



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218  
Washington, D.C. 20036-4505  
202-254-3600

December 2, 2009

Xx Xxxx Xxxxxx  
Xxxx xxxxx  
Xxxxx xx xxxxx

Re: OSC File No. AD-10-xxxx

Dear Xx Xxxxx:

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 it would be a violation of the Hatch Act for you to accept the School Director position you were elected to in the 2009 partisan election. You currently are employed as a County Case Worker at the Xxxx Xxxxxx in Xxxxxxxx, Xxxxx. Our guidance is set forth below.

The Hatch Act, 5 U.S.C. §§ 1501-1508, 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. It has long been established that an officer or employee of a state or local agency is subject to the Hatch Act if, as a normal and foreseeable incident of his principal position or job, he performs duties in connection with an activity financed in whole or in part by federal funds. 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. 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). 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 represents, for example, the Republican or Democratic Party. 5 U.S.C. § 1502(a)(3).

A "write-in" candidacy for partisan public office is permissible only if spontaneous and accomplished without an employee's knowledge. In Re Widenhofer, 1 P.A.R. 836 (1962). Therefore, if an employee covered by the Hatch Act hears rumors of a write-in effort to elect him to partisan political office, it would be a violation of the Act if he encouraged this effort or remained silent. The Act imposes an affirmative duty to disavow this effort through public announcements and other appropriate means.

We understand that your name did not appear on the ballot in the 2009 partisan election for Xxxxxx Township School Director; you were elected to the position by virtue of write-in votes. You explained that you were not involved in, nor were you aware of, any efforts to encourage citizens to write you in as a candidate for School Director. In fact, you did not know you had been written in as a candidate until the election official notified you that you had been elected to

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the School Director position. Accordingly, even assuming you are covered by the provisions of the Hatch Act in your position with the XXXXX<sup>1</sup>, the Act does not prohibit your election to the School Director position by write-in votes in the manner described above.

Please contact me at (202) 254-3682 if you have any questions regarding this matter.

Sincerely,

/s/

Johanna L. Oliver  
Attorney, Hatch Act Unit

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<sup>1</sup> Please note that OSC has made no determination as to whether you are covered by the provisions of the Hatch Act.