



U.S. OFFICE OF SPECIAL COUNSEL

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May 2, 2008

Xx Xxxxx Xxxxx
Xxxxx Xxxxx
XXXXXXXX, XX xxxxx

Re: OSC File No. AD-08-xxxx

Dear Xx Xxxxxxx:

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. After attending a presentation by an attorney from our office, you ask for confirmation and clarification of several Hatch Act issues. We will address each of these issues in turn.

1. *A biography or biographical sketch may not be attached to or included with an invitation to a political event at which an employee is speaking or is a special guest if it includes the employee's title or references to an affiliation with the Federal agency.*

This statement is correct. The Hatch Act prohibits federal employees from using their official authority or influence for the purpose of interfering with or affecting the result of an election. 5 U.S.C. § 7323(a)(1). Thus, while a federal employee may speak on behalf of a candidate at a political event, he must do so in his personal capacity. If the biography of a federal employee who is speaking at a political event is circulated in advance of the event, the concern is that his position with the agency may become the draw to the event, or that it may appear he is speaking in his official capacity. Because an invitation, by definition, is sent prior to an event, it would be inappropriate for the invitation, or any accompanying attachments or enclosures, to include a federal employee's official title or affiliation with a federal agency. However, his official title may appear on a biography to be passed out during the event, provided his title or description of his federal position is given no more prominence than other biographical details.

2. *Because a federal official may not knowingly speak before anyone that has actual matters pending before the agency at a political fundraiser, the agency has a duty to request a list of attendees prior to the event in order to determine whether any attendee has a matter pending before the employee's agency. Does this require the agency to learn the employment and affiliation of all attendees? Does OSC have a formal advisory opinion on the fundraiser attendee list requirements that can provide more precise guidance on this provision?*

This statement is correct in part, but we would clarify it in two respects. First, section 7323(a)(4) of the Hatch Act prohibits an employee from knowingly soliciting or discouraging the

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political activity of any person who has business pending before the employee's employing office. Thus, this prohibition is broader than your characterization in that it applies to situations other than those in which an employee speaks at a political event.

Second, compliance with the Hatch Act is an individual employee's responsibility, and it is the employee's duty to consider all of the Act's restrictions before participating in political activity. The Hatch Act does not impose a legal duty on your agency to give legal advice about the Act. However, if an agency chooses to provide Hatch Act guidance to an employee, it should give careful consideration and exercise due diligence in its review of the activity. It would be negligent to advise an employee that it is permissible to engage in political activity without having carefully considered all the applicable Hatch Act prohibitions and the facts surrounding the matter under legal review.

OSC has not issued a formal advisory opinion on this issue because no agency has submitted for our review the application of section 7323(a)(4) to an employee's participation at a political event.

3. *Government documents, including a clip service that distributes articles, may not include political messages, such as by including quotes relating to elections or political events or articles about political events that an employee attends. The same restriction applies to Government websites. Does this include all articles about an official's attendance at a political event, or only those quoting the official with regard to a campaign or candidate?*

The Hatch Act prohibits all federal employees, including those nominated to their positions by the President and confirmed by the Senate, from using their official authority or influence to interfere with or affect the result of an election. 5 U.S.C. § 7323(a)(1). Thus, if a federal employee attends or speaks at a political event, he necessarily does so in his personal capacity. Because an employee's personal activities are not official agency "news," press articles concerning the employee's political activities should not be distributed to staff through an agency clip service or other means or be posted on an agency's website, regardless of whether the articles contain the employee's election-related quotes or merely report the employee's attendance at a political event.

4. *Photographs of candidates in Government offices may only be displayed if both the candidate and the employee are pictured together, the employee has a personal relationship with the candidate, and the photograph was displayed in advance of any partisan political election season. It would not be appropriate to display in a Government office a picture of a candidate presenting an award to an employee, if they had no prior personal relationship (no matter when the picture was displayed).*

Because section 7324 of the Hatch Act prohibits federal employees from engaging in political activity while on duty or in a federal building, the Act generally would prohibit employees from displaying pictures of candidates for partisan public office in the federal

workplace. See 5 C.F.R. § 734.306, Example 16. However, we advise that an employee would not be prohibited from having a photograph of a candidate in his office if the photograph was on display in advance of the election season, the employee is in the photograph with the candidate and the photograph is a personal one (i.e., the employee has a personal relationship with the candidate and the photograph is taken at some kind of personal event or function, for example, a wedding, and not at a campaign event or some other type of partisan political event). Of course, an employee must not have a political purpose for displaying the photograph, namely, promoting or opposing a political party or a candidate for partisan political office.

