



U.S. OFFICE OF SPECIAL COUNSEL

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**Federal Hatch Act Advisory:
D.C. Employee Serving as an Officer of a Campaign Committee**

May 3, 2004

Re: OSC File No. AD-04-xxxx

Dear Mr. _____:

This letter is in response to your request for an advisory opinion concerning the Hatch Act and how District of Columbia employees may become involved with partisan campaigns. The Office of Special Counsel is authorized pursuant to 5 U.S.C. § 1212(f) to issue binding opinions under the Act. Below we have set forth your specific questions followed by our response.

1. Does the Hatch Act permit a District of Columbia employee to serve as a paid campaign consultant or as a paid campaign manager?

Most Hatch Act covered employees, including District of Columbia employees, are permitted to take an active part in partisan political management and partisan political campaigns.¹ 5 U.S.C. § 7323(a). Therefore, a District of Columbia employee, in his personal capacity, may serve as an officer of a candidate's campaign committee as long as he does not personally solicit, accept or receive political contributions. 5 C.F.R. § 734.204, Example 4. Additionally, the District of Columbia employee may not use his official title or make reference to his position as a District of Columbia government employee when serving as a campaign consultant or manager, or while engaging in any other partisan political activity. 5 C.F.R. § 734.302.

Please be advised that this opinion is limited to what is permissible or prohibited under the Hatch Act. Thus, although the Act would not prohibit the District of Columbia employee from serving as a paid campaign consultant or a paid campaign manager, there may be other laws, rules, or regulations governing this type of outside employment. Therefore, the District of Columbia employee should seek further guidance from his agency's ethics office.

¹ Some federal employees continue to be prohibited from actively participating in partisan political management and political campaigns. See 5 U.S.C. § 7323(b).

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2. May a District of Columbia employee perform partisan campaign related duties during the course of the employee's normal business work day?

Although the Hatch Act permits District of Columbia employees to take an active part in partisan political management and political campaigns, the Act prohibits employees from engaging in political activity: (1) while on duty; (2) in any room or building occupied in the discharge of official duties by an individual employed or holding office in the Government of the United States or any agency or instrumentality thereof; (3) while wearing a uniform or official insignia identifying the office or position of the employee; or (4) in any vehicle owned or leased by the Government of the United States or any agency or instrumentality thereof. 5 U.S.C. § 7324(a). 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.

Based on the above, a District of Columbia employee may not perform partisan campaign duties during the course of the employee's normal business day if the employee is: (1) on duty; (2) in any room or building occupied in the discharge of official duties by an individual employed or holding office in the Government of the United States or any agency or instrumentality thereof; or (3) wearing an official uniform or insignia. Please be advised that an employee is "on duty" when the employee is: (1) in a pay status other than paid leave or other authorized absence; or (2) representing the District of Columbia government in an official capacity.

For example, an employee may stuff envelopes for a partisan candidate while the employee is sitting in a park during his lunch period if he is not considered to be on duty during his lunch period. 5 C.F.R. § 734.306, Example 13. However, an employee may not write campaign speeches, make political calls, or send political emails on behalf of a partisan candidate or political party while the employee is in any room or building occupied in the discharge of official duties by an individual employed or holding office in the Government of the United States or any agency or instrumentality thereof, even if he is not "on duty" for purposes of the Hatch Act.

3. May a District of Columbia employee take leave without pay or annual leave to work full time for a partisan campaign in a paid capacity?

As described above, the Hatch Act would not prohibit a District of Columbia employee from working full time for a partisan campaign in a paid capacity. The Act, however, imposes certain restrictions as to when and where a covered employee may engage in such political activity. Also, even if the employee is on annual leave or leave without pay, he is still subject to the restrictions of the Hatch Act. Thus, even when an employee is in an approved leave status, he is prohibited from soliciting, accepting or receiving contributions on behalf of a partisan candidate or political party. Moreover, an

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employee on leave continues to be prohibited from using his official authority or influence to affect the result of an election.

Please be advised that the decision to grant an employee annual leave or leave without pay is a determination that is made exclusively by the employing agency. Lastly, as indicated above, we would suggest that the employee contact his agency's ethics office to discuss any other agency rules or regulations governing outside employment activities. If you have any further questions, please do not hesitate to contact me at (202) 254-3667.

Sincerely yours,

/s/

Amber A. Bell
Attorney
Hatch Act Unit