



U.S. OFFICE OF SPECIAL COUNSEL

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202-254-3600

September 5, 2007

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XXXXXXXX, XX XXXXXX

Re: OSC File No. AD-07-XXXX

Dear Xx 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 ask whether a person who is promoted by others, without his support or endorsement, as a write-in candidate is considered a candidate for purposes of the Hatch Act. You also inquire as to what would constitute a sufficient affirmative disavowal of the write-in effort to comply with the provisions of the Hatch Act. These questions are addressed below.

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.

A "write-in" candidacy for partisan public office is permissible only if spontaneous and accomplished without an employee's knowledge. In Re Widenhofer, 1 P.A.R. 836 (1962). Therefore, if an employee covered by the Hatch Act hears rumors of a write-in effort to elect him to partisan political office, it would be a violation of the Act if he encouraged this effort or remained silent. The Act imposes an affirmative duty to disavow this effort through public announcements and other appropriate means.

In the situation you present, the employee clearly is aware of an effort by citizens in his community to write him in as a candidate in the partisan election for XXXXXX. Even though he has not supported or encouraged this write-in effort, he is considered a candidate for purposes of

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the Hatch Act. Assuming the employee is covered by the provisions of the Hatch Act, *i.e.*, he has duties in connection with federally funded activities, the employee has an affirmative duty to disavow this effort. To do so, the employee should make some kind of public announcement, *e.g.*, a press release, letter to the editor, etc., clearly stating that he is not a candidate in the election for Sheriff and that he is renouncing any effort to write him in as a candidate.

Please contact me at (202) 254-3650 if you have any questions regarding this matter.

Sincerely,

/s/

Erica Stern Hamrick
Attorney
Hatch Act Unit