



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218

Washington, D.C. 20036-4505

202-254-3600

April 27, 2009

Mx. XXXXXXX XXXXXXX
XXX XXXXXXX XXXXXXX
XXXXX XXXXXXX, XX XXXXX

Via First Class Mail and E-Mail to xxxxxxx@xxxxxx.xxx

Re: OSC File No. AD-xx-xxxx

Dear Mx. XXXXXXXX:

This letter is in response to your request for an advisory opinion concerning the Hatch Act. The Office of Special Counsel is authorized pursuant to 5 U.S.C. § 1212(f) to issue opinions interpreting the Act. Specifically, you ask whether the Act prohibits you from becoming a candidate in the partisan election for XXXXXXXXX in XXXXXXXX, XXXXXXXX. We understand that you are employed by both XXXXXXXX Emergency Services and the XXXXXXXX Police Department. For the reasons explained below, we have concluded that you are not subject to the Hatch Act's restrictions on political activity.

Persons covered by the Hatch Act (5 U.S.C. §§ 1501-1508) are subject to certain protections and restrictions with respect to their political activity. Thus, under section 1502, covered employees are protected from being coerced into political activity. On the other hand, the Act prohibits such employees from being candidates for public office in partisan elections, that is, elections in which any candidate is running as a representative of, for instance, the Republican or Democratic Party. 5 U.S.C. § 1502(a)(3).

An individual is subject to the restrictions of the Hatch Act if his principal position or job is with a state, county, or municipal executive agency, and his job duties are "in connection with" programs financed in whole or in part by loans or grants made by the United States or an agency thereof. 5 U.S.C. § 1501(4). An employee is subject to the Act if, as a normal and foreseeable incident of his position or job, he performs duties in connection with the federally financed activities. 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. Merit Sys. Prot. Bd., 55 F.3d 917 (4th Cir. 1995), cert. denied, 516 U.S. 1071 (1996) (unreported decision).

As explained above, the Hatch Act applies only to individuals who are "principally employed" in connection with programs financed by a federal loan or grant. Therefore, when an individual is employed by more than one agency or organization, it is necessary to ascertain

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which position constitutes his principal employment. In determining an individual's principal employment, the Merit Systems Protection Board (Board) typically considers two factors: (1) time spent in each position; and (2) income earned in each position. See, e.g., In re Daniel, 3 P.A.R. 72, 74 (1977); In re Nicely, 2 P.A.R. 759, 765 (1966); In re Matturi, 2 P.A.R. 430, 437 (1953). Although the Board generally considers both factors, the greatest weight is given to the time spent factor. See Matturi, 2 P.A.R. at 435 (holding that respondent's unsalaried position was his principal employment); Nicely, 2 P.A.R. at 765 ("The income factor, standing alone, is not decisive on the principal employment issue because there is no fixed correlation between income earned and time spent in its production.")

According to the information you provided, you are XXXXXX XXXXXX for XXXXXX Emergency Services, and in this capacity you work forty hours per week, Monday through Friday. You are also on-call at all times. You stated that you earned \$62,402 in 2008, and you rely on your job with XXXXXX Emergency Services for all employment-related benefits, such as retirement, health insurance, life insurance, and short- and long-term disability.

In addition, you serve as a police officer in XXXXXX, XXXXXX on a part-time basis, primarily on weekends. You earned \$10,190 in 2008, averaging approximately fifteen hours per week. You do not receive any other benefits from the police department. Finally, your shifts at the police department are scheduled around your hours at XXXXXX Emergency Services.

Based on the information you provided, we have concluded that you are principally employed by XXXXXX Emergency Services for purposes of the Hatch Act. You informed us that XXXXXX Emergency Services is a private, nonprofit organization that has qualified for tax exempt status under section 501(c)(3) of the Internal Revenue Code. We next consider whether your employment with XXXXXX Emergency Services renders you subject to the provisions of the Hatch Act.

Generally, the Hatch Act does not restrict the political activities of officers or employees of private, nonprofit organizations. However, the Act may apply to officers or employees of such organizations if the statute through which the organization derives its federal funding contains a provision stating that recipient organizations are deemed state or local government agencies for purposes of the Hatch Act. To date, the only grants that contain such provisions are the Head Start Grant and the Community Services Block Grant, both of which originate with the United States Department of Health and Human Services. According to the information you provided, XXXXXX Emergency Services received federal funds from the Federal Emergency Management Agency in 2008 and receives annual grants of state funds from the XXXXXXXXX XXXXXX XXXXXX. Because XXXXXXXXX Emergency Services does not receive any grants pursuant to statutes that deem recipient organizations state or local agencies for purposes of the Hatch Act, you are not covered by the restrictions of the Act. As a result, your current candidacy in the partisan election for XXXXXX XXXXXX is not prohibited.

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Please contact me at (202) 254-3642 if you have any additional questions.

Sincerely,

Carolyn S. Martorana
Attorney, Hatch Act Unit