



OFFICE OF LEGAL AFFAIRS

February 15, 2000

Brendan E. Gill
Executive Director
Bexar County Legal Aid Association Inc.
434 South Main Ave. Suite 300
San Antonio, Texas 78204

Re: Leave of Absence to Pursue Judicial Seat

Dear Mr. Gill:

As Executive Director of Bexar County Legal Services, you recently requested an opinion as to whether you may permit a staff attorney to take a leave of absence without pay to pursue a district judge position.

Part 1608 of the Legal Services Corporation ("LSC") regulations is the applicable law in this case. A purpose of Part 1608 is to ensure LSC funds will not be used to support or promote political activities or interests, and to prevent the identification of LSC with the campaign of any candidate for public partisan office. *See* 42 USC 2996e(e)(1); § 1608.1; and § 1608.4(a).

The relevant prohibition in Part 1608 is that "no staff attorney" shall, "at any time," be a "candidate for partisan elective public office." § 1608.5(c). Thus, the first determination you must make is whether your "senior attorney" qualifies as a "staff attorney" under the LSC regulations.

"Staff attorney" is briefly defined as, "an attorney more than one half of whose annual professional income is derived from the proceeds of a grant from the Legal Services Corporation." § 1600.1. *See also*, 42 USC 2996a(7).

The second element to be considered in the § 1608.5(c) prohibition is "at any time." The question in your case is whether a staff attorney on a "leave of absence" remains a "staff attorney," for purposes of "at any time." A leave of absence implies the attorney is expected to return, and may not prevent the identification of LSC with the campaign of a candidate.

The final determination to be made is whether your senior attorney is to be a candidate for "partisan elective public office." *See* § 1608.5(c). Thus, if the senior attorney is a nonpartisan candidate (i.e. not affiliated with any party), the employee may be permitted to take a leave of absence in order to pursue the office.

LSC has consistently held in external opinions that the staff attorney at a Legal Services program must resign the staff attorney position, in order to qualify and run for a judicial position that is an elective partisan position. I have attached a copy of an earlier opinion for you to review.

I hope that this analysis will provide you with a resolution to your question under the LSC regulations. Please contact me if I can be of any further assistance.

Sincerely,

Kelline A. Carroll
Attorney

Enclosure