



U.S. OFFICE OF SPECIAL COUNSEL

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February 19, 2010

XXXXX XXXXX  
XXXXX XXXXX  
XXXXXX XXXXXX

Re: OSC File No. AD-09-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 interpreting the Act. Initially, you asked whether you are subject to the Act's restrictions on political activity while serving a two-year Without Compensation appointment (WOC) for the United States Department of Veterans Affairs (VA). You later informed OSC that your appointment may be cut short and you may become a permanent VA employee. You also ask whether a federal employee may take a leave of absence to be a candidate in a partisan election, and whether a federal employee may run as an independent in a partisan election. Each of your questions is answered below.

Individuals employed by, or holding office in, the VA are covered by the Hatch Act, 5 U.S.C. §§ 7321-7326. Although the Hatch Act does not define what it means to be "employed" or to "hold office," the United States Code provides that to be an "employee," one must satisfy three main elements: appointment, performance of a federal function, and supervision by an individual with appropriate appointing authority. See 5 U.S.C. § 2105(a). The Hatch Act generally permits covered individuals to actively participate in partisan political management and partisan political campaigns. 5 U.S.C. § 7323. However, covered individuals are prohibited from being candidates in a partisan election, that is, an election in which any candidate represents, for example, the Republican or Democratic Party. 5 U.S.C. § 7323(a)(3); 5 U.S.C. § 7322(2).

According to the information you provided, you work for the University of XXXXX XXXXXX, but, in order to participate in a research study, you were required to receive a WOC appointment from the VA pursuant to 38 U.S.C. § 7405(a), which authorizes the Secretary of Veterans Affairs to "employ . . . personnel . . . on a temporary full-time basis, part-time basis, or without compensation basis." Your appointment form provides that you will serve as a Research Associate for the Chief of Medical Services during a two year term ending July 31, 2010. As a result, you work forty hours per week for the XXXXXX Veterans Health Care System but continue to receive your salary from the University.

Based on the above, we have concluded that you are "employed" by the VA for Hatch Act purposes during your WOC appointment. Specifically, you received an appointment to work exclusively for the VA and report there on a full-time basis for two years. In addition, the VA

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General Counsel's Office considers WOC appointees to be "employees" for purposes of all ethics rules, including the Hatch Act. Thus, even though you are not paid by the VA, you are covered by the Hatch Act by virtue of your WOC appointment and functions. As such, the Act prohibits you from being a candidate in a partisan election during your WOC term.

Next, you ask whether you could be candidate in a partisan election if you took a leave of absence. As explained in previous correspondence, the Act's prohibition against candidacy applies even when an individual is off duty.<sup>1</sup> Thus, taking a leave of absence, paid or unpaid, would not exempt you from the Hatch Act's candidacy prohibition.

Finally, you ask whether the Act prohibits you from running as an Independent candidate in a partisan election. As explained above, a partisan election is one in which *any* candidate is to be nominated or elected as representing, for example, the Republican or Democratic Party. See 5 U.S.C. § 7322(2). As such, even if you were to run as an Independent candidate against a partisan candidate, the election would still be a partisan one. Therefore, the Hatch Act would prohibit such a candidacy.

In summary, you are subject to the Hatch Act's restrictions on political activity during your WOC appointment. Accordingly, you are prohibited from being a candidate in a partisan election, even if you take a leave of absence or run as an Independent candidate. Of course, these restrictions would also apply if you become a permanent VA employee.

Please contact me at (202) 254-3642 if you have any additional questions.

Sincerely,

Carolyn S. Martorana  
Attorney, Hatch Act Unit

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<sup>1</sup> Note that employees who work on an irregular or occasional basis are subject to the Act's restrictions only while they are on duty. 5 C.F.R. § 734.601. Thus, they could be candidates in partisan elections provided they performed no campaign activities at work. Id. (Example). However, because you work a regular schedule, this provision does not apply to you.