



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, DC 20036-4505
(202) 804-7000

April 27, 2020

Mr. Hart Wood
American Oversight
1030 15th Street NW, Suite B255
Washington, DC 20005
Via Email: hart.wood@americanoversight.org; foia@americanoversight.org

Re: Freedom of Information Act Request (#FOIA-2019-063)

Dear Mr. Wood:

Please be advised that this is a final response to your request dated February 11, 2019, in which you asked the U.S. Office of Special Counsel (OSC) to provide you with all records reflecting any final legal advice that have not been publicly published regarding the application of the Hatch Act to federal employees from January 20, 2017 to present. On September 9, 2019, you clarified the scope of your request for unpublished advisory letters that were issued by OSC. Your request has been processed under the Freedom of Information Act (FOIA), 5 U.S.C. § 552 and the Privacy Act, 5 U.S.C. § 552a.

OSC identified 194 responsive pages. We are releasing two (2) pages to you in full and 192 pages in part pursuant to FOIA Exemptions (b)(6) and (b)(7)(C).

- FOIA Exemption 6 protects information if disclosure would constitute a clearly unwarranted invasion of personal privacy. *See* 5 U.S.C. § 552(b)(6).
- FOIA Exemption 7(C) protects law enforcement information if disclosure could reasonably be expected to constitute an unwarranted invasion of personal privacy. *See* 5 U.S.C. § 552(b)(7)(C).

You have the right to appeal this determination under the FOIA. An appeal must be made in writing and sent to OSC's General Counsel at the address shown at the top of this letter or by email to FOIAappeal@osc.gov. The appeal must be received by the Office of General Counsel within ninety (90) days of the date of this letter.

If you have any questions or you require dispute resolution services, please feel free to contact Mahala Dar, OSC's Chief FOIA Officer and acting FOIA Public Liaison, at mdar@osc.gov or (202) 804-7060. Please reference the above tracking number when you call or write. Additionally, you

U.S. Office of Special Counsel
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may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer.¹

Thank you,

/s/

Mahala Dar, Esq.
Clerk

¹ Office of Governmental Information Services (OGIS), National Archives and Records Administration 8601 Adelphi Road, Room 2510, College Park, MD 20740-6001; ogis@nara.gov (Email) 202-741-5770 (Office) 1-877-684-6448 (Toll Free) 202-741-5769 (Fax)



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-254-3600

February 23, 2017

(b)(6); (b)(7)(C)

VIA E-MAIL

(b)(6); (b)(7)(C)

Re: OSC File No. AD-16-

(b)(6);
(b)(7)(C)

Dear

(b)(6);
(b)(7)(C)

This letter is in response to your request for an advisory opinion concerning the Hatch Act. The U.S. Office of Special Counsel is authorized pursuant to 5 U.S.C. § 1212(f) to issue opinions interpreting the Hatch Act. Specifically, you asked whether the Hatch Act covers employees of Federally Qualified Health Centers (FQHCs). For the reasons explained below, such employees might be subject to the Hatch Act's prohibitions.

FQHCs provide health care services to underserved areas or populations. FQHCs include all organizations receiving grants under Section 330 of the Public Health Service Act. These organizations qualify for benefits, including but not limited to, enhanced reimbursements from Medicare and Medicaid. Additionally, any FQHC "look-alike" or tribal organization meeting Section 330 eligibility requirements also qualifies for such enhanced reimbursements.¹ Therefore, it is our understanding that FQHCs are not generally considered federal executive branch agencies but rather are public or private, non-profit organizations that receive funding through the Federal Health Center Program in Section 330 of the Public Health Service Act. See 42 U.S.C. § 254b.

The Hatch Act governs the political activity of federal executive branch employees. 5 U.S.C. §§ 7321-7326. FQHC employees are not federal executive branch employees for Hatch Act purposes.² Therefore, the Hatch Act provisions governing federal employees are not applicable to employees of FQHCs.

However, the Hatch Act also governs the political activity of certain state and local government employees. 5 U.S.C. §§1501-1508. State or local employees who are covered by the Hatch Act may not: (1) use their official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for office; or (2) coerce, attempt to coerce, command, or advise a state or local officer or employee to pay, lend, or contribute

¹ See generally *What are Federally qualified health centers (FQHCs)?*, Health Resources and Services Administration, <https://www.hrsa.gov/healthit/toolbox/RuralHealthITtoolbox/Introduction/qualified.html> (last visited Feb. 22, 2017); *Federally Qualified Health Centers (FQHCs)*, Rural Health Information Hub, <https://www.ruralhealthinfo.org/topics/federally-qualified-health-centers> (last visited Feb. 22, 2017).

² However, FQHC employees may be considered federal employees for other purposes. For example, FQHC employees are considered employees of the federal Public Health Service when they are deemed as such, upon application, for the purposes of tortious lawsuits. See 42 U.S.C. § 233(g)(1)(D).

U.S. Office of Special Counsel

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anything of value for political purposes. 5 U.S.C. §§ 1502 (a)(1) and (2). State and local employees are subject to these two prohibitions if they are 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. The Hatch Act also prohibits some state and local government employees from being candidates for public office in partisan elections. 5 U.S.C. § 1502(a)(3). Pursuant to the Hatch Act Modernization Act of 2012, only those employees whose salaries are paid entirely with federal funds are prohibited from being candidates for partisan political office. 5 U.S.C. § 1502(a)(3).

Furthermore, the Hatch Act applies to employees of private, nonprofit organizations only if the statutes through which these organizations derive their federal funding contain a provision stating that the recipient organizations are deemed to be state or local government agencies for purposes of the Hatch Act. To date, the statutes authorizing Head Start and the Community Service Block Grant (CSBG) are the only statutes that contain such a provision. *See* 42 U.S.C. §§ 9851 and 9918(b). Therefore, if FQHCs receive either CSBG or Head Start funds, FQHC employees having duties in connection with programs receiving these grants would be covered by the Hatch Act's prohibitions, as explained in the preceding paragraph.

In sum, while FQHC employees are not considered federal employees for purposes of the Hatch Act, they may be covered by the Hatch Act as state and local employees if the centers receive CSBG or Head Start funding. Please contact me at (202) 254-3674 if you have any additional questions.

Sincerely,

(b)(6); (b)(7)(C)

Ana Galindo-Marrone
Chief, Hatch Act Unit



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-254-3600

February 23, 2017

(b)(6); (b)(7)(C)

VIA EMAIL

(b)(6); (b)(7)(C)

Re: OSC File No. AD-16 (b)(6); (b)(7)(C)

Dear (b)(6); (b)(7)(C)

This letter is in response to your request for an advisory opinion concerning the Hatch Act. The U.S. Office of Special Counsel is authorized pursuant to 5 U.S.C. § 1212(f) to issue opinions interpreting the Hatch Act. Specifically, you asked whether the Hatch Act prohibits an unpaid volunteer mentor with SCORE (b)(6); (b)(7)(C) a nonprofit association, from assisting another SCORE volunteer with establishing a 501(c)(4) not-for-profit organization in support of a local political candidate. Generally, volunteers are not considered employees for purposes of the Hatch Act. However, even assuming volunteers are deemed employees, for the reasons explained below, SCORE (b)(6); (b)(7)(C) volunteers are not subject to the Hatch Act's prohibitions.

The Hatch Act, 5 U.S.C. §§1501-1508, governs the political activity of certain state and local government employees in order to protect the public workforce from partisan political influence and ensure the nonpartisan administration of laws. State or local employees who are covered by the Hatch Act may not: (1) use their official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for office; or (2) coerce, attempt to coerce, command, or advise a state or local officer or employee to pay, lend, or contribute anything of value for political purposes. 5 U.S.C. §§ 1502 (a)(1) and (2). State and local employees are subject to these two prohibitions if they are 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. The Hatch Act also prohibits some state and local government employees from being candidates for public office in partisan elections. 5 U.S.C. § 1502(a)(3). Pursuant to the Hatch Act Modernization Act of 2012, only those employees whose salaries are paid entirely with federal funds are prohibited from being candidates for partisan political office. 5 U.S.C. § 1502(a)(3).

Furthermore, the Hatch Act applies to employees of private, nonprofit organizations only if the statutes through which these organizations derive their federal funding contain a provision stating that the recipient organizations are deemed to be state or local government agencies for purposes of the Hatch Act. To date, the statutes authorizing Head Start and the Community Service Block Grant (CSBG) are the only statutes that contain such a provision.

U.S. Office of Special Counsel

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See 42 U.S.C. §§ 9851 and 9918(b). You confirmed that SCORE (b)(6); (b)(7)(C) does not receive Head Start or CSBG funds.

Therefore, SCORE (b)(6); (b)(7)(C) is not a state or local agency for purposes of the Hatch Act. Accordingly, the Hatch Act does not apply to any of the chapter's volunteers. Additionally, even if SCORE (b)(6); (b)(7)(C) were a state or local agency for purposes of the Hatch Act, the Act would not prohibit a covered individual from assisting with the establishment of a 501(c)(4) not-for-profit organization in support of a local political candidate.¹ Please contact me at (202) 254-3674 if you have any additional questions.

Sincerely,

(b)(6); (b)(7)(C)

Ana Galindo-Marrone
Chief, Hatch Act Unit

¹ This advisory opinion only addresses the above-described SCORE volunteer activity as it relates to the Hatch Act. There may be other laws or regulations governing 501(c)(4) formation and related activities.



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
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202-254-3600

March 27, 2017

(b)(6); (b)(7)(C)

Re: OSC File No. AD-17 (b)(6); (b)(7)(C)

VIA EMAIL: (b)(6); (b)(7)(C)

Dear (b)(6); (b)(7)(C)

This letter is in response to your request to the U.S. Office of Special Counsel (OSC) for an advisory opinion concerning the Hatch Act. *See* 5 U.S.C. § 1212(f), (authorizing OSC to issue opinions under the Act). Specifically, you asked several questions about your ability to run for (b)(6); (b)(7)(C) County Council in (b)(6); while employed with the U.S. Department of Justice (DOJ). You also asked about your ability to run for an elected state office. As explained below, as long as you run as an independent candidate, the Hatch Act would not prohibit you from running for (b)(6); (b)(7)(C) County Council, but it does prohibit you from running in a partisan election for an elected state office.

The Hatch Act (5 U.S.C. §§ 7321-7326) governs the political activity of federal employees. The Hatch Act permits most employees to actively participate in partisan political management and partisan political campaigns. However, employees covered by the Hatch Act are prohibited from, among other things, being candidates for public office in partisan elections, i.e., elections in which any candidate represents, for example, the Republican or Democratic Party.

This means that the Hatch Act prohibits you from being a candidate in a partisan election for an elected state office while you are employed by DOJ. However, the Office of Personnel Management (OPM) has determined that in certain localities where the majority of voters are employed by the Government of the United States, it is in the domestic interest of employees to participate in local elections. 5 C.F.R. § 733.107(a). Therefore, federal employees living in one of these specially designated localities are permitted to be candidates in partisan elections for local public office in the communities in which they reside, as long as they run as independent candidates. 5 C.F.R. § 733.103. (b)(6); (b)(7)(C) County, (b)(6); is one such designated locality. Thus, if you reside in (b)(6); (b)(7)(C) County, (b)(6); the Hatch Act would not prohibit you from running for (b)(6); (b)(7)(C) County Council as an independent candidate. However, you may not run as the representative of a political party. 5 C.F.R. § 733.104(b)(1).¹

¹ You have indicated that you are not employed by National Security or the Criminal Divisions of DOJ. These "designated locality" provisions do not apply to employees in those Divisions.

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Please note that this guidance does not change even if you are in a Leave Without Pay (LWOP) status. While on LWOP you are still an employee of the federal government, and thus, subject to the prohibitions of the Hatch Act.

If you have any questions or concerns please contact me at (b)(6); (b)(7)(C) @osc.gov or (202) 254-3600 ext. 2502.

Sincerely,

(b)(6); (b)(7)(C)

Dayo Oshilaja
Attorney
Hatch Act Unit



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-254-3600

May 5, 2017

(b)(6); (b)(7)(C)

via email:

(b)(6); (b)(7)(C)

Re: OSC File No. AD-17

(b)(6);
(b)(7)(C)

Dear (b)(6); (b)(7)(C)

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 interpreting the Hatch Act. You are currently serving, by appointment, as Acting Sheriff of (b)(6); (b)(7)(C) County in (b)(6); though it is an elective office for which you would like to run in the upcoming election cycle. You seek clarification as to whether you can run, whether your campaign literature may contain pictures of you in your sheriff's uniform, whether you may campaign door-to-door in your sheriff's uniform, and whether you may include a copy of your official Sheriff's Office business card in your campaign literature.

The Hatch Act, 5 U.S.C. §§ 1501-1508, governs the political activity of certain state and local government employees in order to protect the public workforce from partisan political influence and ensure the nonpartisan administration of laws. State and local employees whose salaries are entirely federally funded are prohibited from being candidates for public office in partisan election. 5 U.S.C. § 1502(a)(3). In addition, state and local employees who perform job duties in connection with a program or activity financed with federal grants or loans are prohibited from, among other things, using their official authority or influence to affect the results of an election. 5 U.S.C. § 1502(a)(1). While the statute itself does not set forth language expressly limiting this prohibition to partisan activity, the Act's legislative history and relevant case law demonstrate that the Hatch Act is applicable only to partisan activity. For example, when addressing the constitutionality of the Hatch Act, the Supreme Court has clarified that it is "only *partisan* political activity that is interdicted." *U.S. Civ. Serv. Comm'n v. Nat'l Ass'n of Letter Carriers*, 413 U.S. 548, 556 (1973) (emphasis added).

We have confirmed that the (b)(6); (b)(7)(C) County Sheriff's seat is a nonpartisan office, and therefore, you will be running in a nonpartisan election. Accordingly, even if you are subject to the provisions of the Hatch Act, your proposed activities do not fall within the scope of the Act's

U.S. Office of Special Counsel

(b)(6); (b)(7)(C)

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prohibitions.¹ Please note that this opinion does not contemplate any possible limitations on such activity by state, county, local, or any other municipal, law, rule, or regulation. You may wish to confirm how state or local laws, rules, or regulations may affect your candidacy and campaign activities. If you have any further questions regarding application of the Hatch Act, please contact me at the below email address or phone number.

Sincerely,

(b)(6); (b)(7)(C)

Christopher Leo
Attorney
Hatch Act Unit
Phone: (202) 254-3615
Email: (b)(6)@osc.gov

);
(b)(7)
(C)

¹ If in the future you are interested in engaging in partisan political activity, such as running in a partisan election, you are welcome to contact our office for an advisory opinion concerning any prohibitions that may apply in that context.



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-254-3600

March 1, 2017

(b)(6); (b)(7)(C)

VIA EMAIL: (b)(6); (b)(7)(C)

Re: OSC File No. AD-17- (b)(6); (b)(7)(C)

Dear (b)(6); (b)(7)(C)

This letter is in response to your request for an advisory opinion from the U.S. Office of Special Counsel (OSC). OSC issues this advisory opinion pursuant to its authority under 5 U.S.C. § 1212(f). In your request, you ask whether the Hatch Act prohibits you from being a candidate for Village President in (b)(6); (b)(7)(C) while employed as (b)(6); (b)(7)(C) for the (b)(6); (b)(7)(C) Housing Authority. For the reasons stated below, the Hatch Act does not prohibit you from being a candidate for Village President.

The Hatch Act, 5 U.S.C. §§ 1501-1508, governs the political activity of certain state and local government employees in order to protect the public workforce from partisan political influence and ensure the nonpartisan administration of laws. Pursuant to the Hatch Act Modernization Act of 2012, the Act prohibits state and local government employees whose salaries are paid entirely with federal funds from being candidates for public office in partisan elections. 5 U.S.C. § 1502(a)(3). The Hatch Act, however, does not prohibit candidacy in a nonpartisan election, i.e., an election in which none of the candidates runs in affiliation with a political party. See 5 C.F.R. § 734.207(b).

You explained that the election for Village President is a nonpartisan election and that candidates for the position do not run with political party affiliation. Accordingly, even if your salary with the (b)(6); (b)(7)(C) Housing Authority is entirely federally funded, the Hatch Act does not prohibit you from being a candidate in the nonpartisan election for Village President in (b)(6); (b)(7)(C).

(b)(6); (b)(7)(C)

If you have any questions concerning this matter, please contact me at (202) 254-3673.

Sincerely,

(b)(6); (b)(7)(C)

Erica S. Hamrick
Deputy Chief
Hatch Act Unit



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-254-3600

April 27, 2017

(b)(6); (b)(7)(C)

Re: OSC File No. AD-17- (b)(6);
(b)(7)(C)

Dear (b)(6); (b)(7)(C)

This letter is in response to your request for an advisory opinion concerning the Hatch Act. The U.S. Office of Special Counsel is authorized pursuant to 5 U.S.C. § 1212(f) to issue opinions interpreting the Hatch Act. Specifically, you asked whether the Hatch Act would prohibit a (b)(6); (b)(7)(C) employee, (b)(6); (b)(7)(C) from running for (b)(6); (b)(7)(C) County (b)(6); (b)(7)(C)

The Hatch Act, 5 U.S.C. §§ 1501-1508, governs the political activity of certain state and local government employees in order to protect the public workforce from partisan political influence and ensure the nonpartisan administration of laws. Among other things, the Hatch Act prohibits some state and local government employees from being candidates for public office in partisan elections. 5 U.S.C. § 1502(a)(3). Pursuant to the Hatch Act Modernization Act of 2012, only those employees whose salaries are paid entirely with federal funds are prohibited from being candidates for partisan political office. 5 U.S.C. § 1502(a)(3).

You stated that (b)(6); (b)(7)(C) is employed as a Safety Education Program Assistant in the (b)(6); (b)(7)(C) Safety Department. You confirmed that the Safety Department does not receive any federal funding and that (b)(6); (b)(7)(C) position is funded from the (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) operating budget. Because (b)(6); (b)(7)(C) salary is not paid entirely with federal funds, (b)(6); (b)(7)(C) is not subject to the Hatch Act's candidacy prohibition. If you have any questions concerning this matter, please contact me at (202) 254-3674.

Sincerely,

(b)(6); (b)(7)(C)

Ana Galindo-Marrone
Chief, Hatch Act Unit



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-254-3600

April 11, 2017

(b)(6); (b)(7)(C)

VIA EMAIL: (b)(6); (b)(7)(C)

Re: OSC File No. AD-17- (b)(6); (b)(7)(C)

Dear (b)(6); (b)(7)(C)

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 interpreting the Hatch Act. Specifically, you ask whether the Hatch Act prohibits you from being a candidate in a partisan election for public office while employed as the Director of the (b)(6); (b)(7)(C). For the reasons explained below, the Hatch Act does not prohibit your candidacy.

The Hatch Act, 5 U.S.C. §§ 1501-1508, governs the political activity of certain state and local government employees in order to protect the public workforce from partisan political influence and ensure the nonpartisan administration of laws. Among other things, the Hatch Act prohibits some state and local government employees from being candidates for public office in partisan elections. 5 U.S.C. § 1502(a)(3). Pursuant to the Hatch Act Modernization Act of 2012, only those employees whose salaries are paid entirely with federal funds are prohibited from being candidates for partisan political office. 5 U.S.C. § 1502(a)(3).

You explained that, although your agency receives federal grants, your salary is not federally funded. Based on this information, OSC has concluded that you are not subject to the candidacy prohibition of the Hatch Act, and thus, the Act does not prohibit you from being a candidate in a partisan election for public office.

Please note that although the Hatch Act does not prohibit you from being a candidate for partisan political office, you may be subject to the Hatch Act's other two restrictions. State and local employees who perform job duties in connection with a program or activity financed with federal grants or loans are prohibited from: (1) using their official authority or influence to affect the results of an election; and (2) coercing, attempting to coerce, commanding, or advising another employee to engage in political activity. See 5 U.S.C. § 1502(a)(1)-(2); § 1501(4).¹ Examples of activities that violate these two prohibitions include telling other employees to

¹ Because your request for an advisory opinion concerned only whether the Hatch Act prohibits you from being a candidate in a partisan election for public office, OSC makes no determination as to whether you are subject to the Act's other restrictions.

U.S. Office of Special Counsel

Page 2

volunteer for a political campaign or give a campaign contribution, and asking subordinate employees to engage in political activity in support of or opposition to a candidate for partisan political office.

If you have any questions concerning this matter, please contact me at (202) 254-3673.

Sincerely,

(b)(6); (b)(7)(C)

Erica S. Hamrick
Deputy Chief
Hatch Act Unit



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-254-3600

May 3, 2017

(b)(6); (b)(7)(C)

VIA EMAIL:

(b)(6); (b)(7)(C)

Re: OSC File No. AD-17 (b)(6); (b)(7)(C)

Dear

(b)(6); (b)(7)(C)

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 interpreting the Hatch Act. We understand that you are planning to run in a partisan election for sheriff of (b)(6); (b)(7)(C) County (b)(6); (b)(7)(C) and you want to know what, if any, Hatch Act restrictions are applicable to you in your current employment as a sergeant with the (b)(6); (b)(7)(C) County Sheriff's Office. As explained below, OSC has concluded that you are not subject to any of the Hatch Act's prohibitions.

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 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 (1990). A state or local employee covered by the Hatch Act is prohibited from: (1) using his official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for office; or (2) coercing, attempting to coerce, commanding, or advising a state or local officer or employee to pay, lend, or contribute anything of value for political purposes. Additionally, the Hatch Act prohibits only those employees whose salary is fully federally funded from being candidates for public office in a partisan election. 5 U.S.C. § 1502(a)(3).

OSC learned that the (b)(6); (b)(7)(C) County Sheriff's Office has received federal Homeland Security grants, which are used to purchase Special Operations equipment. We understand, however, that you are not involved with Special Operations, and you have no responsibility for administering these grants, purchasing the equipment, or supervising any officers who perform those duties. Accordingly, OSC has determined that you do not have duties in connection with federally funded activities, and thus, are not subject to the provisions of the Hatch Act.

U.S. Office of Special Counsel

Page 2

Please contact me at (202) 254-3673 if you have any questions regarding this matter.

Sincerely,

(b)(6); (b)(7)(C)

Erica S. Hamrick
Deputy Chief
Hatch Act Unit



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-254-3600

May 24, 2017

(b)(6); (b)(7)(C)

VIA EMAIL

(b)(6); (b)(7)(C)

Re: OSC File No. AD-17-

(b)(6);
(b)(7)(C)

Dear (b)(6); (b)(7)(C)

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 interpreting the Hatch Act. Specifically, you ask whether the Hatch Act prohibits (b)(6); (b)(7)(C) an engineering (b)(6); (b)(7)(C) at the (b)(6); Department of Transportation, from maintaining (b)(6) current position as mayor or from being a candidate in the next mayoral race. For the reasons stated below, the Hatch Act does not prohibit (b)(6); (b)(7)(C) from holding (b)(6); (b)(7)(C) current position or from being a candidate for reelection.

The Hatch Act, 5 U.S.C. §§ 1501-1508, governs the political activity of certain state and local government employees in order to protect the public workforce from partisan political influence and ensure the nonpartisan administration of laws. Among other things, the Hatch Act prohibits those state and local government employees whose salaries are paid entirely with federal funds from being candidates for partisan political office. 5 U.S.C. § 1502(a)(3).

The Hatch Act, however, does not prohibit a covered employee from being a candidate in a nonpartisan election or holding elected office. You stated that the city's mayoral election is nonpartisan. Accordingly, the Hatch Act does not prohibit (b)(6); (b)(7)(C) from holding (b)(6) position as mayor or being a candidate for reelection.¹ If you have any questions concerning this matter, please contact me at (202) 254-3674.

Sincerely,

(b)(6); (b)(7)(C)

Ana Galindo-Marrone
Chief, Hatch Act Unit

¹ Please note that even if the election were partisan (b)(6); (b)(7)(C) would be allowed to be a candidate because (b)(6); salary is not 100% federally funded. In addition, the following individuals are exempt from the Hatch Act's candidacy prohibition: (1) the Governor or Lieutenant Governor of a State or an individual authorized by law to act as Governor; (2) the mayor of a city; (3) a duly elected head of an executive department of a State, municipality, or the District of Columbia who is not classified under a State, municipal, or the District of Columbia merit or civil-service system; or (4) an individual holding elective office. 5 U.S.C. § 1502(c).



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-254-3600

August 2, 2017

(b)(6); (b)(7)(C)

VIA EMAIL:

(b)(6); (b)(7)(C)

Re: OSC File No. AD-17- (b)(6);
(b)(7)(C)

Dear (b)(6); (b)(7)(C)

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 interpreting the Hatch Act. We understand that you are a civilian general schedule employee with the U.S. Department of Defense (DoD). Your questions concerning the Hatch Act are addressed below.

The Hatch Act, 5 U.S.C. §§ 7321-7326, governs the political activity of federal civilian executive branch employees, including DoD employees, in order to protect the federal workforce from partisan political influence. The Hatch Act prohibits employees 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 employing office. 5 U.S.C. § 7323(a)(1)-(4). The Hatch Act also prohibits employees from engaging in political activity while on duty, in a government building, while wearing an official uniform or insignia, or using an official vehicle. 5 U.S.C. § 7324. Political activity is defined as activity directed toward the success or failure of a political party, candidate for a partisan political office, or partisan political group. 5 C.F.R. § 734.101.

1. Does the Hatch Act prohibit you from fundraising for the U.S. Vote Foundation?

As mentioned above, the Hatch Act prohibits employees from soliciting, accepting, or receiving political contributions. For purposes of the Hatch Act, a political contribution is any gift, subscription, loan, advance, or deposit of money or anything of value, made for the purpose of promoting or opposing a political party, candidate for partisan political office, or partisan political group. 5 C.F.R. § 734.101. We understand that the U.S. Vote Foundation is a 501(c)(3) nonprofit, nonpartisan public charity that develops and provides online tools to assist U.S. citizens living anywhere in the world to register to vote and request their absentee ballot using their state's specific voter forms.¹ Accordingly, monetary contributions to the U.S. Vote

¹ <https://www.usvotefoundation.org/what-we-do>

Foundation do not constitute political contributions for purposes of the Hatch Act. Therefore, the Hatch Act does not prohibit you from fundraising for this organization.

2. Does the Hatch Act prohibit you from publicly speaking on behalf of a partisan political group or candidate for partisan political office?

Because you are a “less restricted” employee under the Hatch Act,² the Act does not prohibit you from publicly speaking on behalf of a partisan political group or candidate for partisan political office, provided you do not engage in any of the prohibited activities listed above. For example, you may speak on behalf of such entities only in your personal capacity and not in your official capacity as a federal employee. Therefore, you may not use or allow others to use your official title or position during the speaking events. In addition, you may not solicit political contributions for the candidate or group during your speech, or at any other time. And you may only speak on behalf of the candidate or group when you are off duty, away from the federal workplace, and not wearing an official uniform or insignia.

