



U.S. OFFICE OF SPECIAL COUNSEL

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XXXXXXXXXX XXXXXXXX
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XXXXXX Xx XXXXXXX

Re: OSC File No. AD-05-xxxx

Dear Xxx xxxxx:

This letter is in response to your request for an advisory opinion concerning the Hatch Act. The Office of Special Counsel (OSC) is authorized pursuant to 5 U.S.C. § 1212(f) to issue opinions under the Act. Specifically, you ask for an opinion as to the applicability of the Hatch Act to a group of XXXXX (XXX) employees' plan to establish a multi-candidate political committee or a political action committee (PAC).¹ You explained that the employees are members of the XXXXXXXX (XXXXXX), a professional association organized to advance the professional interests of XXX county office employees, and that XXXXXXXX plans to establish a PAC. As explained below, the Hatch Act does not prohibit XXX employees from establishing a PAC. Further, the plan you describe in your November 22, 2004, letter addresses many possible Hatch Act concerns and appears to avoid any problems under the Act.²

The Hatch Act (5 U.S.C. §§ 7321-7326) governs the political activity of federal executive branch employees. The Act permits most covered employees to actively participate in partisan political management and partisan political campaigns. Covered employees, however, are prohibited from: using their official authority or influence for the purpose of interfering with or affecting the result of an election; knowingly soliciting, accepting or receiving political contributions from any person; being candidates for public office in partisan elections; and knowingly soliciting or discouraging the political activity of any individual with business before their agency. 5 U.S.C. § 7323(a)(1)-(4). The Hatch Act also prohibits covered employees from engaging in political activity while on duty, in any room or building occupied in the discharge of official duties by an individual employed or holding office in the Government of the United States or any agency or instrumentality thereof, while wearing a uniform or official insignia identifying the office or position of the employee, or using any vehicle owned or leased by the Government of the United States or any agency or instrumentality thereof.³ 5 U.S.C. § 7324.

¹ Please note that this opinion is not applicable to XXX employees who are career members of the senior executive service because they are further restricted under the Hatch Act and may not take an active part in partisan political management or partisan political campaigns. See 5 U.S.C. § 7323 (b)(2)(B)(ii).

² This opinion is limited to permitted and prohibited activities under the Hatch Act and does not address other federal regulations that may be applicable to the set of facts you present.

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While the Hatch Act prohibits XXX employees from soliciting, accepting or receiving political contributions, it does not prohibit them from establishing a PAC or holding office within a PAC. See 5 C.F.R. § 734.204. Thus, an XXX employee is prohibited from requesting expressly of another person that he or she contribute to the PAC and from coming into possession of a contribution from another person officially on behalf of the PAC, but the Act does not prohibit an XXX employee from engaging in ministerial activities, such as handling, disbursing or accounting for contributions.⁴ 5 C.F.R. §§ 734.101 and 734.204, Example 2.

Of course, as you note, an XXX employee may not allow his or her name to appear anywhere on the PAC's solicitation materials, even in the letterhead of stationary used to send out solicitation letters, and such materials should not make any reference to XXX employees.⁵ In addition, while non-solicitation PAC materials may include the names of, or make reference to, XXX employees, such materials should not make reference to the employee's official title or agency affiliation. See 5 C.F.R. § 734.302(b)(1). As you note, however, if XXXXXX members are provided biographical information about PAC board members and officers to inform them of their experience and qualifications for the position, the Hatch Act would not prohibit an XXX employee from allowing a reference to his or her employment in that biographical information, provided that reference is not placed any more prominently than the other included biographical information.

Lastly, XXX employees may not engage in any PAC related activities while they are on duty, in the federal workplace, wearing an official uniform or insignia, or using a government vehicle. Thus, if XXXXXX plans to use a voluntary salary allotment program to facilitate employee contributions to its PAC, XXX employees may not distribute such forms while on duty or in the workplace. In addition, XXX employees may not complete the direct deposit forms or personally deliver the forms to the payroll official who processes such forms while the employee is on duty or in the federal workplace. 5 C.F.R. § 734.306, Examples 18 & 19.

This advisory opinion does not purport to cover all possible Hatch Act issues that may arise when federal employees establish a PAC. But, again, the plan you describe in your November 22, 2004, letter addresses many Hatch Act concerns and appears to avoid

³ Political activity has been defined as activity directed toward the success or failure of a political party, candidate for a partisan political office or partisan political group. 5 C.F.R. § 734.101.

⁴ Such ministerial activities could include depositing into an account contributions made to the PAC, issuing contribution checks to candidates and submitting reports to the Federal Election Commission.

⁵ Similarly, if a website is created for the PAC, XXX employees' names should not appear on the website page where people can contribute money to the PAC, and any website page that mentions XXX employees (e.g., a page listing the officers of the PAC) should not contain a link to the contributions page.

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problems under the Act. If you have any additional questions regarding this opinion or if any issues arise in the future, please feel free to call me at 202-254-3650.

Sincerely,

Erica N. Stern
Attorney
Hatch Act Unit