



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

June 10, 2021

Re: OSC File No. AD-20-xxxxxxx

Dear _____:

This letter is in response to your request for an advisory opinion concerning how the Hatch Act applies to Special Government Employees (SGEs) who work more than 130 days in a 365-day period.¹ As explained below, SGEs retain their classification as an SGE even after exceeding 130 days of work in a 365-day period. Accordingly, the U.S. Office of Special Counsel (OSC) has concluded that they continue to be subject to the Hatch Act only when they are on duty.

The Hatch Act restricts the political activities of federal civilian executive branch employees.² The Hatch Act prohibits employees from: using their official authority or influence for the purpose of affecting the result of an election; knowingly soliciting, accepting, or receiving political contributions from any person; being candidates for public office in partisan elections; and knowingly soliciting or discouraging the political activity of any individual with business before their employing office.³ These four prohibitions apply at all times, even while an employee is not on duty. In addition, the Hatch Act prohibits employees from engaging in political activity while on duty, in a government building, while wearing an official uniform or insignia, or using a government vehicle.⁴

Unlike most federal employees, pursuant to 5 C.F.R. § 734.601, SGEs are subject to the Hatch Act's prohibitions only when they are on duty. You have asked whether this regulation is still applicable to an SGE who has exceeded the statutory limit of 130-days worked per 365-day period or whether that individual is now subject to the Hatch Act as a regular federal employee.

SGEs are defined in 18 U.S.C. § 202(a) as employees who are "retained, designated, appointed, or employed to perform" for not to exceed 130 days during any period of 365 consecutive days.⁵ Congress created the classification in an effort to attract persons with

¹ Pursuant to 5 U.S.C. § 1212(f), the U.S. Office of Special Counsel is authorized to issue opinions interpreting the Hatch Act.

² See generally 5 U.S.C. §§ 7321-7326.

³ 5 U.S.C. § 7323(a)(1)-(4).

⁴ 5 U.S.C. § 7324(a). Political activity is defined as activity directed toward the success or failure of a political party, candidate for a partisan political office, or partisan political group. 5 C.F.R. § 734.101.

⁵ See 18 U.S.C. § 202(a).

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“specialized knowledge or skills” to government service on a part time or intermittent basis, and to do so Congress relaxed some of the ethics restrictions on this classification of employee.⁶ When appointing an SGE, an agency must make a good faith estimate in advance of the appointment that the individual will serve for no more than 130 days in the succeeding 365-day period.⁷ And an SGE designation remains in effect for that entire 365-day period.⁸ Thus, even if an SGE exceeds the 130-day limit on days worked in a 365-day period, the individual retains their classification as an SGE.⁹

Because such an individual retains their status as an SGE, OSC has concluded that 5 C.F.R. § 734.601 still applies to them. Accordingly, an SGE continues to be covered by the Hatch Act only while on duty, even after working more than 130 days in a 365-day period.

Please note that this advisory opinion only relates to the Hatch Act and does not address any other laws, rules, or regulations that may be applicable to SGEs. Please feel free to contact me at (202) 804-7054 if you have any questions regarding this matter.

Sincerely,

/s/

Erica S. Hamrick

Deputy Chief, Hatch Act Unit

⁶ S. Rep. No. 87-2213, 87th Cong., 2d Sess., 4 (1962), *reprinted in* 1962 U.S.C.C.A.N 3852, 3853.

⁷ *See* Restrictions on a Federal Appointee’s Continued Employment by a Private Law Firm, 7 Op. O.L.C. 123, 126 (Aug. 1, 1983).

⁸ *See* Letter from Marilyn L. Glynn, OGE General Counsel, to an Alternate Designated Agency Ethics Official, at 2-3 (Nov. 1, 2005), [OGE Opinions -- Letter to an Alternate Designated Agency Ethics Official dated November 1, 2005](#).

⁹ *See* Memorandum from Stephen D. Potts, OGE Director, to Designated Agency Ethics Officials, General Counsels and Inspectors General Regarding Summary of Ethical Requirements Applicable to Special Government Employees, at 5 (Feb. 15, 2000), [Opinions--00 x 1--Memorandum dated February 15, 2000, from Stephen D. Potts, Director, to DAEOs, General Counsels and Inspectors General Regarding Summary of Ethical Requirements Applicable to Special Government Employees \(oge.gov\)](#).