



U.S. OFFICE OF SPECIAL COUNSEL

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202-254-3600

April 23, 2009

Via Facsimile to: xxx-xxx-xxxx

Re: OSC File No. AD-09-xxxx

Dear Sir or Madam:

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 an individual employed as a police officer in one municipality may become a candidate for Alderman in another municipality. As explained below, the Hatch Act applies to a covered employee regardless of the political subdivision where he lives and works and the one where he wishes to run for partisan elective office.

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. 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). An employee covered by the Act may not, among other things, 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.

Assuming the individual is employed in a Hatch Act-covered position, that is, he has duties in connection with activities financed with federal funds, and assuming the election for Alderman is a partisan one, the Hatch Act would apply even if he became a candidate for office in a municipality other than the one where he works. We would need additional information regarding his job duties and any federal funding received by his employing agency in order to determine whether such an individual is subject to the restrictions of the Hatch Act.

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

Sincerely,

Carolyn S. Martorana
Attorney, Hatch Act Unit