



U.S. OFFICE OF SPECIAL COUNSEL

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March 18, 2008

Xx Xxxxx Xxxxx

Xxxxx Xxxxx xxxx

Xxxxxx, XX xxxxx

Re: OSC File No. AD-08-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 the sending of an e-mail entitled "Who is Barack Obama" by a federal employee violates the Hatch Act. We have reviewed this e-mail, and under the circumstances outlined below, we believe that sending this e-mail would violate the Act.

The Hatch Act, 5 U.S.C. §§ 7321-7326, governs the political activity of federal civilian executive branch employees. The Hatch Act generally permits most federal employees to actively participate in partisan political management and partisan political campaigns. Covered employees, however, are prohibited from, among other things, engaging in political activity while on duty, in a government office or building, while wearing an official uniform, or using a government vehicle. 5 U.S.C. § 7324. Political activity has been defined as activity directed toward the success or failure of a political party, candidate for a partisan political office or partisan political group. 5 C.F.R. § 734.101.

The e-mail at issue begins by stating, "[s]cary stuff that everyone needs to know before it is too late." It asks, "[w]ho is Barack Obama?" and says, "[v]ery interesting and something that should be considered in your choice." The e-mail then provides information about Senator Barack Obama's family history and religious background. Examples of statements in the e-mail include: "Obama takes great care to conceal the fact that he is a Muslim;" "Obama's political handlers are attempting to make it appear that he is not a radical;" "[s]ince it is politically expedient to be a Christian when seeking major public office . . . Barack Hussein Obama has joined the United Church of Christ in an attempt to downplay his Muslim background;" and "[l]et us all remain alert concerning Obama's expected presidential candidacy." The e-mail ends by stating, "[t]he Muslims have said they plan on destroying the U.S. from the inside out, what better way to start than at the highest level – through the President of the United States, one of their own!!!!" Please forward to everyone you know. Would you want this man leading our country? . . . NOT ME." (emphasis in original).

The e-mail described above contains very negative statements about Senator Barack Obama, specifically warns recipients to "remain alert" about his candidacy, and states that it has information recipients should consider in their "choice." It also implies that, if elected President, Senator Obama would be part of a plan to destroy the United States. The e-mail ends with a

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declaration that the sender does not want Senator Obama leading this country and a plea for recipients to forward the e-mail to everyone they know. Accordingly, the content of this e-mail clearly is directed against Senator Obama's candidacy for President of the United States.

We understand that this e-mail was not created by a federal employee. Rather, a federal employee received it and then forwarded it to others without adding any content. Even under these circumstances, if a federal civilian employee<sup>1</sup> sent this e-mail while on duty and/or in a federal office or building, OSC would conclude that the employee had violated the Hatch Act's prohibition against engaging in political activity while on duty and/or in a federal building. If you would like to refer a complaint to our office concerning such activity, you can download a Hatch Act complaint form at: <http://osc.gov/documents/forms/osc13.pdf>.

Please contact me at (202) 254-3673 if you have any questions regarding this matter.

Sincerely,

/s/

Erica S. Hamrick  
Attorney  
Hatch Act Unit

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<sup>1</sup> Members of the uniformed services are not covered by the provisions of the Hatch Act. 5 U.S.C. § 7322(1)(c). In addition, independent contractors are not covered by the Act. 5 C.F.R. § 734.205, Example 5.