



U.S. OFFICE OF SPECIAL COUNSEL
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March 19, 1999

This letter is in response to your request for an advisory opinion concerning the Hatch Act. We understand that you are employed by the Defense Information Systems Agency and have been asked to address an annual political party convention, where you will introduce yourself with an eye towards a future Congressional candidacy. In your letter you pose several questions that address "testing the water" activities associated with running for office.

The Hatch Act (5 U.S.C. §§ 7321-7326) generally permits most federal employees to actively participate in partisan political management and partisan political campaigns. However, a covered employee may not be a candidate for public office in a partisan election, i.e. an election in which any candidate represents, for example, the Democratic or Republican party.

Historically, the Civil Service Commission held that "the prohibition against candidacy extends not merely to the formal announcement of candidacy but also to the preliminaries leading to such announcement and to canvassing or soliciting support or doing or permitting to be done any act in furtherance of candidacy." In re Lukasik, 3 P.A.R. 34, 35 (1969); In re Rooks, 3 P.A.R. 17, 24 (1969). Because the statute has been interpreted to prohibit preliminary activities regarding candidacy, any action which can reasonably be construed as evidence that the individual is seeking support for or undertaking an initial "campaign" to secure nomination or election to office would be viewed as candidacy for purposes of the Act. Engaging in the following types of activities directed toward candidacy would violate the Hatch Act: taking the action necessary under the law of a State to qualify for nomination for election, soliciting or receiving contributions or making expenditures, giving consent to or acquiescing in such activity by others on the employee's behalf, meeting with individuals to plan the logistics and strategy of a campaign, circulating nominating petitions or holding a press conference concerning one's candidacy.

Counsel

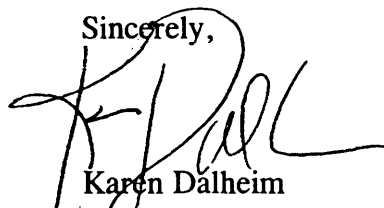
Were you to speak at a political convention and discuss your perspective on issues facing the party you would not violate the Act. If you use this opportunity to present yourself as a candidate and begin seeking support for a nomination from the party, you would violate the Act. Also, be aware that any steps that are taken as a result of this convention, such as creating a steering committee, establishing a campaign fund, or seeking the support of the political party would be considered steps toward candidacy and thus in violation of the Act.

Commissioning a company to conduct focus groups to poll constituents on what issues are important to them would be permitted. Were you to undertake "testing the water" activities that are truly issue oriented, there would be no partisan activity for purposes of the Hatch Act and no concerns on the expenditure of funds for the activity. Conversely, if you begin a partisan campaign by polling constituents specifically on such things as recognition of, or feelings toward, you as a candidate, you would be taking steps towards candidacy in violation of the Act. Furthermore, because this activity is partisan, soliciting, accepting or receiving contributions to fund this activity would also violate the Act.

While we have tried to explain what constitutes preliminary activities toward candidacy, you can see the difficulty it presents. Informal conversation among friends, and addressing a political convention on issues do not violate the Act, but activities in which you seek support for a candidacy or have others seeking such support would violate the Act. Consequently, while you remain a federal employee, you should take great pains to avoid engaging in any of the prohibited activities listed above.

For your information I have enclosed a copy of our booklet, *Political Activity and the Federal Employee*. Please call me at 800-854-2824 if you have any questions.

Sincerely,



Karen Dalheim
Attorney