



U.S. OFFICE OF SPECIAL COUNSEL

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202-254-3600

November 24, 2015

Xx Xxxxx Xxxxxx
Xxxx Xxxx Xxxxxx
Xxxxxx Xxxxx xxxxx

Re: OSC File No. AD-16-xxxx

Dear Ms. Xxxxxx:

This letter is in response to your request for an advisory opinion concerning the Hatch Act. The U.S. Office of Special Counsel (OSC) is authorized pursuant to 5 U.S.C. § 1212(f) to issue opinions interpreting the Hatch Act. Specifically, you seek clarification about what “in concert” means with respect to federal employees who are further restricted under the Hatch Act and ask several questions about said employees’ use of social media to engage in political activity. Our guidance is below.

The Hatch Act, 5 U.S.C. §§ 7321-7326, governs the political activity of federal civilian executive branch employees in order to protect the federal workforce from partisan political influence. The Hatch Act prohibits employees from: using their official authority or influence for the purpose of 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 employing office. 5 U.S.C. § 7323(a)(1)-(4). The Hatch Act also prohibits employees from engaging in political activity while on duty, in a government building, while wearing an official uniform or insignia, or using an official vehicle. 5 U.S.C. § 7324. Political activity is 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.

In addition, employees in certain agencies and positions, such as employees of Xxxx Xxxxxx, are “further restricted” and prohibited from actively participating in partisan political management and campaigning. *See* 5 U.S.C. § 7323(b)(2); 5 C.F.R. § 734.401(a). Such employees are prohibited from engaging in any political activity that is “in concert” with a political party, partisan group, or candidate for partisan political office. *See, e.g., Blaylock v. U.S. Merit Sys. Prot. Bd.*, 851 F.2d 1348, 1354 (11th Cir. 1988) (concluding that “the statutory prohibition against taking an ‘active part in political management or in political campaigns’ encompasses only active participation in, on behalf of, or in connection with, the organized efforts of political parties or partisan committees, clubs, and candidates”); 5 C.F.R. § 734.402.

Thus, for example, further restricted employees may not volunteer for a partisan political campaign, make a speech on behalf of a candidate for partisan political office, or distribute campaign literature from a political party, partisan group, or candidate for partisan political

U.S. Office of Special Counsel

Page 2

office. With respect to social media, the Hatch Act prohibits further restricted employees from: posting or linking to campaign or other partisan material of a political party, partisan group, or candidate for partisan political office; “sharing” these entities’ Facebook pages or their content; and “retweeting” posts from these entities’ Twitter accounts.

However, the Hatch Act does not prohibit further restricted employees from “liking” or commenting on these entities’ social media pages or their content, provided employees do not engage in such activity while on duty or in the workplace and the social media content does not solicit political contributions. To illustrate, while off duty and away from the workplace, a further restricted employee may post on social media his opinion about a Presidential candidate, “share” a friend’s endorsement of a political party, or “like” a candidate’s Facebook page. However, the employee may not “share” a post from a campaign Facebook page, “retweet” a message from a political party, or “like” a post that requests contributions for a candidate.

You may contact me at (202) 254-3673 if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Erica S. Hamrick". The signature is written in a cursive style with a large initial "E" and "H".

Erica S. Hamrick
Deputy Chief
Hatch Act Unit