



U.S. OFFICE OF SPECIAL COUNSEL

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May 12, 2011

XXXXXX XXXXXX, Director
XXXXXXXX Public Library
XXX XXXXX XXXX
XXXXXX, XX XXXXX

Via U.S. Mail and E-Mail to: xxxxxxx@xxxxxx.com

Re: OSC File No. AD-XX-XXXX

Dear Xx. XXXXXX:

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 interpreting the Act. Specifically, you asked whether the Act prohibited you from being a candidate in the 2010 partisan election for XXXXXX XXXXXXXX XXXXXX while employed as the director of the XXXXXXXX Public Library. You also asked whether you fall into an exception from Hatch Act coverage provided for employees of educational or research institutions. For the reasons explained below, OSC has concluded that you were prohibited from running for partisan political office.

Persons covered by the Hatch Act, 5 U.S.C. §§ 1501-1508, are subject to certain protections and restrictions with respect to their political activity. Thus, under section 1502, covered employees are protected from being coerced into political activity. On the other hand, the Act prohibits such employees from being candidates for public office in partisan elections; that is, elections in which any candidate is running as a representative of, for example, the Republican or Democratic Party.¹ 5 U.S.C. § 1502(a)(3).

Covered employees are those whose principal position or job is with a state, county, or municipal executive agency and whose job duties are "in connection with" programs financed in whole or in part by loans or grants made by the United States or an agency thereof. 5 U.S.C. § 1501(4). Employees are subject to the Act if, as a normal and foreseeable incident of their positions or jobs, they perform duties in connection with federally financed activities. In re Hutchins, 2 P.A.R. 160, 164 (1944); Special Counsel v. Gallagher, 44 M.S.P.R. 57 (1990). Coverage is not dependent on the source of an employee's salary, nor is it dependent upon whether the employee actually administers the funds or has policy duties with respect to them. Special Counsel v. Williams, 56 M.S.P.R. 277, 283-84 (1993), aff'd, Williams v. Merit Sys. Prot. Bd., 55 F.3d 917 (4th Cir. 1995), cert. denied, 516 U.S. 1071 (1996) (unreported decision).

¹ Covered employees also are prohibited from using their official authority or influence to affect the result of an election and from coercing other employees to make political contributions. 5 U.S.C. § 1502(a)(1)-(2).

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Notwithstanding the above, the Hatch Act exempts from coverage individuals who are principally employed by educational or research institutions, establishments, agencies, or systems that are supported in whole or in part by a state or political subdivision thereof. 5 U.S.C. § 1501(4)(B). This exemption has been interpreted narrowly as applying to teachers and other employees of educational institutions. Special Counsel v. Suso, 26 M.S.P.R. 673, 678 (1985). A state or local agency is presumed to fall within the scope of this exception if it is part of the state's educational system. In re Grindle, 1 M.S.P.R. 38, 42 (1979). If it is not, the agency must be primarily educational in function and purpose, In re Bambrick, 3 P.A.R. 224, 228 (1973) or be one of the following: an elementary school, secondary school, vocational school, business school, junior college, normal school, university, or "scientific or technical institution furnishing education for adults," Grindle, 1 M.S.P.R. at 42, quoting 38 U.S.C. § 1652(c) (repealed). Conversely, where an agency does not furnish education, instruction, or training, and its relation to education is "incidental and indirect," it is not included in the exception. Grindle, 1 M.S.P.R. at 42; see also Suso, 26 M.S.P.R. at 678-79.

We understand that the XXXXXXXX Public Library is supported in part by state and local tax revenue; thus, it meets one criterion of the exception described above. The outcome of this matter thus turns on whether it is an "educational or research institution" within the meaning of the Hatch Act. Public libraries operate independently of the state Department of Education and, other than appointing three of the seven library trustees, the local school system is not connected to the XXXXXXXX Public Library.² Because it is not part of the state educational system, the XXXXXXXX Public Library must be primarily educational in function and purpose to fall into the Hatch Act's exception for employees of educational institutions.

According to state law, the term "public library" is defined as a municipal corporation that collects and organizes books and provides reference, loan, and related services to patrons. Ind. Code §§ 36-12-1-5(1), 36-12-1-8(c). The state "encourage[s] the establishment, maintenance, and development of public libraries . . . as part of the provision for public education of Indiana" and states that libraries provide free library services "in order to meet the educational, informational, and recreational interests and needs of the public." Ind. Code § 36-12-1-8(a)-(b).

