



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

July 31, 2008

Ms. XXXXXXXX

Re: OSC File No. AD-08-XXXX

Dear Ms. 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 asked whether the City Council election in XXXX is a partisan election for purposes of the Hatch Act. As explained below, we do not believe that the XXXX City Council election is a partisan election.

The Hatch Act, 5 U.S.C. §§ 1501-1508, defines a nonpartisan election as “an election at which none of the candidates is to be nominated or elected as representing a political party any of whose candidates for Presidential elector receives votes in the last preceding election at which Presidential electors were selected.” 5. C.F.R. § 151.101(g); See also 5 U.S.C. § 1503. Examples of political parties that received votes at the last Presidential election are the Democratic and Republican Parties. The Hatch Act also defines partisan as referring to a political party. 5. C.F.R. § 151.101(h). Thus, under the Hatch Act, an election for public office is a partisan election if any candidate is running as a representative of, for instance, the Republican or Democratic Party.

According to the information you provided to our office, candidates for XXXX City Council represent two political parties – the People’s Party and the Citizens Party. You also indicated that neither the People’s Party nor Citizen’s Party is recognized as a political party under West Virginia state law.

In researching this issue, OSC, among other things, reviewed records from the Federal Election Commission. In so doing, OSC determined that neither the People’s Party nor the Citizen’s Party received Presidential elector votes in 2004. Also, OSC determined that the aforementioned Parties are not entities of or otherwise affiliated with political parties that received Presidential elector votes in 2004. Thus, we have concluded that the XXXX City Council election is not a partisan election under the Hatch Act.¹

¹ Please note that if the circumstances concerning this election change, e.g., candidates represent the Democratic, Republican or Green Party, you should contact our office for further guidance as to the status of this election.

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

Sincerely,

Mariama Liverpool
Attorney
Hatch Act Unit