



U.S. OFFICE OF SPECIAL COUNSEL

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

April 28, 2008

Mr. XXXX

Also Via E-mail: XXXX

Re: OSC File No. AD-08-XXXX

Dear Mr. XXXX:

This letter is in response to your request for an opinion concerning the Hatch Act. The Office of Special Counsel (OSC) is authorized pursuant to 5 U.S.C. § 1212(f) to issue advisory opinions under the Act. Specifically, you ask whether the Act would prohibit you from being a candidate in a partisan election for XXXX County Commission. You are currently employed by the State of XXXX's Department of Education (DOE). As explained below, the Hatch Act would not prohibit your candidacy.

Persons covered by the Hatch Act (5 U.S.C. §§ 1501-1508) are subject to certain protections and restrictions with respect to their political activity. Thus, under section 1502, covered employees are protected from being coerced into political activity. On the other hand, the Act prohibits such employees from being candidates for public office in partisan elections, that is, elections in which any candidate is running as a representative of, for instance, the Republican or Democratic Party. 5 U.S.C. § 1502(a)(3).

Covered employees are those whose principal position or job is with a state, county or municipal executive agency, and whose job duties are "in connection with" programs financed in whole or in part by loans or grants made by the United States or an agency thereof. 5 U.S.C. § 1501(4). Employees are subject to the Act if, as a normal and foreseeable incident of their positions or jobs, they perform duties in connection with the federally financed activities. In re Hutchins, 2 P.A.R. 160, 164 (1944); Special Counsel v. Gallagher, 44 M.S.P.R. 57 (1990). Coverage is not dependent on the source of an employee's salary, nor is it dependent upon whether the employee actually administers the funds or has policy duties with respect to them. Special Counsel v. Williams, 56 M.S.P.R. 277, 283-84 (1993), aff'd, Williams v. M.S.P.B., 55 F.3d 917 (4th Cir. 1995).

Notwithstanding the above, the Hatch Act exempts from coverage employees of educational or research institutions, establishments, agencies or systems which are supported in whole or in part by a state or political subdivision thereof. 5 U.S.C. § 1501(4)(B). The term "educational institution" may include a public or private elementary school, secondary school, vocational school, correspondence school, business school, professional school, university, or scientific or technical institution furnishing education for adults. See Matter of Grindle, 1 M.S.P.R. 38, 42 (1979). A state agency is

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presumed to be an agency “within the scope of the exemption if it is part of the State’s educational system, as, for example, an agency within the Department of Education.” Id.

We understand from you and Mr. XXXX, Director of Career and Technical Education for DOE, that you are employed as a XXXX with DOE. In this capacity, you work with secondary and post secondary schools to establish course standards for three career clusters. Because you work for the State of XXXX’s education department, as explained above, you are exempt from the Hatch Act’s restrictions. Thus, the Act would not prohibit you from being a candidate for XXXX County Commission.

Please contact me at (202) 254-3609 or (800) 854-2824 if you have any further questions.

Sincerely,

Mariama Liverpool
Attorney
Hatch Act Unit