U.S. OFFICE OF SPECIAL COUNSEL
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November 16, 2007

XX Xxxxx Xxxxx
XXXXXXXXXX
XXXXXXX, XX xxxxxx

Re: OSC File No. AD-06-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 is authorized pursuant to 5 U.S.C. § 1212(f) to issue opinions under the Act. You ask for an opinion as to the applicability of the Hatch Act to County Office employees of the United States Department of Agriculture ("USDA"), Farm Service Agency ("FSA"). Specifically, you ask whether FSA County Office employees are covered by the provisions of the Hatch Act. You also ask whether the Act would prohibit an FSA County Office employee from becoming a County Committeeperson of a political party. You explain that a County Committeeperson is elected from within a political party's own candidates during the state's primary election.

The Hatch Act (5 U.S.C. §§ 7321-7326) governs the political activity of federal executive branch employees. The Act permits most covered employees to actively participate in partisan political management and partisan political campaigns. Covered employees, however, are prohibited from: using their official authority or influence for the purpose of interfering with or affecting the result of an election; knowingly soliciting, accepting or receiving political contributions from any person; being candidates for public office in partisan elections; and knowingly soliciting or discouraging the political activity of any individual with business before their agency. 5 U.S.C. § 7323(a)(1)-(4). The Hatch Act also prohibits covered employees from engaging in political activity while on duty, in any room or building occupied in the discharge of official duties by an individual employed or holding office in the Government of the United States or any agency or instrumentality thereof, while wearing a uniform or official insignia identifying the office or position of the employee, or using any vehicle owned or leased by the Government of the United States or any agency or instrumentality thereof. 5 U.S.C. § 7324.

A. Are FSA County Office employees covered by the provisions of the Hatch Act?

You stated in your request that you believe FSA County Office employees are not considered federal employees. You explained that the basis for your conclusion is that the salaries of these employees are paid by the borrowing authority of the Commodity Credit Corporation ("CCC"), a Government corporation within the USDA, rather than by direct legislative allocations. You also explained that these employees are hired by farmer-elected County Committee members and are responsible for administering the federal farm programs of the USDA at the local level.

According to Xxxxx Xxxxxx, USDA Assistant General Counsel, FSA County Office employees' salaries are not paid by the borrowing authority of the CCC, but rather by annual appropriations granted to FSA. Xx Xxxxxxx explained that pursuant to the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 2006,[1] FSA received one billion dollars in annual appropriations in order to carry out the USDA programs for the current fiscal year. Xx Xxxxxx explained that a portion of these appropriations comprise the Salaries and Expenses account for the FSA, and the salaries of all FSA County Office employees are paid from this account. In addition, according to Xx Xxxxxx, it is true that pursuant to 15 U.S.C. § 714(b)(c), the Secretary of Agriculture has been given the authority to transfer funds from the CCC to FSA to compensate the agency for certain work performed on behalf of USDA. However, CCC funds are not used to pay the salaries of FSA County Office employees.

In addition, according to Xx Xxxx Xxxxxx, USDA Senior Attorney, FSA County Office employees are hired pursuant to an unusual type of employment system set forth in Title 16 of the United States Code. Xx Xxxxxx explained that Title 16 authorizes the FSA to establish County Committees, which are responsible for administering USDA programs at the local level. According to Xx Xxxxxx, County Committees are comprised of three members who are elected by local farmers to serve a three-year term. The County Committee members then hire a County Executive Director ("CED"), who in turn hires County Office employees. Xx Xxxxxx explained that because they are hired pursuant to this unusual process, it is true that County Committee members, the CED, and the County Office employees do not meet the definition of a "civil service employee" set forth by 5 U.S.C. § 2105. However, Xx Xxxxxx stated that these employees are all considered to be federal employees by the USDA because they are authorized pursuant to a federal statute, they are responsible for administering federal programs at the local level, and their salaries are paid by USDA funds.

Lastly, according to Xx Xxxxxx Xxxxxxx, USDA Human Resource Specialist, FSA County Office employees receive the same life and health insurance as well as the same Thrift Savings Plan retirement benefits as federal employees. In addition, although County Office employees are not paid on the federal "General Schedule" system, but rather on the "County Office" system, Xx Xxxxxxx explained that the County Office system is identical to the General Schedule as far as the salary rate an employee receives at each pay grade. Xx Xxxxxxx also explained that County Office employees have an Official Personnel Folder ("OPF") and that all of the forms used to document a County Office employee's employment history are the same as the forms used for all federal employees. Xx Xxxxxxx stated that the only exception to this is the application form used by County Office employees.

In sum, we understand that FSA County Office employees are authorized pursuant to a federal statute, are responsible for administering federal programs on the local level, are paid their salaries out of USDA appropriations, and receive the same benefits as all federal

[1] Pub. L. No. 109-97, 119 Stat. 2131.

employees. Based on this information, we believe that FSA County Office employees are federal employees, and therefore, are covered by the provisions of the Hatch Act.[2]

B. Does the Hatch Act prohibit an FSA County Office employee from being a County Committeeperson of a political party?

In your inquiry, you ask whether the Hatch Act would prohibit an FSA County Office employee from being a county committeeperson of a political party. You explained that a county committeeperson is elected from within a political party's own candidates during the state's primary election.

While the Act prohibits candidacy for public office in a partisan election, it does not prohibit most federal employees from being candidates for party office, such as county committeeperson of a political party. Accordingly, we do not believe that the Act would prohibit an FSA County Office employee from seeking election to the office of county committeeperson. However, such activity may be prohibited by FSA agency policy or other federal regulations, and we would encourage a County Office employee to consult with his or her agency ethics official prior to engaging in such activity.

If you have any additional questions regarding this opinion, please feel free to call me at (800) 854-2824.

Sincerely,

Erica S. Hamrick
Attorney
Hatch Act Unit

[2] There also is case law supporting the conclusion that County Office employees are federal employees. See Bucholz v. Aldaya, 210 F.3d 862, 864 (8th Cir. 2000) (noting that County Office employees are federal employees, even though they fall outside the federal civil service because of the way they are hired and appointed); Cannady v. United States, 155 F.Supp.2d 1379 (M.D. Ga. 2001) (holding that County Office employees are federal employees for purposes of the Federal Tort Claims Act).