



U.S. OFFICE OF SPECIAL COUNSEL

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Washington, D.C. 20036-4505

202-254-3600

April 19, 2006

Xx XXXXXX XXXXXX

XXXX XXXXXX

XXXXXX, XX XXXXX

Re: OSC File No. AD-06-XXXX

Dear Xx 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 an exception to the Hatch Act can be made so that you may maintain your employment as a XXXXXXXXXXX for XXXXXXX County while being a candidate for re-election as a XXXXXXX in XXXXXX XXXXX, XXXXXXXXXXX. As explained below, there is no such exception.

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, among other things, being candidates for public office in partisan elections, i.e., elections in which any candidate represents, for example, the Republican or Democratic Party. 5 U.S.C. § 1502(a)(3).

Covered employees are those whose principal employment 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 principal employment, 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), cert. denied, 516 U.S. 1071 (1996) (unreported decision).

You explained that you are covered by the provisions of the Hatch Act because your job as a XXXXXX XXXXXXX is funded by the federal government. You explained that as a XXXXXX XXXXXX, you are a member of a county working group that is chartered by the Homeland Security Act to manage federal grant funds, do long range planning, provide target hardening for critical infrastructure, equip first responders, and educate the public through programs for public awareness. You have indicated that while you recognize the Hatch Act prohibits you from being a candidate in the partisan election for XXXXX XXXXX XXXXXXX, you are requesting that an exception be made for your particular situation.

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However, no means exist for an employee who is covered by the Hatch Act to be granted an exception to run in a partisan election. The Hatch Act does specifically exempt certain state and local employees from the prohibition against being a candidate for public office in a partisan election. The governor or lieutenant governor of a state, the mayor of a city, a duly elected head of an executive department of a state or municipality who is not classified under a state or municipal merit or civil service system, or an individual who holds elective office are exempt from the prohibition against seeking partisan public office.¹ 5 U.S.C. § 1502(c)(4). Please note, however, that the exemption regarding individuals holding elective office applies only when the elective office is the position that would otherwise subject the employee to the restrictions of the Hatch Act.

Because it is not your elective office, *i.e.*, XXXXX XXXXXXXX, that subjects you to the restrictions of the Hatch Act, the exemptions discussed above are not applicable to your situation. Accordingly, as an employee covered by the Hatch Act, you are prohibited from being a candidate in a partisan election. Therefore, while you are employed as a XXXXXXX XXXXXXXX for XXXXXXX County, the Act prohibits you from being a candidate in the partisan election for XXXXXXX XXXXXXXX.

For your information, I am enclosing a copy of our publication that explains the Hatch Act as it applies to state and local employees. Please contact me at (202) 254-3650 if you have additional questions regarding this matter.

Sincerely,

/s/

Erica N. Stern
Attorney
Hatch Act Unit

Enclosure

¹ Also, the Hatch Act does not apply to employees of educational or research institutions, establishments, agencies or systems that are supported in whole or in part by a state or political subdivision thereof, even if they have duties in connection with federally funded activities. 5 U.S.C. § 1501(4)(B). This “educational exemption,” however, would not apply to a XXXXX XXXXXXXX.