



U.S. OFFICE OF SPECIAL COUNSEL

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Washington, D.C. 20036-4505

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Re: OSC File No. AD-05-xxxx

Dear xx. 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 whether the Hatch Act prohibits you from performing the duties required of the Chair of the XXXXX County Democratic Committee (XCDC). We understand that you are employed by the Department of Defense (DoD) as a xxxxxxxxxxxxxxxx in the xxxxxxxxxxxxxxxxxxxx. As explained below, while the Hatch Act does not prohibit you from running for and serving as Chair of XCDC, you are subject to certain political activity restrictions that govern what you may do while serving in this position.

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 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 a government building, while wearing an official uniform or insignia or using an official vehicle.¹ 5 U.S.C. § 7324.

The Hatch Act would not prohibit you from running for and serving as Chair of a partisan organization, such as the XCDC, provided you do not engage in any of the prohibited activities discussed above. For example, the prohibition against soliciting, accepting or receiving political contributions includes hosting a fundraiser for a political purpose. Thus, you are prohibited from hosting, sponsoring or being a contact person or a member of the host committee for any political fundraiser, and your name may not appear on an invitation to a political fundraiser in those capacities. However, the Act would not prohibit you from giving a speech or keynote address at a political fundraiser, as long as you do not solicit or encourage political contributions during your speech. In addition, your name may appear on an invitation to a political fundraiser as a guest or keynote speaker, as long as the reference in no way suggests that you are soliciting

¹ Political activity has been defined as activity directed toward the success or failure of a political party, candidate for partisan political office or partisan political group. 5 C.F.R. § 734.101.

or encouraging political contributions. At no time, during a speech or on an invitation, should you use your official employment title or trade on your official position. Lastly, while you may not host a fundraiser, the Hatch Act would not prohibit you from assisting in the organization of a fundraiser or supplying names for the invitation list to the fundraiser.²

You explained that as “Master of Ceremonies” of an XCDC fundraiser, you would be required to perform duties such as welcoming guests, introducing speakers and important party members, and making an introductory or motivational speech. Traditionally, the host or sponsor of an event would be responsible for these duties. Due to the Hatch Act’s prohibition on hosting or sponsoring political fundraisers, you should not take any action that could be viewed as holding yourself out as a host or member of a hosting committee, such as performing “Master of Ceremonies” duties at a political fundraiser.

While the Hatch Act does not prohibit your name from appearing on the official letterhead of the XCDC, the Act does prohibit your name from appearing on any fundraising letters sent out on behalf of the XCDC or any partisan candidate. Consequently, if your name appears on the official XCDC letterhead, such stationary should not be used for fundraising purposes. In addition, solicitation letters and materials should not include your name in the following capacity: “Authorized and Paid for by the Xxxxxx County Democratic Committee., Xxxx xxxxxx, Chair.” Finally, the prohibition against soliciting political contributions also includes soliciting, accepting or receiving the uncompensated volunteer services of subordinate employees. Thus, you may not ask a subordinate employee to volunteer on behalf of the XCDC, a partisan political campaign or other partisan organization.

Finally, the Hatch Act would not prohibit you from appearing in and writing for the XCDC newsletter, provided you do not personally solicit political contributions from readers. Employees covered by the Hatch Act retain the right to express their opinions on partisan political candidates and issues. Thus, the Hatch Act would not prohibit you from endorsing or opposing a partisan political candidate or party in your column. However, the Act would prohibit you from writing your column or engaging in any other political activity while on duty, in a federal building, while using your official title or otherwise acting in an official capacity.

You explained that the XCDC newsletter regularly includes approximately one to ten loose-leaf political flyers for Democratic candidates and fundraisers. You indicated that the newsletter receives \$35 in compensation for the extra time and effort involved in adding these flyers. In addition, you explained that the XCDC inserts a flyer in each issue listing “Sustaining Donors.” You indicated that this flyer lists each donor and the donation bracket they occupy. On the opposite side, there is a printed form readers may use to contribute to XCDC and become a “Sustaining Donor.” You stated that your name and title would not appear on either side of

² Note that while you are prohibited from soliciting, accepting or receiving political contributions, the Hatch Act would not prohibit you from performing ministerial duties that precede or follow the acceptance and receipt of political contributions, such as handling, disbursing or accounting for contributions (e.g., paying bills for the FCDC).

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this solicitation flyer. Provided you do not allow your name to appear on the "Sustaining Donors" flyer or on any of the political advertisement flyers, we do not believe including these loose-leaf flyers in the same XCDC newsletter as your column would violate the Hatch Act.

For your information, I am enclosing a copy of our publication that explains the Hatch Act's application to federal employees. For more information about the Hatch Act, you may visit our website at www.osc.gov. Please contact me at (800) 854-2824, ext. 3673, if you have additional questions regarding this matter.

Sincerely,

Erica N. Stern
Attorney
Hatch Act Unit

Enclosure