



U.S. OFFICE OF SPECIAL COUNSEL
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Washington, D.C. 20036-4505
202-254-3600

November 8, 2010

Mx. XXXXX XXXXXX
XXX XXXX XXXXX
XXXXXXXX, XX XXXXX

Re: OSC File No. AD-xx-xxxx

Dear Mx. XXXX:

This letter is in response to your request for an advisory opinion concerning the Hatch Act (“Act”). The U.S. Office of Special Counsel is authorized pursuant to 5 U.S.C. § 1212(f) to issue opinions under the Act. Specifically, in your written request for an advisory opinion, you asked whether, as a federal employee, you may accept an appointment to the XXXX XXXXX XXXXX Court (“Court”) under the Act. In a subsequent telephone conversation, you asked two additional questions: whether you are permitted to engage in specific activities with a local political party, such as applying for or expressing interest in, or seeking their endorsement for, an appointment to the Court; and whether you may discuss or indicate your current position with the federal government in any communications made in seeking an appointment to the Court. We understand that, presently, you are employed with the U.S. Department xx XXXXX (XXX) as an XXXXXXXXX.¹ Below, please find our response to each of your questions.

Whether, as a federal employee, you may accept an appointment to the XXXX XXXX XXXX Court under the Hatch Act?

We understand that the XXXX XXXX Court is a public office that is typically obtained through a partisan election. See XXXX Const. art. 4 § 4.06. However, “[i]n case the office of any judge shall become vacant, before the expiration of the regular term for which he was elected, the vacancy shall be filled by appointment by the governor.” Id. § 4.13. You asked whether you may accept an appointment to the Court under the Hatch Act should a vacancy occur. While the Act prohibits candidacy for public office in a partisan election, 5 U.S.C. § 7323(a)(3), it does not

¹ The Hatch Act (5 U.S.C. §§ 7321-7326) governs the political activity of federal civilian executive branch employees, including employees of XXX. The Act permits most covered employees to actively participate in partisan political management and partisan political campaigns. 5 U.S.C. § 7323(a). Employees, however, are prohibited from: using their official authority or influence for the purpose of affecting the result of an election; knowingly soliciting, accepting or receiving political contributions from any person; being candidates for public office in partisan elections; and knowingly soliciting or discouraging the political activity of any individual with business before their agency. 5 U.S.C. § 7323(a)(1)-(4). The Hatch Act also prohibits employees from engaging in political activity while on duty, in a government building, while wearing an official uniform or insignia, or using a government vehicle. 5 U.S.C. § 7324.

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prohibit a covered employee from being appointed to public office. Therefore, the Act would not prohibit you from being appointed to the Court.²

Whether you are permitted to seek endorsement from a political party for an appointment to the Xxxx Xxxxx Xxxxx Court?

The Act does not prohibit you from seeking an endorsement from a political party in your efforts to be appointed to the Court.

Whether you may discuss or indicate your current position with the federal government in any communications made in seeking an appointment to the Xxxxx Xxxxx Xxxxx Court?

Under the Hatch Act, a federal employee may not use his or her official title while participating in political activity. 5 C.F.R. § 734.302(b)(1). “Political activity” includes any activity directed toward the success or failure of a candidate for partisan political office. 5 C.F.R. § 734.101. For purposes of the Hatch Act, the definition of “candidate” is confined to those persons seeking nomination or election to an elective office. 5 C.F.R. § 734.101. As you are seeking an appointment, and not nomination or election, any related activity would not be considered political activity prohibited by the Hatch Act. Thus, using your official title in relation to seeking an appointment is not considered political activity prohibited by the Hatch Act.

Lastly, while the Hatch Act does not prohibit the activities discussed above, there may be other government or agency rules or regulations that prohibit such activities. Therefore, you should contact your agency ethics official for further guidance on this issue. If you have any questions regarding this matter, please contact Treyer Mason-Gale at 202-254-3600, ext. 2545.

Sincerely,

/s/

Ana Galindo-Marrone
Chief, Hatch Act Unit

² However, we understand that, if appointed, your term on the Court would expire December 31, 2011. In order to continue to serve on the Court you would have to run for election. Please be advised that because the election for the Court is a partisan one, as an employee of XXX you would be prohibited from being a candidate in the election for the Court.