



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218

Washington, D.C. 20036-4505

202-254-3600

February 23, 2009

Mx. XXXX XXXXX

XXXXXX

XX XXXXX, XX XXXXX

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 seek an opinion as to whether the Hatch Act would prohibit you, a registered nurse with the XXXX County Public Health Nursing Service in XXXX County, New York, from running as a candidate in the partisan election for Village Trustee in XXX XXXXX, New York. For the reasons explained below, the Hatch Act would prohibit you from being a candidate in the election at issue.

The Hatch Act, 5 U.S.C. §§ 1501-1508, restricts the political activity of individuals principally employed by state, county, or municipal executive agencies in connection with programs financed in whole or in part by loans or grants made by the United States or a federal agency. 5 U.S.C. § 1501. It has long been established that an officer or employee of a state or local agency is subject to the Hatch Act if, as a normal and foreseeable incident of his principal position or job, he performs duties in connection with an activity financed in whole or in part by federal funds. In re Hutchins, 2 P.A.R. 160, 164 (1944); Special Counsel v. Gallagher, 44 M.S.P.R. 57, 61 (1990). Coverage is not dependent on the source of an employee's salary, nor is it dependent upon whether the employee actually administers the funds or has policy duties with respect to them. See Special Counsel v. Williams, 56 M.S.P.R. 277, 283-84 (1993); aff'd, Williams v. M.S.P.B., 55 F.3d 917 (4th Cir. 1995). An employee covered by the Act may not be a candidate for public office in a partisan election, i.e., an election in which any candidate represents, for example, the Republican or Democratic Party. 5 U.S.C. § 1502(a)(3).

As a registered nurse with the XXXX County Public Health Nursing Service (Service), your duties include providing home health care to patients that have been referred to the Service. We understand that you occasionally provide services to hospice patients as well.

In a conversation with your supervisor, Mx. XXX XXXXX, OSC learned that the Service receives two federal grants. The first is a grant from the USDA which funds the tele-health program. This is a three year, \$300,000 grant, which allows for in-home devices for patients to monitor their own vital signs. Some of the patients you service have these devices, but that is your only involvement with this project.

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OSC also learned that the Service receives Medicaid reimbursement.¹ Mx. Xxxxx stated that hospice patient care is reimbursed on a per diem basis, and home visit care is reimbursed on a per service basis. When you service Medicaid covered patients during home visits, your services are reimbursed; and when you work at the hospice, your services are reimbursed as part of the per diem rate. According to Mx. Xxxxx, your unit received 14% of its revenue last year through Medicaid reimbursement.

Based on the preceding, we believe that you have duties in connection with a federally funded program and are covered by the Hatch Act. Although we recognize that your salary is not federally funded and you have no discretion or decision making authority as to the Medicaid reimbursement, none of these are requirements for finding you are covered by the Hatch Act.

As explained earlier, an employee covered by the Hatch Act may not be a candidate for public office in a partisan election, i.e., an office for which any candidate is nominated or elected as representing, for example, the Republican or Democratic Party. Therefore, the Hatch Act prohibits you from being a candidate in the partisan election for Village Trustee in Xxx Xxxxx, New York.

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

Sincerely,

Mary Larsen
Attorney
Hatch Act Unit

¹ Federal Medicaid reimbursement is held to be a “grant or loan” for purposes of the Hatch Act. M.S.P.B. v. Alexander, 71 M.S.P.R. 636. Medicaid employees are covered by the Hatch Act. Special Counsel v. Winkler, 55 M.S.P.R. 419, 421 (1992).