



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 201
Washington, D.C. 20036-4505

April 16, 2010

Xx Xxxxxx

Via E-mail: XXXXXX@XXXXXXXX.COM

Re: OSC File No. AD-xx-xxxx

Dear Xx Xxxxxx:

This letter is in response to your request for an opinion concerning the Hatch Act. The Office of Special Counsel (OSC) is authorized pursuant to 5 U.S.C. § 1212(f) to issue advisory opinions under the Act. Specifically, you ask whether the Hatch Act would prohibit you from being a candidate in a partisan election for the County Legislature. You are currently employed as a Rural Carrier Associate (RCA) with the U.S. Postal Service. You are also employed by the Xxxxx State Department of Corrections and are the owner and operator of a motel. As explained below, the Hatch Act would prohibit your candidacy.

The Hatch Act (5 U.S.C. §§ 7321-7326) restricts the political activity of federal executive branch employees, including Postal Service employees. See 39 U.S.C. § 410; 5 C.F.R. § 734.101. The Hatch Act (5 U.S.C. §§ 1501-1508) also 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. Both federal and state and local employees covered by the Hatch Act are prohibited from being candidates 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.

We understand from you and Postmaster Xxxx Xxxxxx that as a RCA with the Postal Service, you work every other Saturday. You also fill in when a carrier is on leave. Additionally, you informed OSC that you are a Lieutenant with the Xxxxx State Department of Corrections, but you will be retiring from this position in June 2010.

Based on the information above, we have concluded that as a RCA with the Postal Service, you are covered by the Hatch Act at all times. While federal employees who work on an "irregular or occasional basis"¹ are subject to the Act's prohibitions only when they are on duty, 5 C.F.R. § 734.601, you work every other Saturday, and as such, are regularly scheduled and do

¹ 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 (emphasis added). The Hatch Act regulations do not have a specific definition for irregular, but the word is generally defined, in this context, as "lacking continuity or regularity." See Webster's New Collegiate Dictionary 606 (1979).

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not work on an occasional or irregular basis. Cf. Kane v. M.S.P.B., 210 F.3d 1379, 1382 (Fed. Cir. 2000) (an individual who worked every Saturday was not working on an occasional or irregular basis). Thus, the restrictions of the Hatch Act prohibit you from being a candidate in a partisan election for the County Legislature.

You also ask whether the Hatch Act would prohibit you from being a candidate for the County Legislature if you were to accept full-time employment with the Postal Service. You would remain covered by the Hatch Act if you were to accept full-time employment with the Postal Service, and you would be prohibited from being a candidate for the County Legislature.

Lastly, you informed OSC that you will be retiring shortly from your Xxxxx State employment. Therefore, we have not analyzed whether you are a state employee covered by the Hatch Act.

Please contact me at (800) 854-2824 or (202) 254-3609 if you have any questions.

Sincerely,

/s/

Mariama Liverpool
Attorney
Hatch Act Unit