



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218

Washington, D.C. 20036-4505

202-254-3600

October 29, 2015

Xx Xxxx Xxxxx
XXXXXX
XXXXX, XX xxxxx

Re: OSC File No. AD-16-xxxx

Dear Mx. 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 ask whether the Hatch Act would prohibit officers and employees of a local sheriff's office from signing a letter of support for the sheriff's reelection campaign. You also ask whether the Hatch Act would prohibit you, the chief deputy sheriff, from requesting officers and employees to sign such a letter. Your questions are addressed below.

The Hatch Act, 5 U.S.C. §§1501-1508, governs the political activity of certain state and local government employees in order to protect the public workforce from partisan political influence and ensure the nonpartisan administration of laws. Employees covered by the Hatch Act are those whose principal position or job is with a state, county, or municipal executive agency and whose job duties are "in connection with" programs financed in whole or in part by loans or grants made by the United States or an agency thereof. 5 U.S.C. § 1501(4). Employees are subject to the Hatch Act if, as a normal and foreseeable incident of their positions or jobs, they perform duties in connection with federally financed activities. *Special Counsel v. Gallagher*, 44 M.S.P.R. 57, 61 (1990); *In re Hutchins*, 2 P.A.R. 160, 164 (Civil Serv. Comm'n 1944).

Individuals who supervise employees who work on federally funded programs have been found to be subject to the Hatch Act due to their oversight responsibilities for those activities. *See In re Palmer*, 2 P.A.R. 590, 595-596 (Civil Serv. Comm'n 1959). Additionally, employees who play a vital role in securing and maintaining federally funded grants as well as who perform affirmative grant-related duties are covered by the Hatch Act. *See Special Counsel v. Greiner*, 117 M.S.P.R. 117, 121-27 (2011). However, coverage is not dependent on the source of an employee's salary,¹ nor is it dependent upon whether the employee actually administers the funds or has policy duties with respect to them. *Special Counsel v. Williams*, 56 M.S.P.R. 277, 283-84 (1993), *aff'd*, 55 F.3d 917 (4th Cir. 1995), *cert. denied*, 516 U.S. 1071 (1996) (unreported decision).

¹ Salary is relevant with respect to the Hatch Act's candidacy prohibition, but that prohibition is not at issue in your advisory request.

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The Hatch Act prohibits employees from using their official authority or influence for the purpose of affecting the results of an election. 5 U.S.C. § 1502(a)(1). This prohibition includes engaging in political activity while wearing an official uniform or using an official title. It also includes using agency resources, such as on-duty personnel, to support a candidate and using one's authority to coerce any person to participate in political activity. Similarly, employees are also prohibited from directly or indirectly coercing subordinates to make political contributions, such as providing personal volunteer services. 5 U.S.C. § 1502(a)(2). The Merit Systems Protection Board, which adjudicates Hatch Act cases, has deemed the supervisor-subordinate relationship to be inherently coercive. *See Special Counsel v. Purnell*, 37 M.S.P.R. 184, 185 (1995), *aff'd sub nom., Fela v. Merit Sys. Prot. Bd.*, 730 F. Supp. 779 (N.D. Ohio 1989) (reaffirming Civil Service Commission rule stating that it is inherently coercive for a supervisor to ask an employee to contribute to a political cause, absent exculpatory circumstances.) Where the supervisor-subordinate relationship exists, no particular words are required to establish coercion because virtually any language can be threatening. *Gallagher*, 44 M.S.P.R. at 76.

The Hatch Act would not prohibit sheriff's office employees or officers from signing a letter of support for the sheriff's reelection campaign, provided they sign the letter in their personal capacities and not in their official capacities as officers or employees of the sheriff's office. However, assuming they are covered by the provisions of the Hatch Act, the Act would prohibit any sheriff's office supervisor, including the sheriff or the chief deputy, from asking subordinate employees to sign a letter of support for the sheriff's reelection campaign, circulate such a letter for signature, or engage in any other political activity.

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

Sincerely,

A handwritten signature in cursive script that reads "Erica S. Hamrick". The signature is written in black ink and is positioned above the typed name.

Erica S. Hamrick
Deputy Chief
Hatch Act Unit