You told OSC that the XXXXXXXX Public Library's mission is to provide access to media for the intellectual, educational, and recreational needs of the community. You described the library's relationship with schools as one of support. For example, the library tries to carry the most popular textbooks as well as books that are on required reading lists. In addition, the library proctors exams for students who commute to colleges in neighboring counties. Typically, a student approaches library staff members, who then contact the student's

² The XXXXXXXX Public Library is governed by a Board of Trustees appointed by local government entities. Specifically, the XXXXXXXX Town Board, XXXXXXXX County Council, XXXXXXXX County Commissioners, and XXXXXXXX Township each appoint one trustee and the XXXXXXXX School Board appoints three at-large trustees.

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professor to coordinate the administration of the test. You also stated that students often do school research at the XXXXXXX Public Library rather than travel to their school libraries. Of the approximately 60,000 volumes at the library, about half are classified as nonfiction.

The library also offers programs for both children and adults. For example, the library hosts book clubs and a poetry contest. These programs are not organized in conjunction with local schools; however, you stated that on occasion, some teachers offer credit if their students attend. In addition, the library puts on a series of classes called "Homeschoolers Learn About," which covers topics like computer skills, "Famous Hoosiers," and the XXXXXX Police Department. You explained that the classes are free and open to all students, not just homeschoolers. They are not taught by certified teachers and, while some students may receive credit for attending,³ the state educational system does not regulate or accredit them. The library also offers a number of story time activities for younger children. For adults, the library hosts activities like a knitting workshop, pilates classes, a genealogy group, and a Texas Hold'em tournament.

In addition, the library allows outside groups to use its facilities to hold events. For example, the United States Census Bureau held testing for prospective census takers at the library. On one occasion, a preparation course for the General Equivalency Diploma (GED) exam was held at the library. Although a library employee taught the course, she did not do so as part of her normal duties and she was not paid by the library to do so. Rather, a private grantor funded the course, including the instructor's fee and the students' costs of attending.

After considering the facts, OSC has concluded that the XXXXXXX Public Library is not an educational or research institution within the meaning of the Hatch Act. Although some of the library's programs arguably have educational benefits, and students occasionally receive school credit for attending them at the discretion of individual teachers, the classes are not part of an accredited educational curriculum or taught by certified instructors. Instead, the library supplements the school system's goals while also offering recreational and community activities. Further, even though some vocational training was held at the library, namely Census Bureau testing and a GED course, the library merely provided space for these events. Likewise, although the library sometimes proctors exams for college students, it is not as a result of a formal relationship or arrangement with any school but rather an *ad hoc* service provided at the request of a student. Thus, it appears that education is not the library's primary function and purpose but an ancillary aspect of its operations. Consequently, employees of the XXXXXXX Public Library who have duties in connection with federally financed activities are subject to the political activity restrictions of the Hatch Act.

OSC understands that you are the director of the library and that you are responsible for managing the building and staff. You supervise the heads of the library's various

³ You stated that according to state law, parents who teach their children at home have absolute discretion to award credit for any activity.

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departments as well as administrative personnel. In 2010, you served as the point of contact for the library's two federal grants and supervised the individual responsible for preparing grant documents. In 2009, the library was awarded a Library Services and Technology Act (LSTA) grant through the State Library from the federal Institute of Museum and Library Services. The library used the proceeds of the grant to purchase furniture and equipment. Reporting requirements for the grant continued until October 1, 2010. In addition, the library is part of the state Public Library Internet Consortium, through which libraries collectively apply for the "E-Rate" discount on internet service provided by the Federal Communications Commission.⁴

Based on the above, OSC has concluded that you had duties in connection with federally financed activities in 2010. Specifically, you supervised the individual who prepared LSTA grant and E-Rate documents and served as the point of contact for both grants. Further, as director, you oversaw all activities of the library and its staff. Consequently, you were covered by the Hatch Act in 2010 and were prohibited from being a candidate in the partisan election for XXXXXX XXXXX XXXXXX.

Please contact me at (202) 254-3642 if you have any additional questions.

Sincerely,

Carolyn S. Martorana
Attorney, Hatch Act Unit

⁴ The Universal Service Administrative Company manages the LSTA grant program.