



U.S. OFFICE OF SPECIAL COUNSEL

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September 27, 2007

Xx Xxxxx Xxxxxx
Xxxxx Xxxxxx
Xxxxxx State Veterans Affairs Board
Xxxxx, XX

Re: OSC File No. AD-07-xxxx

Dear Xx 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 ask whether the Hatch Act prohibits the Administrator of the State Veterans Home in Xxxxx, Xxxxxxxx which receives 46 percent of its funding from the Department of Veterans Affairs ("VA"), from being a candidate in the partisan election for Xxxxx County Tax Collector/Assessor. We reviewed this matter, and as explained below, we do not believe that the Hatch Act prohibits her candidacy.

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. 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 her principal position or job, she 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 (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, among other things, 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.

We understand that the Xxxxxx State Veterans Affairs Board is responsible for, among other things, assisting veterans in securing benefits or privileges to which they are entitled and operating four State Veterans Homes. You explained that each eligible veteran in a State Veterans Home receives a daily VA per diem amount for care in the Home. The Xxxxxx State Veterans Affairs Board then requests, on a monthly basis, reimbursement from the VA for the total days of care provided to all eligible veterans. The VA per diem payments reimburse the Home for up to half the cost of providing care to veterans.

It has long been OSC's opinion, and the opinion of the Civil Service Commission before it, that reimbursement to a state for the care of veterans is not a "grant" within the meaning of the

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Hatch Act. The reasoning for this opinion is that, although the money is paid directly to the state, it is in effect payment of a benefit to the individual veteran, in lieu of care in a federal facility. Therefore, it is our opinion that such payments are not grants for purposes of the Hatch Act.¹

Based on the preceding, we do not believe that the Administrator of the State Veterans Home in Xxxxx has duties in connection with activities funded by federal loans or grants. Accordingly, she is not covered by the provisions of the Hatch Act, and the Act does not prohibit her from being a candidate in the partisan election for Xxxxxxx County Tax Collector/Assessor. Please contact me at (202) 254-3650 if you have any questions regarding this matter.

Sincerely,

/s/

Erica Stern Hamrick
Attorney
Hatch Act Unit

¹ We understand that the only other federal funding the Home receives is reimbursement from Medicare Part B for physician services. However, Medicare payments also are not federal “grants” for purposes of the Hatch Act.