



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

January 16, 2002

Mr. XXXXX  
XXXXXXXXXX  
Norfolk, VA XXXXX

Re: OSC File No. AD-01-0064

Dear Mr. XXXXX:

This letter is in response to your request for an advisory opinion concerning the Hatch Act. Please accept our apology for the delay in responding to your request. The Office of Special Counsel has received a large number of requests this past year, and we are handling them as quickly as possible.

As to the issues you present, first you ask whether an election is partisan if political party affiliation appears on an election ballot next to the candidates' names. For purposes of the Hatch Act, an election is deemed partisan if political party designations appear on a ballot next to candidates' names. Special Counsel v. Mahnke, 54 M.S.P.R. 13, 16 (1992).

As to your second issue, you indicate that the Chesapeake City Charter states that "Mayor and City Council elections shall be nonpartisan." Specifically, you ask whether the Hatch Act was violated if federal employees in the May 2000 election for City Council promoted their candidacies with advertisements and billboards entitled "Vote Republican."

Generally, the Hatch Act prohibits federal employees of the executive branch of government from running for public office in partisan elections. 5 U.S.C. § 7323(a)(3). However, the Hatch Act does not prohibit covered employees from being candidates in nonpartisan elections. A nonpartisan election is one in which none of the candidates is nominated or elected as representing a party any of whose candidates for Presidential elector received votes in the last preceding election at which Presidential electors were selected. 5 U.S.C. §§ 1503 and 7322(2).

Usually, a nonpartisan election is so designated by state or local laws. Such state and local laws, however, create only a rebuttable presumption that an election is nonpartisan. See Special Counsel v. Yoho, 15 M.S.P.R. 409, 413 (1983), overruled on other grounds, Special Counsel v. Purnell, 37 M.S.P.R. 184 (1988). Evidence showing

**U.S. Office of Special Counsel**

January 16, 2002

Page 2

that partisan politics actually enter the campaigns of the candidates may rebut this presumption. See In re Broering, 1 P.A.R. 778, 779 (1955). For example, if a candidate solicits or advertises the endorsement of a partisan political party or uses a political party's resources to further his or her campaign, these actions may transform a nonpartisan election into a partisan one.

Therefore, assuming that the federal employees you inquired about engaged in activities that inserted partisan politics into the election, it is possible that the Hatch Act was violated. If you wish our office to investigate this matter, please submit a written complaint. If you have additional questions concerning this matter, I can be reached at (202) 653-7143.

Sincerely,

\_\_\_\_\_/s/\_\_\_\_\_  
\_\_\_\_\_

Ana Galindo-Marrone

Attorney

Hatch Act Unit