



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 201
Washington, D.C. 20036-4505

March 7, 2003

Re: OSC File No. AD-02-XXXX

Dear Mr. _____:

This letter is in response to your request for an advisory opinion concerning the Hatch Act. Specifically, you ask for clarification concerning 5 U.S.C. § 1502(c)(2)'s exemption that allows an individual who is principally employed as mayor to run for public office in a partisan election.

As you know, 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. See 5 U.S.C. § 1502(4). Employees who are covered by the Act are prohibited from being candidates for public office in partisan elections, i.e., an election in which any candidate represents, for example, the Republican or Democratic Party. 5 U.S.C. § 1502(a)(3).

However, pursuant to Section 1502(c), Governors, Lieutenant Governors, mayors, elected heads of executive departments, and individuals holding elective office are exempt from the prohibition against being a candidate for public office. The legislative purpose of this section was to exempt a small but important number of elected state officers and employees whose official duties in their elective positions involve the administration of federally assisted projects. Northern Virginia Regional Park Authority v. United States Civil Service Commission, 437 F.2d 1346, 1351 (4th Cir. 1969). To qualify under this exemption, the individual must be *principally employed*¹ as a Governor, Lieutenant Governor, mayor, or elected head of an executive department.

Id. at 1351-52 ("It was far from the purpose of the exemptive provision to tolerate political activity by an employee of an agency administering federal funds merely because he happens to have been elected to an entirely unrelated office."); In re

¹ Generally, principal employment is that employment to which an individual devotes the most time and from which he derives the most income. See e.g., Anderson v. U.S. Civil Service Commission, 119 F.Supp. 567, 576-77 (D.Mont. 1954); Smyth v. U.S. Civil Service Commission, 291 F. Supp. 568 (E.D. Wis. 1968).

U.S. Office of Special Counsel

March 7, 2003

Page 2

Higginbotham, 2 P.A.R. 654, 657 (1963)(an officer or employee whose principal employment brings him within the Act must qualify for the exemption on the basis of that employment), aff'd, 221 F.Supp. 839 (W.D. PA 1963), aff'd 340 F.2d 165 (3rd Cir. 1965).

Therefore, in order to qualify for Section 1502(c)(2)'s exemption, an individual must be principally employed as mayor. For example, the exemption would not apply to an individual who is employed full-time by the _____ but serves as mayor in a part-time capacity. Any questions concerning principal employment may be referred to our office.

Please contact me at (800) 854-2824 if you have any further questions.

Sincerely,

Amber A. Bell
Attorney
Hatch Act Unit