3. Does the Hatch Act prohibit you from publicly speaking on behalf of a nonpartisan group, such as (b)(6); (b)(7)(C)?

We understand that (b)(6); (b)(7)(C) is a 501(c)(4) nonprofit organization that advocates for fair redistricting in the (b)(6); (b)(7)(C).³ OSC has opined that 501(c)(4) social welfare organizations are not partisan political groups, even though they may engage in some political activity. Therefore, generally, the Hatch Act does not restrict your ability to publicly speak on behalf of (b)(6); (b)(7)(C) or any other 501(c)(4) organization.

However, if you are speaking at an event that has the purpose of promoting or opposing a political party, candidate for partisan political office, or partisan political group, then the restrictions outlined in the answer to question two, above, would apply to your appearance at that event.

Please contact me at (202) 254-3673 or (b)(6); (b)(7)(C)@osc.gov if you have any additional questions.

Sincerely,

(b)(6); (b)(7)(C)

Erica S. Hamrick
Deputy Chief
Hatch Act Unit

² Employees of certain agencies and in certain positions are “further restricted” under the Hatch Act and prohibited from taking an active part in partisan political management and campaigning. See 5 U.S.C. § 7323(b).

³

(b)(6); (b)(7)(C)



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-254-3600

August 4, 2017

(b)(6); (b)(7)(C)

VIA EMAIL

(b)(6); (b)(7)(C)

Re: OSC File No. AD-17-

(b)(6); (b)(7)(C)

Dear (b)(6); (b)(7)(C)

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 interpreting the Hatch Act. Specifically, you ask whether the Hatch Act prohibits you, a U.S. Department of Veterans Affairs (VA) employee, who is less restricted under the law, from engaging in various activities with an independent expenditure organization (i.e., a super PAC). You describe the main purpose of the super PAC as advocating for the election or defeat of partisan political candidates and for or against public policy issues. We answer each of your questions in turn below.

The Hatch Act, 5 U.S.C. §§ 7321-7326, governs the political activity of federal civilian executive branch employees in order to protect the federal workforce from partisan political influence. While the Hatch Act generally permits less restricted employees to actively participate in partisan political management and partisan political campaigns, it prohibits them 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 employing office.¹ 5 U.S.C. § 7323(a)(1)-(4). The Hatch Act also prohibits employees from engaging in political activity while on duty, in a government building, while wearing an official uniform or insignia, or using an official vehicle. 5 U.S.C. § 7324. Political activity is defined as activity directed toward the success or failure of a political party, candidate for a partisan political office, or partisan political group. 5 C.F.R. § 734.101.

(1) Provided that I do not solicit or accept contributions, may I be a member of an independent expenditure organization that has other members who do solicit contributions?

Yes. The Hatch Act does not prohibit you from being a member of a political party or other partisan political group and participating in its activities. 5 C.F.R. § 734.204. However, as you

¹ Political contribution means any gift, subscription, loan, advance, or deposit of money or anything of value, made for any political purpose. 5 C.F.R. § 734.101. Political purpose means an objective of promoting or opposing a political party, candidate for partisan political office, or partisan political group. 5 C.F.R. § 734.101.

correctly note, the Hatch Act would prohibit you from soliciting, accepting, or receiving political contributions from any person at any time, including when engaged in off-duty super PAC activities. 5 U.S.C. § 7323(a)(2).

(2) Provided that I do not solicit contributions, may I give speeches at political fundraisers, rallies or meetings during non-duty hours in which I reference my affiliation with an independent expenditure organization?

Yes. The Hatch Act does not prohibit you from giving a speech at a political fundraiser, rally, or meeting provided that you are not on duty and do not solicit, accept or receive political contributions, including during any speech. See 5 C.F.R. § 734.208 (Examples 2 and 3); 5 C.F.R. § 734.303(b). In addition, while the Hatch Act would not prohibit you from referencing your affiliation with the independent expenditure organization, it would prohibit you from allowing your official title to be used in connection with fundraising activities at any time. 5 C.F.R. § 734.303(c).

(3) Provided I make no mention of my status as a federal employee, may I produce and distribute—via social media, direct mail marketing, and non-government online digital media platforms—literature and information which, as part of an advocacy effort to re-elect/defeat the President in the next election, argues that the President either is/is not fit to serve, and either should/should not be impeached?

Yes. The Hatch Act does not prohibit you from advocating for or against the President's reelection provided such advocacy is in your personal capacity and the activity occurs off duty and away from the federal workplace. As you note, you would be prohibited from using your official authority or influence for the purpose of affecting the result of an election. 5 U.S.C. § 7323(a)(1). Therefore, the Hatch Act would prohibit you from using or permitting the use of your official title in literature advocating for or against the President's reelection. Furthermore, you may not create, disseminate, or otherwise assemble such literature while on duty, in a government building, while wearing an official uniform or insignia, or using an official vehicle, and you may never distribute literature that contains a solicitation for political contributions. 5 U.S.C. § 7324. OSC recently released an advisory opinion that provides guidance on President Trump's status as a candidate.²

(4) If an independent expenditure organization wants to hire me to produce and publish advertisements that advocate for the defeat/election of specific candidates in partisan elections, does the Hatch Act bar me from receiving payment from the independent expenditure organization in return for providing such services?

No. The Hatch Act does not prohibit you from receiving payment for the production or dissemination of political advertisements, which advocate for the election or defeat of partisan

² See Guidance on President Trump's Status as a Candidate and Its Effect on Activity in the Federal Workplace (Feb. 7, 2017), <https://osc.gov/Resources/2017-President-Candidate-Guidance.pdf>.

political candidates. But, as described above, the Hatch Act would prohibit you from engaging in political activity, such as the creation and distribution of advertisements advocating for the election or defeat of partisan political candidates, while on duty or on federal premises. 5 U.S.C. § 7324. Please note that this advice only pertains to the Hatch Act, and does not address other laws, rules, or regulations that may apply. You should consult with your agency ethics official for further guidance.

If you have any questions, please contact me at (202) 254-3674.

Sincerely,

(b)(6); (b)(7)(C)

Ana Galindo-Marrone
Chief, Hatch Act Unit



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-254-3600

August 1, 2017

(b)(6); (b)(7)(C)

Via Email

(b)(6); (b)(7)(C)

Re: OSC File No. AD-17-

(b)(6); (b)(7)(C)

Dear

(b)(6); (b)(7)(C)

This letter is in response to your request for an advisory opinion concerning the Hatch Act. The U.S. Office of Special Counsel is authorized pursuant to 5 U.S.C. §1212(f) to issue advisory opinions about the Hatch Act. You seek advice for a Department of Commerce (DOC) employee regarding the employee's possible involvement in (b)(6); (b)(7)(C) prospective (b)(6); (b)(7)(C) business. The company would sell customized (b)(6); (b)(7)(C) on behalf of various groups, including political organizations, campaigns, and social welfare groups. After the sale of the (b)(6); (b)(7)(C) the company would relay a percentage of its profits back to the respective organizations. In your (b)(6); (b)(7)(C) 2017 email, you expressed concern that the employee might violate the Hatch Act by engaging with a company that relays political contributions from buyers to partisan political organizations and campaigns. As explained in this advisory opinion, although the employee can work with the company in a limited capacity, the Hatch Act restricts the scope of (b)(6); (b)(7)(C) involvement.

The Hatch Act, 5 U.S.C. §§ 7321-7326, governs the political activity of federal civilian executive branch employees. The Hatch Act generally permits most federal employees to actively participate in partisan political management and partisan political campaigns. 5 U.S.C. § 7323(a). Employees, however, are prohibited from, among other things, knowingly soliciting, accepting, or receiving political contributions from any person. 5 U.S.C. § 7323(a)(2). A political contribution is money, a gift, or anything of value made for the purpose of supporting or opposing a political party, candidate for partisan political office, or partisan political group. 5 C.F.R. § 734.101.

In your request, you ask for advice on the following questions: (1) does selling (b)(6); (b)(7)(C) violate the Hatch Act when a portion of the proceeds are relayed from buyers to partisan political organizations or campaigns; (2) can the DOC employee promote (b)(6); (b)(7)(C) business on social media; (3) can the DOC employee be a passive owner of the (b)(6); (b)(7)(C) company; (4) can the DOC employee work behind-the-scenes for the company; and (5) would the DOC employee be allowed to work for the company if the business model were restructured. We address each question below.

(1) Does selling (b)(6); (b)(7)(C) violate the Hatch Act when a portion of the proceeds are relayed from buyers to partisan political organizations or campaigns?

Yes, it would be a violation of the Hatch Act for a federal employee to sell (b)(6); (b)(7)(C) on behalf of a partisan political organization or campaign. The Hatch Act prohibits the acceptance or solicitation of political contributions. 5 U.S.C. § 7323(a)(2). Selling (b)(6); and relaying profits to partisan political organizations and campaigns would violate these political contribution restrictions. Accordingly, such action is not allowed under the Hatch Act.

However, the Hatch Act would not be implicated if the company only sold (b)(6); (b)(7)(C) supporting social welfare organizations and issue advocacy groups because acceptance and solicitation restrictions apply solely to partisan political groups, political parties, campaigns, and candidates for partisan political office. 5 C.F.R. § 734.101. The Hatch Act does not place restrictions on interactions with organizations outside of the specified categories.

(2) Can the DOC employee promote (b)(6); (b)(7)(C) business on social media?

The employee's ability to promote the (b)(6); company on social media is restricted, even if (b)(6); were to play no role in the operation of the company. Federal employees are prohibited from sharing links on social media to websites that solicit political contributions for political parties, candidates for partisan political office, or partisan political groups. Consequently, the employee could not, for example, share a link to a (b)(6); if proceeds from the sale of that (b)(6); (b)(7)(C) benefit the Democratic or Republican Party.

However, the employee would be allowed to promote the company generally or share links to (b)(6); that do not benefit restricted groups. For example, assuming the company does not strictly sell (b)(6); connected to political parties or candidates for partisan political office, the employee could share a link to the company's homepage.

(3) Can the DOC employee be a passive owner of the (b)(6); (b)(7)(C) company?

No, the employee cannot be a passive owner of the (b)(6); (b)(7)(C) company. The Hatch Act restricts federal employees from accepting political contributions. 5 U.S.C. § 7323(a)(2). Under the company's current business model, a customer would buy a (b)(6); (b)(7)(C) by sending payment to the company, with the understanding that a portion of that payment would be relayed to their desired partisan political organization or campaign. Effectively, even as a passive owner of this company, the federal employee would be accepting the customer's political contribution on behalf of the restricted entity. Accordingly, the Hatch Act prohibits the employee from being a passive owner of the (b)(6); (b)(7)(C) company, as long as it sells (b)(6); (b)(7)(C) that benefit partisan political groups, political parties, or candidates for partisan political office.

(4) Can the DOC employee work behind-the-scenes for the company (i.e. IT maintenance or accounting)?

Yes, there are some behind-the-scenes jobs that the employee could do without violating the Hatch Act. For instance, completing IT maintenance for the company would not constitute a Hatch Act violation.

Additionally, the employee may act as an accountant for the company, as long as any political contributions are initially received by someone else within the company. The Hatch Act restricts the employee from accepting contributions on behalf of a political party, partisan political group, or candidate for partisan political office. 5 C.F.R. § 734.101. However, (b)(6); (b)(7)(C) is allowed to handle, disburse, or account for contributions once they are received by the company.¹ See 5 C.F.R. § 734.204, Example 2. As a result, the employee is prohibited from directly accepting or soliciting political contributions, but is free to work with funds that have already been received by the company.

(5) Would the DOC employee be allowed to work for or co-own the company if the business model were restructured to eliminate the transfer of funds from the company to political groups?

Yes, the employee would be allowed to work for or co-own the company if the business model was adjusted. In your email you suggested a situation where the company would create (b)(6); (b)(7)(C) for political groups, but would refrain from advertising or directly selling the products. Instead, the organizations and campaigns would independently sell the (b)(6); (b)(7)(C). If these changes were implemented, then the employee would not be at risk of soliciting or accepting political contributions on behalf of a restricted group. Accordingly, there would not be any Hatch Act concerns with the employee owning or working for the company.

Please contact me at (202) 254-3673 if you have any questions.

Sincerely,

(b)(6); (b)(7)(C)

Erica S. Hamrick
Deputy Chief
Hatch Act Unit

¹ Such activities could include depositing campaign contributions into an account, paying bills for the company, or filing necessary paperwork.



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-254-3600

September 5, 2017

(b)(6); (b)(7)(C)

VIA EMAIL:

(b)(6); (b)(7)(C)

Re: OSC File No. AD-17-

(b)(6); (b)(7)(C)

Dear

(b)(6); (b)(7)(C)

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 interpreting the Hatch Act. You ask whether federal employees would have violated the Hatch Act if, after the November 2016 election, they sent an email titled, "(b)(6); (b)(7)(C)"

(b)(6); (b)(7)(C) while they were on duty or in the federal workplace. As explained below, OSC has concluded that this activity would not have violated the Hatch Act.

The Hatch Act, 5 U.S.C. §§ 7321-7326, governs the political activity of federal civilian executive branch employees. While most employees are permitted to engage in a variety of political activities, they are prohibited from, among other things, engaging in political activity while on duty, in a federal room or building, while wearing an official uniform or insignia, or using a government vehicle. 5 U.S.C. § 7324. Political activity is defined as activity directed toward the success or failure of a political party, candidate for a partisan political office, or partisan political group. 5 C.F.R. § 734.101.

The email at issue, dated (b)(6); (b)(7)(C) 2016, is addressed to members of the (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C) It discusses (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

The email opines that (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

The email ends with the sentiment that (b)(6);

(b)(6); (b)(7)(C)

In sum, the email is about (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

It was written in response to the results of the 2016

U.S. Office of Special Counsel

Page 2

Presidential election, not in preparation for an upcoming election. And it is not about the electoral success or failure of a political party or candidate for partisan political office. Accordingly, sending this email would not constitute political activity for purposes of the Hatch Act, and employees would not violate the Act if they sent it while on duty or in the federal workplace.

Please note that this advisory opinion addresses only the Hatch Act and not any other rules or regulations that may apply. You may contact me at (202) 254-3673 if you have any questions.

Sincerely,

(b)(6); (b)(7)(C)

Erica S. Hamrick
Deputy Chief
Hatch Act Unit



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

August 30, 2017

(b)(6); (b)(7)(C)

VIA EMAIL:

(b)(6); (b)(7)(C)

Re: OSC File No. AD-17-

(b)(6); (b)(7)(C)

Dear Mr. Burton:

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 interpreting the Hatch Act. You ask for guidance on the Hatch Act and its impact on you serving as president of the (b)(6); (b)(7)(C) Coalition of (b)(6); (b)(7)(C) a 501(c)(4) nonprofit organization. You explained that this organization fundraises to support its work but does not fundraise for candidates or to contribute money to candidates.¹ Our guidance is below.

We understand that you are a GS-(b)(6); (b)(7)(C) with the Federal Aviation Administration (FAA). As an FAA employee, you are subject to the Hatch Act, which governs the political activity of federal civilian executive branch employees. 5 U.S.C. §§ 7321-7326. The Hatch Act permits most employees to actively participate in partisan political management and partisan political campaigns. However, employees are prohibited from, among other things, knowingly soliciting, accepting, or receiving political contributions.² 5 U.S.C. § 7323(a)(2). A political contribution is defined as money, a gift, or anything of value made for the purpose of supporting or opposing a political party, candidate for partisan political office, or partisan political group. 5 C.F.R. § 734.101. The Hatch Act also prohibits employees from engaging in political activity while on duty, in a federal room or building, while wearing a uniform or official insignia, or using a government vehicle. 5 U.S.C. § 7324. Political activity is defined as activity directed toward the success or failure of a political party, candidate for a partisan political office, or partisan political group. 5 C.F.R. § 734.101.

OSC has opined that 501(c)(4) social welfare organizations are not partisan political groups, even though they may engage in some political activity. Therefore, generally, the Hatch Act does not restrict your ability to serve as president of the (b)(6); (b)(7)(C) Coalition of

(b)(6); (b)(7)(C) In addition, the Hatch Act does not prohibit you from soliciting or accepting monetary contributions, including signing fundraising letters, for the (b)(6); (b)(7)(C) Coalition of (b)(6); (b)(7)(C) provided the contributions are not intended to support a political party or

¹ You also explained that it does not have a political action committee associated with it.

² The Hatch Act also prohibits employees from: using their official authority or influence for the purpose of interfering with or affecting the result of an election; being candidates for public office in partisan elections; and knowingly soliciting or discouraging the political activity of any individual with business before their employing office. 5 U.S.C. §§ 7323(a)(1),(3),(4).

U.S. Office of Special Counsel

Page 2

candidate for partisan political office. However, if the organization does engage in any political activity, as defined above, you may only participate in such activity in your personal capacity, while off duty and away from the federal workplace.

You noted in your request that the (b)(6); (b)(7)(C) Coalition of (b)(6); (b)(7)(C) currently shares office space with a political consultant who is on the organization's board of directors and directs its business, i.e., proofing, editing, and approving all correspondence and fundraising projects. The political consultant also has clients who are actively campaigning for partisan political office, and thus, you ask whether the office space arrangement presents any additional Hatch Act issues. You explained, though, that the political consultant's campaign work is separate from his work for the (b)(6); (b)(7)(C) Coalition of (b)(6); (b)(7)(C). In light of the separation between the two entities, we do not believe there are any additional Hatch Act concerns with the arrangement.

Please contact me at (202) 804-(b)(6); (b)(7)(C) if you have additional questions.

Sincerely,

(b)(6); (b)(7)(C)

Erica S. Hamrick
Deputy Chief
Hatch Act Unit



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218

Washington, D.C. 20036-4505

202-804-7000

August 31, 2017

(b)(6); (b)(7)(C)

VIA EMAIL:

(b)(6); (b)(7)(C)

Re: OSC File No. AD-17-

(b)(6); (b)(7)(C)

Dear

(b)(6); (b)(7)(C)

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 interpreting the Hatch Act. Specifically, you ask whether participants in an employment and training program are covered by the Hatch Act if the costs associated with the training are reimbursed through the federal Workforce Innovation and Opportunity Act (WIOA). Our guidance is below.

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.^{1, 2} 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). A state or local employee covered by the Hatch Act is prohibited from: (1) using her official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for office; or (2) coercing, attempting to coerce, commanding, or advising a state or local officer or employee to pay, lend, or contribute anything of value for political purposes.

¹ The Hatch Act also governs the political activity of federal executive branch employees. 5 U.S.C. §§ 7321-7326. However, pursuant to 29 U.S.C. § 3207, WIOA participants are not considered federal employees.

² In addition, the Hatch Act applies to employees of private, nonprofit organizations only if the statutes through which these organizations derive their federal funding contain a provision stating that the recipient organizations are deemed to be state or local government agencies for purposes of the Hatch Act. To date, the statutes authorizing Head Start and the Community Service Block Grant are the only statutes that contain such a provision. See 42 U.S.C. §§ 9851 and 9918(b).

Additionally, the Hatch Act prohibits only those employees whose salary is fully federally funded from being candidates for public office in a partisan election. 5 U.S.C. § 1502(a)(3).

You explained that some employment and training program participants are placed in on-the-job training with private or public sector employers. And the costs associated with training these participants are reimbursed with federal WIOA funding. As mentioned above, the Hatch Act applies to employees of state or local government agencies. Accordingly, there are no Hatch Act implications for those in the private sector receiving WIOA funding.

And with respect to those participants placed in the public sector, if their only link to federal funding is that the cost of their training is reimbursed through WIOA, we would not conclude that they have sufficient duties in connection with federally funded activities to cause them to be covered by the Hatch Act. However, employees of state or local government agencies whose job duties include providing such training would have duties in connection with the WIOA funded activity, and thus, would be covered by the Hatch Act.

If you have any questions concerning this matter, please contact me at (202) 254-3673.

Sincerely,

(b)(6); (b)(7)(C)

Erica S. Hamrick
Deputy Chief
Hatch Act Unit



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-254-3600

August 25, 2017

(b)(6); (b)(7)(C)

VIA EMAIL: (b)(6); (b)(7)(C)

Re: OSC File No. AD-17 (b)(6); (b)(7)(C)

Dear (b)(6);
(b)(7)(C)

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 interpreting the Hatch Act. You ask whether the Hatch Act prohibits you from being a candidate in a partisan election for local public office in (b)(6); (b)(7)(C). We understand that you currently reside in (b)(6); (b)(7)(C) and are employed with U.S. Citizenship and Immigration Services, U.S. Department of Homeland Security. Our advice is below.

The Hatch Act, 5 U.S.C. §§ 7321-7326, governs the political activity of federal civilian executive branch employees in order to protect the federal workforce from partisan political influence. The Hatch Act prohibits employees from, among other things, being candidates for public office in partisan elections. 5 U.S.C. § 7323(a)(3). However, the Office of Personnel Management (OPM) has determined that in certain localities where the majority of voters are employed by the Government of the United States, it is in the domestic interest of employees to participate in local elections. 5 C.F.R. § 733.107(a). Therefore, federal employees living in one of these specially designated localities are permitted to be candidates in partisan elections for local public office in the communities in which they reside, as long as they run as independent candidates. 5 C.F.R. § 733.103.

OPM has designated (b)(6); (b)(7)(C) as one of these localities. 5 C.F.R. § 733.107. Therefore, because you reside in (b)(6); (b)(7)(C) the Hatch Act would not prohibit you from being a candidate in a partisan election for (b)(6); (b)(7)(C) public office, as long as you remain an independent candidate. Independent means “not relying on others”; “not dependent for support or supplies”; “[n]ot subject to bias or influence”; “not bound by party; exercising a free choice in voting with either or any party.” *See Campbell v. Merit Sys. Prot. Bd.*, 27 F.3d 1560, 1568 (Fed. Cir. 1994), *quoting Webster’s New Int’l Dict. Of the English Language* 1094 (1932). Therefore, to remain an independent candidate, you must not seek or accept party support in any way for your candidacy. For example, you would no longer be considered an independent candidate and, thus, would be a partisan candidate in violation of the Hatch Act, if you were to, participate in and win a party caucus; hold yourself out as having the party’s political support by advertising this in speeches, flyers or mailings; seek and advertise the

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political party's endorsement; or receive party support in the form of supplies (e.g., wooden stakes for signs, bulk mail permit), campaign volunteers, campaign publications (e.g., flyers, posters) or use of party headquarters.

Also, please know that this advisory opinion addresses only the Hatch Act. You should speak with your agency ethics official about any other rules or regulations that may govern your proposed activity. If you have any questions, you may contact me at (202) 254-3673.

Sincerely,

(b)(6); (b)(7)(C)

Erica S. Hamrick
Deputy Chief
Hatch Act Unit



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

November 14, 2017

(b)(6); (b)(7)(C)

Re: OSC File No. AD-17 (b)(6); (b)(7)(C)

Dear (b)(6); (b)(7)(C)

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 interpreting the Hatch Act. Specifically, you ask if the Hatch Act would prohibit you, an employee of the (b)(6); (b)(7)(C) Department of Transportation, from being a candidate in the 2019 election for (b)(6); (b)(7)(C) County Sheriff. For the reasons explained below, OSC has concluded that you are not subject to the Hatch Act's candidacy prohibition.

The Hatch Act applies to certain state and local employees who are 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(4). Employees who are covered by the Hatch Act may not: (1) use their official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for office; or (2) coerce, attempt to coerce, command, or advise a state or local officer or employee to pay, lend, or contribute anything of value for political purposes. 5 U.S.C. § 1502 (a)(1)-(2). Additionally, the Hatch Act prohibits only those employees whose salaries are entirely federally funded from being candidates for public office in a partisan election. *See* 5 U.S.C. § 1502(a)(3).

In order to advise you, we contacted your agency and confirmed that you are employed at the (b)(6); (b)(7)(C) Department of Transportation as an enforcement officer. We also confirmed that your salary is funded entirely by the State of (b)(6); (b)(7)(C). Accordingly, you are not subject to the Hatch Act's candidacy prohibition. Therefore, the Hatch Act does not prohibit you from being a candidate for (b)(6); (b)(7)(C) County Sheriff, even if the election is partisan. If you have any questions concerning this matter, please contact me at (202) 804- (b)(6); (b)(7)(C)

Sincerely,

(b)(6); (b)(7)(C)

Ana Galindo-Marrone
Chief, Hatch Act Unit



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

October 19, 2017

(b)(6); (b)(7)(C)

VIA EMAIL: (b)(6); (b)(7)(C)

Re: OSC File No. AD-17- (b)(6); (b)(7)(C)

Dear (b)(6); (b)(7)(C)

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 interpreting the Hatch Act. You ask whether the Hatch Act would prohibit employees at the U.S. Department of Veterans Affairs (VA) from discussing while on duty and in the workplace, (b)(6); (b)(7)(C) paper, (b)(6); (b)(7)(C). You also ask whether, when addressing (b)(6); (b)(7)(C) in veterans, there are any Hatch Act concerns when handling the political critique that is inherent in the (b)(6); (b)(7)(C). Our guidance is below.

The Hatch Act, 5 U.S.C. §§ 7321-7326, governs the political activity of federal executive branch employees, including VA employees, in order to protect the federal workforce from partisan political influence. The Hatch Act prohibits employees from, among other things, engaging in political activity while on duty, in a government building, while wearing an official uniform or insignia, or using an official vehicle. 5 U.S.C. § 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.

One issue here is whether a discussion of (b)(6); (b)(7)(C) paper would constitute political activity under the Hatch Act, and thus, be prohibited while on duty or in the federal workplace. (b)(6); (b)(7)(C) paper argues that (b)(6); (b)(7)(C). (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C) Discussing this paper and its premise would not constitute political activity for purposes of the Hatch Act, as it is not directed at the success or failure of a political party, candidate for partisan political office, or partisan political group.

Another issue is whether employees would engage in prohibited political activity when addressing (b)(6); (b)(7)(C) in veterans and the political critique that comes with it. First, not all

U.S. Office of Special Counsel

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“political critique” will constitute political activity for purposes of the Hatch Act. For example, advocating against war in general or criticizing a specific war and/or how it was or is being managed would not constitute political activity. Second, a VA employee treating a veteran would not violate Hatch Act if the veteran, during a session focused on (b)(6); (b)(7)(C) were to engage in political critique that constituted political activity. Only if the VA employee also engaged in such activity, e.g., advocating for or against the electoral success of a candidate or a political party, would the employee run afoul of the Hatch Act.

Please call me at (202) 804- (b)(6); (b)(7)(C) if you have any questions or we can be of further assistance.

