



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-254-3600

Ms. XXXXXX XXXXXXXX
XXXXXX XXXXXXXX
XXXXXX xxxxxxxxxxxx

VIA E-MAIL: XXxxxxxxxxxxxxx

Re: OSC File No. AD-06-XXXX

Dear Ms. XXXXXX:

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 a Stafford Act Employee (SAE), Disaster Assistance Employee (DAE) from being a candidate for the XXXXXX State Senate. We reviewed this matter, and as explained below, we do not believe the Hatch Act prohibits the DAE's candidacy.

The Hatch Act (5 U.S.C. §§ 7321-7326) governs the political activity of federal executive branch employees, including employees of the Federal Emergency Management Agency (FEMA). The Act permits most covered employees to actively participate in partisan political management and partisan political campaigns. However, an employee covered by the Act may not, among other things, be a candidate for public office in a partisan election, i.e., an election in which any candidate is to be nominated or elected as representing, for example, the Republican or Democratic Party.

However, an employee who works on an "irregular or occasional basis" is subject to the Act's prohibitions only when he is on duty. 5 C.F.R. § 734.601. The Hatch Act regulations define occasional as "occurring infrequently, at irregular intervals, and according to no fixed or certain scheme; *acting or serving for the occasion or only on particular occasions.*" 5 C.F.R. § 734.101 (emphasis added).

We understand that DAEs are a corps of "reservists" who are mobilized in times of disaster to help FEMA accomplish its mission of recovery and relief. It was explained that DAEs notify FEMA of their availability for deployment through an Automated Deployment Database and that they determine when they are available and can leave a deployment at any time.

After further research, it is our understanding that DAEs are nonpermanent, excepted service employees of FEMA, appointed under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act. They are initially appointed for periods of up to one year, and the appointment may be renewed in increments of one year. DAEs perform disaster response and recovery activities, usually at temporary work sites located in disaster damaged

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areas. It is our understanding that DAEs must be free to travel a minimum of two to six weeks at a time, usually with as little as a day or two of notice.

Based on the above information, we believe that DAEs act or serve only on particular occasions, i.e., when they are deployed to respond to an emergency or disaster. Therefore, we believe that, for purposes of the Hatch Act, DAEs are employees who work on an irregular or occasional basis. Accordingly, a DAE is covered by the provisions of the Hatch Act only when he or she is on duty acting as a DAE. Therefore, the Act does not prohibit a DAE from being a candidate for the Xxxxxxx State Senate, and a DAE does not have to resign from his or her position to be such a candidate. However, a DAE may actively campaign only when he or she is not on duty. See 5 C.F.R. § 734.601 (example).

Please contact me at (202) 254-3650 if you have additional questions regarding this matter.

Sincerely,

Erica N. Stern
Attorney
Hatch Act Unit