



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218

Washington, D.C. 20036-4505

202-254-3600

Mr. xxxxx xxxxxx
XXXXX County Sheriff's Office

Re: OSC File No. AD-06-xxxx

Dear xxx xxxxxxxx:

This letter is in response to an inquiry 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 advisory opinions interpreting the Act. Specifically, it was asked whether you are prohibited by the Hatch Act from being a candidate for partisan public office, while principally employed as a Captain/Supervisor for the XXXXXX County Sheriff's Office. Based on the information we obtained, we do not believe that you are subject to the restrictions of the Hatch Act.

Persons covered by the Hatch Act, 5 U.S.C. §§ 1501-1508, are subject to certain protections and restrictions with respect to their political activity. Thus, under section 1502, covered employees are protected from being coerced into political activity. On the other hand, the Act prohibits such employees from being candidates for public office in partisan elections, that is, elections in which any candidate is running as a representative of, for instance, the Republican or Democratic Party. 5 U.S.C. § 1502(a)(3).

Covered employees are those whose principal position or job is with a state, county or municipal executive agency, and whose job duties are "in connection with" programs financed in whole or in part by loans or grants made by the United States or an agency thereof. 5 U.S.C. § 1501(4). Employees are subject to the Act if, as a normal and foreseeable incident of their positions or jobs, they perform duties in connection with the federally financed activities. In re Hutchins, 2 P.A.R. 160, 164 (1944); Special Counsel v. Gallagher, 44 M.S.P.R. 57 (1990). Coverage is not dependent on the source of an employee's salary, nor is it dependent upon whether the employee actually administers the funds or has policy duties with respect to them. Special Counsel v. Williams, 56 M.S.P.R. 277, 283-84 (1993), aff'd, Williams v. Merit Sys. Prot. Bd., 55 F.3d 917 (4th Cir. 1995), cert. denied, 516 U.S. 1071 (1996) (unreported decision).

We understand that you are principally employed as a Captain/Supervisor with the XXXXXX County Sheriff's Office (XCSO). As a Captain, you are responsible for supervising the following functions of the court: Criminal Process/Warrant Team, Community Service Coordinator, Court Security, Civil Process, Court Services and Criminal Court.

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According to XXXXXX XXXXXXXX, the XCSO's Director of Administration and Public Director, the XCSO currently is financed by five federal grants. First, the XCSO received a Stop Violence Against Women Formula Grant from the U.S. Department of Justice for approximately \$49,198. According to Mr. XXXXXX, this grant finances the salary of a detective responsible for responding to serious domestic violence incidents and participating in local prevention initiatives. We understand that you are not paid by this federal grant, and that you do not participate in the local prevention activities aimed at preventing domestic violence. Nor do you supervise the person whose salary is paid by this federal grant. Thus, we have concluded that you do not perform duties in connection with activities funded by the Stop Violence Against Women Formula Grant.

Second, the XCSO receives a Project Safe Neighborhoods Grant in the amount of \$26,929 from the U.S. Department of Justice, Bureau of Justice Assistance. Project Safe Neighborhoods is a nationwide program committed to reducing gun crime in America by networking existing local programs that target gun crime and providing these programs with additional tools necessary to be successful. We understand that these federal grant funds are used to pay the salary of another XCSO officer who is assigned full time to the XXXXXXXX Office of the XXXXXXXX. We also understand that you have no supervisory responsibilities over this individual. Thus, we have concluded that you do not perform duties in connection with programs funded by the Project Safe Neighborhoods Grant.

Third, the XCSO has been awarded a Traffic Safety Grant in the amount of \$217,699 from the XXXXXXXX Governor's Highway Safety Office. We understand that this grant pays for the salary, social security, retirement and insurance costs of five XCSO officers who are assigned full time to traffic enforcement and prevention. According to Mr. XXXXXX, you are not one of the officers assigned to this program. Nor do you supervise the individuals who are assigned to perform the traffic enforcement and prevention duties. Thus, even if we were to determine that these grant funds originated from the federal government, we have concluded that you do not perform duties in connection with activities funded by the Traffic Safety Grant.

Mr. XXXXX also provided information that the XCSO has been awarded an Edward Byrne Memorial Justice Assistance Grant in the amount of \$23,413 from the U.S. Department of Justice, Bureau of Justice Assistance. The purpose of this grant is to provide units of local government with funding for additional personnel, equipment, supplies, contractual support, training, technical assistance, and information systems for criminal justice. We understand that the XCSO will use these grant funds to purchase equipment to support mobile data terminals in the patrol cars. Mr. XXXXX confirmed that he is the individual who is responsible for overseeing this program and facilitating the purchase of the mobile data terminals. The only connection that you have to this program is that you may use the equipment purchased with the federal grant funds.

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The Hatch Act only restricts the activities of those individuals who have duties in connection with the activities funded by federal loans or grants. Therefore, as to federal grants used to purchase equipment, it is OSC's opinion that any employee who applies for federal grants, purchases the equipment, or supervises employees engaging in these activities is subject to the restrictions of the Hatch Act. However, in regard to those employees who merely use the equipment, OSC has concluded that their connection to the federally funded program is too attenuated to subject these individuals to the restrictions of the Hatch Act. Thus, we have concluded that any connection you may have to the Edward Byrne Memorial Justice Assistance Grant is too attenuated to conclude that you are covered by the Hatch Act.

Lastly, Mr. XXXXX explained that the XCSO receives a reimbursement of the U.S. Marshal's Service for housing federal inmates. Specifically, the XCSO and the U.S. Marshal's Service have entered into an Intergovernmental Agreement for the housing, safekeeping, and subsistence of federal prisoners housed in the XXXXX County detention facility. Under this agreement the XCSO guarantees that 100 beds are available for federal inmates and XCSO receives a per diem rate for each federal prisoner that the county houses. The U.S. Marshal's Service fixes this per diem rate based on actual and allowable costs associated with the operation of the facility. In determining the per diem rate, the regular and overtime salaries of personnel that work at the detention facility are taken into account. In contrast, the salary and overtime costs of law enforcement personnel assigned to non-detention functions of the sheriff's office are not considered in computing the per diem rate.

According to Mr. XXXXXX, you do not perform any duties at the XXXXXX County detention center. We also understand that you are not responsible for supervising any of the individuals who work at the detention center. Lastly, we confirmed that the federal inmates must appear before the federal court located in XXXXXXXXX. Therefore, your salary and overtime costs were not considered by the U.S. Marshal's Service when it determined that appropriate per diem rate. Thus, we have concluded that you do not perform any duties in connection with programs financed by the payments from the U.S. Marshal's Service.

As explained in detail above, we have found no information evidencing that you perform duties in connection with any of the programs financed by the federal grants described above. Consequently, we have concluded that you are not subject to the political activity restrictions of the Hatch Act, and thus, the Act would not prohibit you from being a candidate for partisan public office.

It must be noted, however, that future federal grants received by the XCSO and/or a modification in your duties, could change your status under the Hatch Act. If this occurs, we would advise you to immediately contact our office.

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For your information, I have enclosed a copy of our pamphlet explaining the application of the Hatch Act to state, county and municipal employees. Please do not hesitate to contact me at (800) 854-2824 x. 3667 if you have any further questions.

Sincerely yours,

Amber A. Bell
Attorney
Hatch Act Unit

Enclosure