



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218

Washington, D.C. 20036-4505

202-254-3600

February 8, 2007

Dr. XXXXX

Via e-mail: XXXXXX

Re: OSC File No. AD-07-XXXX

Dear Dr. XXXX:

This letter is in response to your request for an opinion concerning the Hatch Act. The Office of Special Counsel is authorized pursuant to 5 U.S.C. § 1212(f) to issue advisory opinions under the Act. Specifically, you asked whether the Hatch Act would prohibit you from taking a six-month temporary work assignment under the auspices of the National Aeronautics and Space Administration (NASA) Leadership Development Program (LDP) in XXXXX, Office of the Governor of the State of Ohio. You also asked whether as part of your six-month temporary work assignment, you can register as a legislative agent. You are employed as an XXXX with NASA's XXXXX. As explained below, we do not believe that your activities would violate the Hatch Act.

As an employee of NASA, you are covered by the Hatch Act, and your status under the Act will not change as a result of your temporary work assignment. See 5 U.S.C. §§ 7321-7326. The Hatch Act generally permits most covered employees to actively participate in partisan political campaigning and political management. However, covered employees are prohibited from, among other things, using their official authority or influence to interfere with or affect the result of an election; and engaging in political activity while on duty and/or in the federal workplace, while wearing a uniform or official insignia, or while using a vehicle that is owned or leased by the federal government. 5 U.S.C. §§ 7323(a)(1) and 7324. Political activity is defined as activity directed toward the success or failure of a political party, candidate for partisan political office or partisan political group. 5 C.F.R. § 734.101.

Based on the information you provided, we understand that the LDP is a rigorous 12-month leadership program that challenges competitively selected participants to produce and be accountable for measurable results. The program permits participants to complete work assignments in other federal agencies and public, private, and non-profit organizations. Upon acceptance into the LDP you proposed and were granted approval by NASA management to pursue three legislative affairs-related work assignments over a 12-month period, beginning XXXX. One of your approved legislative affairs work assignments is with the XXXX, Office of the Governor of the State of Ohio.

We understand that your assignment with the Governor's Office will entail you aiding the Governor in performing his official duties as Governor of Ohio. Examples of your duties will include helping the Director and staff of the XXXX in the execution of office responsibilities as

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the Governor's liaison to State House and Senate members, their staff, and the staff of the Ohio Legislative Services Commission. Specifically, you will assist in tasks to develop and present appropriations and budget documents and information to the Appropriations Committees related to the Governor's Fiscal Years 2008-2009 Biennium Budget Request, and track and analyze committee and floor issues, hearing discussions, and markup of appropriations bills. Your position with the Governor's Office will not involve any duties, responsibilities, or activities related to or associated with the Governor's election and/or reelection to office.

Additionally, as part of your assignment to the Governor's Office, you have been asked to register as a legislative agent with the Ohio Legislative Ethics Committee as required by Ohio Law. Under Ohio law, a legislative agent is any individual who is engaged by an employer during at least a portion of his time to promote, advocate, or oppose the passage, modification, or defeat of any legislation by direct communication with any member of the Ohio General Assembly.

As to your first question in which you asked whether the Hatch Act would prohibit you from taking a six-month temporary work assignment with the Governor's Office, we do not believe your activity, as described above, is prohibited by the Hatch Act. You have indicated that your duties with the Governor's Office will not entail you working on any partisan political activities, and will only comprise official duties. Also, our review of the description of your duties that you provided does not indicate that they constitute partisan political activity, i.e., activity directed at the success or failure of a political party, candidate for partisan political office or partisan political group. Therefore, participating in the six-month assignment with the Governor's Office will not violate the Hatch Act.¹

Second, you ask whether the Hatch Act would prohibit you from registering as a legislative agent. Registering as a legislative agent and/or lobbying of elected officials about legislative issues is not a violation of the Hatch Act because it does not, by itself, constitute partisan political activity. Therefore, the Hatch Act would not prohibit you from registering as a legislative agent and/or lobbying elected officials.²

¹ If during your tenure with the Governor's Office you are asked to perform any partisan political duties, e.g., working with a political party, candidate for partisan political office or political group, you should immediately contact our office for further guidance.

² It is, however, important to note that while registering as a legislative agent and/or lobbying elected officials by itself is not a violation of the Hatch Act, information pertaining to partisan political activity, such as advocating support for the reelection campaign of an elected official, while you are on duty, or engaging in other Hatch Act prohibited activity (See 5 U.S.C. §§ 7323-7324 for a list of Hatch Act prohibitions) would be in violation of the Act. In addition, even though the Hatch Act does not prohibit you from registering as a legislative agent and/or engaging in lobbying activities, you should check with your agency to see if there are additional restrictions that may apply to your activities.

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Please contact me at (202) 254-3609 or (800) 854-2824 if you have any questions concerning this matter.

Sincerely,

Mariama Liverpool
Attorney
Hatch Act Unit