Sincerely,

(b)(6); (b)(7)(C)

Erica S. Hamrick
Deputy Chief
Hatch Act Unit



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

October 16, 2017

(b)(6); (b)(7)(C)

VIA EMAIL:

(b)(6); (b)(7)(C)

Re: OSC File No. AD-17-

(b)(6); (b)(7)(C)

Dear

(b)(6); (b)(7)(C)

This letter is in response to your request for an advisory opinion concerning the Hatch Act. The U.S. Office of Special Counsel is authorized pursuant to 5 U.S.C. § 1212(f) to issue opinions interpreting the Hatch Act. Specifically, you ask whether the Hatch Act would prohibit you from working for and publicly supporting a candidate in a partisan election while wearing your official uniform and in your official capacity as Chief Deputy of the (b)(6); (b)(7)(C) County Sheriff's Office (b)(6); (b)(7)(C). Your question is addressed below.

The Hatch Act, 5 U.S.C. §§1501-1508, governs the political activity of certain state and local government employees in order to protect the public workforce from partisan political influence and ensure the nonpartisan administration of laws. Employees covered by the Hatch Act 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 Hatch Act if, as a normal and foreseeable incident of their positions or jobs, they perform duties in connection with federally financed activities. *Special Counsel v. Gallagher*, 44 M.S.P.R. 57, 61 (1990); *In re Hutchins*, 2 P.A.R. 160, 164 (Civil Serv. Comm'n 1944).

Individuals who supervise employees who work on federally funded programs have been found to be subject to the Hatch Act due to their oversight responsibilities for those activities. See *In re Palmer*, 2 P.A.R. 590, 595-96 (1959), remanded, *Palmer v. U.S. Civil Service Commission*, 191 F. Supp. 495 (S.D. Ill. 1961), rev'd 297 F.2d 450 (7th Cir. 1962), cert. denied, 369 U.S. 849 (1962). Additionally, employees who play a vital role in securing and maintaining federally funded grants as well as who perform affirmative grant-related duties are covered by the Hatch Act. See *Special Counsel v. Greiner*, 117 M.S.P.R. 117, 121-27 (2011). However,

U.S. Office of Special Counsel

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coverage is not dependent on the source of an employee's salary,¹ 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*, 55 F.3d 917 (4th Cir. 1995), *cert. denied*, 516 U.S. 1071 (1996) (unreported decision).

We understand that as Chief Deputy, you are second-in-command of (b)(6); (b)(7)(C) and responsible for planning, directing, and evaluating the work of departmental personnel. You oversee a department that receives four types of federal funding: the Edward Byrne Memorial Justice Assistance Grant (Byrne JAG); the Byrne JAG: Methamphetamine Hot Spots; the Bulletproof Vest Partnership grant; and funding from federal contracts with the U.S. Marshals Service and the U.S. Department of Homeland Security, Immigration and Customs Enforcement (ICE).

Although you are not responsible for applying for any federal funding, two of your direct reports apply for, administer, and/or oversee the Bulletproof Vest Partnership grant and funding from the U.S. Marshals Service and ICE. In addition, you are the (b)(6); (b)(7)(C) Civil Rights Contact Person for the Byrne JAG: Methamphetamine Hot Spots. With respect to the Byrne JAG, although the sergeant who applies for and oversees this grant is not your direct report, the sergeant is under your chain of command. Accordingly, we have concluded that you have job duties in connection with federally funded activities and, as such, you are covered by the Hatch Act.

As a Hatch Act-covered employee, you are prohibited from using your official authority or influence for the purpose of affecting the results of an election. 5 U.S.C. § 1502(a)(1). This prohibition includes engaging in political activity while wearing an official uniform or using an official title. It also includes using agency resources, such as on-duty personnel, to support a candidate and using one's authority to coerce any person to participate in political activity. Similarly, you are prohibited from directly or indirectly coercing subordinates to make political contributions, such as providing personal volunteer services. 5 U.S.C. § 1502(a)(2). The Merit Systems Protection Board, which adjudicates Hatch Act cases, has deemed the supervisor-subordinate relationship to be inherently coercive. *See Special Counsel v. Purnell*, 37 M.S.P.R. 184, 185 (1995), *aff'd sub nom., Fela v. Merit Sys. Prot. Bd.*, 730 F. Supp. 779 (N.D. Ohio 1989) (reaffirming Civil Service Commission rule stating that it is inherently coercive for a supervisor to ask an employee to contribute to a political cause, absent exculpatory circumstances.) Where the supervisor-subordinate relationship exists, no particular words are required to establish coercion because virtually any language can be threatening. *Gallagher*, 44 M.S.P.R. at 76.

Because you are subject to these two prohibitions, you may not endorse a candidate for partisan political office in your official capacity. In addition, you may not provide support for, or engage in any campaign-related activity, while wearing your official uniform.

¹ Salary is relevant with respect to the Hatch Act's candidacy prohibition, but that prohibition is not at issue in your advisory request.

U.S. Office of Special Counsel

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Please contact me at 202-804-(b)(6);
(b)(7)(C) if you have any questions.

Sincerely,

(b)(6); (b)(7)(C)

Kelley E. Nobriga
Attorney, Hatch Act Unit



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

October 16, 2017

(b)(6); (b)(7)(C)

VIA EMAIL: (b)(6); (b)(7)(C)

Re: OSC File No. AD-18

(b)(6);
(b)(7)(C)

Dear (b)(6); (b)(7)(C)

This letter is in response to your request for an advisory opinion concerning the Hatch Act. The U.S. Office of Special Counsel is authorized pursuant to 5 U.S.C. § 1212(f) to issue opinions interpreting the Hatch Act. You ask whether the Hatch Act would prohibit you from accepting a yearlong appointment to the (b)(6); (b)(7)(C) City Council. You explain that, at the end of your appointment, you would be required to run as a candidate in a partisan election to retain your city council seat. As such, you also ask whether the Hatch Act would prohibit you from being a candidate in a partisan election. We understand that you are employed by the (b)(6); (b)(7)(C) Housing Authority for the City of (b)(6); (b)(7)(C). Your questions are addressed below.

The Hatch Act, 5 U.S.C. §§ 1501-1508, governs the political activity of certain state and local government employees in order to protect the public workforce from partisan political influence and ensure the nonpartisan administration of government programs. Among other things, the Hatch Act prohibits state and local employees whose salaries are entirely federally funded from being candidates for partisan political office. 5 U.S.C. § 1502(a)(3). However, the Hatch Act does not prohibit a state and local employee from being appointed to or from holding public elective office.

According to the information provided by (b)(6); (b)(7)(C), Chief Financial Officer of (b)(6); (b)(7)(C), your salary is entirely federally funded through the U.S. Department of Housing and Urban Development. As such, you are subject to the candidacy prohibition of the Hatch Act. Therefore, although the Hatch Act would not prohibit you from being appointed to the (b)(6); (b)(7)(C) City Council, the Act would prohibit you from being a candidate in a partisan election to retain your city council seat. Please contact me at 202-804-(b)(6); (b)(7)(C) if you have any questions.

Sincerely,

(b)(6); (b)(7)(C)

Kelley E. Nobriga
Attorney, Hatch Act Unit



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

October 30, 2017

(b)(6); (b)(7)(C)

VIA EMAIL: (b)(6); (b)(7)(C)

Re: OSC File No. AD-18 (b)(6); (b)(7)(C)

Dear (b)(6); (b)(7)(C)

This letter is in response to your request for an advisory opinion concerning the Hatch Act. The U.S. Office of Special Counsel is authorized pursuant to 5 U.S.C. § 1212(f) to issue opinions interpreting the Hatch Act. You ask whether the Hatch Act would prohibit you from being a candidate in a local partisan election. We understand that you are a Rural Carrier Associate (RCA) for the U.S. Postal Service (USPS). Your question is addressed below.

The Hatch Act, 5 U.S.C. §§ 7321-7326, governs the political activity of federal executive branch employees, including USPS employees. *See* 39 U.S.C. § 410. The Hatch Act permits most employees to actively participate in partisan political management and partisan political campaigns. However, an employee covered by the Hatch Act may not, among other things, be a candidate for public office in a partisan election, i.e., an election in which any candidate is to be nominated or elected as representing, for example, the Republican or Democratic Party.

An individual who works on an irregular or occasional basis, however, is subject to the Hatch Act's prohibitions only when he is on duty. 5 C.F.R. § 734.601. The Hatch Act regulations define occasional as "occurring infrequently, at irregular intervals, and according to no fixed or certain scheme; acting or serving for the occasion or only on particular occasions." 5 C.F.R. § 734.101. In *Kane v. Merit Systems Protection Board*, 210 F.3d 1379 (Fed. Cir. 2000), an employee argued that he was permitted to run for partisan public office because he worked for the federal government on an irregular or occasional basis. Rejecting this argument, the Federal Circuit affirmed the Merit Systems Protection Board's holding that an employee did not qualify as an irregular or occasional employee because he worked every Saturday and, therefore, had a regular tour of duty.

According to (b)(6); (b)(7)(C) Postmaster of the (b)(6); (b)(7)(C) Post Office, as an RCA you are scheduled to work every Saturday. In addition, you are able to work during the week on an "as needed" basis. Similar to the employee in *Kane*, we do not believe that you qualify as an irregular or occasional employee because you have a set schedule and work according to a fixed scheme, i.e., every Saturday. Consequently, as an RCA you are covered by the Hatch Act's restrictions and prohibited from being a candidate for public office in a partisan election.

U.S. Office of Special Counsel

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Please contact me at (202) 804-(b)(6);
(b)(7)(C) if you have any questions.

Sincerely,

(b)(6); (b)(7)(C)

Kelley E. Nobriga
Attorney, Hatch Act Unit



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

November 3, 2017

(b)(6); (b)(7)(C)

VIA EMAIL:

(b)(6); (b)(7)(C)

Re: OSC File No. AD-18-

(b)(6); (b)(7)(C)

Dear

(b)(6); (b)(7)(C)

This letter is in response to your request for an advisory opinion from the U.S. Office of Special Counsel (OSC). OSC issues this advisory opinion pursuant to its authority under 5 U.S.C. § 1212(f). Specifically, you ask whether you would be subject to the candidacy prohibition of the Hatch Act if you were to accept a position as assistant program director for the

(b)(6);
(b)(7)(C)

Community Center's

(b)(6); (b)(7)(C)

program. Our guidance is below.

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. A state or local employee covered by the Hatch Act is prohibited from: (1) using his official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for office; or (2) coercing, attempting to coerce, commanding, or advising a state or local officer or employee to pay, lend, or contribute anything of value for political purposes. Additionally, the Hatch Act prohibits those employees whose salaries are fully federally funded from being candidates for public office in a partisan election. 5 U.S.C. § 1502(a)(3).

Further, the Hatch Act applies to employees of private, nonprofit organizations only if the statutes through which these organizations derive their federal funding contain a provision stating that the recipient organizations are deemed to be state or local government agencies for purposes of the Hatch Act. To date, the statutes authorizing Head Start and the Community Service Block Grant (CSBG) are the only statutes that contain such a provision. See 42 U.S.C. §§ 9851 and 9918(b).

OSC has confirmed that the (b)(6); (b)(7)(C) Community Center is a private, nonprofit organization and the (b)(6); (b)(7)(C) program is funded through a federal grant from the U.S. Department of Health and Human Services. However, the federal grant is not Head Start or CSBG funding. Accordingly, you would not be subject to the Hatch Act if you accepted a position as assistant program director for the (b)(6); (b)(7)(C) program.

U.S. Office of Special Counsel

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Please contact me at (202) 804-(b)(6);
(b)(7)(C) if you have any questions regarding this matter.

Sincerely,

(b)(6); (b)(7)(C)

Erica S. Hamrick
Deputy Chief
Hatch Act Unit



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

January 5, 2018

(b)(6); (b)(7)(C)

VIA EMAIL:

(b)(6); (b)(7)(C)

Re: OSC File No. AD-18-

(b)(6); (b)(7)(C)

Dear

(b)(6); (b)(7)(C)

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 interpreting the Hatch Act. Specifically, you seek guidance about your coverage under the Hatch Act as a Major with the (b)(6); (b)(7)(C) State Police (b)(6); (b)(7)(C) and its impact on your campaign in the partisan election for county sheriff. OSC's guidance is below.

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 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). Except in limited circumstances,¹ 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. Merit Sys. Prot. Bd.*, 55 F.3d 917 (4th Cir. 1995). An individual who supervises employees who work in connection with federally funded programs generally will be held to have duties in connection with federally financed activities because of his oversight responsibility for those activities, even if his salary is not federally funded and he has no direct duties in connection with those programs. *Palmer v. United States Civil Service Commission*, 297 F.2d 450, 454 (7th Cir.)(1962).

OSC learned that you are the (b)(6); (b)(7)(C) and ultimately are responsible for 350-400 (b)(6) troopers in the northern half of the state. We understand that (b)(6) participates in at least two federally funded programs – the High Intensity Drug Trafficking Area (HIDTA) program and a traffic safety grant program, which includes DUI enforcement overtime. While

¹ Pursuant to the Hatch Act Modernization Act of 2012, employees whose salaries are paid entirely with federal funds are prohibited from being candidates in partisan elections. 5 U.S.C. § 1502(a)(3). The candidacy prohibition is not at issue here because your salary is not federally funded.

U.S. Office of Special Counsel

Page 2

you do not have any direct involvement in these federally funded programs, it is possible that officers under your command are involved in the programs by, for example, scheduling the DUI enforcement patrols or actually working those patrols. If that is the case, then because of your oversight responsibility for the (b)(6); (b)(7)(C) OSC would conclude that you have duties in connection with federally funded activities and are covered by the Hatch Act.

As an employee covered by the Hatch Act, you would be prohibited from using your official authority or influence to affect the result of an election.² 5 U.S.C. § 1502(a)(1). Under this provision, an employee who is a candidate for partisan political office may not: wear his uniform while campaigning for office, including at campaign events or in campaign advertisements, web pages, signs, or literature; use agency resources to advance his candidacy; or request, encourage, suggest, or imply that subordinate employees assist his campaign efforts. In addition, an employee may not use his official title and/or position when, for example, signing campaign communications and solicitations or identifying himself on campaign signs (e.g., "Vote for (b)(6); (b)(7)(C)"). Doing so would create the impression that he is running in his official capacity with the authority of the agency behind him and, as such, would violate the Hatch Act.

Please contact me at (202) 804- (b)(6); (b)(7)(C) if you have any questions regarding this matter.

Sincerely,

(b)(6); (b)(7)(C)

Erica S. Hamrick
Deputy Chief
Hatch Act Unit

² The Hatch Act also prohibits covered employees from coercing other employees into making political contributions. 5 U.S.C. § 1502(a)(2).



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

November 30, 2017

(b)(6); (b)(7)(C)

VIA EMAIL:

(b)(6); (b)(7)(C)

Re: OSC File No. AD-18-

(b)(6); (b)(7)(C)

Dear

(b)(6); (b)(7)(C)

This letter is in response to your request for an advisory opinion concerning the Hatch Act. The U.S. Office of Special Counsel is authorized pursuant to 5 U.S.C. § 1212(f) to issue opinions interpreting the Hatch Act. You ask whether the Hatch Act prohibits you from holding elective office as an (b)(6); (b)(7)(C) Community College (b)(6); (b)(7)(C) trustee while employed by the U.S. Department of Agriculture (USDA). Your question is addressed below.

The Hatch Act (5 U.S.C. §§ 7321-7326) governs the political activity of federal civilian executive branch employees, including USDA employees. As such, USDA employees 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 employing office. 5 U.S.C. § 7323(a)(1)-(4). The Hatch Act also prohibits employees from engaging in political activity while on duty, in a government building, while wearing an official uniform or insignia, or using an official vehicle. 5 U.S.C. § 7324. Political activity is defined as activity directed toward the success or failure of a political party, candidate for a partisan political office, or partisan political group. 5 C.F.R. § 734.101. Although the Hatch Act prohibits covered employees from being candidates for partisan political office, the Act does not prohibit employees from holding public office during their employment.

We understand that in (b)(6); (b)(7)(C) you were elected for a six-year term as an (b)(6); (b)(7)(C) Community College (b)(6); (b)(7)(C) trustee. (b)(6); (b)(7)(C), you began working for the USDA. Because you were holding elective office at the time you began working for the USDA, the Hatch Act does not prohibit you from serving in both capacities.

Furthermore, according to information provided by the (b)(6); (b)(7)(C) County Clerk's Office, the (b)(6); (b)(7)(C) Community College (b)(6); (b)(7)(C) trustee election is nonpartisan. While the Hatch Act prohibits candidacy in a partisan election, it does not prohibit candidacy in a

U.S. Office of Special Counsel

Page 2

nonpartisan election. Accordingly, you may be a candidate for reelection at the end of your term while employed by the USDA, provided the election for (b)(6); (b)(7)(C) Community College (b)(6); (b)(7)(C) trustee remains nonpartisan.

Please note that this opinion addresses only the Hatch Act. You should speak with your agency ethics official about any other rules that may apply. If you have any questions, please contact me at (202) 804- (b)(6); (b)(7)(C)

Sincerely,

(b)(6); (b)(7)(C)

Kelley E. Nobriga
Attorney, Hatch Act Unit



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

January 8, 2018

(b)(6); (b)(7)(C)

VIA EMAIL:

(b)(6); (b)(7)(C)

Re: OSC File No. AD-18

(b)(6); (b)(7)(C)

Dear

(b)(6); (b)(7)(C)

This letter is in response to your request for an advisory opinion concerning the Hatch Act. The U.S. Office of Special Counsel is authorized pursuant to 5 U.S.C. § 1212(f) to issue opinions interpreting the Hatch Act. You ask whether the Hatch Act prohibits you from being a candidate in the election for (b)(6); (b)(7)(C) select board member. We understand that you are employed by the U.S. Citizenship and Immigration Services (USCIS). Your question is addressed below.

The Hatch Act (5 U.S.C. §§ 7321-7326) governs the political activity of federal civilian executive branch employees, including USCIS employees. As such, USCIS employees 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 employing office. 5 U.S.C. § 7323(a)(1)-(4). The Hatch Act also prohibits employees from engaging in political activity while on duty, in a government building, while wearing an official uniform or insignia, or using an official vehicle. 5 U.S.C. § 7324. Political activity is defined as activity directed toward the success or failure of a political party, candidate for a partisan political office, or partisan political group. 5 C.F.R. § 734.101.

According to the (b)(6); (b)(7)(C) Town Clerk's Office, the election for (b)(6); (b)(7)(C) select board member is nonpartisan. While the Hatch Act prohibits candidacy in a partisan election, it does not prohibit candidacy in a nonpartisan election. Therefore, your candidacy in the nonpartisan election for (b)(6); (b)(7)(C) select board member would not violate the Hatch Act.

Usually a nonpartisan election is designated as such by state or local law. The law, however, creates only a rebuttable presumption that an election is nonpartisan. See *Special Counsel v. Yoho*, 15 M.S.P.R. 409, 413 (1983). Evidence showing that partisan politics actually entered a candidate's campaign may rebut this presumption. See *McEntee v. Merit Sys. Prot. Bd.*, 404 F.3d 1320 (Fed. Cir. 2005). But no bright-line rule exists that identifies the type or amount of conduct (either by the candidate or party) needed to prove that a statutorily designated nonpartisan election, in fact, became a partisan one. *McEntee*, 404 F.3d at 1334.

Each case will present a unique combination of facts that will either show that the candidate was politically independent or not. *See Campbell v. Merit Sys. Prot. Bd.*, 27 F.3d 1560, 1566 (Fed. Cir. 1994). So, the ultimate answer regarding what activity may change a nonpartisan election into a partisan one rests on the totality of the circumstances. *See id.* Accordingly, a nonpartisan election could become partisan if, for instance, one of the candidates were to: participate in and win a party caucus; hold himself out as having the party's political support by advertising this in his speeches, flyers or mailings; seek and advertise the political party's endorsement; or receive party support in the form of supplies (e.g., wooden stakes for signs, bulk mail permit), campaign volunteers, campaign publications (e.g., flyers, posters) or use of party headquarters. Please note, that the foregoing list is illustrative only and is not an exhaustive list of the unique combination of facts that could change a nonpartisan election into a partisan one.

Accordingly, while the Hatch Act does not prohibit you from being a candidate in a nonpartisan election for (b)(6); (b)(7)(C) select board member, you should refrain from engaging in any of the types of activities discussed above. Please let me know if we can be of further assistance. You may contact me at (202) 804- (b)(6); (b)(7)(C)

Sincerely,

(b)(6); (b)(7)(C)

Kelley E. Nobriga
Attorney, Hatch Act Unit



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

February 8, 2018

(b)(6); (b)(7)(C)

VIA EMAIL:

(b)(6); (b)(7)(C)

Re: OSC File No. AD-18 (b)(6); (b)(7)(C)

Dear (b)(6); (b)(7)(C)

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 interpreting the Hatch Act. Specifically, you ask what restrictions the Hatch Act places on (b)(6); (b)(7)(C) recently hired Chief Strategy Officer (CSO), (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C). OSC understands that (b)(6); (b)(7)(C) also currently serves as a (b)(6); (b)(7)(C) Assembly Member. Your questions are addressed below.

The Hatch Act governs the political activity of certain state and local government employees in order to protect the public workforce from partisan political influence and ensure the nonpartisan administration of laws. *See generally* 5 U.S.C. §§1501-1508. Employees covered by the Hatch Act 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 Hatch Act if, as a normal and foreseeable incident of their positions or jobs, they perform duties in connection with federally financed activities. *Special Counsel v. Gallagher*, 44 M.S.P.R. 57, 61 (1990); *In re Hutchins*, 2 P.A.R. 160, 164 (Civil Serv. Comm’n 1944).

Individuals who supervise employees who work on federally funded programs have been found to be subject to the Hatch Act due to their oversight responsibilities for those activities. *See In re Palmer*, 2 P.A.R. 590, 595-96 (1959), remanded, *Palmer v. U.S. Civil Service Commission*, 191 F. Supp. 495 (S.D. Ill. 1961), rev’d 297 F.2d 450 (7th Cir. 1962), cert. denied, 369 U.S. 849 (1962). Additionally, employees who play a vital role in securing and maintaining federally funded grants as well as who perform affirmative grant-related duties are covered by the Hatch Act. *See Special Counsel v. Greiner*, 117 M.S.P.R. 117, 121-27 (2011). However,

U.S. Office of Special Counsel

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coverage is not dependent on the source of an employee's salary,¹ 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*, 55 F.3d 917 (4th Cir. 1995), *cert. denied*, 516 U.S. 1071 (1996) (unreported decision).

(b)(6); (b)(7)(C) receives federal grants from the U.S. Department of Labor, as authorized by the Workforce Innovation and Opportunity Act (WIOA). As CSO, (b)(6); (b)(7)(C) oversees, and supervises staff that work on, various WIOA initiatives. Accordingly, (b)(6); (b)(7)(C) has duties in connection with federally financed programs and is covered by the provisions of the Hatch Act.

In your advisory request you ask what restrictions the Hatch Act places on (b)(6); (b)(7)(C) generally. As a Hatch Act-covered employee, (b)(6); (b)(7)(C) is prohibited from: (1) using (b)(6) official authority or influence to affect the results of an election; and (2) coercing, attempting to coerce, commanding, or advising another employee to engage in political activity. 5 U.S.C. § 1502(a)(1)-(2); § 1501(4). Examples of activities that violate these two prohibitions include using (b)(6) official title, or otherwise trading on the influence of (b)(6); position, while engaged in political activity; telling other employees to volunteer for a political campaign or give a campaign contribution; and asking subordinate employees to engage in political activity in support of or opposition to a candidate for partisan political office. To illustrate, (b)(6); (b)(7)(C) may not send to other state and local employees, including subordinates,² an email endorsing a candidate for partisan political office or inviting them to a political party fundraising event. In addition, if (b)(6); (b)(7)(C) wrote a letter to the editor of a newspaper endorsing a candidate for partisan political office, (b)(6) may not include (b)(6); agency or official (b)(6); (b)(7)(C) title in the letter.

Next you ask what restrictions the Hatch Act places on (b)(6); (b)(7)(C) social media use. (b)(6); (b)(7)(C) may not use (b)(6) official CSO title when engaged in political activity on social media. For example, (b)(6); (b)(7)(C) in (b)(6) official capacity may not endorse a candidate for partisan political office on social media. The Hatch Act would also prohibit (b)(6) from using social media to coerce others, such as subordinate employees, to participate in political activity.

You also ask if the Hatch Act requires (b)(6); (b)(7)(C) to be on leave when participating in the legislative committees or a special session. The Hatch Act is silent on what type of leave state and local employees must use when engaging in political activity. Political activity is defined as activity directed toward the success or failure of a political party, candidate

¹ Salary is relevant to the Hatch Act's candidacy prohibition. You state in your request that (b)(6); (b)(7)(C) salary is entirely federally funded, and (b)(6) will not seek reelection. Although candidacy is not at issue in your advisory request, please note that the Hatch Act would prohibit (b)(6); (b)(7)(C) from being a candidate for partisan political office if (b)(6) salary is entirely federally funded. 5 U.S.C. § 1502(a)(3).

² The Merit Systems Protection Board, which adjudicates Hatch Act cases, has deemed the supervisor-subordinate relationship to be inherently coercive. See *Special Counsel v. Purnell*, 37 M.S.P.R. 184, 185 (1995), *aff'd sub nom., Fela v. Merit Sys. Prot. Bd.*, 730 F. Supp. 779 (N.D. Ohio 1989) (reaffirming Civil Service Commission rule stating that it is inherently coercive for a supervisor to ask an employee to contribute to a political cause, absent exculpatory circumstances). Where the supervisor-subordinate relationship exists, no particular words are required to establish coercion because virtually any language can be threatening. *Gallagher*, 44 M.S.P.R. at 76.

for a partisan political office, or partisan political group. 5 C.F.R. § 734.101. In any event, because the activity you inquire about does not meet the above definition, it would not be considered political activity for Hatch Act purposes.

Lastly, you ask what is considered “on duty” for Hatch Act purposes. State and local provisions of the Hatch Act do not define “on duty.” However, the federal regulations applicable to federal employees define on duty as when an employee is: “(1) [i]n a pay status other than paid leave, compensatory time off, credit hours, time off as an incentive award, or excused or authorized absence (including leave without pay); or (2) representing any agency or instrumentality of the United States Government in an official capacity.” 5 C.F.R. § 734.101.³

Please contact OSC Hatch Act Unit Attorney Kelley Nobriga at (202) 804- (b)(6); (b)(7)(C) if you have any questions.

