



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 201
Washington, D.C. 20036-4505

March 18, 2003

Mr. _____

Re: OSC File No. AD-03-XXXX

Dear Mr. _____:

This letter is in response to your request for an advisory opinion concerning the Hatch Act. Specifically, you ask whether the Act prohibits U.S. Department of _____ employees from wearing antiwar buttons while at work.

Federal employees of executive agencies, including the U.S. Department of _____, are covered by the Hatch Act (5 U.S.C. §§ 7321-7326). The Hatch Act generally permits most federal employees to actively participate in partisan political management and partisan political campaigns. 5 U.S.C. § 7324(a). Covered employees, however, are prohibited from, among other things, engaging in political activity while on duty, in a government office or building, while wearing an official uniform, or using a government vehicle. 5 U.S.C. § 7324. 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.

An antiwar button is not directed at the success or failure of any political party, candidate for a partisan political office or partisan political group, as described above. Accordingly, section 7324 does not prohibit federal employees from wearing antiwar buttons while on duty, in a federal building, while wearing an official uniform, or using a government vehicle.

Notwithstanding the above, 5 C.F.R. § 734.203(d) provides: An employee may “[p]articipate fully in public affairs, except as prohibited by other federal law, in a manner which does not compromise his or her efficiency or integrity as an employee, or the neutrality, efficiency, or integrity of the agency . . . in which he or she is employed.” In your request, you ask whether section 734.203(d) would restrict the wearing of antiwar buttons by federal employees while on duty in their federal workplace. The regulation you have cited -- § 734.203 -- does not contain any Hatch Act prohibitions in any of its subsections. The purpose of that provision is to make clear that employees continue to enjoy the right to express their opinions on political subjects and to be active on political or community issues, so long as it is not otherwise unlawful or inconsistent with their duties. It is only intended to clarify that the Hatch Act’s prohibitions should not be read too broadly.

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Put another way, it is not a violation of the Hatch Act for an employee to participate in public affairs in a way that compromises an agency's neutrality, efficiency or integrity, unless the employee is also violating one of the Hatch Act's specific prohibitions. Therefore, we do not provide advice about these issues.

You have asked if we believe that each agency must make its own determination on this question. It may be that the government will respond to this issue agency by agency. Or it may be a question that requires a uniform policy across the government. We do not believe, however, that it is a Hatch Act question, and so we do not think that we are the agency that should decide what the policy should be.

Please contact me at (202) 653-7143 if you have any additional questions.

Sincerely,

Amber A. Bell
Attorney
Hatch Act Unit