



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

February 13, 1996

This letter is in response to your request for clarification as to when an employee becomes a "candidate" for Hatch Act purposes. You expressed particular interest in "testing the waters" activities.

The Hatch Act Reform Amendments of 1993 (5 U.S.C. §§ 7321-7326) generally permit most federal employees to actively participate in partisan political management and partisan political campaigns. However, a covered employee may not be a candidate for public office in a partisan election, i.e. an election in which any candidate represents, for example, the Democratic or Republican party.

Historically, the Civil Service Commission held that the prohibition against candidacy in a partisan election extended not merely to the formal announcement of candidacy, but also to the preliminaries leading to such announcement and to canvassing or soliciting support or doing or permitting to be done any act in furtherance of candidacy. Consequently, engaging in the following types of activities directed toward candidacy would violate the Hatch Act: taking the action necessary under the law of a State to qualify for nomination for election, soliciting or receiving contributions or making expenditures, giving consent to or acquiescing in such activity by others on the employee's behalf, meeting with individuals to plan the logistics and strategy of a campaign, circulating nominating petitions or holding a press conference concerning one's candidacy.

In your letter you pose two questions that address "testing the water" activities. Those questions and our answers follow.

(1) Could an employee commission a company to hold focus groups and to conduct a poll of constituents, both on an anonymous basis?

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Commissioning a company to conduct focus groups to poll constituents on what issues are important to them would be permitted. Polling constituents specifically on such things as recognition of, or feelings toward, the employee as a candidate would not be permitted.

(2) Could an employee personally ask these questions or have an uncompensated colleague do so?

The Act would not prohibit the employee from leading a focus group that addresses issues of concern to the community. However, the employee would be prohibited from leading such a group if the intent is to receive information on the employee's potential as a candidate.

If an employee makes the decision to run for public office, and does not engage in any activities, such as the ones listed above, the employee would not violate the Act by engaging in informal discussion about the decision prior to resigning from their federal position.

Please call Karen Dalheim at (202) 653-7183 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Eddy", with a stylized flourish at the end.

Ralph B. Eddy
Senior Trial Attorney