



U.S. OFFICE OF SPECIAL COUNSEL

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July 20, 2009

XXXXX XXXXX, XXXX XXXXXXXXX

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XXXXXXXX, XX XXXXX

Via U.S. Mail and E-Mail to: xxxxxxxxxxxx@vxxxxx.xxx

Re: OSC File No. AD-xx-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 interpreting the Act. Specifically, you ask OSC to verify your conclusion that part-time Special Assistant United States Attorney (SAUSA) XXXX XXXXX is covered by the Hatch Act and that xx may be a member of the XXXXX XXXXX Democratic Party State Central Committee for XXXXXXXX, XXXXXX. In the course of preparing this advisory opinion, OSC discovered that Mx. XXXXXXXX hosted a campaign fundraiser for a partisan political candidate in December 2007, before he was appointed to his SAUSA position. He also has indicated that his spouse may host a political fundraiser in the future. As explained below, your conclusions are correct; however, given Mx. XXXXX's previous fundraising activities, this opinion also clarifies whether Mx. XXXXX is subject to the Hatch Act's restrictions when he is not on duty as a SAUSA, and in which types of fundraising activities he may engage.

A. Mx. XXXXX's Status Under the Hatch Act

As you know, the Hatch Act governs the political activity of individuals employed or holding office in federal executive branch agencies, including the United States Department of Justice (USDOJ). See 5 U.S.C. §§ 7321-7326. The Act prohibits a covered employee from: using his official authority or influence to interfere with the result of an election; soliciting, accepting, or receiving political contributions from any person, and; being a candidate in a partisan election. 5 U.S.C. § 7323(a)(1)-(3). Generally, these prohibitions apply even when an employee is not in duty status. In addition, covered employees may not engage in political activity while on duty or in any room or building occupied in the discharge of official duties by federal employees. 5 U.S.C. § 7324(a)(1)-(2).¹

As a SAUSA, Mx. XXXXX is "employed or holding office in" a federal executive agency and thus is covered by the Hatch Act. Note that an employee who works on an irregular or occasional basis, however, is subject to the Act's prohibitions only when he is on duty. 5 C.F.R. § 734.601. Because Mx. XXXXX is not a full-time officer or employee with the USDOJ, we must

¹ "Political activity" is defined as "an activity directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group." 5 C.F.R. § 734.101.

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determine whether he is employed on an irregular or occasional basis. The Hatch Act regulations define occasional as “occurring infrequently, at irregular intervals, and according to no fixed or certain scheme; acting or serving for the occasion or only on particular occasions.” 5 C.F.R. § 734.101.

According to the information you provided, Mx. XXXXXX is a XXXXXX XXXXX XXXXXXXX XXXXX XXXXXXX who received a one year SAUSA appointment on XXXXX xx, xxxx. His term has been extended. Initially, United States Attorney XXXXXX XXXXX and XXXXXXXX XXXXXXXX orally agreed that Mx. XXXXX would work in the United States Attorney’s office three days per week, but later reduced his tour to two days per week. Except for a few days when Mx. XXXXXXXX was required to appear in state court, he has consistently worked Mondays and Tuesdays in the United States Attorney’s Office. He has his own docket of cases.

Based on the above, OSC has concluded that Mx. XXXXX does not work at the United States Attorney’s Office on an irregular or occasional basis. Specifically, he works a regular tour of every Monday and Tuesday. Moreover, he is assigned his own cases, and thus does not work merely “for the occasion or only on particular occasions.” See 5 C.F.R. § 734.101. As a result, Mx. XXXXXXXX is subject to Hatch Act’s prohibitions when he is not on duty as a SAUSA.²

