



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218

Washington, D.C. 20036-4505

202-254-3600

March 11, 2008

Xx Xxxxx Xxxxx

Xxx Xxxxx

Xxxxx, XX xxxx

Re: OSC File No. AD-08-xxxx

Dear Xx Xxxxx:

This letter is in response to a request for an advisory opinion the Office of Special Counsel ("OSC") received concerning the Hatch Act. OSC is authorized pursuant to 5 U.S.C. § 1212(f) to issue opinions under the Act. Specifically, OSC was asked whether the Hatch Act prohibits you from being a candidate in the partisan election for Xxxx County Sheriff while employed by the Xxxxx Xxxxx Xxxxx Task Force ("XXXX Task Force" or "Task Force"). We reviewed this matter, and as explained below, we believe the Hatch Act prohibits your candidacy.

The Hatch Act, 5 U.S.C. §§ 1501-1508, restricts the political activity of individuals principally employed by state, county or municipal executive agencies in connection with programs financed in whole or in part by loans or grants made by the United States or a federal agency. It has long been established that an officer or employee of a state or local agency is subject to the Hatch Act if, as a normal and foreseeable incident of his principal position or job, he performs duties in connection with an activity financed in whole or in part by federal funds. 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. See 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).

We understand that the XXXX Task Force is a local enforcement organization that provides drug enforcement services for a four county area in Xxxxx. As a Detective with the Task Force, you are responsible for aggressively investigating and arresting drug offenders through consent searches, drug purchases, search warrants, traffic stops, arrests, trash searches, surveillance, and other legal means. It is our understanding that you are not responsible for supervising other officers or personnel within the Task Force.

According to Operations Chief Captain Xxxx Xxxxx, the XXXX Task Force receives most of its funding from federal grants. Captain Xxxxx explained that the Task Force has three sources of funding: a \$12,200 federal Marijuana Eradication Grant from the U.S. Department of Justice (DOJ), Drug Enforcement Agency (DEA); a \$297,350 federal Justice Assistance Grant (JAG) from DOJ; and a \$77,446 state Xxxx Xxxxx Methamphetamine Relief Team (XXXMART) grant. The purpose of the federal DEA grant is for the investigation and enforcement of marijuana cultivation within the XXXX Task Force area of operations. It is used

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to fund overtime, equipment and fuel. The purpose of the federal JAG grant is to provide drug enforcement in the XXXX Task Force area of operations. It is used to fund salaries, equipment, and the overall operating costs of the Task Force, including: the building, vehicles and copier leases; insurance; fuel; vehicle maintenance; confidential funds to buy controlled substances; and any other operational costs. This grant requires a 25 percent match from local agencies willing to participate.¹ Lastly, the purpose of the state XXXMART grant is methamphetamine enforcement in the State of Xxxxxx. Currently, the only items this state grant pays for is your salary and overtime.²

Thus, over 60 percent of the XXXX Task Force's budget is funded through federal grants. As described above, federal grants are responsible for funding the Task Force's basic operations, from the building it occupies to the fuel for its officers' vehicles. Therefore, even though your salary and overtime is being paid with a state grant, as a Detective with the heavily federally funded XXXX Task Force, we believe you necessarily have duties in connection with federally funded activities and are covered by the provisions of the Hatch Act. As an employee covered by the Act, you are prohibited from being a candidate for election to partisan political office, i.e., an office for which any candidate is nominated or elected as representing, for example, the Republican or Democratic Party.

Accordingly, the Hatch Act prohibits you from being a candidate in the partisan election for Xxxxxx County Sheriff while employed by the XXXX Task Force. Please contact me at (202) 254-3673 if you have any questions regarding this matter.

Sincerely,

/s/

Erica S. Hamrick
Attorney
Hatch Act Unit

¹ Thus, \$74,337 of the \$297,350 JAG grant is funding from local agencies.

² Prior to Xxxxxx xx, 2008, your salary was funded through the federal JAG grant.