



U.S. OFFICE OF SPECIAL COUNSEL

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Washington, D.C. 20036-4505  
202-254-3600

May 13, 2011

Xx Xxxxxxx

VIA E-MAIL: xxxxxx@xxxx.com

Re: OSC File No. AD-xx-xxxx

Dear Mx. Xxxxx:

This letter is in response to your request for an advisory opinion concerning the Hatch Act. The U.S. 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 in a partisan election for public office while employed as a corrections lieutenant with the Xxxxxx County Sheriff's Office (Sheriff's Office). We reviewed this matter, and as explained below, we have concluded that the Hatch Act prohibits your candidacy.

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, i.e., elections in which any candidate represents, for example, the Republican or Democratic Party. 5 U.S.C. § 1502(a)(3).

Covered employees are those whose principal position or job is with a state, county or municipal executive agency, and whose 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). 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). Furthermore, application of the Act is not affected by whether the federal contributions are made in advance or as a reimbursement. See In re Palmer, 2 P.A.R. 590 (1959), remanded, Palmer v. U.S. Civil Service Commission, 191 F. Supp. 495 (S.D. Ill. 1961), rev'd 297 F.2d 450 (7th Cir. 1962), cert. denied, 369 U.S. 849 (1962); In re Bollettieri, 2 P.A.R. 674 (1962); In re Engelhardt, 2 P.A.R. 632 (1961); In re Ramshaw, 2 P.A.R. 769 (1966); Special Counsel v. Alexander, 71 M.S.P.R. 636 (1996), aff'd sub nom. Alexander v. Merit Sys. Protection Bd., 165 F.3d 474 (6th Cir. 1999).

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We understand that you are employed as a corrections lieutenant with the Sheriff's Office, and in that capacity, are responsible for the supervision of inmates and other corrections officers. The Sheriff's Office has entered into a cooperative agreement with the U.S. Marshal's Service, U.S. Immigrations and Customs Enforcement (ICE), Federal Bureau of Prisons (BOP), and Headquarters, Department of the Army (HQDA) through which the County receives reimbursements from the federal government for the housing, safekeeping and subsistence of federal prisoners at the county jail. The Sheriff's Office receives federal reimbursements at a rate of approximately \$81 per day per inmate from the U.S. Marshals Service ICE, BOP, and HQDA for housing such inmates. This per diem rate is established on the basis of actual and allowable costs associated with the operation of the detention facility and that benefit federal prisoners. Such costs include the detention facility's personnel expenses, which include the costs of the salaries and fringe benefits of the corrections officers at the facility.

Accordingly, because, as a corrections officer, you are responsible for the safekeeping of inmates at the Xxxxx County Jail, we have concluded that you have duties in connection with activities financed by federal grants from the U.S. Marshal's Service, ICE, BOP, and HQDA. Therefore, you are covered by the provisions of the Hatch Act, and the Act prohibits you from being a candidate in a partisan election while employed as a corrections lieutenant with the Xxxxx County Sheriff's Office.

Please contact me at (202) 254-3673 if you have additional questions regarding this matter.

Sincerely,

/s/

Erica S. Hamrick  
Deputy Chief  
Hatch Act Unit