Sincerely,

(b)(6); (b)(7)(C)

Ana Galindo-Marrone
Chief, Hatch Act Unit
U.S. Office of Special Counsel

³ Federal employees have specific on duty and in the workplace restrictions. See 5 U.S.C. § 7324.



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

January 31, 2018

(b)(6); (b)(7)(C)

VIA EMAIL:

(b)(6); (b)(7)(C)

Re: OSC File No. AD-18

(b)(6); (b)(7)(C)

Dear

(b)(6); (b)(7)(C)

This letter is in response to your request for an advisory opinion concerning the Hatch Act. The U.S. Office of Special Counsel is authorized pursuant to 5 U.S.C. § 1212(f) to issue opinions interpreting the Hatch Act. You ask whether the Hatch Act would prohibit you from being a candidate in a partisan election. We understand that you are currently employed as a state trooper for the (b)(6); (b)(7)(C) Department of Public Safety (DPS). We have reviewed this matter and, as explained below, we have concluded that the Hatch Act would not prohibit you from being a candidate in a partisan election.

The Hatch Act, 5 U.S.C. §§ 1501-1508, governs the political activity of certain state and local government employees in order to protect the public workforce from partisan political influence and ensure the nonpartisan administration of government programs. Among other things, the Hatch Act prohibits state and local employees whose salaries are entirely federally funded from being candidates for partisan political office. 5 U.S.C. § 1502(a)(3).

According to the information provided by (b)(6); (b)(7)(C) Human Resources Manager, your salary is in no part federally funded. Therefore, the Hatch Act would not prohibit you from being a candidate in a partisan election.

Please note that although the Hatch Act would not prohibit you from being a candidate for partisan political office, you may nevertheless be subject to the Hatch Act's other two restrictions. State and local government employees who perform job duties in connection with a program or activity financed with federal grants or loans are prohibited from: (1) using their official authority or influence to affect the results of an election; and (2) coercing, attempting to coerce, commanding, or advising another employee to engage in political activity. See 5 U.S.C. § 1502(a)(1)-(2); § 1501(4). Examples of activities that violate these two prohibitions include

U.S. Office of Special Counsel

Page 2

telling other employees to volunteer for a political campaign or give a campaign contribution and asking subordinate employees to engage in political activity in support of or opposition to a candidate for partisan political office.

Please contact Hatch Act Unit Attorney Kelley Nobriga at (202) 804-(b)(6);
(b)(7)(C) if you have any questions.

Sincerely,

(b)(6); (b)(7)(C)

Ana Galindo-Marrone
Chief, Hatch Act Unit
U.S. Office of Special Counsel



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

February 21, 2018

(b)(6); (b)(7)(C)

VIA ELECTRONIC MAIL:

(b)(6); (b)(7)(C)

Re: OSC File No. AD-18- (b)(6); (b)(7)(C)

Dear (b)(6); (b)(7)(C)

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 interpreting the Hatch Act. You ask whether the Hatch Act prohibits you from being a candidate in a partisan election for sheriff and referencing your official (b)(6); (b)(7)(C) State Police (b)(6); (b)(7)(C) state trooper position while campaigning. OSC has reviewed this matter and, as explained below, the Hatch Act does not prohibit you from being a candidate for sheriff, but it does restrict how you can use your official position for campaign purposes.

The Hatch Act governs the political activity of certain state and local government employees in order to protect the public workforce from partisan political influence and ensure the nonpartisan administration of laws. *See generally* 5 U.S.C. §§1501-1508. Employees covered by the Hatch Act 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 Hatch Act if, as a normal and foreseeable incident of their positions or jobs, they perform duties in connection with federally financed activities. *Special Counsel v. Gallagher*, 44 M.S.P.R. 57, 61 (1990); *In re Hutchins*, 2 P.A.R. 160, 164 (Civil Serv. Comm’n 1944).

We understand that you are a squad leader in the (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C) In that position, you are responsible for supervising police personnel and assisting with the coordination and management of (b)(6); (b)(7)(C) enforcement operations. We learned that your division is funded by two Motor Carrier Safety Assistance Program grants from the Federal Motor Carrier Safety Administration and that half of your salary is funded by these federal grants. Based on this information, OSC has concluded that you have job duties in connection with federally funded activities and are covered by the Hatch Act.

As a Hatch Act-covered employee, you are prohibited from: (1) using your official authority or influence to affect the results of an election; and (2) coercing, attempting to coerce, commanding, or advising another employee to engage in political activity. 5 U.S.C. § 1502(a)(1)-(2); § 1501(4). In

addition, the Hatch Act prohibits you from being a candidate for partisan political office only if your salary is entirely federally funded. 5 U.S.C. § 1502(a)(3). Your specific questions are addressed below.

1. *Can you be a candidate in a partisan election for sheriff while working in a division that receives federal funds?*

Yes. According to the information received from (b)(6);, your salary is not entirely federally funded. Therefore, even though you work in a division that receives federal funds, the Hatch Act does not prohibit you from being a candidate for sheriff.

2. *Can you provide to the media or use in campaign materials, including fundraiser invitations, photographs of you in an official (b)(6); uniform and/or (b)(6); official photograph, emblem, or title? (b)(7)(C)*

No. These activities violate the Hatch Act's use of official authority prohibition. You may not use agency resources, such as on-duty personnel, or your official title or position, including your official uniform or departmental insignia, for campaign purposes. Thus, you may not wear your uniform while campaigning for office, including at campaign events or in campaign advertisements, web pages, signs, or literature.

3. *Can you use your (b)(6); experience, title, and the name of your department in campaign materials, such as campaign brochures? (b)(7)(C)*

Yes, but subject to certain limitations. The Hatch Act does not prohibit you from referring to your official title, position, and/or accomplishments when promoting your qualifications for the elective office you are seeking. Thus, you may provide such biographical information in campaign materials, including brochures or websites. However, you may not appear to be running for partisan political office in your official capacity as an (b)(6); state trooper. To illustrate, your materials should not read, "(b)(6); (b)(7)(C) for Sheriff" or "Vote for State Trooper (b)(6);." This use of your official title or position for campaign purposes would violate the Hatch Act's use of official authority prohibition.

Please note that, as stated above, you are also subject to the Hatch Act's prohibition against coercing, attempting to coerce, commanding, or advising another employee to engage in political activity. Examples of activities that violate this prohibition include telling other employees to volunteer for a political campaign or give a campaign contribution and asking subordinate employees to engage in political activity in support of or opposition to a candidate for partisan political office.

Please contact OSC Hatch Act Unit Attorney Kelley Nobriga at (202) 804- (b)(6); if you have any questions. (b)(7)(C)

Sincerely,

(b)(6); (b)(7)(C)

Erica S. Hamrick
Deputy Chief, Hatch Act Unit



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

January 31, 2018

(b)(6); (b)(7)(C)

VIA EMAIL:

(b)(6); (b)(7)(C)

Re: OSC File No. AD-18

(b)(6); (b)(7)(C)

Dear

(b)(6); (b)(7)(C)

This letter is in response to your request for an advisory opinion concerning the Hatch Act. The U.S. Office of Special Counsel is authorized pursuant to 5 U.S.C. § 1212(f) to issue opinions interpreting the Hatch Act. Specifically, you ask whether the Hatch Act prohibits you from being a candidate in a partisan election. We understand that you are an extension agent employed by the University of (b)(6); (b)(7)(C) Extension. We have reviewed this matter and, as explained below, we have concluded that the Hatch Act does not prohibit you from being a candidate in a partisan election.

The Hatch Act governs the political activity of certain state and local government employees in order to protect the public workforce from partisan political influence and ensure the nonpartisan administration of government programs. 5 U.S.C. §§ 1501-1508. Among other things, the Hatch Act prohibits state and local employees whose salaries are entirely federally funded from being candidates for partisan political office. 5 U.S.C. § 1502(a)(3). Notwithstanding the preceding, the Hatch Act does not apply to individuals employed by educational or research institutions, establishments, agencies, or systems that are supported in whole or in part by a state or political subdivision thereof, or by a recognized religious, philanthropic, or cultural organization. 5 U.S.C. § 1501(4)(B).

We understand that the University of (b)(6); (b)(7)(C) Extension is an educational institution. Because you are employed by an educational institution, you are not covered by the provisions of the Hatch Act or subject to its candidacy prohibition. Please contact Hatch Act Unit Attorney Kelley Nobriga at (202) 804- (b)(6); (b)(7)(C) if you have any questions.

Sincerely,

(b)(6); (b)(7)(C)

Erica S. Hamrick
Deputy Chief, Hatch Act Unit



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

February 16, 2018

(b)(6); (b)(7)(C)

VIA ELECTRONIC MAIL:

(b)(6); (b)(7)(C)

Re: OSC File No. AD-18-

(b)(6); (b)(7)(C)

Dear (b)(6); (b)(7)(C)

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 interpreting the Hatch Act. You ask whether the Hatch Act prohibits you from being a candidate in the 2018 election for City of (b)(6); (b)(7)(C) City Council. OSC understands that you are employed by the U.S. Department of the Army. Your question is addressed below.

The Hatch Act governs the political activity of federal civilian executive branch employees, including U.S. Department of the Army employees. *See generally* 5 U.S.C. §§ 7321-7326. As such, employees 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 employing office. 5 U.S.C. § 7323(a)(1)-(4). The Hatch Act also prohibits employees from engaging in political activity while on duty, in a government building, while wearing an official uniform or insignia, or using an official vehicle. 5 U.S.C. § 7324. Political activity is defined as activity directed toward the success or failure of a political party, candidate for a partisan political office, or partisan political group. 5 C.F.R. § 734.101.

According to the City of (b)(6); (b)(7)(C) Clerk-Treasurer Department, the election for City of (b)(6); (b)(7)(C) City Council is nonpartisan. While the Hatch Act prohibits candidacy in a partisan election, it does not prohibit candidacy in a nonpartisan election. Therefore, the Hatch Act does not prohibit you from being a candidate in the nonpartisan election for City of (b)(6); (b)(7)(C) City Council.

Usually a nonpartisan election is designated as such by state or local law. The law, however, creates only a rebuttable presumption that an election is nonpartisan. *See Special Counsel v. Yoho*, 15 M.S.P.R. 409, 413 (1983). Evidence showing that partisan politics actually entered a candidate's campaign may rebut this presumption. *See McEntee v. Merit Sys. Prot. Bd.*, 404 F.3d 1320 (Fed. Cir. 2005). But no bright-line rule exists that identifies the type or amount of conduct (either by the candidate or party) needed to prove that a statutorily designated nonpartisan election, in fact, became a partisan one. *McEntee*, 404 F.3d at 1334.

Each case will present a unique combination of facts that will either show that the candidate was politically independent or not. *See Campbell v. Merit Sys. Prot. Bd.*, 27 F.3d 1560, 1566 (Fed. Cir. 1994). So, the ultimate answer regarding what activity may change a nonpartisan election into a partisan one rests on the totality of the circumstances. *See id.* Accordingly, a nonpartisan election could become partisan if, for instance, one of the candidates were to: participate in and win a party caucus; hold himself out as having the party's political support by advertising this in his speeches, flyers or mailings; seek and advertise the political party's endorsement; or receive party support in the form of supplies (e.g., wooden stakes for signs, bulk mail permit), campaign volunteers, campaign publications (e.g., flyers, posters) or use of party headquarters. Please note, that the foregoing list is illustrative only and is not an exhaustive list of the unique combination of facts that could change a nonpartisan election into a partisan one.

Accordingly, while the Hatch Act does not prohibit you from being a candidate in a nonpartisan election for City of (b)(6); (b)(7)(C) City Council, you should refrain from engaging in any of the types of activities discussed above. Please contact OSC Hatch Act Unit Attorney Kelley Nobriga at (202) 804-(b)(6); (b)(7)(C) if you have any questions.

Sincerely,

(b)(6); (b)(7)(C)

Erica S. Hamrick
Deputy Chief, Hatch Act Unit



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

April 30, 2018

(b)(6); (b)(7)(C)

VIA ELECTRONIC MAIL:

(b)(6); (b)(7)(C)

Re: OSC File No. AD-18

(b)(6); (b)(7)(C)

Dear

(b)(6); (b)(7)(C)

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 interpreting the Hatch Act. You ask whether the Hatch Act prohibits a National Security Agency (NSA) employee from working part-time for a political consulting company. Your question is addressed below.

The Hatch Act governs the political activity of federal civilian executive branch employees in order to protect the federal workforce from partisan political influence. *See generally* 5 U.S.C. §§ 7321-7326. The Hatch Act prohibits employees 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 employing office. 5 U.S.C. § 7323(a)(1)-(4). The Hatch Act also prohibits employees from engaging in political activity while on duty, in a government building, while wearing an official uniform or insignia, or using an official vehicle. 5 U.S.C. § 7324. Political activity is defined as activity directed toward the success or failure of a political party, partisan political group, or candidate for partisan political office. 5 C.F.R. § 734.101.

In addition, employees in certain agencies and positions, such as NSA employees, are “further restricted” and prohibited from actively participating in partisan political management and campaigning. *See* 5 U.S.C. § 7323(b)(2); 5 C.F.R. § 734.401(a). Such employees are prohibited from engaging in any political activity that is “in concert” with a political party, partisan group, or candidate for partisan political office.¹ Thus, for example, further restricted

¹ *See, e.g., Blaylock v. U.S. Merit Sys. Prot. Bd.*, 851 F.2d 1348, 1354 (11th Cir. 1988) (concluding that “the statutory prohibition against taking an ‘active part in political management or in political campaigns’ encompasses

U.S. Office of Special Counsel

Page 2

employees may not volunteer for a partisan political campaign, make a speech on behalf of a candidate for partisan political office, or distribute campaign literature from a political party, partisan group, or candidate for partisan political office.

OSC has previously advised that the Hatch Act does not prohibit further restricted employees from performing a service, such as graphic design, to a company that works with partisan political campaigns. However, as mentioned above, further restricted employees may not take an active part in political campaigns or political management. Examples of activities that violate this prohibition include directly or indirectly consulting with and developing policy for a campaign.

Given the general nature of your request, OSC is unable to provide a specific answer to your question because we need more information about the further restricted employee's desired employment opportunity. Should you receive additional information relevant to your request or have any questions, please contact OSC Hatch Act Unit Attorney Kelley Nobriga at (202) 804-

(b)(6); (b)(7)(C)

Sincerely,

(b)(6); (b)(7)(C)

Ana Galindo-Marrone
Chief, Hatch Act Unit
U.S. Office of Special Counsel

only active participation in, on behalf of, or in connection with, the organized efforts of political parties or partisan committees, clubs, and candidates"); 5 C.F.R. § 734.402.



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

March 19, 2018

(b)(6); (b)(7)(C)

VIA EMAIL: (b)(6); (b)(7)(C)

Re: OSC File No. AD-18- (b)(6); (b)(7)(C)

Dear (b)(6); (b)(7)(C)

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 interpreting the Hatch Act. Specifically, you ask whether the Hatch Act prohibits you from being a candidate in the partisan election for Governor of (b)(6); (b)(7)(C) while employed as a (b)(6); (b)(7)(C) with the (b)(6); (b)(7)(C) Department of Human Services (DHS). For the reasons explained below, the Hatch Act does not prohibit you from being a candidate for partisan political office.

The Hatch Act, 5 U.S.C. §§ 1501-1508, governs the political activity of certain state and local government employees in order to protect the public workforce from partisan political influence and ensure the nonpartisan administration of laws. Among other things, the Hatch Act prohibits some state and local government employees from being candidates for public office in partisan elections. 5 U.S.C. § 1502(a)(3). Pursuant to the Hatch Act Modernization Act of 2012, only those employees whose salaries are paid entirely with federal funds are prohibited from being candidates for partisan political office. 5 U.S.C. § 1502(a)(3).

OSC has confirmed with DHS counsel that, although a large part of your salary is federally funded, a small percentage of your salary is funded with state money. Because your salary is not entirely federally funded, OSC has concluded that you are not subject to the candidacy prohibition of the Hatch Act, and thus, the Act does not prohibit you from being a candidate in the partisan election for Governor of (b)(6); (b)(7)(C).

Please note that although the Hatch Act does not prohibit you from being a candidate for partisan political office, you are subject to the Hatch Act's other two restrictions. State and local employees who perform job duties in connection with a program or activity financed with federal

U.S. Office of Special Counsel

Page 2

grants or loans are prohibited from: (1) using their official authority or influence to affect the results of an election; and (2) coercing, attempting to coerce, commanding, or advising another employee to engage in political activity. *See* 5 U.S.C. § 1502(a)(1)-(2); § 1501(4). Examples of activities that violate these two prohibitions include telling other employees to volunteer for a political campaign or give a campaign contribution, and asking subordinate employees to engage in political activity in support of or opposition to a candidate for partisan political office.

If you have any questions concerning this matter, please contact me at (202) 804-

(b)(6);
(b)(7)(C)

Sincerely,

(b)(6); (b)(7)(C)

Erica S. Hamrick
Deputy Chief
Hatch Act Unit



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

March 30, 2018

(b)(6); (b)(7)(C)

VIA ELECTRONIC MAIL: (b)(6); (b)(7)(C)

Re: OSC File No. AD-18- (b)(6); (b)(7)(C)

Dear (b)(6); (b)(7)(C):

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 interpreting the Hatch Act. Specifically, you ask whether the Hatch Act prohibits you from being a candidate in a partisan election. We understand that you work part-time for the (b)(6); (b)(7)(C) County Extension. We have reviewed this matter and, as explained below, we have concluded that the Hatch Act does not prohibit you from being a candidate in a partisan election.

The Hatch Act governs the political activity of certain state and local government employees in order to protect the public workforce from partisan political influence and ensure the nonpartisan administration of government programs. 5 U.S.C. §§ 1501-1508. Among other things,¹ the Hatch Act prohibits state and local employees whose salaries are entirely federally funded from being candidates for partisan political office. 5 U.S.C. § 1502(a)(3). Notwithstanding the preceding, the Hatch Act does not apply to individuals employed by educational or research institutions, establishments, agencies, or systems that are supported in whole or in part by a state or political subdivision thereof, or by a recognized religious, philanthropic, or cultural organization. 5 U.S.C. § 1501(4)(B).

We understand that the (b)(6); (b)(7)(C) County Extension is an educational institution. Because you are employed by an educational institution, you are not covered by the provisions of the Hatch Act or subject to its candidacy prohibition. Please contact OSC Hatch Act Unit Attorney Kelley Nobriga at (202) 804-(b)(6); (b)(7)(C) if you have any questions.

Sincerely,

(b)(6); (b)(7)(C)

Ana Galindo-Marrone
Chief, Hatch Act Unit
U.S. Office of Special Counsel

¹ State and local government employees who perform job duties in connection with a program or activity financed with federal grants or loans are prohibited from: (1) using their official authority or influence to affect the results of an election; and (2) coercing, attempting to coerce, commanding, or advising another employee to engage in political activity. See 5 U.S.C. §§ 1502(a)(1)-(2) and 1501(4).



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

April 9, 2018

(b)(6); (b)(7)(C)

VIA ELECTRONIC MAIL:

(b)(6); (b)(7)(C)

Re: OSC File No. AD-18-

(b)(6); (b)(7)(C)

Dear

(b)(6); (b)(7)(C)

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 interpreting the Hatch Act. Specifically, you ask whether the Hatch Act prohibits you from being a candidate for partisan political office. OSC understands that you are the

(b)(6); (b)(7)(C)

for the

(b)(6); (b)(7)(C)

(b)(6); As explained below, OSC has concluded that the Hatch Act does not prohibit you from being a candidate for partisan political office.

The Hatch Act governs the political activity of certain state and local government employees in order to protect the public workforce from partisan political influence and ensure the nonpartisan administration of government programs. *See generally* 5 U.S.C. §§ 1501-1508. Among other things, the Hatch Act prohibits state and local employees whose salaries are entirely federally funded from being candidates for partisan political office. *See* 5 U.S.C. § 1502(a)(3). Notwithstanding the preceding, the Hatch Act does not apply to individuals employed by educational or research institutions, establishments, agencies, or systems that are supported in whole or in part by a state or political subdivision thereof, or by a recognized religious, philanthropic, or cultural organization. *See* 5 U.S.C. § 1501(4)(B).

OSC understands that (b)(6); (b)(7)(C) is an educational institution. Because you are employed by an educational institution, you are not subject to the provisions of the Hatch Act. Therefore, the Hatch Act does not prohibit you from being a candidate for partisan political office. Please contact OSC Hatch Act Unit Attorney Kelley Nobriga at (202) 804- (b)(6); (b)(7)(C) if you have any questions.

Sincerely,

(b)(6); (b)(7)(C)

Erica S. Hamrick
Deputy Chief, Hatch Act Unit

(b)(6);
(b)(7)(C)



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

May 8, 2018

(b)(6); (b)(7)(C)

Sent via E-mail to:

(b)(6); (b)(7)(C)

Re: OSC File No. AD-18-

(b)(6); (b)(7)(C)

Dear

(b)(6); (b)(7)(C)

This letter responds to your request for an advisory opinion concerning the Hatch Act. The U.S. Office of Special Counsel (OSC) is authorized under 5 U.S.C. § 1212(f) to issue opinions interpreting the Hatch Act. Specifically, you ask several questions regarding the extent to which the Hatch Act restricts campaign activities related to your current candidacy for sheriff of (b)(6); (b)(7)(C) County (b)(6); (b)(7)(C).

Employees covered by the Hatch Act include 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). These employees are subject to the Hatch Act if, as a normal and foreseeable incident of their positions or jobs, they perform duties in connection with federally financed activities. *Special Counsel v. Gallagher*, 44 M.S.P.R. 57, 61 (1990); *In re Hutchins*, 2 P.A.R. 160, 164 (Civil Serv. Comm’n 1944). Individuals who supervise employees who work on federally funded programs have been found to be subject to the Hatch Act due to their oversight responsibilities for those activities. *See In re Palmer*, 2 P.A.R. 590, 595-96 (Civil Serv. Comm’n 1959). Additionally, employees who play a vital role in securing and maintaining federally funded grants as well as who perform affirmative grant-related duties are covered by the Hatch Act. *See Special Counsel v. Greiner*, 117 M.S.P.R. 117, 121-27 (2011). However, coverage is not dependent on the source of an employee’s salary,¹ 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*, 55 F.3d 917 (4th Cir. 1995), *cert. denied*, 516 U.S. 1071 (1996) (unreported decision).

Based on the information you provided, you have duties in connection with an activity financed by the (b)(6); (b)(7)(C) grant from the U.S. Department of Justice. Specifically, you are listed as the program director in grant documents, and you directly

¹ The Hatch Act prohibits those employees whose salaries are entirely federally funded from being candidates for partisan political office. That prohibition is not at issue here.

supervise the employee who performs the functions for which the grant was awarded. Thus, you are subject to the Hatch Act's restrictions.

Covered employees are prohibited from using their official authority or influence to affect the result of an election.² 5 U.S.C. § 1502(a)(1). Under this provision, a covered employee who is a candidate for partisan political office may not: wear his uniform while campaigning for office, including at campaign events or in campaign advertisements, web pages, signs, or literature; use agency resources such as equipment, vehicles, or office supplies to advance his candidacy; or request, encourage, suggest, or imply that subordinate employees assist his campaign efforts. In addition, an employee may not use his official title and/or position when, for example, signing campaign communications and solicitations or identifying himself on campaign signs (e.g., "Vote for Chief Deputy John Smith"). Doing so would create the impression that he is running in his official capacity with the authority of the agency behind him and, as such, would violate the Hatch Act.

We address your specific questions in light of these rules. You first ask whether you can feature photographs of yourself in uniform or wearing your badge in campaign materials such as your website and Facebook page. As explained above, this would violate the Hatch Act's prohibition against using your official authority or influence to affect the result of an election. We understand that this issue was brought to your attention before you requested this opinion. At that time, you removed all photographs of yourself wearing your uniform or badge from your campaign sites, and OSC has confirmed this.

Next, you ask whether you may drive your marked sheriff's office vehicle to campaign events. You explained that as the undersheriff, you are on call at all times, so you are required to drive your official vehicle even when off duty. Under these circumstances, merely using your official vehicle as transportation to events would not violate the Hatch Act. However, you should avoid featuring your vehicle in campaign materials and displaying the vehicle at campaign events, such as parades or rallies.

You also ask whether you may gather signatures from sheriff's office employees for your petition. As OSC attorney Carolyn Martorana explained during your April 30, 2018 phone conversation, you may not target sheriff's office employees when seeking signatures. However, sheriff's office employees are free to sign the petition if they wish. In the same vein, you stated that employees of the sheriff's office have offered you their support, and you ask whether they may volunteer for your campaign while they are off duty.³ Like signing your petition, sheriff's office employees are permitted to support any candidate they choose,

² The Hatch Act also prohibits covered employees from directly or indirectly coercing other covered employees into contributing anything of value for a political purpose. 5 U.S.C. § 1502(a)(2). You told OSC that you do not plan to engage in fundraising as part of your campaign for sheriff.

³ You also ask whether other county employees may volunteer for your campaign. The Hatch Act does not prohibit their voluntary participation.

U.S. Office of Special Counsel

(b)(6); (b)(7)(C)

Page 3

including you. However, you would violate the Hatch Act if you asked any subordinate employee to support your campaign. During your phone conversation with Ms. Martorana, she described ways in which you can avoid problematic situations, including advertising events online and referring interested deputies to a third party campaign manager for more information about how they can help your campaign.

Please contact Ms. Martorana at (202) 804- or (b)(6); (b)(7)(C) @osc.gov if you have any additional questions.

(b)(6);
(b)(7)(C)

Sincerely,

(b)(6); (b)(7)(C)

Ana Galindo-Marrone
Chief, Hatch Act Unit



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

May 22, 2018

(b)(6); (b)(7)(C)

Sent via E-mail to: (b)(6); (b)(7)(C)

Re: OSC File No. AD-18 (b)(6); (b)(7)(C)

Dear Mr. (b)(6); (b)(7)(C)

This letter responds to your request for a Hatch Act advisory opinion. The U.S. Office of Special Counsel (OSC) is authorized under 5 U.S.C. § 1212(f) to issue opinions interpreting the Hatch Act. Specifically, you ask several questions regarding the extent to which the Hatch Act applies to you when you are not on duty as a volunteer for the National Park Service (NPS).

Persons covered by the Hatch Act, 5 U.S.C. §§ 7321-7326, include those individuals employed by or holding office in a federal executive agency. The Hatch Act generally permits most federal employees to actively participate in partisan political management and partisan political campaigns. 5 U.S.C. § 7323(a). But it prohibits covered individuals from: (1) using their official authority or influence to affect the result of an election; (2) knowingly soliciting, accepting, or receiving political contributions from any person; (3) being candidates for partisan public office; (4) knowingly soliciting or discouraging the political activity of someone who has business pending before their employing office; and (5) engaging in political activity while on duty, in the federal workplace, wearing official uniform or insignia, or in a government vehicle. 5 U.S.C. § 7323(a); 7324(a). "Political activity" means an activity directed at the success or failure of a political party, candidate for partisan public office, or partisan political group. 5 C.F.R. § 734.101.

