or political subdivision thereof, or by a recognized religious, philanthropic, or cultural organization."


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