



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218

Washington, D.C. 20036-4505

202-254-3600

May 6, 2008

Xx. XXXXX XXXX XXXX, XXX.

x/x XXXXXX XXXXXX, XX

xxx XXXXX XXXXXX

XXXXXXXX, XXX XXXX XXXXXX

Re: OSC File No. AD-08-xxxx

Dear Xx. XXXX:

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 asked whether Xx. XXXXXXXX XXXXXX may continue in her elected office of Councilwoman for the Town of XXXXX, XXXX, while she is employed by the Office of the XXXXX State Attorney General. Our guidance is set forth below.

The Hatch Act, 5 U.S.C. §§ 1501-1508, restricts the political activity of individuals employed by state, county or municipal executive agencies whose principal employment is in connection with programs financed in whole or in part by loans and 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 perform 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. 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). An employee covered by the Act may not 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. 5 U.S.C. § 1502(a)(3).

While the Hatch Act prohibits covered state and local employees from being candidates in partisan elections, it does not prohibit them from holding public office. Consequently, Xx. XXXXXX may continue to serve in her elected position even assuming she currently is covered by the Hatch Act.¹ However, please be advised that should Xx. XXXXXX decide to run for re-election for her position as Councilwoman for the Town of XXXXX, or election to any partisan office, she may have to resign from her employment with Office of the XXXXX State Attorney

¹ Please note that OSC has made no determination as to whether Xx. XXXXXX is covered by the provisions of the Hatch Act.

U.S. Office of Special Counsel

Page 2

General if she is covered by the Hatch Act. If such a situation were to arise, we strongly recommend that you or Xx. Xxxxxx contact our office for an advisory opinion to determine if she is covered by the Hatch Act at least six months prior to becoming a candidate in a partisan election. Failure to do so may result in a knowing and willful violation of the Hatch Act by Xx. Xxxxxx.

Please contact me at (202) 254-3682 if you have questions regarding this matter.

Sincerely,

/s/

Johanna L. Oliver
Attorney, Hatch Act Unit