



U.S. OFFICE OF SPECIAL COUNSEL

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Washington, D.C. 20036-4505

202-254-3600

February 8, 2011

Xxxx Xxxxxx  
Chief of Police  
Xxxx Xxx Xxxxx  
Xxxxx, XX xxxxx

Re: OSC File No. AD-xx-xxxx

Dear Chief Xxxxxxx:

This letter is in response to your request for an advisory opinion from the U.S. Office of Special Counsel (“OSC”) concerning your coverage under the Hatch Act. OSC issues this opinion pursuant to its authority under 5 U.S.C. §1212(f). Your request sought guidance as to whether you may be a candidate in an election for Xxx Xxxx while employed as Chief of the Xxxxx Police Department. For the reasons stated below, we find that you are covered by the provisions of the Hatch Act and are prohibited from being a candidate for Xxx Xxxx while employed as Chief of the Xxxxxxx Police Department.

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). See also In re Palmer, 2 P.A.R. 590 (1959), remanded, Palmer v. United States Civil Service Commission, 191 F. Supp. 495 (S.D. Ill. 1961), rev’d, 297 F.2d 450, 454 (7th Cir. 1962), cert. denied, 369 U.S. 849 (1962) (individual who supervises employees who work on federally funded programs is subject to the Hatch Act because of his oversight responsibilities for those activities, even if his salary is not federally funded and he has no direct duties in connection with those programs). An employee covered by the Act may not, among other things, be a candidate for public office in a partisan election, i.e., an election in which any candidate represents, for example, the Republican or Democratic Party.

In your request for an advisory opinion, you asked whether you could run for the elected office of Xxxxx Xxxxx while employed as Chief of the Xxxxx Police Department. Currently, the Police Department receives funding from the North Central Highway Safety Network (“NCHSN”) for highway safety programs. Xxxxx, XxxxXxxxx of NCHSN, has confirmed that the funding distributed by his organization to the Xxxxx Police Department is comprised of

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federal grants from the U.S. Department of Transportation's National Highway Traffic Safety Administration ("NHTSA"). Specifically, the Xxxxxx Police Department receives NHTSA funding via NCHSN in the form of a State and Community Highway Safety Grant, used for the Buckle Up XX Program, and an Occupant Protection Incentive Grant, used for both the XX Aggressive Driving Program and the North Central Regional DUI Enforcement Project.

Under these programs, the Police Department receives federal funding for the overtime pay of officers who patrol during designated waves or mobilizations throughout the year. The officers assigned to these patrols enforce safety belt, aggressive driving, and DUI laws. While you do not participate as a patrol officer in any of these programs, you, as Chief of Police, oversee the three programs, supervise the officers working the patrols, and administer the NHTSA program funding received by the Xxxxxx Police Department from NCHSN. Therefore, you have duties in connection with activities funded by federal grants and are subject to the restrictions of the Hatch Act.

As an employee covered by the Hatch Act, you are prohibited from, among other things, running as a candidate for public office in a partisan election. We have confirmed with the Xxxxxxx Board of Commissions, Elections, and Legislature that the election for Xxxxxx Xxxxxxx is a partisan election. Because the election is partisan, the Hatch Act prohibits you from being a candidate while you are employed as Chief of the Xxxxxxx Police Department.

If you should have any questions about this advisory opinion, please contact me at 202-254-3635.

Sincerely,

/s/

Corinne R. Seibert  
Attorney  
Hatch Act Unit