According to the information you provided, you volunteer approximately four hours per week for NPS. NPS does not compensate you or reimburse you for any expenses. NPS is authorized under 54 U.S.C. § 102301 to accept the services of volunteers in national parks. The statute states that, except in limited circumstances, a volunteer "shall not be deemed a Federal employee and shall not be subject to the provisions of law relating to Federal employment." 54 U.S.C. § 102301(c)(1). Volunteers are not considered federal employees for purposes of the Hatch Act's restrictions on political activities. *See id.* (providing that volunteers are considered employees only for purposes of tort claims, workers' compensation, and compensation for loss of property incidental to volunteer service, but not the Hatch Act); *see also* Director's Order #7, Volunteers in Parks, § 8.3. Accordingly, the Hatch Act does not apply to you in your capacity as an NPS volunteer.

U.S. Office of Special Counsel

(b)(6); (b)(7)(C)

Page 2

We understand that you agreed not to engage in any political activity while you are on duty. However, your supervising ranger also advised volunteers that, if you identify yourself as an NPS volunteer on a social media profile, then the Hatch Act prohibits you from engaging in political activity on social media even when off duty. This guidance is incorrect. In fact, OSC has advised that even federal employees who identify themselves as such in their social media profiles may generally post partisan political messages on their social media pages when they are off duty.¹ Because the Hatch Act does not apply to you, the Hatch Act does not prohibit you from engaging in political activity via social media, even if you identify yourself as an NPS volunteer on your social media page.

Please contact OSC attorney Carolyn Martorana at (202) 804- if you have any additional questions.

(b)(6);
(b)(7)(C)

Sincerely,

(b)(6); (b)(7)(C)

Ana Galindo-Marrone
Chief, Hatch Act Unit

¹ See OSC's February 13, 2018 Hatch Act Social Media Guidance, p. 7 ¶ 3(A), available at <https://osc.gov/pages/advisory-opinions.aspx>. Some restrictions still apply; for example, federal employees may never solicit political contributions, even via social media, and they may not identify their official titles *in the same post* in which they advocate for or against a political party or candidate.



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

June 4, 2018

(b)(6); (b)(7)(C)

Sent via E-mail to:

(b)(6); (b)(7)(C)

Re: OSC File No. AD-18

(b)(6); (b)(7)(C)

Dear

(b)(6); (b)(7)(C)

This responds 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 interpreting the Hatch Act. Specifically, you ask whether the Hatch Act would prohibit you from wearing a shirt bearing the insignia of your employer, the police department of the City of (b)(6); (b)(7)(C) at events promoting your candidacy in the partisan election for (b)(6); (b)(7)(C) County sheriff. For the reasons explained below, the Hatch Act does not apply to you, so it would not prohibit you from engaging in the activity you describe.

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). Except in limited circumstances,¹ 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. Merit Sys. Prot. Bd.*, 55 F.3d 917 (4th Cir. 1995).

Covered employees are prohibited from using their official authority or influence to affect the result of an election. 5 U.S.C. § 1502(a)(1). Under this provision, a covered employee who is a candidate for partisan political office may not, for example, wear his

¹ Under the Hatch Act Modernization Act of 2012, employees whose salaries are paid entirely with federal funds are prohibited from being candidates in partisan elections. See Hatch Act Modernization Act of 2012, Pub. L. No. 112-230, § 2, 126 Stat. 1616 (codified at 5 U.S.C. § 1502(a)(3)). Previously, the candidacy prohibition applied to employees who merely had duties in connection with a federally financed activity. The candidacy prohibition is not at issue here because your salary is not entirely federally funded.

U.S. Office of Special Counsel

(b)(6); (b)(7)(C)

Page 2

uniform while campaigning for office, including at campaign events or in campaign advertisements. Doing so would create the impression that he is running in his official capacity with the authority of the agency behind him and, as such, would violate the Hatch Act.

According to the information we received, you are currently working as a narcotics detective. Your supervisor, Captain (b)(6); (b)(7)(C) explained that the police department participates in the High Intensity Drug Trafficking Area (HIDTA) program and the Organized Crime Drug Enforcement Task Force (OCDETF) in cooperation with the U.S. Drug Enforcement Agency (DEA). Under those programs, the DEA reimburses the police department for overtime hours worked by department employees. Captain (b)(6); (b)(7)(C) told OSC that you do not have any duties related to HIDTA or OCDETF.² Instead, you work on local narcotics cases that the DEA does not investigate. Under these circumstances, you do not have duties in connection with federally financed activities, so the Hatch Act does not apply to you. Therefore, the Hatch Act would not prohibit you from wearing the police department's insignia during campaign events.³

Please contact OSC attorney Carolyn Martorana at (202) 804- (b)(6); (b)(7)(C) if you have any additional questions.

Sincerely,

(b)(6); (b)(7)(C)

Ana Galindo-Marrone
Chief, Hatch Act Unit

² We understand that until (b)(6); (b)(7)(C) you were one of the police department's designated DEA task force officers pursuant to an Intergovernmental Personnel Agreement. In that capacity, you were considered a DEA employee for Hatch Act purposes and would have been prohibited from seeking partisan political office if you had not stepped down. See 5 U.S.C. §§ 3374(c)(2), 7323(a)(3).

³ Although the Hatch Act would not prohibit the activity you describe, other laws, rules, or regulations may apply to the use of your organization's official uniforms or insignia. Therefore, you should check with local authorities for guidance.



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

May 1, 2018

(b)(6); (b)(7)(C)

Sent via E-mail to: (b)(6); (b)(7)(C)

Re: OSC File No. AD-18 (b)(6); (b)(7)(C)

Dear (b)(6); (b)(7)(C)

This letter responds to your request for an advisory opinion concerning the Hatch Act. The U.S. Office of Special Counsel has authority under 5 U.S.C. § 1212(f) to issue opinions interpreting the Hatch Act. Specifically, you ask several questions regarding the extent to which (b)(6); (b)(7)(C) city council member and mayor pro tem of (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C) may use Facebook to promote (b)(6); (b)(7)(C) current candidacy for U.S. Representative from (b)(6); (b)(7)(C) Congressional district. (b)(6); (b)(7)(C)

The Hatch Act, 5 U.S.C. §§ 1501-1508, places restrictions on the partisan political activities of individuals who are principally employed in executive branch agencies of state, local, and municipal governments, and who have duties in connection with activities financed by federal loans or grants.¹ 5 U.S.C. § 1501. These employees are prohibited from using their official authority or influence to affect the result of a partisan election. 5 U.S.C. § 1502(a)(1). Conduct prohibited by this provision includes asking subordinate employees to engage in political activities or using government resources in support of a partisan political campaign. The Hatch Act also prohibits covered employees from coercing or attempting to coerce another covered employee to make a political contribution. 5 U.S.C. § 1502(a)(2).²

You ask whether the Hatch Act applies to candidates for Congress. As explained above, it is an individual's employment in the executive branch of government that triggers Hatch Act coverage. If (b)(6); (b)(7)(C) is subject to the Hatch Act, it would be by virtue of position as mayor pro tem, and not in (b)(6); (b)(7)(C) capacity as a candidate for U.S. Representative. However, we have not determined whether the Hatch Act applies to (b)(6); (b)(7)(C) because (b)(6); (b)(7)(C)

¹ The Hatch Act also applies to employees of federal executive branch agencies. 5 U.S.C. §§ 7321-7326. Federal employees are prohibited from using their official authority or influence to affect the result of an election; (2) soliciting, accepting, or receiving political contributions from any person; (3) being candidates for partisan public office; (4) knowingly soliciting or discouraging the political activity of someone with business pending before their employing office; and (4) engaging in political activity while on duty or in the workplace. 5 U.S.C. §§ 7323(a)(1)-(4); 7324(a).

² In addition, such employees are prohibited from being candidates for partisan political office if their salaries are entirely funded with federal loans or grants. 5 U.S.C. § 1502(a)(3).

U.S. Office of Special Counsel

(b)(6); (b)(7)(C)

Page 2

(b)(6);
(b)(7)(C)

even if (b)(6); (b)(7)(C) was covered by the Hatch Act's provisions, the Hatch Act would not prohibit (b)(6); (b)(7)(C) from engaging in the activities you describe in your request.

Your other questions relate to whether (b)(6); (b)(7)(C) campaign can "like" or "friend" various military groups' Facebook pages, such as those set up by the military branches, specific military units, and related groups such as military spouses and family members. The Hatch Act would not prohibit (b)(6); (b)(7)(C) from reaching out to these groups on social media or otherwise. Note, however, that uniformed service members must follow standards of conduct, such as Department of Defense Directive 1344.10, that could affect their ability to accept a friend request, or display posts or comments, from a political candidate on official military social media pages.

Sincerely,

(b)(6); (b)(7)(C)

Ana Galindo-Marrone
Chief, Hatch Act Unit



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
(202) 804-7000

April 12, 2018

(b)(6); (b)(7)(C)

Re: OSC File No. AD-18

(b)(6); (b)(7)(C)

Dear

(b)(6); (b)(7)(C)

This letter responds to your request for an advisory opinion concerning the Hatch Act. You ask whether the Hatch Act prohibits you from being a candidate in the partisan election for county commissioner in (b)(6); County (b)(6); while employed by the (b)(6); State Hospital. For the reasons explained below, the Hatch Act does not prohibit you from seeking partisan political office.

The Hatch Act, 5 U.S.C. §§ 1501-1508, governs the political activity of certain state and local government employees in order to protect the public workforce from partisan political influence and ensure the nonpartisan administration of laws. Among other things, the Hatch Act prohibits employees of state and local government whose salaries are paid entirely from federal loans or grants from being candidates for public office in partisan elections. 5 U.S.C. § 1502(a)(3).

We understand that you are an (b)(6); (b)(7)(C) We contacted (b)(6); (b)(7)(C) a budget analyst for (b)(6); State Hospital, and (b)(6) confirmed that no portion of your salary is federally funded. Therefore, the Hatch Act does not prohibit you from being a candidate in the partisan election for county commissioner.

Please contact attorney Carolyn Martorana at (202) 804- if you have any additional questions.

(b)(6);
(b)(7)(C)

Sincerely,

(b)(6); (b)(7)(C)

Ana Galindo-Marrone
Chief, Hatch Act Unit



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

June 26, 2018

(b)(6); (b)(7)(C)

VIA ELECTRONIC MAIL:

(b)(6); (b)(7)(C)

Re: OSC File No. AD-18

(b)(6); (b)(7)(C)

Dear

(b)(6); (b)(7)(C)

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 interpreting the Hatch Act. Specifically, you ask whether employees of the John F. Kennedy Center for the Performing Arts (Kennedy Center) are covered by the Hatch Act. As explained below, only Kennedy Center federal employees are subject to the restrictions of the Hatch Act.

The Hatch Act governs the political activity of individuals, other than the President and Vice President, employed in an Executive agency. *See generally* 5 U.S.C. §§ 7321-7326. An Executive agency is defined as “an Executive department, a Government corporation, and an independent establishment.” 5 U.S.C. § 105. The Merit Systems Protection Board has held that the Smithsonian Institution is an independent establishment under 5 U.S.C. §§ 104, 105. *See Pessa v. Smithsonian Inst.*, 60 M.S.P.R. 421, 425 (1994). Specifically, the Kennedy Center is “part of the Smithsonian Institution, which is owned and operated by the federal government.”¹ Further, the Kennedy Center building was constructed “for the Smithsonian Institution.” 20 U.S.C. § 76i(a). And the Kennedy Center receives annual federal funding for the maintenance and operation of its building, which is considered a “federal facility.”² Thus, OSC has concluded that the Kennedy Center, as part of the Smithsonian Institution, is an Executive agency for purposes of the Hatch Act.

OSC understands that the Kennedy Center employs approximately 55 federal employees. These federal employees, paid with federal funds, hold positions within the competitive service

¹ *Makarova v. U.S.*, 201 F.3d 110, 112 (2000) (finding that “[i]t is undisputed that the Kennedy Center is an entity of the United States government”).

² <https://www.kennedy-center.org/pages/about/history> (last visited June 26, 2018).

and “handle contracting, project management, facilities services and maintenance of the physical plant, as well as federally funded contracts for security and housekeeping services and construction and maintenance projects.”³ Because Kennedy Center federal employees are paid with federal funds and responsible for maintaining the Kennedy Center building, i.e., a federal facility, they are covered by the Hatch Act and subject to its restrictions.⁴

The Kennedy Center also employs approximately 1,000 trust employees. Trust employees, paid with trust funds, are responsible for presenting and providing education about the performing arts. However, they have no duties related to the maintenance of the Kennedy Center building. Therefore, trust employees of the Kennedy Center are not federal employees, and so they are not covered by the Hatch Act.⁵

Please contact OSC Hatch Act Unit Attorney Kelley Nobriga at (202) 804- [REDACTED] if you have any questions.

Sincerely,

[REDACTED]
(b)(6); (b)(7)(C)

Ana Galindo-Marrone
Chief, Hatch Act Unit
U.S. Office of Special Counsel

³ https://www.kennedy-center.org/pages/about_govShutdown.aspx (last visited June 26, 2018).

⁴ Covered employees 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 employing office. 5 U.S.C. § 7323(a)(1)-(4). The Hatch Act also prohibits employees from engaging in political activity while on duty, in a government building, while wearing an official uniform or insignia, or using an official vehicle. 5 U.S.C. § 7324. Political activity is defined as activity directed toward the success or failure of a political party, partisan political group, or candidate for partisan political office. 5 C.F.R. § 734.101.

⁵ In fact, a trust employee is considered an “employee” under the National Labor Relations Act, which expressly excludes the United States from its definition of an “employer.” See 20 U.S.C. § 76k(f)(2) and 29 U.S.C. § 152(2). In contrast, most federal employees are covered by the Federal Labor Relations Act. See 5 U.S.C. § 7103.



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

July 11, 2018

(b)(6); (b)(7)(C)

Sent via E-mail to: (b)(6); (b)(7)(C)

Re: OSC File No. AD-18- (b)(6); (b)(7)(C)

Dear (b)(6); (b)(7)(C)

This letter responds to your request for a Hatch Act advisory opinion. The U.S. Office of Special Counsel (OSC) is authorized under 5 U.S.C. § 1212(f) to issue opinions interpreting the Hatch Act. Specifically, you ask several questions regarding the extent to which the Hatch Act applies to volunteers and Student Conservation Association (SCA) interns who perform work on National Park Service (NPS) property and lodge in NPS housing. We address each of your questions in detail below.

Persons covered by the Hatch Act, 5 U.S.C. §§ 7321-7326, include those individuals employed by or holding office in a federal executive agency. The Hatch Act generally permits most federal employees to actively participate in partisan political management and partisan political campaigns. 5 U.S.C. § 7323(a). But it prohibits covered individuals from: (1) using their official authority or influence to affect the result of an election; (2) knowingly soliciting, accepting, or receiving political contributions from any person; (3) being candidates for partisan public office; (4) knowingly soliciting or discouraging the political activity of someone who has business pending before their employing office; and (5) engaging in political activity while on duty, wearing official uniform or insignia, in a government vehicle, or while in any room or building occupied in the discharge of official duties by a federal employee. 5 U.S.C. §§ 7323(a); 7324(a).

First, the Hatch Act does not apply to NPS volunteers. NPS is authorized under 54 U.S.C. § 102301 to accept the services of volunteers in national parks. The statute states that, except in limited circumstances, a volunteer "shall not be deemed a Federal employee and shall not be subject to the provisions of law relating to Federal employment." 54 U.S.C. § 102301(c)(1). Thus, volunteers are not considered federal employees for purposes of the Hatch Act. *See id.* (providing that volunteers are considered federal employees only for purposes of tort claims, workers' compensation, and compensation for loss of property incidental to volunteer service, but not the Hatch Act); *see also* Director's Order #7,

U.S. Office of Special Counsel

(b)(6); (b)(7)(C)

Page 2

Volunteers in Parks, § 8.3. Thus, NPS volunteers are not subject to the Hatch Act's political activity restrictions.

Likewise, the Hatch Act does not apply to SCA interns. NPS entered into a cooperative agreement with SCA whereby NPS pays SCA to place students and young adults at various NPS properties for up to one year to gain experience in environmental education, community service, and natural and cultural resource management. The agreement expressly disclaims an employment relationship between NPS and SCA interns. NPS Cooperative Agreement P15AC00031 Art. XII ¶ A.14. Consequently, SCA interns are not considered federal employees for Hatch Act purposes.

Because volunteers and SCA interns are not federal employees subject to the Hatch Act, the Hatch Act's prohibition against engaging in political activity while in a government room or building does not apply to them. In any event, OSC has concluded that NPS lodging is not a "room or building occupied in the discharge of official duties" by a federal employee as defined in the Hatch Act. *See* OSC Advisory Opinion, "Canvassing Residents of Government Housing Units" (Oct. 28, 2008) (available at: <https://osc.gov/pages/advisory-opinions.aspx>).

Please contact OSC attorney Carolyn Martorana at (202) 804-

if you have any

(b)(6)
;
(b)(7)
(C)

Sincerely,

(b)(6); (b)(7)(C)

Ana Galindo-Marrone
Chief, Hatch Act Unit



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

May 4, 2018

(b)(6); (b)(7)(C)

VIA ELECTRONIC MAIL:

(b)(6); (b)(7)(C)

Re: OSC File No. AD-18-

(b)(6);
(b)(7)(C)

Dear

(b)(6); (b)(7)(C)

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 interpreting the Hatch Act. Specifically, you ask whether the Hatch Act prohibits you from: (1) being appointed to the (b)(6); (b)(7)(C) Township Fire Protection District Board of Directors (Board); and (2) seeking election to the Board. OSC understands that you are employed by U.S. Citizenship and Immigration Services (USCIS). As explained below, the Hatch Act does not prohibit you from engaging in these activities.

The Hatch Act governs the political activity of federal civilian executive branch employees, including USCIS employees. *See generally* 5 U.S.C. §§ 7321-7326. Among other things, the Hatch Act prohibits employees from being candidates for public office in partisan elections. 5 U.S.C. § 7323(a)(3).¹ An election is partisan if any candidate is to be nominated or elected as representing, for example, the Republican or Democratic Party.

While the Hatch Act prohibits candidacy for partisan elective office, it does not prohibit employees from being appointed to a partisan elective office. Therefore, you may accept an appointment to the Board. Furthermore, according to the (b)(6); (b)(7)(C) County Election Board, the election for Board member is nonpartisan. Therefore, the Hatch Act would not prohibit you from being a candidate in said election.

¹ Covered employees are also 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; and knowingly soliciting or discouraging the political activity of any individual with business before their employing office. 5 U.S.C. § 7323(a). The Hatch Act also prohibits employees from engaging in political activity while on duty, in a government building, while wearing an official uniform or insignia, or using an official vehicle. 5 U.S.C. § 7324. Political activity is defined as activity directed toward the success or failure of a political party, partisan political group, or candidate for partisan political office. 5 C.F.R. § 734.101.

However, please be advised that a nonpartisan election may become partisan. Usually a nonpartisan election is designated as such by state or local law. The law, however, creates only a rebuttable presumption that an election is nonpartisan. *See Special Counsel v. Yoho*, 15 M.S.P.R. 409, 413 (1983). Evidence showing that partisan politics actually entered a candidate's campaign may rebut this presumption. *See McEntee v. Merit Sys. Prot. Bd.*, 404 F.3d 1320 (Fed. Cir. 2005). But no bright-line rule exists that identifies the type or amount of conduct (either by the candidate or party) needed to prove that a statutorily designated nonpartisan election, in fact, became a partisan one. *McEntee*, 404 F.3d at 1334.

Each case will present a unique combination of facts that will either show that the candidate was politically independent or not. *See Campbell v. Merit Sys. Prot. Bd.*, 27 F.3d 1560, 1566 (Fed. Cir. 1994). So, the ultimate answer regarding what activity may change a nonpartisan election into a partisan one rests on the totality of the circumstances. *See id.* Accordingly, a nonpartisan election could become partisan if, for instance, one of the candidates were to: participate in and win a party caucus; hold himself out as having the party's political support by advertising this in his speeches, flyers or mailings; seek and advertise the political party's endorsement; or receive party support in the form of supplies (e.g., wooden stakes for signs, bulk mail permit), campaign volunteers, campaign publications (e.g., flyers, posters) or use of party headquarters. Please note, that the foregoing list is illustrative only and is not an exhaustive list of the unique combination of facts that could change a nonpartisan election into a partisan one.

In conclusion, while the Hatch Act does not prohibit you from being a candidate in the nonpartisan election for Board member, you should refrain from engaging in any of the types of activities discussed above. Please contact OSC Hatch Act Unit Attorney Kelley Nobriga at (202) 804-

(b)(6);
(b)(7)(C)

Sincerely,

(b)(6); (b)(7)(C)

Ana Galindo-Marrone
Chief, Hatch Act Unit
U.S. Office of Special Counsel



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

April 30, 2018

(b)(6); (b)(7)(C)

VIA ELECTRONIC MAIL: (b)(6); (b)(7)(C)

Re: OSC File No. AD-18- (b)(6); (b)(7)(C)

Dear (b)(6); (b)(7)(C)

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 interpreting the Hatch Act. Specifically, you ask whether the Hatch Act prohibits you from being a candidate in the election for Town Commissioner of the Town of (b)(6); (b)(7)(C). (b)(6); (b)(7)(C) OSC understands that you are employed by U.S. Citizenship and Immigration Services (USCIS). As explained below, the Hatch Act does not prohibit you from being a candidate in the election for Town of (b)(6); (b)(7)(C) Town Commissioner.

The Hatch Act governs the political activity of federal civilian executive branch employees, including USCIS employees. *See generally* 5 U.S.C. §§ 7321-7326. As such, employees are prohibited from: being candidates for public office in partisan elections; 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; and knowingly soliciting or discouraging the political activity of any individual with business before their employing office. 5 U.S.C. § 7323(a)(1)-(4). The Hatch Act also prohibits employees from engaging in political activity while on duty, in a government building, while wearing an official uniform or insignia, or using an official vehicle. 5 U.S.C. § 7324. Political activity is defined as activity directed toward the success or failure of a political party, partisan political group, or candidate for partisan political office. 5 C.F.R. § 734.101.

According to the Town of (b)(6); (b)(7)(C) Town Manager, the election for Town of (b)(6); (b)(7)(C) Town Commissioner is nonpartisan. While the Hatch Act prohibits candidacy in a partisan election, it does not prohibit candidacy in a nonpartisan election. Therefore, the Hatch Act does not prohibit you from being a candidate in the nonpartisan election for Town of (b)(6); (b)(7)(C) Town Commissioner.

Usually a nonpartisan election is designated as such by state or local law. The law, however, creates only a rebuttable presumption that an election is nonpartisan. *See Special Counsel v. Yoho*, 15 M.S.P.R. 409, 413 (1983). Evidence showing that partisan politics actually entered a candidate's campaign may rebut this presumption. *See McEntee v. Merit Sys. Prot. Bd.*, 404 F.3d 1320 (Fed. Cir. 2005). But no bright-line rule exists that identifies the type or amount of conduct (either by the candidate or party) needed to prove that a statutorily designated nonpartisan election, in fact, became a partisan one. *McEntee*, 404 F.3d at 1334.

Each case will present a unique combination of facts that will either show that the candidate was politically independent or not. *See Campbell v. Merit Sys. Prot. Bd.*, 27 F.3d 1560, 1566 (Fed. Cir. 1994). So, the ultimate answer regarding what activity may change a nonpartisan election into a partisan one rests on the totality of the circumstances. *See id.* Accordingly, a nonpartisan election could become partisan if, for instance, one of the candidates were to: participate in and win a party caucus; hold himself out as having the party's political support by advertising this in his speeches, flyers or mailings; seek and advertise the political party's endorsement; or receive party support in the form of supplies (e.g., wooden stakes for signs, bulk mail permit), campaign volunteers, campaign publications (e.g., flyers, posters) or use of party headquarters. Please note, that the foregoing list is illustrative only and is not an exhaustive list of the unique combination of facts that could change a nonpartisan election into a partisan one.

In conclusion, while the Hatch Act does not prohibit you from being a candidate in the nonpartisan election for Town of (b)(6); (b)(7)(C) Town Manager, you should refrain from engaging in any of the types of activities discussed above. Please contact OSC Hatch Act Unit Attorney Kelley Nobriga at (202) 804- (b)(6); (b)(7)(C) if you have any questions.

Sincerely,

(b)(6); (b)(7)(C)

Erica S. Hamrick
Deputy Chief, Hatch Act Unit



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

May 22, 2018

(b)(6); (b)(7)(C)

VIA ELECTRONIC MAIL:

(b)(6); (b)(7)(C)

Re: OSC File No. AD-18-

(b)(6); (b)(7)(C)

Dear

(b)(6); (b)(7)(C)

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 interpreting the Hatch Act. Specifically, you ask whether individuals employed by the (b)(6); (b)(7)(C) are subject to the Hatch Act's candidacy prohibition. Your question is addressed below.

Employees covered by the Hatch Act are those whose principal position or job is with a state,¹ 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). But the Hatch Act prohibits employees from being a candidate for partisan political office only if their salary is entirely funded by a federal loan or grant. 5 U.S.C. § 1502(a)(3).²

You state in your request that, following two category five hurricanes, the (b)(6); (b)(7)(C) received a federal Community Disaster Loan, which is being used to pay the salaries of some employees. (b)(6); (b)(7)(C) employees whose salaries are entirely funded by this federal loan are subject to the Hatch Act's candidacy prohibition and prohibited from being a candidate for partisan political office.³

¹ For purposes of the Hatch Act, "state" includes a territory or possession of the United States. 5 C.F.R. § 151.101.

² The Hatch Act also prohibits covered employees from: (1) using their official authority or influence to affect the results of an election; and (2) coercing, attempting to coerce, commanding, or advising another employee to engage in political activity. 5 U.S.C. § 1502(a)(1)-(2); § 1501(4).

³ For purposes of the Hatch Act, a partisan political office is "any office for which any candidate is nominated or elected as representing a party any of whose candidates for Presidential elector received votes in the last preceding election at which Presidential electors were selected, but shall exclude any office or position within a political party or affiliated organization." 5 U.S.C. § 7322(2) (although the definition is in a federal statute, the prohibition is the same in federal, state, and local contexts).

