



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218

Washington, D.C. 20036-4505

202-254-3600

December 12, 2007

Ms. XXXX

Via e-mail: XXXX

Re: OSC File No. AD-08-XXXX

Dear Ms. XXXX:

This letter is in response to your request for an opinion concerning the Hatch Act. The Office of Special Counsel is authorized pursuant to 5 U.S.C. § 1212(f) to issue advisory opinions under the Act. Specifically, you ask whether the Hatch Act would prohibit you from being a candidate for XXXX Municipal Judge and whether you can fundraise for your candidacy. You are currently employed as an attorney with the Social Security Administration (SSA). As explained below, the Hatch Act would not prohibit your candidacy nor would it prohibit you from fundraising for your candidacy.

As an employee of SSA, you are covered by the Hatch Act. See 5 U.S.C. §§ 7321-7326. The Hatch Act generally permits most covered employees to actively participate in partisan political campaigning and political management. While the Hatch Act permits covered employees to participate in political campaigning and political management, it prohibits employees from engaging in certain partisan political activities. Covered employees are prohibited from, among other things, soliciting, accepting or receiving political contributions and being candidates for public office in a partisan election, i.e., an election in which any candidate represents, for example, the Republican or Democratic Party. 5 U.S.C. §§ 7323(a)(2),(3).

Employees covered by the Hatch Act, however, are not prohibited from engaging in nonpartisan activities. Examples of the activities that employees are permitted to engage in include being candidates in nonpartisan elections and soliciting, accepting or receiving political contributions for their candidacies in nonpartisan elections. 5 C.F.R. § 734.207(b), Example 1.

In your request for an advisory opinion, you stated that the election for XXXX Municipal Judge is a nonpartisan election. Also, Ms. XXXX, XXXX City Clerk, informed our office that candidates for Municipal Judge do not represent any political parties.

As explained above, the Hatch Act specifically permits federal employees to be candidates in a nonpartisan election and to raise funds for their candidacies. Thus, because the election for XXXX Municipal Judge is a nonpartisan election, the Hatch Act would not prohibit your candidacy nor would it prohibit you from fundraising for such candidacy.¹

¹ While the Hatch Act would not prohibit you from fundraising for your candidacy in a nonpartisan election, there may be other laws that would govern your activity.

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Lastly, please be advised that usually a nonpartisan election is so designated by state or local laws. Such state and local laws, however, create only a rebuttable presumption that an election is nonpartisan. See Special Counsel v. Yoho, 15 M.S.P.R. 409, 413 (1983), overruled on other grounds, Special Counsel v. Purnell, 37 M.S.P.R. 184 (1988). Evidence showing that partisan politics actually enter the campaigns of the candidates may rebut this presumption. See McEntee v. M.S.P.B., 404 F.3d 1320 (Fed. Cir. 2005); In re Broering, 1 P.A.R. 778, 779 (1955). For example, if a candidate solicits or advertises the endorsement of a political party or uses a political party's resources to further his or her campaign, these actions may rebut the presumption that an election is nonpartisan, and thus, indicate that the election is a partisan one. As such, if any candidate for Municipal Judge becomes associated with a political party, you should immediately contact our office for further guidance.

Please contact me at (202) 254-3609 or (800) 854-2824 if you have any questions concerning this matter.

Sincerely,

Mariama Liverpool
Attorney
Hatch Act Unit