



U.S. OFFICE OF SPECIAL COUNSEL

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August 14, 2014

[REDACTED]
VIA EMAIL: [REDACTED]

Re: OSC File No. AD- [REDACTED]

Dear M [REDACTED]:

This letter is in response to your recent request for an advisory opinion from the U.S. Office of Special Counsel (OSC). OSC issues this advisory opinion pursuant to its authority under 5 U.S.C. § 1212(f). In your request, you asked whether and how the Hatch Act applies to employees of [REDACTED], a nonprofit social services agency. In general, you asked several questions concerning the application of the Hatch Act to employees of [REDACTED], and we address question below.

Certain state or local employees who are covered by the Hatch Act, 5 U.S.C. §§ 1501-1508, may not: (1) use their official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for office; or (2) coerce, attempt to coerce, command, or advise a state or local officer or employee to pay, lend, or contribute anything of value for political purposes. State and local employees are subject to these two prohibitions if they are principally employed by state, county, or municipal executive agencies in connection with programs financed in whole or in part by loans or grants made by the United States or a federal agency. Additionally, the Hatch Act prohibits certain state and local employees whose salaries are fully federally funded from being candidates for public office in partisan elections. 5 U.S.C. § 1502(a)(3).

Coverage Under the Hatch Act

The Hatch Act applies to employees of private, nonprofit organizations only if the statutes through which these organizations derive their federal funding contain a provision stating that recipient organizations are deemed state or local government agencies for purposes of the Hatch Act. To date, the statutes authorizing Head Start and the Community Service Block Grant (CSBG) are the only statutes that contain such a provision. *See* 42 U.S.C. §§ 9851 and 9918 (b).

Any agency receiving Head Start or CSBG assistance shall be deemed a state or local agency for the purposes of only clauses (1) and (2) of section 1502(a) of the Hatch Act, outlined above, relating to use of official authority and coercion. *Id.* Any agency responsible for the planning, developing, and coordinating of Head Start programs or CSBG activities shall be deemed a state or local agency for the purposes of all clauses of section 1502(a), including clause (3), which is the prohibition related to candidacy. Therefore, employees of a nonprofit organization that plans, directs, or coordinates Head Start programs or CSBG

activities and receives Head Start or CSBG funds may be subject to all prohibitions of the Hatch Act. Accordingly, employees of such an organization whose salaries are fully funded by Head Start or CSBG funds would be prohibited from being candidates in partisan election. In contrast, employees of a nonprofit organization that just receives Head Start or CSBG funds may be subject to only the first two prohibitions of the Hatch Act, but not the candidacy prohibition.

Use of Official Authority & Coercion Prohibitions

According to the information you provided, [REDACTED] receives both Head Start and CSBG funding. As a recipient of funding, [REDACTED] is considered a state or local agency for the purposes of clauses (1) and (2) of section 1502(a) of the Hatch Act. Accordingly, any employee of [REDACTED] who has job duties in connection with activities funded by Head Start or CSBG is prohibited from: (1) using his official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for office; and (2) coercing, attempting to coerce, commanding, or advising a state or local officer or employee to pay, lend, or contribute anything of value for political purposes.

Candidacy Prohibition

With respect to CSBG, the [REDACTED] State Division of Community Services (DCS) is designated as the lead agency for CSBG administration and allocates the funding to CSBG recipient organizations, like [REDACTED]. Accordingly, DCS, not [REDACTED], is responsible for planning, developing, and coordinating CSBG activities. Therefore, receipt of CSBG funding does not deem [REDACTED] a state or local agency for the purposes of clause (3) of section 1502(a), and employees whose salaries are fully funded by CSBG funding are not prohibited from being candidates in partisan elections.

However, with respect to Head Start, [REDACTED] is the direct grantee or delegate for Head Start funding, and it operates several Head Start centers throughout [REDACTED] County. According to the triennial review report of your organization conducted by the U.S. Department of Health and Human Services' Administration for Children and Families, [REDACTED] has responsibility for, among other things, decision making pertaining to program administration and operations, including selecting delegates and service areas; establishing procedures and criteria for recruitment, selection, and enrollment; and reviewing all applications for funding.

Based on the foregoing, in addition to receiving Head Start funding, [REDACTED] also has responsibility for planning, developing, and coordinating Head Start programs. Therefore, [REDACTED] is considered a state and local agency for the purposes of clause (3) of section 1502(a), and, consequently, employees whose salaries are fully funded by Head Start grants are prohibited from being candidates in partisan elections.

Permitted Activities

In your request for an advisory opinion, you specifically asked if employees could engage in certain activities. First, you asked whether employees could be candidates for office. As explained above, only those employees whose salaries are fully financed with Head Start grants are prohibited from being candidates in partisan elections. All other employees, including those whose salaries are only partially financed by Head Start funds, are permitted to be candidates in partisan elections. Furthermore, please note that the Hatch Act only prohibits candidacy in partisan elections and does not prohibit covered employees from being candidates in nonpartisan elections.¹ Therefore, even if an employee's salary were fully financed with Head Start grants, the employee could still be a candidate for public office, provided the election was nonpartisan.

You also asked whether employees could participate in voter registration drives. In general, even assuming an employee had job duties in connection with CSBG or Head Start funding, the Hatch Act would not prohibit the employee from participating in a voter registration drive. However, if the voter registration drive is partisan, meaning it is sponsored by a political party or partisan group or is aimed at helping a political party or candidate succeed, then a covered employee would not be able to participate in the drive in his official capacity. Participation in such partisan voter registration drives should only be done in the employee's personal capacity, and should not make use of an employee's official position or title or any agency resources, including agency facilities and staff.

Finally, you asked whether an employee may participate in campaigning or on political committees. Again, in general, even assuming an employee had job duties in connection with CSBG or Head Start funds, the Hatch Act would not prohibit the employee from actively participating in campaigning or on political committees. However, we again caution that covered employees should only participate in such activities in their personal capacities. Additionally, we advise that covered employees should not involve subordinate employees in such political activities in order to avoid violating the Hatch Act's prohibition on coercing employees.

If you have additional questions or concerns, please contact me at 202-254-3635 or cseibert@osc.gov.

Sincerely,



Corinne R. Seibert
Attorney, Hatch Act Unit

¹ A nonpartisan election is an election in which none of the candidates is to be nominated or elected as representing a political party. 5 C.F.R. § 734.101.