U.S. Office of Special Counsel

Page 2

Please contact OSC Hatch Act Unit Attorney Kelley Nobriga at (202) 804-(b)(6);
(b)(7)(C) if you have any questions.

Sincerely,

(b)(6); (b)(7)(C)

Erica S. Hamrick
Deputy Chief, Hatch Act Unit



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1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

May 15, 2018

(b)(6); (b)(7)(C)

VIA ELECTRONIC MAIL:

(b)(6); (b)(7)(C)

Re: OSC File No. AD-18 (b)(6); (b)(7)(C)

Dear (b)(6); (b)(7)(C)

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 interpreting the Hatch Act. Specifically, you ask whether the Hatch Act prohibits a local police officer, who is a candidate for sheriff, from using in campaign materials pictures of (b)(6); in a uniform that does not have any identifiable agency markings.¹ As explained below, assuming that the employee is covered by the Hatch Act and the election is partisan,² the Act does not prohibit (b)(6); (b)(7) from using the above-described pictures for campaign purposes.

Employees covered by the Hatch Act 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). Among other things, the Hatch Act prohibits covered employees from using their official authority or influence to affect the results of an election.³ 5 U.S.C. § 1502(a)(1). Examples of activities that violate this prohibition include using one’s official position to engage in political activity and wearing an official uniform while campaigning for

¹ Please note that this opinion applies even if the picture includes a silhouetted image of an official uniform without any identifying agency markings.

² The Hatch Act’s legislative history and relevant case law demonstrate that the Act is applicable only to partisan activity. For example, when addressing the constitutionality of the Hatch Act, the Supreme Court has clarified that it is “only *partisan* political activity that is interdicted.” *U.S. Civ. Serv. Comm’n v. Nat’l Ass’n of Letter Carriers*, 413 U.S. 548, 556 (1973) (emphasis added).

³ Covered employees who perform duties in connection with federally financed activities are also prohibited from coercing other employees into making political contributions. 5 U.S.C. § 1502(a)(2). In addition, the Hatch Act prohibits only those employees whose salary is fully federally funded from being candidates for public office in a partisan election. 5 U.S.C. § 1502(a)(3).

office, including at campaign events or in campaign advertisements, web pages, signs, or literature.

The Hatch Act's use of official authority prohibition focuses, in part, on using one's official position or influence for campaign purposes. In your question, you specify that the pictures at issue would not include any identifiable agency insignia, such as a patch, to connect the employee to (b)(6) official position. Given that the employee would not be using any agency insignia to promote (b)(6) candidacy for partisan political office, using such pictures for campaign purposes would not violate the Hatch Act.

Please contact OSC Hatch Act Unit Attorney Kelley Nobriga at (202) 804- (b)(6); (b)(7)(C) if you have any questions.

Sincerely,

(b)(6); (b)(7)(C)

Ana Galindo-Marrone
Chief, Hatch Act Unit
U.S. Office of Special Counsel



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

July 31, 2018

(b)(6); (b)(7)(C)

VIA ELECTRONIC MAIL:

(b)(6); (b)(7)(C)

Re: OSC File No. AD-18-

(b)(6); (b)(7)(C)

Dear

(b)(6); (b)(7)(C)

This letter responds to your request for an advisory opinion regarding the Hatch Act.¹ Specifically, you asked whether (1) employees of state Disability Determination Services (DDS) agencies are considered federal or state employees for purposes of the Hatch Act, and (2) further restricted employees may “check in” on social media to campaign-sponsored partisan political events. As described below, DDS employees are state employees for purposes of the Hatch Act, and further restricted employees may “check in” to campaign events.

The Hatch Act governs the political activity of certain federal, state, and local government employees in order to protect the public workforce from partisan political influence and ensure the nonpartisan administration of laws. *See generally* 5 U.S.C. §§ 1501-1508 and 7321-7326. Different restrictions apply to federal employees than apply to state and local government employees. *Compare* 5 U.S.C. §§ 7323-7324, *with* 5 U.S.C. § 1502. The restrictions imposed upon state and local government employees apply to those individuals who work in the executive branch and whose principal employment is in connection with an activity financed by loans or grants made by the United States or a federal agency. 5 U.S.C. § 1501(4).² A state employee whose duties are in connection with a federally-reimbursed state program is subject to the Hatch Act even if the reimbursement is not formally characterized as a “loan” or “grant.” *See Special Counsel v. Alexander*, 71 M.S.P.R. 636, 646-47 (1996), *aff’d sub nom. Alexander v. Merit Sys. Prot. Bd.*, 165 F.3d 474 (6th Cir. 1999); *Field v. County of La Paz*, 225 F.3d 662 (9th Cir. 2000) (unpublished table decision).

¹ The U.S. Office of Special Counsel is authorized by 5 U.S.C. § 1212(f) to issue opinions interpreting the Hatch Act.

² The Hatch Act does not apply to employees of an educational or research institution, establishment, agency, or system supported in whole or in part by a state (or political subdivision thereof), the District of Columbia, or a recognized religious, philanthropic, or cultural organization. 5 U.S.C. § 1501(4)(B). Our understanding of DDS agencies is that employees of such agencies do not qualify for this exclusion from Hatch Act coverage.

The restrictions imposed upon federal employees apply to those individuals employed by, or holding office in, either a federal executive agency or a position within the federal competitive service. 5 U.S.C. § 7322(1). In addition to the restrictions applicable to all federal employees, employees in certain agencies and positions (further restricted employees) are prohibited from taking an active part in political management or political campaigns. 5 U.S.C. § 7323(b)(2).³ Further restricted employees may not, for example, engage in activities done in concert with a political party or candidate for partisan political office. 5 C.F.R. § 734.411.

1. Are DDS employees considered federal or state employees for purposes of the Hatch Act?

We understand that DDS agencies are state agencies that determine whether an individual applying for benefits under the federal Old-Age, Survivors, and Disability Insurance (OASDI) program is, in fact, under a disability.⁴ The U.S. Government reimburses DDS agencies for the costs associated with making disability determinations. Federal reimbursement for the salaries of DDS employees who perform duties unrelated to the OASDI program is reduced proportionately with those employees' non-OASDI duties. While DDS agencies are reimbursed for their OASDI-related expenses and must comply with regulations issued by the Commissioner of Social Security, 42 U.S.C. § 421(a)(2), (c), the agencies are not under the direct administrative control of the federal government. Furthermore, DDS employees are paid by their employing state and not directly by a federal agency. DDS employees are therefore state employees for purposes of the Hatch Act.

As state employees, DDS employees are covered by the Hatch Act if they have job duties in connection with a program financed in whole or in part by loans or grants made by the United States.⁵ For example, a DDS employee whose salary is federally funded, or who supervises employees whose salaries are federally funded, is subject to the Hatch Act. *See In re Palmer*, 2 P.A.R. 590, 595-96 (Civil Serv. Comm'n 1959). However, coverage is not dependent on the source of an employee's salary, nor is it dependent upon whether the DDS employee actually administers federal 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*, 55 F.3d 917 (4th Cir. 1995), *cert. denied*, 516 U.S. 1071 (1996) (unreported decision).

In sum, all DDS employees, including those who perform collateral state duties, are state employees for purposes of the Hatch Act. Such employees may be subject to the Hatch Act as explained above and should be advised accordingly.

³ Of relevance here, Administrative Law Judges and career appointees in the Senior Executive Service—both of which are employed by the U.S. Social Security Administration—are further restricted employees. 5 U.S.C. § 7323(b)(2)(B)(ii).

⁴ State DDS agencies may assume responsibility for making disability determinations provided that the Commissioner of Social Security has not found that the relevant agency has substantially failed to make disability determinations in accordance with federal law. 42 U.S.C. § 421(a)(1).

⁵ We assume for purposes of this advisory opinion that each state's DDS agency is within that state's executive branch of government.

2. May further restricted employees “check in” on social media to campaign events?

Yes, further restricted employees may “check in” on social media to campaign events. Merely checking in does not constitute taking an active part in political management or a political campaign and is therefore permissible under the Hatch Act.

Some social media platforms offer users the ability to check in at an event, *i.e.*, to mark themselves physically present at the event. In doing so, the user generally triggers a notification sent to the user’s network informing members of the network that the user is at a particular event. In some cases, the user can also add a message or choose to notify only certain members of the user’s network.

We have previously advised that a further restricted employee does not violate the Hatch Act by indicating on social media the employee’s intent to attend a political event, including a fundraising event, provided that the employee does not do so while on duty or in the workplace. This is true notwithstanding that the employee’s intention to attend is viewable by members of the employee’s network. Similarly, a further restricted employee does not violate the Hatch Act merely by checking in to that same event once the employee arrives at the event.⁶

Certain actions that an employee may take when checking in on social media to a campaign event could, however, violate the Hatch Act. For example, any federal employee—further restricted or not—would violate the Hatch Act if the employee were to include a message requesting donations to the partisan campaign or political party hosting the event. Note that the violation would not arise from the employee checking in, but rather from the employee’s additional effort to engage in prohibited fundraising.

Please contact OSC attorney Eric Johnson at (202) 804-(b)(6);
(b)(7)(C) if you have any additional questions.

Sincerely,

(b)(6); (b)(7)(C)

Ana Galindo-Marrone
Chief, Hatch Act Unit

⁶ Presumably the employee is not attending the event while on duty, wearing a uniform or insignia identifying the employee’s federal employment, or using a vehicle owned or leased by the U.S. Government, any one of which would violate the Hatch Act.



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

July 13, 2018

(b)(6); (b)(7)(C)

VIA EMAIL: (b)(6); (b)(7)(C)

Re: OSC File No. AD-18- (b)(6); (b)(7)(C)

Dear (b)(6); (b)(7)(C)

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 interpreting the Hatch Act. Specifically, you ask whether you may maintain your elected positions as a justice of the peace and a school board member once you begin working for U.S. Immigration and Customs Enforcement (ICE). You also ask whether you may seek reelection to these positions. Our advice is below.

Federal executive branch employees, including ICE employees, are subject to the Hatch Act. 5 U.S.C. §§ 7321-7326. The Hatch Act prohibits federal employees from, among other things, being candidates for partisan political office. 5 U.S.C. § 7323(a)(3).¹ Partisan political office is defined as “any office for which any candidate is nominated or elected as representing a party any of whose candidates for Presidential elector received votes in the last preceding election at which Presidential electors were selected but does not include any office or position within a political party or affiliated organization.” 5 C.F.R. § 734.101. The Hatch Act does not prohibit employees from being candidates for public office in nonpartisan elections.

In addition, the Hatch Act does not prohibit a federal employee from holding public office, and thus it does not bar a person from retaining an elective office upon entering federal service.

Therefore, the Hatch Act does not prohibit you from continuing to serve both on the (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) School Board and as a justice of the peace in (b)(6); (b)(7)(C) once you begin employment with ICE. But you should seek guidance from an ICE ethics official regarding other rules or regulations that may govern such activity.

With respect to the election for the justice of the peace position, we understand that the Republican and Democratic parties nominate candidates and that candidates’ party affiliations appear on the ballot. Therefore, while you may serve as a justice of the peace until the end of your current term, the Hatch Act prohibits you from seeking reelection while an ICE employee. But because the election for the (b)(6); (b)(7)(C) School Board is

¹ The Hatch Act also prohibits federal employees from: using their official authority or influence to affect the result of an election; soliciting, accepting, or receiving political contributions; soliciting or discouraging the political activity of any person who has business before their agency; and engaging in political activity while on duty, in a government room or building, wearing an official uniform, or using a government vehicle. 5 U.S.C. §§ 7323-7324.

U.S. Office of Special Counsel

Page 2

nonpartisan, the Hatch Act does not prohibit you from seeking reelection to this position while you are a federal employee.

Usually a nonpartisan election is designated as such by state or local law. The law, however, creates only a rebuttable presumption that an election is nonpartisan. *See Special Counsel v. Yoho*, 15 M.S.P.R. 409, 413 (1983). Evidence showing that partisan politics actually entered a candidate's campaign may rebut this presumption. *See McEntee v. Merit Sys. Prot. Bd.*, 404 F.3d 1320 (Fed. Cir. 2005). But no bright-line rule exists that identifies the type or amount of conduct (either by the candidate or party) needed to prove that a statutorily designated nonpartisan election, in fact, became a partisan one. *McEntee*, 404 F.3d at 1334.

Each case will present a unique combination of facts that will either show that the candidate was politically independent or not. *See Campbell v. Merit Sys. Prot. Bd.*, 27 F.3d 1560, 1566 (Fed. Cir. 1994). So the ultimate answer regarding what activity may change a nonpartisan election into a partisan one rests on the totality of the circumstances. *See id.* Accordingly, a nonpartisan election could become partisan if, for instance, one of the candidates were to: participate in and win a party caucus; hold himself out as having the party's political support by advertising this in his speeches, flyers or mailings; seek and advertise the political party's endorsement; or receive party support in the form of supplies (e.g., wooden stakes for signs, bulk mail permit), campaign volunteers, campaign publications (e.g., flyers, posters) or use of party headquarters. Please note, that the foregoing list is illustrative only and is not an exhaustive list of the unique combination of facts that could change a nonpartisan election into a partisan one.

Accordingly, while the Hatch Act does not prohibit you from being a candidate in a nonpartisan election for school board, you should refrain from engaging in any of the types of activities discussed above.

Please contact me at (202) 804-(b)(6);
(b)(7)(C) if you have any questions regarding this matter.

Sincerely,

(b)(6); (b)(7)(C)

Erica S. Hamrick
Deputy Chief
Hatch Act Unit



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
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202-804-7000

July 12, 2018

(b)(6); (b)(7)(C)

VIA ELECTRONIC MAIL: (b)(6); (b)(7)(C)

Re: OSC File No. AD-18- (b)(6); (b)(7)(C)

Dear (b)(6); (b)(7)(C)

This letter responds 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 interpreting the Hatch Act. You ask whether the Hatch Act prohibits you from: (1) being appointed to the (b)(6); (b)(7)(C) Board of Trustees (Board); and (2) seeking election to the Board. OSC understands that you are employed by the U.S. Citizenship and Immigration Services (USCIS). As explained below, the Hatch Act does not prohibit you from engaging in these activities.

The Hatch Act governs the political activity of federal civilian executive branch employees, including USCIS employees. *See generally* 5 U.S.C. §§ 7321-7326. Among other things, the Hatch Act prohibits covered employees from being candidates in elections for partisan political office. 5 U.S.C. § 7323(a)(3).¹ An election is partisan if any one of the candidates represents a party whose nominee in the last Presidential election received votes. 5 U.S.C. § 7322(2).²

While the Hatch Act prohibits employees from being candidates for partisan political office, it does not prohibit them from being appointed to a public office, partisan or otherwise. Therefore, you may accept an appointment to the Board. Furthermore, according to the (b)(6); (b)(7)(C) Assistant Town Clerk, the election for Board trustee is nonpartisan. The Hatch Act

¹ Covered employees are also 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; and knowingly soliciting or discouraging the political activity of any individual with business before their employing office. 5 U.S.C. § 7323(a). The Hatch Act also prohibits employees from engaging in political activity while on duty, in a government building, while wearing an official uniform or insignia, or using an official vehicle. 5 U.S.C. § 7324. Political activity is defined as activity directed toward the success or failure of a political party, partisan political group, or candidate for partisan political office. 5 C.F.R. § 734.101.

² For instance, an election is partisan if a candidate represents the Democratic, Republican, Libertarian, or Green Party.

does not interdict nonpartisan activity and, as a result, the Act does not prohibit you from being a candidate in the nonpartisan election for Board trustee.³

Please note that a nonpartisan election may become partisan. Usually, a nonpartisan election is designated as such by state or local law. The law, however, creates only a rebuttable presumption that an election is nonpartisan. *See Special Counsel v. Yoho*, 15 M.S.P.R. 409, 413 (1983). Evidence showing that partisan politics entered a candidates' campaign may rebut this presumption. *See McEntee v. Merit Sys. Prot. Bd.*, 404 F.3d 1320 (Fed. Cir. 2005). However, no bright-line rule exists that identifies the type or amount of conduct (either by the candidate or party) needed to prove that a statutorily designated nonpartisan election, in fact, became a partisan one. *McEntee*, 404 F.3d at 1334.

Each case will present a unique combination of facts that will either show that the candidate was politically independent or not. *See Campbell v. Merit Sys. Prot. Bd.*, 27 F.3d 1560, 1566 (Fed. Cir. 1994). So, the ultimate answer regarding what activity may change a nonpartisan election into a partisan one rests on the totality of the circumstances. *See id.* Accordingly, a nonpartisan election could become partisan if, for instance, one of the candidates were to: participate in and win a party caucus; hold himself out as having the party's political support by advertising this in his speeches, flyers, or mailings; seek and advertise the political party's endorsement; or receive party support in the form of supplies (e.g., wooden stakes for signed, bulk mail permit), campaign volunteers, campaign publications (e.g., flyers, posters) or use of party headquarters. Please note that the foregoing list is illustrative only and is not an exhaustive list of the unique combinations of facts that could change a nonpartisan election into a partisan one.

In conclusion, although the Hatch Act does not prohibit you from being a candidate in the nonpartisan election for Board trustee, you should refrain from engaging in any of the types of activities discussed above. Please contact OSC Hatch Act Unit Attorney Kelley Nobriga at (202) 804-(b)(6);
(b)(7)(C) if you have any questions.

Sincerely,

(b)(6); (b)(7)(C)

Erica S. Hamrick
Deputy Chief, Hatch Act Unit

³ The Hatch Act's legislative history and relevant case law demonstrate that the Act is applicable only to partisan activity. For example, when addressing the constitutionality of the Hatch Act, the Supreme Court has clarified that it is "only *partisan* political activity that is interdicted." *U.S. Civ. Serv. Comm'n v. Nat'l Ass'n of Letter Carriers*, 413 U.S. 548, 556 (1973) (emphasis added).



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

July 10, 2018

(b)(6); (b)(7)(C)

Via E-mail to: (b)(6); (b)(7)(C)

Re: OSC File No. AD-18- (b)(6); (b)(7)(C)

Dear (b)(6); (b)(7)(C)

This letter responds 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 interpreting the Hatch Act. Specifically, you ask whether the Hatch Act prohibits you from being a candidate for partisan political office. We understand that you work at the (b)(6); (b)(7)(C) Federal Building/Courthouse and are sworn in as a special deputy of the U.S. Marshals Service (USMS), but you are employed by (b)(6); (b)(7)(C) a private company that contracts with the USMS. As explained below, the Hatch Act does not apply to you.

Persons covered by the Hatch Act, 5 U.S.C. §§ 7321-7326, include those individuals employed by or holding office in a federal executive agency. The Hatch Act generally permits most federal employees to actively participate in partisan political management and partisan political campaigns. 5 U.S.C. § 7323(a). However, a covered employee may not be a candidate for partisan political office. 5 U.S.C. § 7323(a)(3).

According to the information you provided, you are not employed by or holding office in a federal executive agency. Rather, you work for (b)(6); (b)(7)(C), a private corporation that provides services to the USMS and other federal agencies on a contract basis. Thus, you are employed by an independent contractor and not a federal agency. Independent contractors are not subject to the Hatch Act's restrictions, so the Hatch Act does not prohibit you from being a candidate for a partisan political office. 5 C.F.R. § 734.205 (example 5).

Please contact me at (202) 804- (b)(6); (b)(7)(C) if you have any additional questions.

Sincerely,

(b)(6); (b)(7)(C)

Erica S. Hamrick
Deputy Chief
Hatch Act Unit



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

August 7, 2018

(b)(6); (b)(7)(C)

Sent via E-mail to: (b)(6); (b)(7)(C)

Re: OSC File No. AD-18- (b)(6); (b)(7)(C)

Dear (b)(6); (b)(7)(C)

This letter responds to your request for an advisory opinion concerning the Hatch Act. The U.S. Office of Special Counsel has authority under 5 U.S.C. § 1212(f) to issue opinions interpreting the Hatch Act. Specifically, you ask whether the Hatch Act prohibits a township recreation center built with Federal Emergency Management Agency (FEMA) funds from being used for partisan political activity.

The Hatch Act governs the political activity of certain state and local government employees in order to protect the public workforce from partisan political influence and ensure the nonpartisan administration of laws. *See generally* 5 U.S.C. §§ 1501-1508. Only those state and local government employees who work in the executive branch, or an agency or department thereof, and whose principal employment is in connection with an activity financed in whole or in part by loans or grants made by the United States or a federal agency are subject to the Hatch Act. 5 U.S.C. § 1501(4). Such employees may not: (1) use their official authority or influence for the purpose of interfering with or affecting the result of an election; (2) coerce, attempt to coerce, command, or advise another state or local government employee to engage in political activity; or (3) be a candidate for elective office, if the employee's salary is paid entirely by loans or grants made by the United States or a federal agency. 5 U.S.C. § 1502(a)(1)-(3).

The Hatch Act, however, would not prohibit a township recreation center built with FEMA funds from being used for partisan political activity.¹ If you have any further questions, please contact me at (202) 804-

(b)(6);
(b)(7)(C)

Sincerely,

(b)(6); (b)(7)(C)

Erica S. Hamrick
Deputy Chief, Hatch Act Unit

¹ But, assuming the township employees responsible for the recreation center are covered by the Hatch Act, there could be potential Hatch Act issues if, for example, the employees allowed only members of one political party to use the center.



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1730 M Street, N.W., Suite 218
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August 6, 2018

(b)(6); (b)(7)(C)

VIA ELECTRONIC MAIL:

(b)(6); (b)(7)(C)

Re: OSC File AD-18-

(b)(6); (b)(7)(C)

Dear

(b)(6); (b)(7)(C)

This letter is in response to your request for an advisory opinion concerning the Hatch Act's application to independent contractors and certain state employees.¹ Your questions are addressed below.

1. *Are state employees who work on a federally-funded state transportation project subject to any provisions of the Hatch Act?*

Employees covered by the Hatch Act include 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). These employees are subject to the Hatch Act if, as a normal and foreseeable incident of their positions or jobs, they perform duties in connection with federally financed activities. *See Special Counsel v. Gallagher*, 44 M.S.P.R. 57 (1990); *In re Hutchins*, 2 P.A.R. 160, 164 (1944). Individuals who supervise employees who work on federally funded programs have been found to be subject to the Hatch Act due to their oversight responsibilities for those activities. *See In re Palmer*, 2 P.A.R. 590, 595-96 (Civil Serv. Comm'n 1959). Additionally, employees who play a vital role in securing and maintaining federally funded grants as well as who perform affirmative grant-related duties are covered by the Hatch Act. *See Special Counsel v. Greiner*, 117 M.S.P.R. 117, 121-27 (2011). However, coverage is not dependent on the source of an employee's salary;² 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. Merit Sys. Prot. Bd.*, 55 F.3d 917 (4th Cir. 1995), cert. denied, 516 U.S. 1071 (1996) (unreported decision).

Based upon the preceding, state employees who work on transportation projects financed in whole or in part by federal funds are subject to the following provisions of the Hatch Act. The Hatch Act prohibits covered state employees and officers from: (1) using their official authority or influence to affect the results of an election; and (2) coercing, attempting to coerce, commanding, or advising another employee to engage in political activity. *See* 5 U.S.C. § 1502(a)(1)-(2). Examples of activities that violate these two prohibitions include telling other employees to volunteer for a partisan political

¹ The U.S. Office of Special Counsel is authorized pursuant to 5 U.S.C. § 1212(f) to issue opinions interpreting the Hatch Act.

² The Hatch Act prohibits those employees whose salaries are entirely federally funded from being candidates for partisan political office. *See* 5 U.S.C. § 1502(a)(3). This prohibition is not at issue in your request.

U.S. Office of Special Counsel

Page 2

campaign or give a campaign contribution and asking subordinate employees to engage in political activity in support of or opposition to a candidate for partisan political office.

2. *Are ribbon cuttings, speeches, and similar activities by a state governor considered political activities under the Hatch Act when these activities occur on state time at a federally-funded state transportation project?*

For purposes of the Hatch Act, political activity is defined as activity directed toward the success or failure of a political party, partisan political group, or candidate for partisan political office. 5 C.F.R. § 734.101. Activities such as those you describe do not constitute political activity, as defined above, because they are generally part of an elected officer's official duties. Therefore, even assuming the state governor is covered by the Hatch Act, engaging in such activities in his official capacity, without more, does not violate the Act.

3. *Is a state employee engaging in an OSC prohibited personnel practice (PPP) if this person encourages, entices, requires, or otherwise compels either explicitly or implicitly any state employee, private consultant or contractor personnel working on a federally-funded state transportation project to participate in the planning or execution of a political activity on state time and/or on the state transportation project site?*

OSC's jurisdiction in PPP matters only extends to federal employees and, as a result, OSC does not have jurisdiction over any such matters affecting a state employee. However, as noted above, the Hatch Act prohibits covered employees from coercing, attempting to coerce, commanding, or advising another employee to engage in political activity.

4. *Are private consultant and contractor personnel who work on a federally-funded state transportation project considered state employees for Hatch Act purposes?*

OSC understands that these private consultants and contractors are considered independent contractors who must place a bid with the state to work on a state transportation project. The Hatch Act does not apply to independent contractors. Accordingly, because these individuals are not employed by or holding office in a state, county, or municipal executive agency, they are not subject to the provisions of the Hatch Act.

Please contact Hatch Act Unit Attorney Kelley Nobriga at (202) 804- if you have any questions.

(b)(6);
(b)(7)(C)

Sincerely,

(b)(6); (b)(7)(C)

Ana Galindo-Marrone
Chief, Hatch Act Unit
U.S. Office of Special Counsel



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

August 10, 2018

(b)(6); (b)(7)(C)

VIA ELECTRONIC MAIL: (b)(6); (b)(7)(C)

Re: OSC File No. AD-18 (b)(6); (b)(7)(C)

Dear (b)(6); (b)(7)(C)

This letter responds to your request for an advisory opinion regarding the Hatch Act.¹ Specifically, you asked whether the Hatch Act would prohibit an employee of a 501(c)(3) nonprofit organization, whose salary is partially funded through the federal Temporary Assistance for Needy Families (TANF) program, from running for partisan political office. As described below, the Hatch Act would not prohibit the employee from running for partisan political office.

The Hatch Act governs the political activity of certain state and local government employees in order to protect the public workforce from partisan political influence and ensure the nonpartisan administration of laws. *See generally* 5 U.S.C. §§ 1501-1508. Only those state and local government employees who work in the executive branch and whose principal employment is in connection with an activity financed in whole or in part by loans or grants made by the United States or a federal agency are subject to the Hatch Act. 5 U.S.C. § 1501(4). Among other things, covered employees may not be a candidate for elective office, if the employee's salary is paid completely by loans or grants made by the United States or a federal agency. 5 U.S.C. § 1502(a)(3).²

The Hatch Act generally does not apply to employees of private nonprofit organizations. However, certain federal grant programs contain a provision deeming recipient organizations as state or local government agencies for purposes of the Hatch Act. *See, e.g.*, 42 U.S.C.

