



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 201
Washington, D.C. 20036-4505

February 14, 2001

Re: OSC File No. _____

Dear _____

This is in response to your request for an advisory opinion concerning the Hatch Act. Specifically, you ask whether the Hatch Act permits a federal employee to participate in a fundraising effort to retire a campaign debt, which he incurred prior to accepting federal employment. Although this is the first time this issue has arisen since the Hatch Act was amended in 1993, our prior advice concerning the retirement of campaign debt continues to apply.

Prior to the 1993 Reform Amendments, the Hatch Act prohibited federal employees from actively participating in partisan political management and partisan political campaigns. Specifically, the implementing regulations at 5 C.F.R. § 733.122(b)(3) prohibited federal employees from directly or indirectly "soliciting, receiving, collecting, handling, disbursing, or accounting for assessments, contributions, or other funds for a partisan political purpose." The regulations did not further define the term partisan political purpose.

Based on the language of the statute and the implementing regulations, the Office of Special Counsel advised agencies that an agent or the campaign organization of a candidate who later became a federal employee could continue to organize and promote fundraising events to retire campaign debt, but the employee-candidate could not assist in promoting the events and could not otherwise actively participate in such events. We further advised that the candidate could attend these events, be recognized and briefly state the appreciation to all whose efforts contributed to the retirement of the campaign debt. We advised that any participation beyond this passive role would inevitably involve the employee in fundraising activity beyond what the law permitted.

In 1993, the language of the Hatch Act was amended to allow most federal employees to actively engage in partisan political management and partisan political

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campaigns. However, covered federal employees may not “knowingly solicit, accept, or receive a political contribution from any person....”¹ 5 U.S.C. § 7323(a)(2). The implementing regulations for the 1993 Amendments define political contribution as “any gift, subscription, loan, advance, or deposit of money or anything of value, made for any political purpose.” 5 C.F.R. § 734.101. Political purpose means “an objective of promoting or opposing a political party, candidate for partisan political office, or partisan political group.” *Id.* Based on the above language, the issue is whether a federal employee’s fundraising to retire campaign debt constitutes soliciting, accepting, or receiving a political contribution for the purpose of promoting or opposing a candidate for partisan political office.

Although it is unclear under the regulations when an individual ceases to be a candidate², we believe that the employee remains a “candidate” after the election for purposes of retiring campaign debt. In the situation you present, the federal employee was clearly a candidate at the time the debt was incurred. The debt was incurred for the purpose of promoting his candidacy for partisan political office and the post-election fundraising is to pay off his campaign debt. Moreover, although the fundraising would occur after the election, it requires that the employee hold himself out as a candidate in requesting assistance to pay off his campaign debt. Therefore, in these limited circumstances, the federal employee is still considered a “candidate” for purposes of the Hatch Act as it relates to retiring campaign debt.

This interpretation is consistent with the other provisions of the Hatch Act and best supports the Congressional intent underlying the Reform Amendments of 1993. Specifically, this interpretation is supported by the Act’s prohibition against fundraising and its overriding purpose of preventing coercion or the appearance of coercion by covered employees.

¹ There is a narrow exception in the statute which allows a federal employee to receive a political contribution if the person is (A) a member of the same federal labor organization . . . ; (B) not a subordinate employee; and (C) the solicitation is for a contribution to the multi-candidate political committee.

² The Hatch Act regulations define candidate as:

an individual who seeks nomination or election to any elective office whether or not the person is elected. An individual is deemed to be a candidate if the individual has received political contributions or made expenditures or has consented to another person receiving contributions or making expenditures with a view to bringing about the individual’s nomination or election.

5 C.F.R. § 734.101.

Although the 1993 Amendments greatly expanded most federal employees' rights to engage in political activity, the Amendments retained and strengthened the prohibition against fundraising. Even those employees who are subject to lesser restrictions under the Act are prohibited from engaging in fundraising. Thus, although the law permits employees who are appointed by the President, by and with the advice and consent of the Senate (PAS), to widely engage in political activity while on duty and in government buildings, even these employees are prohibited from soliciting, accepting or receiving political contributions. See 5 C.F.R. Part 734, Subpart E.³

In addition, the purpose behind prohibiting fundraising is to prevent any coercion or the appearance of coercion by covered employees. It is clear under the Hatch Act that covered employees may not solicit, accept, or receive political contributions on behalf of current candidates for partisan political office. In retiring campaign debt, the potential for coercion has not changed. For example, if we were to determine that the employee in question is no longer a candidate for purposes of retiring campaign debt, he would not be prohibited from actively soliciting, accepting or receiving funds from his subordinate employees and individuals who have business before the agency.⁴ Thus, the potential for coercion continues to be a concern even after an election.

In short, based on the above, a federal employee is considered a "candidate" for purposes of the Hatch Act as it relates to retiring campaign debt. Therefore, such an employee is prohibited from personally soliciting, accepting or receiving political contributions. However, we have previously advised, an agent or the campaign organization of a candidate who later becomes a federal employee may continue to organize and promote fundraising events to retire campaign debt. But the employee-candidate may not assist in promoting the event and may not otherwise actively participate in such events. Further, the candidate may attend these events, be recognized and briefly state his appreciation to all whose efforts contributed to the

³ Unlike other federal employees, PAS employees and those employees who are paid from an appropriation for the Executive Office of President may engage in political activity: while on duty; while wearing a uniform, badge, or insignia; while in a federal building; and, while using a government vehicle. 5 C.F.R. § 734.502(c).

⁴ We recognize that such activities would likely be proscribed by ethical standards.

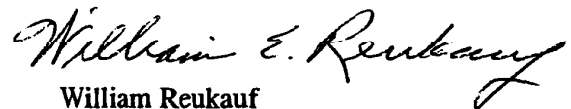
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retirement of his campaign debt. Any participation beyond this passive role would inevitably involve the employee in fundraising activity beyond what the law permits.

If you have any further questions, please contact Amber Bell at (202) 653-7143.

Sincerely,

A handwritten signature in black ink that reads "William E. Reukauf". The signature is written in a cursive style with a large, sweeping flourish at the end.

**William Reukauf
Associate Special Counsel
for Prosecution**