



U.S. OFFICE OF SPECIAL COUNSEL

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February 28, 2007

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XXXX XXXXXX

XXXXXXX, XX

VIA E-MAIL: xxxxxxxxxxxx

Re: OSC File No. AD-06-xxxx

Dear Xx Xxxxxxx:

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 funds from the Federal Highway User Tax Fund constitute a "loan or grant" for purposes of the Hatch Act. We reviewed and researched this issue, and as explained below, we believe such funding is a grant for purposes of the Hatch Act.

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. Accordingly, one of the initial questions in determining whether a state or local employee is covered by the Hatch Act is whether the federal funding at issue is a "loan or grant." You have raised such a question in regard to Highway Trust Fund (HTF) funding.¹

Because none of the HTF funds received by the states is to be repaid to the federal government, the money is not a "loan" for purposes of the Hatch Act. In re Palmer, 2 P.A.R. 590, 591 (1959), remanded, Palmer v. United States Civil Service Commission, 191 F. Supp. 495, 537 (S.D. Ill. 1961), rev'd, 297 F.2d 450 (7th Cir. 1962), cert. denied, 369 U.S. 849 (1962).

The Hatch Act does not define the term "grant." Absent a definition in the legislative enactment, all words must be given their accepted, understood meaning. Palestine Info. Office v. Schultz, 853 F.2d 932, 938 (D.C. Cir. 1988). "Grant" has been defined as "to bestow or confer, with or without compensation, a gift or bestowal by one having control or authority over it, as of

¹ We were unable to find any information regarding the Highway User Tax Fund, to which you refer in your request. However, we believe the Highway Trust Fund is the actual name of the funding to which you inquire. The Highway Trust Fund (HTF) was created by the Highway Revenue Act of 1956 (Pub. L. 84-627) primarily to ensure a dependable source of financing for the National System of Interstate and Defense Highways and also as the source of funding for the remainder of the Federal-Aid Highway Program. The Highway Revenue Act provided that revenues from certain highway-user taxes would be credited to the HTF to finance a greatly expanded highway program enacted in the Federal-Aid Highway Act of 1956.

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land or money.” Black’s Law Dictionary 699 (6th Ed. 1996) (citing Palmer, 191 F. Supp. at 537).² Hence, the term “grant” is capable of broad meaning.

An expansive definition of “grant” is consistent with the legislative history of the Hatch Act. Senator Hatch, discussing the application of the Act to state and local employees, explained that the purpose is to cover “employees in the states whose employment is made possible by the use of Federal funds or appropriation from the Federal Treasury.” Cong. Rec. 2338, 76th Cong., 3rd Sess. (March 5, 1940). The Senate Report on S. 3046, which became the Hatch Act, stated that the prohibition applies to “any officer or employee of any State or local agency, who exercises any function in connection with any activity which is financed in whole or in part by *funds* of the United States.” S. Rep. No. 1236, 76th Cong., 3rd Sess. (1940) (emphasis added).

Further, caselaw supports an inclusive definition of “grant.” See In re Palmer, 2 P.A.R. 590 (1959), remanded, Palmer v. United States Civil Serv. Comm’n, 191 F. Supp. 495 (S.D. Ill. 1961), rev’d, 297 F.2d 450 (7th Cir. 1962), cert denied, 369 U.S. 849 (1962) (Seventh Circuit accepting without analysis the conclusions of the Civil Service Commission and the District Court that the term “grant” is broad enough to include federal reimbursements to the state in accordance with the terms of cooperative contracts); Engelhardt v. United States Civil Service Commission, 197 F. Supp. 806, 811 (M.D. Ala. 1961), aff’d, 304 F.2d 882 (5th Cir. 1962) (funds paid by the Federal Government under a contractual obligation for the purpose of highway construction and maintenance projects are “loans or grants” under the Hatch Act); In re Normandin, 2 P.A.R. 422, 424 (1952) (lease or demise of property from Federal Government to agency constitutes a “loan or grant” as does an advance or conveyance of money).

With HTF funding, the federal government gives money to the states for the purpose of supporting highway, highway and motor carrier safety, and transit programs. An appropriations act from Congress is necessary to release HTF funds. There is nothing about HTF funding that suggests it is anything but a grant. We understand that HTF funding may come in the form of a reimbursement to the states for the federal share of project costs. This does not change the fact that the funding is a grant. “The Civil Service Commission determined more than fifty years ago that federal payments made to states in the form of reimbursements to fund highway construction costs constituted funding by ‘grants or loans’ within the meaning of the Hatch Act.” Special Counsel v. Alexander, 71 M.S.P.R. 636, 646 (1996) (citing In re Slaymaker, 2 P.A.R. 56, 57 (1943)), aff’d, Alexander v. M.S.P.B., 165 F.3d 474 (6th Cir. 1999).

In addition, that HTF funding is derived from federal excise taxes on highway motor fuel and truck related taxes, rather than from income taxes, does not change the fact that it is a grant. The federal funds at issue in Palmer, which were considered grants for purposes of the

² The American Heritage Dictionary of the English Language, Fourth Edition defines “grant” as “a giving of funds for a specific purpose.”

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Hatch Act, came from revenues from federal taxes on firearms, shells and cartridges, and from federal taxes on fishing rods, creels, reels, artificial lures, baits, and flies.

Therefore, based on the preceding, we believe that funding from the HTF is a federal grant for purposes of the Hatch Act. Please contact me at (202) 254-3650 if you have any additional questions regarding this matter.

Sincerely,

/s/

Erica N. Stern
Attorney
Hatch Act Unit