



U.S. OFFICE OF SPECIAL COUNSEL

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Washington, D.C. 20036-4505
202-254-3600

February 14, 2011

Mx. XXXXX XXXXX
XXXXX Xxx XXXX XXXXX
XXXX XXXX XXXXX
XXXX, XX XXXXX

Re: OSC File No. AD-xx-xxxx

Dear Mx. XXXXXXXX:

This letter is in response to your request for an advisory opinion concerning the Hatch Act. The U.S. 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, as a federal employee, you may solicit persons via telephone to volunteer with a Voter Protection Team (“VPT”) that is organized by a partisan campaign. Additionally, you asked, assuming the aforementioned activity is permitted, whether you should avoid contacting attorneys you know or with whom you have business when soliciting volunteers. We understand that, presently, you are employed with the United States Department of XXXX (“XXX”) as an XXXX XXXXX in the XXXXXXXXXX. As explained below, the Hatch Act does not prohibit you from soliciting persons via telephone to volunteer with a VPT that is organized by a partisan campaign so long as such activity is not done while on duty, in a government building, while wearing an official uniform or insignia, or using a government vehicle. Additionally, in doing so, you may not identify yourself by using your official title, nor may you solicit, accept, or receive volunteer services from your subordinate employees.

The Hatch Act (5 U.S.C. §§ 7321-7326) governs the political activity of federal civilian executive branch employees, including employees of the XXX. The Act permits most covered employees to actively participate in partisan political management and partisan political campaigns. 5 U.S.C. § 7323(a). Employees, however, are prohibited from: using their official authority or influence for the purpose of affecting the result of an election; knowingly soliciting, accepting or receiving political contributions from any person; being candidates for public office in partisan elections; and knowingly soliciting or discouraging the political activity of any individual with business before their agency. 5 U.S.C. § 7323(a)(1)-(4). The Hatch Act also prohibits employees from engaging in political activity¹ while on duty, in a government building, while wearing an official uniform or insignia, or using a government vehicle. 5 U.S.C. § 7324.

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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You asked whether the Hatch Act generally prohibits you from soliciting persons via telephone to volunteer with a VPT and whether the Act prohibits you from soliciting certain persons. Each question is addressed below.

1. *As a federal employee, may you solicit persons via telephone to volunteer with a Voter Protection Team that is organized by a partisan campaign?*

We understand that a VPT is a group of lawyers who volunteer to protect the integrity of the voting polls on Election Day, making sure they open and close as scheduled and that anyone who wants to vote has fair access to the polls. We understand that, generally, a VPT is organized by a partisan political campaign, and soliciting attorneys to volunteer with a VPT would be done on behalf of the campaign. As the campaign supports a candidate for partisan political office, any work for the campaign would constitute political activity for purposes of the Hatch Act. See 5 C.F.R. § 734.101. While the Act permits most federal employees to engage in political activity, it does not allow employees to engage in political activity while on duty, in a government building, while wearing an official uniform or insignia, or using a government vehicle. See 5 U.S.C. §§ 7323(a), 7324(a). Therefore, the Act does not prohibit you from soliciting persons via telephone to volunteer with a VPT so long as such activity is not done while on duty, in a government building, while wearing an official uniform or insignia, or using a government vehicle.

2. *If permitted to solicit persons to volunteer with the Voter Protection Team, should you avoid contacting attorneys you know or with whom you have business?*

As mentioned above, federal employees are prohibited from using their official authority or influence for the purpose of affecting the result of an election. 5 U.S.C. § 7323(a)(1). Accordingly, a federal employee may not use his official title or act in his official capacity while participating in political activity nor may he solicit, accept, or receive uncompensated volunteer services from a subordinate for any political purpose. 5 C.F.R. § 734.302(b)(1), (2). As discussed, soliciting volunteers on behalf of a candidate for partisan political office is considered political activity under the Hatch Act. Therefore, while you are generally permitted to solicit persons to volunteer services with a VPT, you may not: identify yourself by using your official title; act in your official capacity as an Xxxx Xxxx; or solicit, accept, or receive volunteer services from your subordinate employees. See 5 C.F.R. § 734.302, exs. 1 & 2.

Additionally, the Hatch Act prohibits federal employees from knowingly soliciting or discouraging the political activity of any individual who is the subject of or a participant in an ongoing audit, investigation, or enforcement action being carried out by their employing office. 5 U.S.C. § 7323(a)(4)(B). Again, soliciting volunteers on behalf of a candidate for partisan political office is considered political activity under the Hatch Act. Therefore, you may not solicit anyone to volunteer services with a VPT who is the subject of or a participant in an ongoing audit, investigation, or enforcement action being carried out by your employing office.

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Please note that this advisory opinion addresses only the Hatch Act; there may be other government or agency rules or regulations that prohibit you from soliciting persons via telephone to volunteer with a VPT. Therefore, you should contact your agency ethics official for further guidance on this issue. If you have any questions regarding this matter, please contact Treyer Mason-Gale at 202-254-3678.

Sincerely,

/s/

Erica S. Hamrick
Deputy Chief
Hatch Act Unit