



U.S. OFFICE OF SPECIAL COUNSEL

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Washington, D.C. 20036-4505

202-254-3600

September 18, 2008

Xx Xxxxx Xxxxx

VIA E-MAIL (Xxxxxx@xxxx.xxx)

Re: OSC File No. AD-08-xxxx

Dear Xx Xxxxx:

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 the Hatch Act prohibits you from being a candidate in a partisan election for public office. We understand that you are a member of the National Disaster Medical System, Disaster Mortuary Operation Response Team (DMORT). We reviewed this matter, and as explained below, we do not believe the Hatch Act prohibits your candidacy.

The Hatch Act (5 U.S.C. §§ 7321-7326) governs the political activity of federal executive branch employees. The Act permits most covered employees to actively participate in partisan political management and partisan political campaigns. However, 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 is to be nominated or elected as representing, for example, the Republican or Democratic Party.

However, an employee who works on an "irregular or occasional basis" is subject to the Act's prohibitions only when she is on duty. 5 C.F.R. § 734.601. The Hatch Act regulations define occasional as "occurring infrequently, at irregular intervals, and according to no fixed or certain scheme; acting or serving for the occasion or only on particular occasions." 5 C.F.R. § 734.101.

The National Disaster Medical System, as part of the Department of Health and Human Services Office of Preparedness and Response, supports federal agencies in their management and coordination of the federal medical response to major emergencies and federally declared disasters. DMORTs are composed of private citizens, each with a particular field of expertise, who are activated in the event of a disaster to provide victim identification and mortuary services. When activated, individuals become intermittent part-time federal employees and are compensated for their duty time.

We understand that as a member of DMORT, you only are called to duty when there is a disaster and a need for your services. You may be called at short notice, and generally, are deployed for about two weeks at a time. You explained that you are activated once every two years or so.

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Based on the preceding, we believe that as a member of DMORT, you are an employee who works on an irregular or occasional basis. Accordingly, you are covered by the provisions of the Hatch Act only when you are on duty as an activated member of DMORT. Therefore, the Act does not prohibit you from being a candidate for public office in a partisan election, but you may actively campaign only when you are not on duty. See 5 C.F.R. § 734.601 (example).

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

Sincerely,

/s/

Erica S. Hamrick
Attorney
Hatch Act Unit