¹ The U.S. Office of Special Counsel is authorized by 5 U.S.C. § 1212(f) to issue opinions interpreting the Hatch Act.

² Covered employees also may not: use their official authority or influence for the purpose of interfering with or affecting the result of an election; or coerce, attempt to coerce, command, or advise another state or local government employee to engage in political activity. 5 U.S.C. § 1502(a)(1)-(2).

U.S. Office of Special Counsel

Page 2

§§ 9851(a) and 9918(b) (deeming organizations receiving Head Start and Community Service Block Grant funds, respectively, as state or local agencies for purposes of the Hatch Act).

We understand that the nonprofit organization in question receives federal funding pursuant to either the TANF Block Grant or Social Services Block Grant programs.³ Neither of these programs contains a provision deeming a nonprofit organization that receives grant funds a state or local agency for purposes of the Hatch Act. Accordingly, employees of the nonprofit organization are not subject to the Hatch Act merely because the organization receives funding derived from either block grant program. Even if the nonprofit organization were deemed a state or local government agency—for instance, because it received Head Start funding—an employee would be permitted to run for partisan political office provided that the employee's salary was not paid completely by loans or grants made by the United States or a federal agency.

Please contact OSC attorney Eric Johnson at (202) 804-(b)(6); (b)(7)(C) if you have any additional questions.

Sincerely,

(b)(6); (b)(7)(C)

Ana Galindo-Marrone
Chief, Hatch Act Unit

³ You indicated that the nonprofit receives TANF funds awarded under 42 U.S.C. § 1397. Section 1397 authorizes Social Services grants, while TANF grants are authorized under 42 U.S.C. §§ 601-619. However, these two grant programs are related in that states may use a portion of their federal TANF funding to carry out programs pursuant to the Social Services grant program. 42 U.S.C. § 604(d)(1)(A) (“a State may use not more than 30 percent of the amount of any grant made to the State under section 603(a) [authorizing Block Grants to States for Temporary Assistance for Needy Families] of this title for a fiscal year to carry out a State program pursuant to . . . division A [authorizing Block Grants to States for Social Services Programs] of subchapter XX of this chapter”). Because neither grant program deems nonprofit organizations that receive grant funding to be state or local agencies for purposes of the Hatch Act, it is immaterial which of the two programs is the source of the organization's funding.



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202-804-7000

August 16, 2018

(b)(6); (b)(7)(C)

VIA ELECTRONIC MAIL: (b)(6); (b)(7)(C)

Re: OSC File No. AD-18- (b)(6); (b)(7)(C)

Dear (b)(6); (b)(7)(C)

This letter responds to your request for an advisory opinion regarding the Hatch Act.¹ Specifically, you asked whether a federal employee may contribute to an incumbent senator's reelection campaign and then solicit the senator's help in obtaining a promotion.² As described below, the Hatch Act does not prohibit either activity, but other laws may limit a senator's ability to assist a federal employee in obtaining a promotion.

The Hatch Act governs the political activity of federal civilian executive branch employees, including employees of the Federal Reserve Board of Governors. *See generally* 5 U.S.C. §§ 7321-7326. Among other things, the Hatch Act prohibits covered employees from engaging in political activity while on duty or in the federal workplace. 5 U.S.C. § 7324(a).³ "Political activity" is defined as activity directed toward the success or failure of a political party, partisan political group, or candidate for partisan political office. 5 C.F.R. § 734.101.

The Hatch Act does not prohibit any employee from contributing to a partisan political campaign.⁴ It does, however, impose restrictions on how such contributions can be made. Contributing to a partisan political campaign is political activity under the Hatch Act because it is directed toward the success of the campaign. Therefore, contributions must be made in accordance with the Hatch Act's political activity restrictions. In particular, a covered employee

¹ The U.S. Office of Special Counsel is authorized by 5 U.S.C. § 1212(f) to issue opinions interpreting the Hatch Act.

² We acknowledge that your question was whether a less restricted employee may engage in such activity. However, the distinction between a less restricted and further restricted employee is immaterial in this case as the Hatch Act would not prohibit an employee in either category from either making a political contribution or soliciting a senator's help in obtaining a promotion.

³ Covered employees are also prohibited from: using their official authority or influence to affect the result of an election; knowingly soliciting, accepting, or receiving political contributions from any person; running for the nomination or as a candidate for election to a partisan political office; or knowingly soliciting or discouraging the political activity of any individual with matters pending before their employing office. 5 U.S.C. § 7323(a).

⁴ The one limited exception, not relevant here, is for employees of the Federal Election Commission (FEC). FEC employees are prohibited from contributing to a current member of Congress or an officer of a uniformed service. 5 U.S.C. § 7323(b)(1).

U.S. Office of Special Counsel

Page 2

may not make a political contribution while on duty, in the federal workplace, or using a vehicle owned or leased by the federal government. For example, an employee may not use a personal electronic device to make a partisan political contribution if the employee is on duty or while sitting at the employee's desk in the federal workplace.⁵ Provided that an employee complies with the Hatch Act's political activity restrictions, that employee may contribute to a partisan political campaign.

The second part of this question—whether an employee can solicit a senator's help in obtaining a promotion—does not implicate the Hatch Act. However, the request likely implicates other laws. Among these may be laws governing federal hiring and promotions, ethical conduct by federal employees, and the use of official authority by members of Congress. We cannot opine on those laws and recommend that you consult with your agency ethics officials or with private counsel for legal advice about this matter.

Please contact OSC attorney Eric Johnson at (202) 804-(b)(6);
(b)(7)(C) if you have any additional questions.

Sincerely,

(b)(6); (b)(7)(C)

Erica S. Hamrick
Deputy Chief, Hatch Act Unit

⁵ Note that the federal workplace includes cafeterias and gyms located in a federal building, even if the cafeteria or gym space is leased by a contractor. See 5 C.F.R. § 734.306, Example 17.



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
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202-804-7000

August 14, 2018

(b)(6); (b)(7)(C)

VIA ELECTRONIC MAIL:

(b)(6); (b)(7)(C)

Re: OSC File No. AD-18

(b)(6); (b)(7)(C)

Dear

(b)(6); (b)(7)(C)

This letter from the U.S. Office of Special Counsel (OSC) responds to your request for an advisory opinion regarding the Hatch Act.¹ Specifically, you asked whether you, an incumbent sheriff up for reelection in the State of (b)(6); (b)(7)(C), may wear your uniform and drive your agency-issued vehicle to an event at which you gather signatures for your reelection nominating petition. As described below, the Hatch Act does not prohibit such activity.

The Hatch Act governs the political activity of certain state and local government employees in order to protect the public workforce from partisan political influence and ensure the nonpartisan administration of laws. *See generally* 5 U.S.C. §§ 1501-1508. The Hatch Act applies to state and local government employees who work in the executive branch and whose principal employment is in connection with an activity financed in whole or in part by loans or grants made by the United States or a federal agency.² 5 U.S.C. § 1501(4). Such employees generally may not: (1) use their official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office; (2) coerce, attempt to coerce, command, or advise another state or local government employee to engage in political activity; or (3) be a candidate for elective office, if the employee's salary is paid completely by loans or grants made by the United States or a federal agency. 5 U.S.C. § 1502(a)(1)-(3). Individuals holding elective office are exempt from the candidacy prohibition. 5 U.S.C. § 1502(c)(4).

We have interpreted the statutory restriction on an employee using official authority or influence to affect an election to prohibit most covered employees from using an official title or wearing an agency uniform while engaging in political activity. However, we generally do not extend those prohibitions to employees holding elective office. Congress has explicitly granted employees holding elective office greater leeway to engage in political activity by exempting

¹ OSC is authorized by 5 U.S.C. § 1212(f) to issue opinions interpreting the Hatch Act.

² We assume for purposes of this advisory opinion that sheriffs in the State of (b)(6); (b)(7)(C) are within the executive branch and that you have duties in connection with an activity financed by the United States or a federal agency, and therefore that you are subject to the Hatch Act.

them from the candidacy prohibition. Because incumbents already hold partisan political office, we have reasoned that incumbents do not violate the Hatch Act by wearing a uniform or using an official title while campaigning for reelection. Thus, we have advised that a sheriff may attend campaign events while wearing his uniform and identifying himself as the sheriff or use photographs of himself in uniform for campaign purposes. Similarly, a sheriff does not violate the Hatch Act by driving an agency-issued vehicle to a campaign event.

This is not to say that sheriffs are completely exempt from the prohibition on using official authority to interfere with or affect an election or a nomination for office. Certain other actions, such as a sheriff offering leniency to an individual suspected of violating the law in exchange for that person's promise to vote for the sheriff, would constitute a prohibited use of official authority. Similarly, a sheriff may not go door-to-door canvassing for voter support while in uniform. This is so because a private citizen, not knowing whether the sheriff was there to discuss a law enforcement matter, might feel compelled to open the door when that citizen would not feel similarly compelled to open the door for campaign volunteers or a candidate not in uniform. To avoid creating any such feelings of compulsion, which would be a prohibited use of official authority, a sheriff should not engage in door-to-door canvassing while in uniform.

Additionally, sheriffs remain subject to the Hatch Act prohibition on coercing or attempting to coerce other employees into making political contributions. See 5 U.S.C. § 1502(a)(2). Asking a subordinate employee to make a political contribution or volunteer for a political campaign is considered inherently coercive. See *Special Counsel v. Acconcia* (CB-1216-06-0007-T-1, February 26, 2007) (Initial Decision at 9), *modified*, 107 M.S.P.R. 60 (2007), *citing Special Counsel v. Purnell*, 37 M.S.P.R. 184, 195 (1988), *aff'd sub nom. Fela v. U.S. Merit Sys. Prot. Bd.*, 730 F. Supp. 779 (N.D. Ohio 1989). Where the supervisor-subordinate relationship exists, no particular words are required to establish coercion because virtually any language can be threatening. See *Special Counsel v. Gallagher*, 44 M.S.P.R. 57, 76 (1990). Thus, sheriffs should not ask subordinate employees to contribute to a political campaign.

Please contact OSC attorney Eric Johnson at (202) 804-(b)(6); (b)(7)(C) if you have any additional questions.

Sincerely,

(b)(6); (b)(7)(C)

Erica S. Hamrick
Deputy Chief, Hatch Act Unit



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

August 7, 2018

(b)(6); (b)(7)(C)

Re: OSC File AD-18- (b)(6); (b)(7)(C)

Dear (b)(6); (b)(7)(C)

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 interpreting the Hatch Act. You ask whether the Hatch Act prohibits (b)(6); (b)(7)(C) a (b)(6); (b)(7)(C) with the (b)(6); Department of Transportation, from being appointed to and subsequently holding the position of (b)(6); County (b)(6); Republican Party Chair. Your question is addressed below.

The Hatch Act governs the political activity of certain state and local government employees to protect the public workforce from partisan political influence and ensure the nonpartisan administration of laws. *See generally* 5 U.S.C. §§ 1501-1508. State and local employees who perform job duties in connection with a program or activity financed with federal grants or loans are prohibited from: (1) using their official authority or influence to affect the results of an election; and (2) coercing, attempting to coerce, commanding, or advising another employee to engage in political activity. *See* 5 U.S.C. § 1502(a)(1)-(2); § 1501(4). The Hatch Act also prohibits employees whose salaries are paid entirely with federal funds from being candidates for public office in partisan elections. 5 U.S.C. § 1502(a)(3).

The Hatch Act, however, does not prohibit employees from being elected or appointed to party office. Accordingly, even if (b)(6); (b)(7)(C) is covered by the Hatch Act,¹ the Act would not prohibit (b)(6); from running for or holding the position of (b)(6); County Republican Party Chair. Please contact OSC Hatch Act Unit Attorney Kelley Nobriga at (202) 804- (b)(6); if you have any questions.

Sincerely,

(b)(6); (b)(7)(C)

Erica S. Hamrick
Deputy Chief, Hatch Act Unit

¹ OSC makes no determination as to whether (b)(6); (b)(7)(C) is covered by the Hatch Act.



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

August 29, 2018

(b)(6); (b)(7)(C)

VIA ELECTRONIC MAIL: (b)(6); (b)(7)(C)

Re: OSC File No. AD-18- (b)(6); (b)(7)(C)

Dear (b)(6); (b)(7)(C)

This letter from the U.S. Office of Special Counsel (OSC) responds to your request for an advisory opinion regarding the Hatch Act.¹ Specifically, you asked whether you, an employee of the (b)(6); (b)(7)(C) County Sheriff's Office, are subject to the Hatch Act and, if so, whether you may engage in certain activities related to your candidacy for (b)(6); (b)(7)(C) County Sheriff. As described below, you are not subject to the Hatch Act. Therefore, the Hatch Act would not prohibit you from engaging in any proposed activity related to your candidacy for (b)(6); (b)(7)(C) County Sheriff.

The Hatch Act governs the political activity of certain state and local government employees in order to protect the public workforce from partisan political influence and ensure the nonpartisan administration of laws. *See generally* 5 U.S.C. §§ 1501-1508. The Hatch Act applies to state and local government employees who work in the executive branch and whose principal employment is in connection with an activity financed in whole or in part by loans or grants made by the United States or a federal agency.² 5 U.S.C. § 1501(4). A covered employee generally may not: (1) use the employee's official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office; (2) coerce, attempt to coerce, command, or advise another state or local government employee to engage in political activity; or (3) be a candidate for elective office, if the employee's salary is paid completely by loans or grants made by the United States or a federal agency. 5 U.S.C. § 1502(a)(1)-(3).

We understand that you asked for an advisory opinion because you are a sworn member of a Federal Bureau of Investigation (FBI) Violent Crimes Task Force. You are not detailed to the FBI, and you have described the task force as a way for the FBI to facilitate cooperation among state and local law enforcement authorities in the investigation of violent crimes. While

¹ OSC is authorized by 5 U.S.C. § 1212(f) to issue opinions interpreting the Hatch Act.

² We assume for purposes of this advisory opinion that sheriffs in the (b)(6); (b)(7)(C) are within the executive branch for purposes of the Hatch Act.

U.S. Office of Special Counsel

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you carry credentials identifying yourself as a sworn member of the task force, you do not carry an FBI badge and you are not detailed to, or otherwise assigned to perform duties on behalf of, the FBI. Furthermore, the (b)(6); County Sheriff's Office does not receive any federal funding or reimbursement related to your work on the task force.

The (b)(6); (b)(7)(C) County Sheriff's Office has also informed us that you do not have any duties in connection with activities financed in whole or in part by the United States or a federal agency. Specifically, the office has indicated that you do not oversee or otherwise work on any federal grant program nor do you have any duties related to a federally-reimbursed program. Based upon this information, you are not subject to the Hatch Act and therefore not prohibited by the Hatch Act from engaging in any particular campaign activity. Please note that this guidance is based upon our understanding that you do not have duties in connection with activities financed by the federal government. If you are assigned to any such duties during your campaign—for example, if you are assigned to a joint investigation with a federal agency and that agency reimburses the (b)(6); (b)(7)(C) County Sheriff's Office for a portion of your salary—then I recommend that you contact my office for additional guidance.

Please contact OSC attorney Eric Johnson at (202) 804- (b)(6); (b)(7)(C) if you have any additional questions.

Sincerely,

(b)(6); (b)(7)(C)

Erica S. Hamrick
Deputy Chief, Hatch Act Unit



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

May 1, 2019

(b)(6); (b)(7)(C)

VIA ELECTRONIC MAIL:

(b)(6); (b)(7)(C)

Re: OSC File No. AD-18

(b)(6); (b)(7)(C)

Dear

(b)(6); (b)(7)(C)

This letter is in response to your November 30, 2018 request that the U.S. Office of Special Counsel (OSC) withdraw the advisory opinion issued to you on November 20, 2018,¹ and your April 2, 2019, request that OSC withdraw both the advisory opinion and related public guidance.² OSC will not be retracting its November 20, 2018 opinion and reaffirms the legal analysis from the advisory opinion and public guidance.

Although for the reasons stated below, OSC will not be taking any further action regarding your past usage of #resist and its iterations on the (b)(6); account, failure to comply with the November 20, 2018 advisory opinion may result in OSC taking future action. Please ensure that your future operation of the account, if any, complies with the advisory opinion and public guidance.

OSC first published guidance regarding #resist and its iterations on November 27, 2018. All of the instances of which we are presently aware of (b)(6); referencing #resist or #resistance occurred prior to that date. Accordingly, we will not ask you to remove any of those tweets because of their usage of #resist or #resistance. If we receive a Hatch Act complaint about activity on the (b)(6); (b)(7)(C) account taken subsequent to our November 27, 2018 public advisory opinion, including retweets of past (b)(6); (b)(7)(C) tweets, OSC will conduct an investigation in accordance with our standard procedures to determine whether, in light of all relevant facts and circumstances, that activity constitutes political activity, *i.e.*, is directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group.³

(b)(6)

(b)(7)(C)

¹ OSC File No. AD-18 (Nov. 20, 2018).

² OSC, "Clarification of November 27, 2018 Email" (Nov. 30, 2018), <https://osc.gov/Resources/OSC%20November%2027%202018%20Guidance%20Extension%20and%20Clarification.pdf>.

³ See 5 C.F.R. § 734.101.

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Regarding our presumption that #resist and #resistance constitute political activity, we note that you have yourself used the (b)(6); account to associate #resistance efforts with electoral outcomes. For example, you used #resist when linking to a video about (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) and #Resistance when talking about having (b)(6); (b)(7)(C).⁵ In light of how #resist and #resistance have been used in connection with partisan political activity, as documented in our public guidance, we continue to presume that their usage is political activity for purposes of the Hatch Act, unless the facts and circumstances indicate otherwise.

We now consider this matter closed. Please contact OSC attorney Eric Johnson at (202) 804- with any further questions.

(b)(6)
;
(b)(7)
(C)

Sincerely,

(b)(6); (b)(7)(C)

Ana Galindo-Marrone
Chief, Hatch Act Unit

4 (b)(6); (b)(7)(C)
5



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

November 20, 2018

(b)(6); (b)(7)(C)

VIA ELECTRONIC MAIL: (b)(6); (b)(7)(C)

Re: OSC File No. AD-18- (b)(6);
(b)(7)(C)

Dear (b)(6);
(b)(7)(C)

This letter responds to your request for an advisory opinion from the U.S. Office of Special Counsel (OSC) regarding the Hatch Act.¹ Specifically, you asked whether you may make certain statements on the (b)(6); Twitter account, which you operate, and whether those statements constitute political activity for purposes of the Hatch Act. Each of your specific questions is addressed below. This advisory opinion is based upon your stipulations that all activity related to the Twitter account takes place off-duty and away from your federal workplace.

The Hatch Act governs the political activity of federal civilian executive branch employees, including employees of the (b)(6); (b)(7)(C).² Among other things, the Hatch Act prohibits a covered employee from using the employee's official authority or influence to interfere with or affect the result of an election and from engaging in political activity while on duty or in the federal workplace.³ Employees of the (b)(6) and certain other agencies are considered "further restricted" and, in addition to the preceding restrictions, may not take an active part in political management or political campaigns.⁴

"Political activity," for purposes of the Hatch Act, is "activity directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group."⁵ Political activity under the Hatch Act encompasses more than express advocacy.⁶ While express

¹ OSC is authorized by 5 U.S.C. § 1212(f) to issue opinions interpreting the Hatch Act.

² See generally 5 U.S.C. §§ 7321-7326.

³ Covered employees are also prohibited from: knowingly soliciting, accepting, or receiving political contributions from any person; running for the nomination or as a candidate for election to a partisan political office; or knowingly soliciting or discouraging the political activity of any individual with matters pending before their employing office. 5 U.S.C. §§ 7323(a) and 7324(a).

⁴ See 5 U.S.C. § 7323(b)(2).

⁵ 5 C.F.R. § 734.101.

⁶ In your request you asked whether there are "magic words" of express advocacy that must appear in order for speech to be considered political activity, citing the Supreme Court's campaign finance decision in *Buckley v. Valeo*

U.S. Office of Special Counsel

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advocacy related to the success or failure of a political party, candidate for partisan political office, or partisan political group is certainly sufficient for activity to be considered political activity under the Hatch Act, express advocacy is not a necessary component of political activity.⁷ Thus, determining whether a covered employee engaged in political activity prohibited by the Hatch Act requires consideration of all relevant facts and circumstances. For example, the Hatch Act prohibits a federal employee from displaying in the workplace a homemade sign stating “Candidate X will fight for unions” during the period where Candidate X is a candidate for partisan political office. Even though the sign is homemade—and therefore the employee is not displaying campaign material created by the candidate—and the sign does not contain any express advocacy, the sign is clearly political in nature and its display is directed at the success or failure of the candidate.

One of the primary justifications for passage of the Hatch Act was that it would “ensure that the impartiality of the Government would be beyond reproach.”⁸ In furtherance of that goal, Congress has prohibited covered employees from using their official authority or influence for the purpose of interfering with or affecting the result of an election. In light of this prohibition, we have advised, for example, that a covered employee may not engage in political activity on social media if the employee’s official title or position is displayed alongside the relevant post.⁹ Such an invocation of one’s official title when engaging in political activity is a prohibited use of official authority or influence for the purpose of affecting the result of an election.

We previously advised you that “given the invocation of a position within the (b)(6) on the (b)(6); account page, the Hatch Act would prohibit you from using the (b)(6); account page to” engage in political activity.¹⁰ A visitor to the account would likely, and correctly, assume from the information presented that the account is operated by one or more (b)(6); employees.¹¹ Thus, statements made on the account are similar to other prohibited statements in which an employee invokes an official title or position when engaging in political activity, *e.g.*, (b)(6); (b)(7)(C). Therefore, our guidance from that previous advisory opinion regarding your use of the account to engage in political activity remains in effect.

We turn now to the specific statements about which you have asked.

and its “express words of advocacy of election or defeat, such as ‘vote for,’ ‘elect,’ ‘support,’ ‘cast your ballot for,’ ‘Smith for Congress,’ ‘vote against,’ ‘defeat,’ ‘reject.’” 424 U.S. 1, 44 n.52 (1976). Such words are not required.

⁷ See *Burrus v. Vegliante*, 336 F.3d 82, 87-89 (2d Cir. 2003) (finding that displaying a poster comparing the positions of two candidates for President, without expressly advocating for either, is political activity).

⁸ H.R. REP. NO. 103-16, at 4 (1993).

⁹ See Hatch Act Guidance on Social Media 7 (Feb. 3, 2018), <https://osc.gov/pages/advisory-opinions.aspx>.

¹⁰ OSC Advisory AD-17-(b)(6) at 2 ((b)(6);

¹¹ The account’s profile states that the account is “(b)(6); (b)(7)(C)

(b)(6); which strongly implies that the account is operated by one or more employees of the (b)(6);

Furthermore, the account has “pinned,” or anchored to the top of the page, (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C) identifies that the account is run by an (b)(6); employee.

1. Is strong criticism or praise of an administration's policies and actions considered political activity?

Criticism or praise that is directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group is political activity. Absent evidence that the criticism or praise is so directed, criticism or praise of an administration's policies and actions is not considered political activity. Whether a particular statement constitutes political activity depends, of course, upon the facts and circumstances.

Consider, for example, the administration's recent decision to move the U.S. embassy in Israel to Jerusalem. An employee who strongly criticizes or praises that decision during a workplace discussion with a colleague in the days immediately following the decision is less likely to be engaging in political activity than one making those same statements in the run-up to the next presidential election—when the decision will likely have been out of the news for several years—to a colleague that the employee knows has strong feelings about the subject.

As we stated above, there are no “magic words” of express advocacy necessary in order for statements to be considered political activity under the Hatch Act. Therefore, when a federal employee is prohibited by the Hatch Act from engaging in political activity—*e.g.*, when on duty, in the federal workplace, or invoking official authority, such as by using the (b)(6); [REDACTED] Twitter account—the employee must be careful to avoid making statements directed toward the success or failure of, among others, a candidate for partisan political office.

2. Is advocating for or against impeachment of a candidate for federal office considered political activity?

Yes. Impeachment is the process by which certain federal officials, including the president and the vice president, may be removed from office and disqualified from holding any future “Office of honor, Trust or Profit under the United States.”¹² We are not aware of any case law establishing whether the disqualification from holding future office applies to the office of the president, but we presume that it does based upon how the term “office of profit or trust” has been interpreted where it appears elsewhere in the Constitution.¹³

Assuming that disqualification from holding federal office would bar an individual from serving as president, any advocacy for or against an effort to impeach a candidate is squarely within the definition of political activity for purposes of the Hatch Act. Advocating for a candidate to be impeached, and thus potentially disqualified from holding federal office, is clearly directed at the failure of that candidate's campaign for federal office. Similarly, advocating against a candidate's impeachment is activity directed at maintaining that candidate's

¹² U.S. CONST., art. I, § 3, cl. 7; *see also* U.S. CONST., art. II, § 4.

¹³ *See District of Columbia v. Trump*, 315 F. Supp. 3d 875 (D. Md. 2018) (denying defendant's motion to dismiss and finding that “the text, history, and purpose of the Foreign Emoluments Clause, as well as executive branch precedent interpreting it, overwhelmingly support the conclusion that the President holds an ‘Office of Profit or Trust under [the United States]’ within the meaning of the Foreign Emoluments Clause”); *see also* 33 Op. O.L.C. 1, 4 (Dec. 7, 2009) (stating that the “President surely ‘hold[s] an[] Office of Profit or Trust’” as that term is used in article I, section 9, clause 8 of the Constitution) (alterations in original).

eligibility for federal office and therefore also considered political activity. Note that activity directed at the success or failure of an impeachment effort regarding someone who is not a candidate for partisan elective office would not be considered political activity.

3. Is activity related to “the Resistance” considered political activity?

To the extent that your question relates to resistance to President Donald J. Trump, usage of the terms “resistance,” “#resist,” and derivatives thereof is political activity. We understand that the “resistance” and “#resist” originally gained prominence shortly after President Trump’s election in 2016 and generally related to efforts to oppose administration policies. However, “resistance,” “#resist,” and similar terms have become inextricably linked with the electoral success (or failure) of the president. We note that (b)(6); (b)(7)(C) recently said of a New York Times article that it is a “(b)(6); (b)(7)(C)”¹⁴ That article states that “the only common denominator for ‘the resistance’ today is a commitment to resisting Donald Trump—the man, not necessarily his mission.”¹⁵ During the period when President Trump was not considered by OSC to be a candidate for reelection the terms did not raise any Hatch Act concerns. Now that President Trump is a candidate for reelection, we must presume that the use or display of “resistance,” “#resist,” “#resistTrump,” and similar statements—whose common denominator is that they are directed towards the failure of a candidate for partisan political office—is political activity unless the facts and circumstances indicate otherwise.

