



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 201
Washington, D.C. 20036-4505

May 29, 2007

Mr. XXXXX

Via e-mail: XXXXXX

Re: OSC File No. AD-07-XXXX

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 ask whether the Hatch Act would prohibit you from being a candidate in the partisan election for Mayor of XXXXXX. You are currently employed as a Registered Nurse with the New Jersey Department of Human Services (DHS). As explained below, we believe that you are covered by the Hatch Act, and are prohibited from being a candidate for Mayor.

Persons covered by the Hatch Act, 5 U.S.C. §§ 1501-1508, are subject to certain protections and restrictions with respect to their political activity. Thus, under section 1502, covered employees are protected from being coerced into political activity. On the other hand, the Act prohibits such employees from being candidates for public office in partisan elections, that is, elections in which any candidate is running as a representative of, for instance, the Republican and/or Democratic Party. 5 U.S.C. § 1502(a)(3).

Covered employees are those whose principal position or job is with a state, county or municipal executive agency, and whose job duties are "in connection with" programs financed in whole or in part by loans or grants made by the United States or an agency thereof. 5 U.S.C. § 1501(4). Employees are subject to the Act if, as a normal and foreseeable incident of their positions or jobs, they perform duties in connection with federally financed activities. In re Hutchins, 2 P.A.R. 160, 164 (1944); Special Counsel v. Gallagher, 44 M.S.P.R. 57 (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. 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), cert. denied, 516 U.S. 1071 (1996) (unreported decision).

We understand from Mr. XXXXXX, your supervisor, that DHS receives federal Medicaid grants. Additionally, you and Mr. XXXXX informed our office that you provide quality assurance reviews for services that are funded with the Medicaid grants DHS receives. Examples of your duties include conducting reviews of psychiatric day programs to make sure that they are in compliance with Medicaid's requirements and ensuring that nurses are following the care plans set by doctors for Medicaid recipients.

Based on the preceding, we believe that you are performing duties in connection with federally financed activities, and as such, are covered by the provisions of the Hatch Act. Therefore, the Act would prohibit you from being a candidate in the partisan election for Mayor.

Please contact me at (800) 854-2824 or (202) 254-3609 if you have any questions concerning this matter.

Sincerely,

Mariama Liverpool
Attorney
Hatch Act Unit