B. Participation in Political Party Management

You ask whether Mx. XXXXXXXX may be a member of the XXXXXXXX XXXXXXX Democratic Party State Central Committee for XXXXXXXX XXXXXXXX. The Hatch Act generally permits most federal employees to actively participate in partisan political management and partisan political campaigns to the extent such activities are not inconsistent with the enumerated prohibitions. 5 U.S.C. § 7323(a). With respect to partisan political management, the Hatch Act regulations permit federal employees to “[s]erve as an officer of a political party or other political group, a member of a nation, State, or local committee of a political party, an officer or member of a committee of a political group, or be a candidate for any of these positions.” 5 C.F.R. § 734.204(b) (emphasis added). A partisan political group is “any committee, club, or other organization which is affiliated with a political party or candidate for public office in a partisan election, or organized for a partisan purpose, or which engages in partisan political activity.” 5 C.F.R. § 734.101. Accordingly, the Hatch Act does not prohibit Mx. XXXXXXXX from being a member or officer of the XXXXX XXXXXXX Democratic Party State Central Committee for XXXXXXXX XXXXXXX, provided he neither engages in activities related to the Committee while on duty nor solicits, receives, or accepts political contributions at any time.³

² This advisory opinion does not address whether Mx. XXXXXX is subject to the Hatch Act in his position as XXXXXX XXXXXXXX. The Act applies to state and local executive branch employees who have duties in connection with activities financed in whole or in part by federal loans or grants. 5 U.S.C. § 1501(4). Note that the Act’s prohibitions as to state and local employees are different than those that apply to federal employees. See 5 U.S.C. § 1502.

³ Political contributions include “any gift, subscription, loan, advance, or deposit of money or anything of value, made for a political purpose.” 5 C.F.R. § 734.101.

C. Prohibited and Permitted Fundraising Activities

We understand that, before Mx. Xxxxxx became a SAUSA, he hosted a campaign fundraiser for a partisan political candidate. As explained above, at no time may a covered individual solicit, accept, or receive political contributions. See 5 U.S.C. § 7323(a)(2). Activities encompassed by this prohibition include: hosting a fundraiser or serving as a point of contact or sponsor for a fundraiser; inviting others to a fundraiser; sending or forwarding e-mails containing solicitations or invitations to fundraisers, and; signing solicitation letters. See generally 5 C.F.R. §§ 734.208, 734.303. Moreover, he may not use his official title in connection with any fundraising activities. 5 C.F.R. § 734.303(c).

In this vein, Mx. Xxxxxx asked you whether his spouse may host a political fundraiser. The Hatch Act does not prevent his spouse from hosting a fundraiser in their home or at a commercial location, nor does it prohibit Mx. Xxxxxxx from attending that or any other fundraiser. See 5 C.F.R. § 734.208(b); 5 C.F.R. § 734.303 (example 1).⁴ We note that the Hatch Act regulations state that an employee may help behind the scenes of a fundraiser by supplying names for the invitee list. See 5 C.F.R. § 734.208 (example 9). In a situation where the host of the event is related to the employee who provides names, this permitted activity is tempered by the prohibition against using his official authority or influence to affect the result of an election. See 5 U.S.C. § 7323(a)(1). Thus, invitees should be individuals acquainted with his spouse and not people acquainted only with Mx. Xxxxxx in his capacity as a SAUSA. This precaution will reduce the risks of his being perceived as a point of contact or co-host for the event and from his trading on his position with the USDOJ. Further, he should not hold himself out as host or co-host at the fundraiser by, for example, greeting people at the door or taking their coats. Lastly, he may not personally solicit, accept, or receive contributions toward the fundraiser or at the fundraiser.

In summary, Mx. Xxxxxx is covered by the Hatch Act, and, as he is not an irregular or occasional employee, he is subject to the Act's restrictions even when he is off duty. Thus, although he may be a member of the Xxxxx Xxxxxxx Democratic Party State Central Committee for Xxxxxx Xxxxx, he may not engage in any political activity related to that organization while on duty. In addition, he may not solicit, accept, or receive political contributions, use his official authority to interfere with the result of an election, or be a candidate in a partisan election, even when he is not in duty status. Please contact me at (202) 254-3642 if you have any additional questions.

Sincerely,

Carolyn S. Martorana
Attorney, Hatch Act Unit

⁴ We base this statement on the assumption that Mx. Xxxxxx's spouse is not covered by the Hatch Act.