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September 5, 2006

XXXXXX XXXXXXXXXXX

VIA E-MAIL: xxxxxxxx

Re: OSC File No. AD-06-xxxx

Dear Xx XXXXXXXX:

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 employees of Amtrak are subject to the provisions of the Hatch Act. We reviewed this issue, and as explained below, we have concluded that Amtrak employees are not covered by the Act.

The Hatch Act, 5 U.S.C. §§ 7321-7326, governs the political activity of federal civilian 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.

For purposes of the Hatch Act, an employee is defined as any individual, other than the President or Vice President, employed or holding office in an executive agency. 5 U.S.C. § 7322 (1)(A). The United States Code specifically states that Amtrak is not a department, agency or instrumentality of the United States Government. 49 U.S.C. § 24301 (a)(3). Accordingly, Amtrak employees are *not* employed or holding office in a federal executive agency, and thus, do not fall within the definition of 'employee' for purposes of the Hatch Act.

Consequently, Amtrak employees are not subject to the provisions of the Hatch Act. Please contact me at (202) 254-3650 if you have any additional questions regarding this matter.

Sincerely,

/s/

Erica N. Stern  
Attorney  
Hatch Act Unit