Notwithstanding the above advice, we have considered your example in which an employee wants to display a photograph of him receiving an award from an individual who is now a candidate for partisan public office. Provided the award is not related to any partisan political event or activity (e.g. a “Top Fundraiser” award) and the photograph was on display in advance of the election season, we do not believe the Hatch Act would prohibit an employee from having such a photograph in his office.

5. *An employee may display only one standard-sized political bumper sticker on a personal vehicle parked in a Government parking lot. Should we interpret this to mean one sticker only or one sticker per candidate (assuming the employee has two different stickers supporting candidates for different offices, e.g., President and Congress)?*

While section 7324 of the Hatch Act prohibits federal employees from engaging in political activity in a federal workplace, the Hatch Act regulations specifically state that an employee may place a partisan political bumper sticker on his personal vehicle and park that vehicle in a federal parking lot or garage. 5 C.F.R. § 734.306, Example 7. Thus, OSC generally advises that an employee may place a partisan bumper sticker on his car and park it in a federal parking lot. We do not believe, however, that an employee would violate the Hatch Act if he has one bumper sticker for candidate A and another for candidate B on his car and parks that car in a federal parking lot. Employees must be cautioned, though, against displaying other partisan political materials, or even bumper stickers, in such a way that makes the vehicle appear to be a campaign mobile.

6. *An employee may serve as a treasurer of a political organization only if state law does not require the treasurer’s name to be included on all campaign correspondence, including fundraising letters.*

This statement is correct. While the Hatch Act generally permits federal employees to take an active part in political management or in political campaigns, employees are prohibited from knowingly soliciting, accepting or receiving political contributions from any person. 5 U.S.C. § 7323(a)(2). Thus, the Hatch Act would not prohibit an employee from serving as the treasurer of a partisan political organization, provided the employee does not solicit, accept or receive political contributions. In addition, he may not allow his name to appear anywhere on a letter soliciting political contributions for the party or a candidate, including in the letterhead of such a letter. Thus, if an employee lives in a state that requires the treasurer’s name to appear on all

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campaign materials, including solicitation materials, then the employee would not be able to be a treasurer for the campaign because, as noted above, his name cannot appear on any solicitation for political contributions.¹ He could hold, however, another position within the organization the duties of which would not entail activities prohibited by the Hatch Act.

- 7. Social networking websites, such as Facebook, may not include political commentary on the same page as biographical information that includes an employee's title or Federal agency affiliation. Such comments may appear on a page linked to the original page.*

We are unclear as to your use of the term “political commentary,” as it is not defined or used in the Hatch Act. Thus, we assume for purposes of this question that the comments at issue, if made, would constitute political activity, i.e., “activity directed toward the success or failure of a political party, candidate for partisan public office, or partisan political group.” 5 C.F.R. § 734.101.² Statements constituting political activity are subject to the limitations described in your request, namely, they may be accessible through a link on a web page containing an employee's employment information, as long as the page on which the statements appear does not reveal the employee's title or affiliation with a federal agency.

Please contact me at (202) 254-3674 if you have any additional questions.

Sincerely,

/s/

Ana Galindo-Marrone
Chief, Hatch Act Unit

¹ If an employee wishes to serve as treasurer of a political organization or campaign in such a state, and that organization does not solicit contributions in a way that implicates a state law requiring the treasurer's name to be provided, we would encourage the employee to contact our office for an opinion specifically tailored to his circumstances.

² We note that the Hatch Act does not prohibit all political commentary by federal employees. For example, expressing position statements about the war or abortion that do not refer to a candidate or political party do not constitute political activity for purposes of the Hatch Act.