



U.S. OFFICE OF SPECIAL COUNSEL

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202-254-3600

May 6, 2010

XX. XXX X XXXXXX  
XXXX XXXXX  
XXXX, XX XXXXX

Re: OSC File No. AD-10-XXXX

Dear XX. XXXXXX:

This letter responds to your request for an advisory opinion wherein you ask if the Hatch Act prohibits you from being a candidate in the 2010 partisan election for XXXX XXXXXX Commissioner. We understand that you are a Building Inspector with the Planning Department for XXXX XXXXXX, Xxx XXXXXX. The U.S. Office of Special Counsel (OSC) is authorized to issue opinions under the Hatch Act pursuant to 5 U.S.C. 1212(f). For the reasons explained below, the Hatch Act does not prohibit you from being a candidate for public office in a partisan election.

The Hatch Act (5 U.S.C. §§ 1501-1508) both protects and restricts covered employees' political activities. Section 1502(a)(2), for instance, protects covered employees from being coerced into political activity. But the Hatch Act also prohibits covered employees from being candidates for public office in partisan elections, *i.e.*, elections in which any candidate represents, for example, the Republican or Democratic Party. 5 U.S.C. § 1502(a)(3).

Covered employees are those individuals principally employed by a state, county or municipal agency who perform duties "in connection with" programs financed in whole or in part by loans or grants made by the United States or a federal agency. 5 U.S.C. § 1501(4). Coverage does not depend on whether the employee actually administers the federal funds or whether he has policy duties attendant to the federal funds. *See Special Counsel v. Williams*, 56 M.S.P.R. 277, 283-84 (1993), *aff'd*, *Williams v. M.S.P.B.*, 55 F.3d 917 (4th Cir. 1995). What is more, coverage does not depend on the source of the employee's salary. *See id.* Rather, the deciding factor is whether the employee, as a normal and foreseeable incident of his principal position or job, performs duties in connection with the federally funded activities. *In re Hutchins*, 2 P.A.R. 160, 164 (1944); *Special Counsel v. Gallagher*, 44 M.S.P.R. 57 (1990).

To determine if you are a Hatch Act-covered employee, we examined your position with the Planning Department, your job duties and the federal funding the department receives. As a Building Inspector, you assure compliance with county, state and/or federal uniform building and energy conservation codes and ordinances. Specifically, your job duties include: reviewing building plans; issuing building permits; and inspecting buildings. While the majority of buildings you inspect are residential, you occasionally inspect commercial buildings as well. You are not a supervisor and you do not apply for or

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administer any federal funding the department might receive. Interim County Manger Xxxx Xxxxx confirmed this statement.

As to federal funding, Xx. Xxxxx indicated that the Planning Department did not receive any federal grants or loans in 2009 and does not intend to apply for any in 2010. He also indicated that the department recently created a position that will be supported with funding it receives from the U.S. Forest Service under Title III and the Secure Rural Schools and Community Self-Determination Act of 2000; however, the position will not relate to your job in any way.<sup>1</sup>

Lastly, Xx. Xxxxx disclosed that in 2009 Xxxx Xxxxxx received \$1,687,421 from the Department of Interior under the Payment in Lieu of Taxes Act (PILTA), which helps local governments offset losses in property taxes in counties where nontaxable federal lands are located. The payment is calculated using a statutorily set formula and is used for any local government service. Xxxx Xxxxxx received its payment via electronic wire, commingled it with general fund revenues, and used it for general purposes in all departments. Although PILTA dollars originate from the federal government, it is OSC's opinion that PILTA payments are not grants within the meaning of the Hatch Act.

Based upon the foregoing information, OSC finds that you do not perform duties in connection with federally funded activities. As such, you are not covered by the Hatch Act, and the Act does not prohibit your candidacy in the partisan political election for Xxxx Xxxxxx Commissioner.<sup>2</sup>

If you have any questions about this matter, feel free to contact me at (202) 254-3681.

Sincerely,

Leslie J. Gogan  
Attorney  
Hatch Act Unit

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<sup>1</sup> The position's primary duties will be "rural addressing and GIS Mapping in [Xxxxxxxx] Wildfire-Urban Interface (WUI) areas under Xxxx Xxxxxxxx Firewise Communities Program;" and it will be under the supervision of the Planning Director.

<sup>2</sup>Please be advised that should there be a change in your duties or a change in the federal funding received by the Planning Department, you should contact OSC for further guidance.