



U.S. OFFICE OF SPECIAL COUNSEL

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December 4, 2008

Mx. XXXX XXXXX

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Re: OSC File No. AD-09-xxxx

Dear Mx. XXXXX:

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 asked whether employees of the Carlos Rosario International Public Charter Schools, Inc. (CRPCS) are covered by the Act. For the reasons stated below, this letter serves as notice that the Hatch Act would not cover employees of CRPCS by virtue of that employment alone.¹

The Hatch Act governs the political activities of federal employees. See 5 U.S.C. §§ 7321-7326. For the purposes of the Hatch Act, the term employee includes any individual employed or holding office in the government of the District of Columbia.² 5 U.S.C. § 7322 (1)(c). The Hatch Act generally permits most covered employees to actively participate in partisan political management and partisan political campaigns. 5 U.S.C. § 7323(a). Employees covered by the Hatch Act are prohibited from, among other things, being candidates for public office in partisan elections, i.e., elections in which any candidate represents, for example, the Democratic or Republican Party.

According to information we received, the CRPCS is a private nonprofit organization³ that receives its funding through the Charter School Fund.⁴ The website for CRPCS⁵ states that it was the first charter received for adult education in the nation and is accredited by Middle States Association of Colleges and Schools. To further support the status as a recognized charter

¹ An employee of CRPCS, if applicable, may be covered by the Hatch Act pursuant to other employment.

² DC Code § 38-1800.02 (10)(A) defines the term "District of Columbia Government" as including (i) any department, agency, or instrumentality of the District of Columbia; and . . . (vi) any other agency, public authority, or public nonprofit corporation that has the authority to receive moneys directly or indirectly from the District of Columbia.

³ The Hatch Act applies to employees of private, non profit organizations only if any of the statutes through which the organization derives its federal funding contain a provision stating that recipient organizations are deemed state or local government agencies for purposes of the Hatch Act. To date, only the statutes authorizing Head Start and Community Service Block Grant (CSBG) funds contain such a provision. 42 U.S.C. § 9851 and §9918(b). The CRPCS does not receive these grants.

⁴ DC Code § 38-1804.03. This funding source was confirmed by Xx XXXXX XXXXXX.

⁵ www.carlosrosario.org

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school in the District of Columbia, in 2006, CRPCS was recognized by the Mayor as one of the 10 best charter schools in Washington, D.C.

As stated above, coverage by the Hatch Act extends to employees of the Government of the District of Columbia. Employees of a public charter school, however, belong to an excepted category which expressly excludes public charter schools from the category of District of Columbia Government.⁶

Further evidence that employees of public charter schools are excluded from classification as employees of the Government of the District of Columbia can be found in the DC Code. The Code expresses that public charter schools are exempt from statutes, policies, rules, and regulations established by the District of Columbia for its public schools.⁷ In addition, the Code states that an employee of a public charter school, notwithstanding any other provision of law, shall not be considered to be an employee of the District of Columbia Government for any purpose.⁸

Accordingly, based on the above law, OSC finds that employees of CRPCS are not considered employees of the Government of the District of Columbia for purposes of the Hatch Act. Therefore, employees of CRPCS are not covered by the Hatch Act.

Please contact me at (202) 254-3662 if you have any questions regarding this matter.

Sincerely,

Mary Donovan
Attorney
Hatch Act Unit

⁶ DC Code § 38-1800.02 (10)(B).

⁷ DC Code § 38-1802.04 (C)(3)(B).

⁸ DC Code § 38-1802.07.