



U.S. OFFICE OF SPECIAL COUNSEL
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August 21, 2009

Xxx XXXXXXX
XXXX Xxx XXXX
XXXXXXXX, XX xxxxxx

Re: OSC File No. AD-xx-xxxx

Dear Xx XXXXXXX:

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 under the Act. Specifically, you seek clarification as to how the Hatch Act applies to a U.S. Department of Xxxxx employee running in a partisan election for a local school board in Pennsylvania.

Employees of the U.S. Department of Xxxxx (DOX) are covered by the provisions of the Hatch Act. The Hatch Act, 5 U.S.C. §§ 7321-7326, generally permits most federal employees to actively participate in partisan political management and partisan political campaigns. Employees covered by the Act, however, are prohibited from being candidates for public office in partisan elections, i.e., elections in which any of the candidates is to be nominated or elected as representing, for example, the Republican or Democratic Party. 5 U.S.C. § 7323(a)(3). An election allowing candidates to cross-file as representing multiple political parties is partisan for purposes of the Hatch Act. Special Counsel v. Yoho, 15 M.S.P.R. 409, 412 (1983).

Accordingly, the Hatch Act prohibits a DOX employee from being a candidate in a partisan election for a local school board in Pennsylvania, even if candidates in that election can be nominated by more than one political party. Thus, if a DOX employee became a candidate in such an election, that employee would violate the Hatch Act and could be subject to an enforcement action before the Merit Systems Protection Board (Board). If the Board determines that the employee violated the Hatch Act, the Board would order the employee to be removed or suspended without pay from federal employment. 5 U.S.C. § 7326.

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

Sincerely,

/s/

Erica S. Hamrick
Deputy Chief
Hatch Act Unit