



U.S. OFFICE OF SPECIAL COUNSEL

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January 18, 2011

Xxxx Xxxxxx
Xx Xxxxxxxx
Xxxxxx, XX xxxxx

Re: OSC File No. AD-xx-xxxx

Dear Mx 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 asked whether the Hatch Act prohibits an employee of the Southern Alleghenies Planning and Development Commission (SAP&DC) from being a candidate in a partisan election for public office. We reviewed this matter, and our guidance is below.

Generally, the Hatch Act, 5 U.S.C. §§ 1501-1508, restricts the political activity of certain individuals employed by a state or local agency.¹ The Hatch Act defines a “state or local agency” as “the executive branch of a State, municipality, or other political subdivision of a state or an agency or department thereof.” 5 U.S.C. § 1501(2). SAP&DC, a public non-profit corporation, is one of Pennsylvania’s seven Local Development Districts (LDDs). Originally formed by Bedford, Blair, Cambria, Fulton, Huntingdon and Somerset Counties pursuant to the Appalachian Regional Development Act, SAP&DC is now governed by the Local Development District Act of 1994 (LDD Act).² 73 Pa. Cons. Stat. §§ 801-811(1994).

The LDD Act defines the LDDs as “Multi-county economic and community development districts established...to provide regional planning and development services to improve the economy and quality of life in their respective regions through a variety of activities, including, but not limited to, the fostering of public/private partnerships and providing assistance to businesses.” *Id.* § 804. The LDD Act states that the LDDs “shall exist for the purpose of promoting economic development within their respective regions. Such purpose is hereby declared to be a *public purpose for which public money may be spent.*” *Id.* § 802(b)(1) (emphasis added). It also outlines the powers and duties of the LDDs, including research and coordination, development activities, loan programs, and agency coordination and it encourages

¹ The Hatch Act also applies to employees of private non-profit organizations if the statutes through which these organizations derive their federal funding contain a provision stating that recipient organizations are deemed state or local government agencies for purposes of the Hatch Act. To date, the statutes authorizing Head Start grants and Community Service Block Grants are the only statutes that contain such a provision. *See* 42 U.S.C. § 9851, 9918(b).

² The LDD Act created a policy of certification and regulation of Pennsylvania’s LDDs through its Department of Commerce. *Id.* § 802(b). It specifically designated the counties of Bedford, Blair, Cambria, Fulton, Huntingdon and Somerset as a LDD and further stated that existing LDDs that were formed pursuant to the Appalachian Regional Development Act were deemed “certified” under the Act. *Id.* § 805(5), 804.

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the receipt and administration of funds from the federal government and the state to carry out its functions. Id. § 806. The LDD Act provides that LDDs report information annually to the Pennsylvania Department of Commerce. Id. § 810.

In light of the quasi-governmental character, purpose and functions of the seven Pennsylvania LDDs, we have concluded that SAP&DC constitutes a “state or local agency” for purposes of the Hatch Act. See Special Counsel v. Suso, 26 M.S.P.R. 637 (1985) (considering the state statute that created the respondent’s employing agency and the governmental nature of the agency’s services in determining that the organization was a local government agency within the meaning of the Hatch Act).

The Hatch Act restricts the political activity of individuals principally employed by a “state or local agency” 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 be a candidate for public office in a partisan election i.e., an election in which any candidate represents, for instance, the Democratic or Republican Party.

Because we have concluded that SAP&DC is a state or local agency for purposes of the Hatch Act, any SAP&DC employee who has duties in connection with federally funded activities would be covered by the provisions of the Hatch Act and prohibited from being a candidate in a partisan election for public office.

Please contact me at (202) 254-3641 if you have any additional questions regarding this matter.

Sincerely,

/s/

Kathryn Lefebber
Attorney, Hatch Act Unit