



U.S. OFFICE OF SPECIAL COUNSEL
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August 14, 2018

Xx. Xxxx Xxx XXXXXXXX
xxx XXXXXXXXX
XXXXXXXX, XX xxxxxx

VIA ELECTRONIC MAIL: xxxxxxxxxxxxxxxxxxxxxxxx

Re: OSC File No. AD-18-xxxx

Dear Mx. Xxx XXXXXXXX:

This letter from the U.S. Office of Special Counsel (OSC) responds to your request for an advisory opinion regarding the Hatch Act.¹ Specifically, you asked whether you, an incumbent sheriff up for reelection in the Xxxxx xx Xxx Xxxx, may wear your uniform and drive your agency-issued vehicle to an event at which you gather signatures for your reelection nominating petition. As described below, the Hatch Act does not prohibit such activity.

The Hatch Act 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. *See generally* 5 U.S.C. §§ 1501-1508. The Hatch Act applies to state and local government employees who work in the executive branch and whose principal employment is in connection with an activity financed in whole or in part by loans or grants made by the United States or a federal agency.² 5 U.S.C. § 1501(4). Such employees generally may not: (1) use their official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office; (2) coerce, attempt to coerce, command, or advise another state or local government employee to engage in political activity; or (3) be a candidate for elective office, if the employee's salary is paid completely by loans or grants made by the United States or a federal agency. 5 U.S.C. § 1502(a)(1)-(3). Individuals holding elective office are exempt from the candidacy prohibition. 5 U.S.C. § 1502(c)(4).

We have interpreted the statutory restriction on an employee using official authority or influence to affect an election to prohibit most covered employees from using an official title or wearing an agency uniform while engaging in political activity. However, we generally do not extend those prohibitions to employees holding elective office. Congress has explicitly granted employees holding elective office greater leeway to engage in political activity by exempting

¹ OSC is authorized by 5 U.S.C. § 1212(f) to issue opinions interpreting the Hatch Act.

² We assume for purposes of this advisory opinion that sheriffs in the Xxxxx xx Xxx Xxxx are within the executive branch and that you have duties in connection with an activity financed by the United States or a federal agency, and therefore that you are subject to the Hatch Act.

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them from the candidacy prohibition. Because incumbents already hold partisan political office, we have reasoned that incumbents do not violate the Hatch Act by wearing a uniform or using an official title while campaigning for reelection. Thus, we have advised that a sheriff may attend campaign events while wearing his uniform and identifying himself as the sheriff or use photographs of himself in uniform for campaign purposes. Similarly, a sheriff does not violate the Hatch Act by driving an agency-issued vehicle to a campaign event.

This is not to say that sheriffs are completely exempt from the prohibition on using official authority to interfere with or affect an election or a nomination for office. Certain other actions, such as a sheriff offering leniency to an individual suspected of violating the law in exchange for that person's promise to vote for the sheriff, would constitute a prohibited use of official authority. Similarly, a sheriff may not go door-to-door canvassing for voter support while in uniform. This is so because a private citizen, not knowing whether the sheriff was there to discuss a law enforcement matter, might feel compelled to open the door when that citizen would not feel similarly compelled to open the door for campaign volunteers or a candidate not in uniform. To avoid creating any such feelings of compulsion, which would be a prohibited use of official authority, a sheriff should not engage in door-to-door canvassing while in uniform.

Additionally, sheriffs remain subject to the Hatch Act prohibition on coercing or attempting to coerce other employees into making political contributions. *See* 5 U.S.C. § 1502(a)(2). Asking a subordinate employee to make a political contribution or volunteer for a political campaign is considered inherently coercive. *See Special Counsel v. Acconcia* (CB-1216-06-0007-T-1, February 26, 2007) (Initial Decision at 9), *modified*, 107 M.S.P.R. 60 (2007), *citing Special Counsel v. Purnell*, 37 M.S.P.R. 184, 195 (1988), *aff'd sub nom. Fela v. U.S. Merit Sys. Prot. Bd.*, 730 F. Supp. 779 (N.D. Ohio 1989). Where the supervisor-subordinate relationship exists, no particular words are required to establish coercion because virtually any language can be threatening. *See Special Counsel v. Gallagher*, 44 M.S.P.R. 57, 76 (1990). Thus, sheriffs should not ask subordinate employees to contribute to a political campaign.

Please contact OSC attorney Eric Johnson at (202) 804-7044 if you have any additional questions.

Sincerely,



Erica S. Hamrick
Deputy Chief, Hatch Act Unit