



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218

Washington, D.C. 20036-4505

202-254-3600

June 13, 2007

Xx Xxxx Xxxxxx
XX Xxxx Xxxxx
Xxxxx, XX xxxxxxx

Re: OSC File No. AD-07-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 the Hatch Act prohibits you from being a candidate for the Xxxxx County Legislature while employed as an intern with the Xxxx State Xxxxx Xxxxxx (XXXXX) through the Federal Work Study Program. We reviewed this matter, and as explained below, we do not believe that 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). The Hatch 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).

We understand that you have received your internship with XXXXX as a result of, and in continued conjunction with, the Federal Work Study Program. The Federal Work Study Program is a need based funding program that assists students by enabling them to earn money to help pay education expenses. In your internship with XXXXX, your duties involve general legal research, background checks for providers, and determining ways for not-for-profit entities to get involved with XXXXX. You explained that you will be working with XXXXX for a period of ten weeks and will be paid through the Federal Work Study Program. The Federal Work Study aid will be administered by Xxxxx Law School, and XXXXX will reimburse Xxxxx Law School for 25 percent of your salary.

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As noted above, the Federal Work Study Program is financial aid that is provided for you based on financial necessity to support your continuing education. In exchange for this allotment, you are doing work that benefits the public and increases your ability to be a competent and diligent attorney in the future. Thus, because of the educational and financial aid components of this unique situation, we do not believe you are an “employee” for the purposes of the Hatch Act. Therefore, you are not covered by the provisions of the Hatch Act, and the Act does not prohibit your candidacy for the Xxxxx County Legislature.

Please contact me at (202) 254-3650 if you have additional questions regarding this matter.

Sincerely,

/s/

Erica Stern Hamrick
Attorney
Hatch Act Unit