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March 10, 1998

This letter is in response to the e-mail you forwarded to the Office of Special Counsel concerning the Hatch Act. In your letter you ask whether a state employee who currently holds public elected office will have to step down from the elected position if he moves into a state position that is partially federally funded.

The Hatch Act (5 U.S.C. §§ 1501 - 1508) restricts the political activity of individuals principally employed by state, county, or municipal executive agencies in connection with programs financed in whole or in part by loans or grants made by the United States or a federal agency. It has long been established that an officer or employee of a state or local agency is subject to the Hatch Act if, as a normal and foreseeable incident of his principal position or job, he performs duties in connection with an activity financed in whole or in part by federal funds. In re Hutchins, 2 P.A.R. 160, 164 (1944), Special Counsel v Gallagher, 44 M.S.P.R. 57 (1990). An employee covered by the Act may not be a candidate for public office in a partisan election, i.e., an election in which any candidate represents, for example, the Republican or Democratic party. While the Act prohibits a covered employee from running for public office it does not prohibit a covered employee from holding public office.

Because the Hatch Act does not prohibit a covered employee from holding public office, the state employee would be allowed to finish out his elected term despite the fact that he works in connection with a federally funded program. However, while he remains an employee working in connection with a federally funded program, he would be prohibited from becoming a candidate in a partisan election. Candidacy for purposes of the Hatch Act has been interpreted to extend not merely to the formal announcement of candidacy but also to the preliminaries leading to such announcement and to canvassing or soliciting support or doing or permitting to be done any act in furtherance of candidacy. As the statute has been interpreted to prohibit preliminary

activities regarding candidacy, any action which can reasonably be construed as evidence that an individual is seeking support for or undertaking an initial "campaign" to secure nomination or election to office would be viewed as candidacy for purposes of 5 U.S.C. § 1502(a)(3). Consequently, the employee would need to leave his covered state position prior to beginning his candidacy.

For you information I am enclosing our publication, Political Activity and the State and Local Employee. Please call me at 800-854-2824 if you have any questions.

Sincerely,

Karen Dalheim
Attorney