



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 201
Washington, D.C. 20036-4505

XXXXXXX

Via e-mail: XXXXX

Re: OSC File No. AD-05-XXXXX

Dear Mr. XXXXX:

This letter is in response to your request for an opinion concerning the Hatch Act. The Office of Special Counsel (OSC) is authorized pursuant to 5 U.S.C. § 1212(f) to issue advisory opinions under the Act. Specifically, you seek guidance concerning the Hatch Act's application to federal employees in light of a Nebraska Statute requiring registered voters to serve as election officials and employers to excuse their employees for such service without penalty or loss of pay. Also, in your request concern is expressed as to whether Nebraska can make this law applicable to federal employees.

As you know, federal employees of executive agencies are covered by the Hatch Act. See 5 U.S.C. §§ 7321-7326. While some federal employees are less restricted by the Hatch Act and are permitted to actively participate in partisan political management and political campaigns, other employees are further restricted by the Act and are prohibited from engaging in these activities.¹ Additionally, the Hatch Act prohibits all covered employees from, among other things, engaging in political activity while on duty, in any room or building occupied in the discharge of official duties, while using a government vehicle or while wearing a government uniform or insignia. 5 U.S.C. §§ 7323-7324. Political activity is defined as 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.

According to the information you provided with your advisory request, Nebraska Revised Statutes §§32-221, 228 authorize the drafting of registered voters to serve as election officials. Once registered voters are selected, they are placed in a pool of potential workers. If appointed from this pool to work, individuals are notified of their appointment at least 30 days prior to any election in which they are required to work. Once appointed to serve as election officials, these individuals are required to serve unless they are excused for a valid reason. Also, according to Nebraska law, selected voters cannot be subject to discharge from employment, loss of pay, loss of overtime pay, loss of sick leave, loss of vacation time, or the threat of any such action from their employer as a result of their service as election officials.

¹ See 5 U.S.C. § 7323(b)(2)(B) for a list of further restricted employees.

After considering the Nebraska statutes at issue and the Hatch Act, we are able to provide the following advice. All federal employees may serve as election clerks, judges or in similar positions. 5 C.F.R. §§ 734.206, 734.403. However, further restricted employees may only serve in this capacity if they are solely performing nonpartisan duties. 5 C.F.R. § 734.403(c). Thus, further restricted employees who are subject to Nebraska Revised Statutes §§32-221, 228 would be at risk of a Hatch Act violation if their service to the state as election officials would require them to engage in partisan duties. As to less restricted employees, the Hatch Act would not bar them from performing as election officials even if they were required to perform partisan duties, as long as they were not on duty, in a federal building, using a government vehicle or wearing a government uniform or insignia.

In regard to the leave issue presented by this matter, federal employees may use earned paid leave, e.g., annual leave, credit hours or compensatory time, to engage in political activity. However, granting employees administrative leave to engage in partisan political activity would not be permissible under the Hatch Act. On the other hand, if the activity in question is nonpartisan then the Hatch Act would not be relevant to the leave determination.

Lastly, as to the part of your inquiry pertaining to whether Nebraska can make the law described above applicable to federal employees, we are unable to advise you. OSC issues advisory opinions about the Hatch Act, but is not authorized to issue opinions about the application of state laws to federal employees.

Please contact me at (202) 254-3609 if you have any further questions.

Sincerely,

/s/

Mariama Liverpool
Attorney
Hatch Act Unit