Note that this presumption is only relevant to employee conduct that takes place on duty, in the workplace, while wearing an agency uniform or insignia, or while invoking any official authority or influence.¹⁶ Provided that they comply with the Hatch Act’s restrictions, employees are free to engage in political activity while off-duty and away from the federal workplace.

More broadly, usages of the terms “resist” and “resistance” that are not directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group are not prohibited by the Hatch Act. For example, an employee would not be engaging in political activity by posting on social media “I must #resist the temptation to eat another donut from the break room.” That said, we do presume that the use or display of the hashtags #resist and #resistTrump, in isolation, is political activity under the Hatch Act.

We want to emphasize the effect of this conclusion upon your operation of the (b)(6); (b)(7)(C) account. Because we have previously determined that the account invokes your official authority, and therefore that you may not engage in political activity on the account, your usage of #resist and #resistance constitutes political activity prohibited by the Hatch Act. We will follow up separately with instructions on how to cure this violation.

¹⁴ (b)(6); (b)(7)(C)

¹⁵ Michelle Alexander, *We Are Not the Resistance*, N.Y. Times, Sept. 23, 2018, at SR1, available at <https://www.nytimes.com/2018/09/21/opinion/sunday/resistance-kavanaugh-trump-protest.html>.

¹⁶ See *supra* Question 1, para. 3.

4. Are references to past campaigns considered political activity?

The definition of political activity refers to political parties, candidates for partisan political office, and partisan political groups. Thus, to the extent that discussion of, or other activity related to, a past campaign also relates to a political party, current candidate for partisan political office, or partisan political group, then that discussion or activity may constitute political activity. For example, we have consistently advised that, to the extent that a former candidate is again running for partisan political office, an employee may not display in the workplace campaign paraphernalia from that candidate's prior campaigns.¹⁷

Please contact OSC attorney Eric Johnson at (202) 804-(b)(6) if you have any further questions.

Sincerely,

(b)(6); (b)(7)(C)

Ana Galindo-Marrone
Chief, Hatch Act Unit

¹⁷ See, e.g., Updated Guidance Regarding the Hatch Act and President Donald Trump Now That He Is Officially a Candidate for Reelection (Mar. 5, 2018), <https://osc.gov/pages/advisory-opinions.aspx> ("For example, while on duty or in the workplace, employees may not: wear, display, or distribute items with the slogan "Make America Great Again" or any other materials from President Trump's 2016 or 2020 campaigns['']") (emphasis added).



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

September 26, 2018

(b)(6); (b)(7)(C)

Via email to: (b)(6); (b)(7)(C)

Re: OSC File No. AD-18 (b)(6); (b)(7)(C)

Dear (b)(6); (b)(7)(C)

This letter responds 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 interpreting the Hatch Act. Specifically, you ask whether the Hatch Act prohibits you from being a candidate in an election for the (b)(6); County School Board (b)(6);¹ We understand that you work for the (b)(6); Department of State Police. As explained below, the Hatch Act does not prohibit you from being a candidate for (b)(6);

The Hatch Act governs the political activity of certain state and local employees. See 5 U.S.C. §§ 1501-1508. State and local employees whose salaries are paid completely, directly or indirectly, by loans or grants made by the United States or a federal agency may not be candidates in partisan elections.² See 5 U.S.C. § 1502(a)(3). However, the Hatch Act does not prohibit state and local employees from being candidates in nonpartisan elections. 5 U.S.C. § 1503.

Usually, a nonpartisan election is designated as such by state or local law. The law, however, creates only a rebuttable presumption that an election is nonpartisan. See *Special Counsel v. Yoho*, 15 M.S.P.R. 409, 413 (1983). Evidence showing that partisan politics actually entered a candidate's campaign may rebut this presumption. See *McEntee v. Merit Sys. Prot. Bd.*, 404 F.3d 1320, 1325-26 (Fed. Cir. 2005). However, no bright-line rule exists that identifies the type or amount of conduct (either by the candidate or party) needed to prove that a statutorily designated nonpartisan election, in fact, became a partisan one. *McEntee*, 404 F.3d at 1334.

Each case will present a unique combination of facts that will either show that the candidate was politically independent or not. See *Campbell v. Merit Sys. Prot. Bd.*, 27 F.3d

¹ We understand that (b)(6); County is in the (b)(6); (b)(7)(C)

² In addition, the Hatch Act prohibits state and local employees whose principal employment is in connection with an activity which is financed in whole or in part by loans or grants made by the United States from (1) using their official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for office and (2) directly or indirectly coercing, commanding, or advising a state or local officer or employee to pay, lend, or contribute anything of value to a party, organization, agency, or person for political purposes. 5 U.S.C. § 1502(a)(1)-(2).

U.S. Office of Special Counsel

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1560, 1566 (Fed. Cir. 1994). So, the ultimate answer regarding what activity may change a nonpartisan election into a partisan one rests on the totality of the circumstances.³ See *id.*

(b)(6); (b)(7)(C) State law provides that candidates for school board elections must be nominated by popular petition and may not be nominated by a political party. See (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) Furthermore, the (b)(6); Department of Elections represented to OSC that school board elections are nonpartisan, ballots do not include party designations, and candidates do not seek endorsements of political parties. Also, in your request for an advisory opinion, you stated that elections for (b)(6); (b)(7)(C) are nonpartisan. Accordingly, we have concluded that the election for (b)(6); (b)(7)(C) is nonpartisan. Therefore, the Hatch Act does not prohibit you from being a candidate in an election for (b)(6); (b)(7)(C).

Please note that if partisan politics enters an (b)(6); (b)(7)(C) candidate's campaign, then the Hatch Act may prohibit your candidacy, but only if your salary is paid completely, directly or indirectly, by loans or grants made by the United States or a federal agency. See 5 U.S.C. § 1502(a)(3).

Please contact me at 202-804-(b)(6); (b)(7)(C) if you have any additional questions.

Sincerely,

(b)(6); (b)(7)(C)

Erica S. Hamrick
Deputy Chief
Hatch Act Unit

³ A nonpartisan election could become partisan if, for instance, one of the candidates were to: participate in and win a party caucus; hold himself out as having the party's political support by advertising this in his speeches, flyers, or mailings; seek and advertise the political party's endorsement; or receive party support in the form of supplies (e.g., wooden stakes for signs, bulk mail permit), campaign volunteers, campaign publications (e.g., flyers, posters) or use of party headquarters. Note that the foregoing list is illustrative only and is not an exhaustive list of the unique combination of facts that could change a nonpartisan election into a partisan one.



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

August 22, 2018

(b)(6); (b)(7)(C)

VIA ELECTRONIC MAIL:

(b)(6); (b)(7)(C)

Re: OSC File No. AD-18-

(b)(6); (b)(7)(C)

Dear (b)(6); (b)(7)(C)

This letter is in response to your request for an advisory opinion concerning the Hatch Act.¹ You ask whether the Hatch Act prohibits you from being a candidate in the election for city council in City of (b)(6); (b)(7)(C). We understand that you are a rural carrier associate with the U.S. Postal Service (USPS). As explained below, the Hatch Act does not prohibit you from being a candidate for city council.

The Hatch Act governs the political activity of federal civilian executive branch employees, including USPS employees. *See generally* 5 U.S.C. §§ 7321-7326; 39 U.S.C. § 410. Among other things, the Hatch Act prohibits employees from being candidates for public office in partisan elections. 5 U.S.C. § 7323(a)(3).² An election is partisan if any candidate is to be nominated or elected as representing, for example, the Republican or Democratic Party.

According to the (b)(6); (b)(7)(C) Secretary of State website, the election for city council in the City of (b)(6); (b)(7)(C) is nonpartisan. While the Hatch Act prohibits candidacy in a partisan election, it does not prohibit candidacy in a nonpartisan election. Therefore, the Hatch Act does not prohibit you from being a candidate in the nonpartisan election for city council.

Usually a nonpartisan election is designated as such by state or local law. The law, however, creates only a rebuttable presumption that an election is nonpartisan. *See Special Counsel v. Yoho*, 15 M.S.P.R. 409, 413 (1983). Evidence showing that partisan politics actually

¹ The U.S. Office of Special Counsel is authorized to issue opinions interpreting the Hatch Act. *See* 5 U.S.C. § 1212(f).

² Covered employees are also 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; knowingly soliciting or discouraging the political activity of any individual with business before their employing office; and engaging in political activity while on duty, in a government building, while wearing an official uniform or insignia, or using an official vehicle. 5 U.S.C. § 7323(a) and § 7324. Political activity is defined as activity directed toward the success or failure of a political party, partisan political group, or candidate for partisan political office. 5 C.F.R. § 734.101.

U.S. Office of Special Counsel

Page 2

entered a candidate's campaign may rebut this presumption. *See McEntee v. Merit Sys. Prot. Bd.*, 404 F.3d 1320 (Fed. Cir. 2005). But no bright-line rule exists that identifies the type or amount of conduct (either by the candidate or party) needed to prove that a statutorily designated nonpartisan election, in fact, became a partisan one. *McEntee*, 404 F.3d at 1334.

Each case will present a unique combination of facts that will either show that the candidate was politically independent or not. *See Campbell v. Merit Sys. Prot. Bd.*, 27 F.3d 1560, 1566 (Fed. Cir. 1994). So, the ultimate answer regarding what activity may change a nonpartisan election into a partisan one rests on the totality of the circumstances. *See id.* Accordingly, a nonpartisan election could become partisan if, for instance, one of the candidates were to: participate in and win a party caucus; hold himself out as having the party's political support by advertising this in his speeches, flyers or mailings; seek and advertise the political party's endorsement; or receive party support in the form of supplies (e.g., wooden stakes for signs, bulk mail permit), campaign volunteers, campaign publications (e.g., flyers, posters) or use of party headquarters. Please note, that the foregoing list is illustrative only and is not an exhaustive list of the unique combination of facts that could change a nonpartisan election into a partisan one.

In conclusion, while the Hatch Act does not prohibit you from being a candidate in the nonpartisan election for city council, you should refrain from engaging in any of the types of activities discussed above. Please contact Hatch Act Unit Attorney Kelley Nobriga at (202) 804-
if you have any questions.

(b)(6);
(b)(7)(C)

Sincerely

(b)(6); (b)(7)(C)

Erica S. Hamrick
Deputy Chief, Hatch Act Unit



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

August 23, 2018

(b)(6); (b)(7)(C)

VIA ELECTRONIC MAIL: (b)(6); (b)(7)(C)

Re: OSC File No. AD-18- (b)(6); (b)(7)(C)

Dear (b)(6); (b)(7)(C)

This letter is in response to your request for an advisory opinion concerning the Hatch Act.¹ You ask whether the Hatch Act prohibits you from being a candidate in the election for Village of (b)(6); (b)(7)(C) Trustee. We understand that you are employed by the U.S. Department of Veterans Affairs (VA). As explained below, the Hatch Act does not prohibit you from being a candidate for Village of (b)(6); (b)(7)(C) Trustee.

The Hatch Act governs the political activity of federal civilian executive branch employees, including VA employees. *See generally* 5 U.S.C. §§ 7321-7326. Among other things, the Hatch Act prohibits employees from being candidates for public office in partisan elections. 5 U.S.C. § 7323(a)(3).² An election is partisan if any candidate is to be nominated or elected as representing, for example, the Republican or Democratic Party.

According to the (b)(6); (b)(7)(C) County Elections Department, the election for Village of (b)(6); (b)(7)(C) Trustee is nonpartisan. While the Hatch Act prohibits candidacy in a partisan election, it does not prohibit candidacy in a nonpartisan election. Therefore, the Hatch Act does not prohibit you from being a candidate in the nonpartisan election for Village of (b)(6); (b)(7)(C) Trustee.

Usually a nonpartisan election is designated as such by state or local law. The law, however, creates only a rebuttable presumption that an election is nonpartisan. *See Special Counsel v. Yoho*, 15 M.S.P.R. 409, 413 (1983). Evidence showing that partisan politics actually entered a candidate's campaign may rebut this presumption. *See McEntee v. Merit Sys. Prot. Bd.*, 404 F.3d 1320 (Fed. Cir. 2005). But no bright-line rule exists that identifies the type or

¹ The U.S. Office of Special Counsel is authorized to issue opinions interpreting the Hatch Act. *See* 5 U.S.C. § 1212(f).

² Covered employees are also 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; knowingly soliciting or discouraging the political activity of any individual with business before their employing office; and engaging in political activity while on duty, in a government building, while wearing an official uniform or insignia, or using an official vehicle. 5 U.S.C. § 7323(a) and § 7324. Political activity is defined as activity directed toward the success or failure of a political party, partisan political group, or candidate for partisan political office. 5 C.F.R. § 734.101.

amount of conduct (either by the candidate or party) needed to prove that a statutorily designated nonpartisan election, in fact, became a partisan one. *McEntee*, 404 F.3d at 1334.

Each case will present a unique combination of facts that will either show that the candidate was politically independent or not. *See Campbell v. Merit Sys. Prot. Bd.*, 27 F.3d 1560, 1566 (Fed. Cir. 1994). So, the ultimate answer regarding what activity may change a nonpartisan election into a partisan one rests on the totality of the circumstances. *See id.* Accordingly, a nonpartisan election could become partisan if, for instance, one of the candidates were to: participate in and win a party caucus; hold himself out as having the party's political support by advertising this in his speeches, flyers or mailings; seek and advertise the political party's endorsement; or receive party support in the form of supplies (e.g., wooden stakes for signs, bulk mail permit), campaign volunteers, campaign publications (e.g., flyers, posters) or use of party headquarters. Please note, that the foregoing list is illustrative only and is not an exhaustive list of the unique combination of facts that could change a nonpartisan election into a partisan one.

In conclusion, while the Hatch Act does not prohibit you from being a candidate in the nonpartisan election for Village of (b)(6); (b)(7)(C) Trustee, you should refrain from engaging in any of the types of activities discussed above. Please contact Hatch Act Unit Attorney Kelley Nobriga at (202) 804- (b)(6); (b)(7)(C) if you have any questions.

(b)(6);
(b)(7)(C)

Sincerely,

(b)(6); (b)(7)(C)

Erica S. Hamrick
Deputy Chief, Hatch Act Unit



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

September 11, 2018

(b)(6); (b)(7)(C)

VIA ELECTRONIC MAIL: (b)(6); (b)(7)(C)

Re: OSC File No. AD-18- (b)(6); (b)(7)(C)

Dear (b)(6); (b)(7)(C)

This letter from the U.S. Office of Special Counsel (OSC) responds to your request for an advisory opinion regarding the Hatch Act.¹ Specifically, you asked whether you may run for a seat on the (b)(6); City Council and, if so, whether the Hatch Act imposes any restrictions upon your fundraising activities. As described below, the Hatch Act does not prohibit you from running in the election or restrict the ways in which you may raise money to support your candidacy. However, other federal, state, and local laws likely do impose such restrictions.

The Hatch Act governs the political activity of federal civilian executive branch employees, including employees of the Department of Defense. *See generally* 5 U.S.C. §§ 7321-7326. Among other restrictions, a covered employee may not be a candidate for election to a partisan political office or knowingly solicit, accept, or receive a political contribution.² 5 U.S.C. § 7323(a)(2)-(3). “Partisan political office” means any office for which a candidate is nominated or elected as representing a party whose electors received votes in the last preceding presidential election, e.g., the Democratic or Republican Party. 5 C.F.R. § 734.101. The Hatch Act does not prohibit a covered employee from running as a candidate in a nonpartisan election or from fundraising to support such a candidacy. 5 C.F.R. § 734.207(b) and Example 1.

State or local law typically designates whether the election for a particular office is partisan or nonpartisan. However, a law designating an election as nonpartisan creates only a rebuttable presumption that the election is nonpartisan for purposes of the Hatch Act. *See Special Counsel v. Yoho*, 15 M.S.P.R. 409, 413 (1983). Evidence showing that partisan politics entered a candidate’s campaign—such as the candidate’s acceptance of partisan political support or advertisement of a political party’s endorsement—may rebut this presumption. *See McEntee v. Merit Sys. Prot. Bd.*, 404 F.3d 1320, 1325-26 (Fed. Cir. 2005) (citing *In re Broering*, 1 P.A.R. 778, 779 (1955)).

¹ OSC is authorized by 5 U.S.C. § 1212(f) to issue opinions interpreting the Hatch Act.

² The Hatch Act also prohibits covered employees from: (1) using their official authority or influence to interfere with an election; (2) soliciting or discouraging political activity by any person who has business pending before their employing office; and (3) engaging in political activity while on duty, in uniform, in the federal workplace, or using a government-owned or -leased vehicle. 5 U.S.C. §§ 7323(a)(1), (4), 7324(a).

1) *The election for (b)(6); (b)(7)(C) City Council is nonpartisan.*

In your request for an advisory opinion, you stated that the election for (b)(6); (b)(7)(C) City Council is nonpartisan. The (b)(6); (b)(7)(C) County, (b)(6); (b)(7)(C) Election Commission—which has jurisdiction over municipal elections in (b)(6); (b)(7)(C)—confirmed that the election is nonpartisan and that all candidates will appear on the ballot without party designation. Furthermore, you stated that you have not sought or received a political party's endorsement or support, nor are you aware of your opponent having done so. Based upon these facts, the election for (b)(6); (b)(7)(C) City Council is a nonpartisan election for purposes of the Hatch Act. Therefore, you are not prohibited by the Hatch Act from being a candidate in the election.

Please note that our determination that the election is nonpartisan is based upon the facts as described in this advisory opinion. If you or your opponent introduce partisan politics into the race, then that could make the race a partisan one for purposes of the Hatch Act even though you will not appear on the ballot with a party designation. Please do not hesitate to contact OSC for additional guidance if you have any concerns about future developments in the race.

2) *Because the election is nonpartisan, the Hatch Act does not prohibit you from fundraising to support your candidacy.*

The Hatch Act expressly permits a covered employee to be a candidate in a nonpartisan election and to raise funds to support that candidacy. Because the election for (b)(6); (b)(7)(C) City Council is nonpartisan, the Hatch Act does not impose any restrictions upon your campaign fundraising activities. You specifically asked whether you may serve as treasurer, host a fundraiser, and solicit from a union. All three activities are permissible under the Hatch Act.

We caution that while the Hatch Act does not prohibit fundraising on behalf of your candidacy, other federal law may limit your ability to do so. The Hatch Act regulations specifically identify the standards of ethical conduct for federal employees, codified at 5 C.F.R. part 2635, and the federal property management regulations, codified at 41 C.F.R. chapter 101, as federal laws that may apply to nonpartisan campaign fundraising activities. 5 C.F.R. § 734.207, Example 1. State and local laws may also apply, such as those governing donation limits. We cannot advise you on the application of those laws and suggest that you consult with your agency ethics officials or outside counsel to address any questions that you may have.

Please contact OSC attorney Eric Johnson at (202) 804- (b)(6); (b)(7)(C) if you have any questions.

Sincerely,

(b)(6); (b)(7)(C)

Ana Galindo-Marrone
Chief, Hatch Act Unit



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

February 5, 2019

(b)(6); (b)(7)(C)

VIA EMAIL

(b)(6); (b)(7)(C)

Re: OSC File No. AD-18- (b)(6); (b)(7)(C)

Dear (b)(6); (b)(7)(C)

This letter is in response to your request for an advisory opinion concerning the Hatch Act.¹ Specifically, you asked whether Reagan Udall Foundation (Foundation) fellows are covered by the Hatch Act. As explained below, OSC has determined that the Foundation fellows are not considered employees under the relevant Hatch Act provisions.

The Hatch Act governs the political activity of federal civilian executive branch employees and some state and local employees.² A federal employee under the Hatch Act is any individual employed or holding office in an executive agency or an individual in a position within the competitive service, which is not in an executive agency.³ The Hatch Act also applies to state and local employees who are 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.⁴ Furthermore, the Hatch Act applies to employees of private, nonprofit organizations only if the statutes through which these organizations derive their federal funding contain a provision stating that the recipient organizations are deemed to be state or local government agencies for purposes of the Hatch Act. To date, the statutes authorizing Head Start and the Community Service Block Grant (CSBG) are the only statutes that contain such a provision.⁵

We understand that Congress established the Foundation and the associated fellowship program pursuant to the Federal Food, Drug, and Cosmetic Act and that the Foundation is not an agency or instrumentality of the United States Government.⁶ The Foundation is instead a

¹ The U.S. Office of Special Counsel (OSC) is authorized pursuant to 5 U.S.C. § 1212(f) to issue opinions interpreting the Hatch Act.

² See generally 5 U.S.C. §§ 1501-1508, 7321-7326.

³ See 5 U.S.C. § 7322(1). The Hatch Act does not cover the President, the Vice President, individuals in the Government Accountability Office, members of the uniformed services, or individuals employed or holding office in the government of the District of Columbia. See 5 U.S.C. § 7322(1).

⁴ 5 U.S.C. § 1501(4).

⁵ See 42 U.S.C. §§ 9851 and 9918(b).

⁶ See 21 U.S.C. §§ 379dd and 379l.

U.S. Office of Special Counsel

Page 2

501(c)(3) nonprofit organization. Notably, the Foundation's authorizing statute does not include a Hatch Act provision similar to the ones found in the Head Start and CSBG statutes.⁷

Moreover, fellows are employed by the Foundation, which sets their compensation, and they do not have federal supervisors. Therefore, fellows are neither federal employees nor state and local employees for purposes of the Hatch Act.

However, we understand that 21 U.S.C. § 3791(b) mandates that fellows and individuals in other training programs "shall be subject to all legal and ethical requirements otherwise applicable to officers or employees of the Department of Health and Human Services."⁸ Civilian HHS employees are subject to the Hatch Act, which is an ethical requirement. Thus, you suggested that 21 U.S.C. § 3791(b) can be understood to extend Hatch Act jurisdiction over fellows. While this statute may be relevant to determining whether fellows are subject to the Hatch Act, OSC lacks jurisdiction to interpret 21 U.S.C. § 3791(b).⁹ Therefore, we are unable to opine if 21 U.S.C. § 3791(b) operates as a separate statutory basis, which would subject fellows to the Hatch Act.

If you have any questions, please contact Jacqueline Yarbrow at (202) 804-

(b)(6); (b)(7)(C)

Sincerely,

(b)(6); (b)(7)(C)

Ana Galindo-Marrone
Chief, Hatch Act Unit

⁷ See 42 U.S.C. §§ 9851 and 9918(b).

⁸ See 21 U.S.C. § 3791(b).

⁹ The Special Counsel may not issue an advisory opinion concerning any law, rule, or regulation (other than an advisory opinion concerning chapter 15 or subchapter III of chapter 73). 5 U.S.C. § 1212(f).



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

September 21, 2018

(b)(6); (b)(7)(C)

VIA EMAIL

(b)(6); (b)(7)(C)

Re: OSC File No. AD-18- (b)(6); (b)(7)(C)

Dear (b)(6); (b)(7)(C)

This letter is in response to your request for an advisory opinion concerning the Hatch Act. The U.S. Office of Special Counsel is authorized pursuant to 5 U.S.C. § 1212(f) to issue opinions interpreting the Hatch Act. Specifically, you asked whether the Hatch Act would prohibit you, an Air Traffic Controller with the Federal Aviation Administration (FAA), from being a candidate for the (b)(6); (b)(7)(C) city council.

The Hatch Act governs the political activity of federal civilian executive branch employees, including FAA employees. *See generally* 5 U.S.C. §§ 7321-7326. Among other things, the Hatch Act prohibits employees from being candidates for public office in partisan elections. 5 U.S.C. § 7323(a)(3).¹ An election is partisan if any candidate is to be nominated or elected as representing, for example, the Republican or Democratic Party.

OSC called the (b)(6); (b)(7)(C) city clerk and confirmed that the local city council election is nonpartisan. While the Hatch Act prohibits candidacy in a partisan election, it does not prohibit candidacy in a nonpartisan election. Accordingly, the Hatch Act does not prohibit you from being a candidate for a seat on the city council.

Usually a nonpartisan election is designated as such by state or local law. The law, however, creates only a rebuttable presumption that an election is nonpartisan. *See Special Counsel v. Yoho*, 15 M.S.P.R. 409, 413 (1983). Evidence showing that partisan politics actually entered a candidate's campaign may rebut this presumption. *See McEntee v. Merit Sys. Prot. Bd.*, 404 F.3d 1320 (Fed. Cir. 2005). But no bright-line rule exists that identifies the type or amount of conduct (either by the candidate or party) needed to prove that a statutorily designated nonpartisan election, in fact, became a partisan one. *McEntee*, 404 F.3d at 1334.

¹ Covered employees are also 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; knowingly soliciting or discouraging the political activity of any individual with business before their employing office; and engaging in political activity while on duty, in a government building, while wearing an official uniform or insignia, or using an official vehicle. 5 U.S.C. § 7323(a) and § 7324. Political activity is defined as activity directed toward the success or failure of a political party, partisan political group, or candidate for partisan political office. 5 C.F.R. § 734.101.

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Each case will present a unique combination of facts that will either show that the candidate was politically independent or not. *See Campbell v. Merit Sys. Prot. Bd.*, 27 F.3d 1560, 1566 (Fed. Cir. 1994). So, the ultimate answer regarding what activity may change a nonpartisan election into a partisan one rests on the totality of the circumstances. *See id.* Accordingly, a nonpartisan election could become partisan if, for instance, one of the candidates were to: participate in and win a party caucus; hold himself out as having the party's political support by advertising this in his speeches, flyers or mailings; seek and advertise the political party's endorsement; or receive party support in the form of supplies (e.g., wooden stakes for signs, bulk mail permit), campaign volunteers, campaign publications (e.g., flyers, posters) or use of party headquarters. Please note, that the foregoing list is illustrative only and is not an exhaustive list of the unique combination of facts that could change a nonpartisan election into a partisan one.

In conclusion, while the Hatch Act does not prohibit you from being a candidate in the nonpartisan election for (b)(6); (b)(7)(C) city council, you should refrain from engaging in any of the types of activities discussed above. If you have any questions, please contact me at (202) 804- (b)(6); (b)(7)(C)

Sincerely,

(b)(6); (b)(7)(C)

Erica S. Hamrick
Deputy Chief
Hatch Act Unit



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

October 4, 2018

(b)(6); (b)(7)(C)

VIA ELECTRONIC MAIL: (b)(6); (b)(7)(C)

Re: OSC File Nos. AD-18 (b)(6); (b)(7)(C) and HA-19 (b)(6); (b)(7)(C)

Dear (b)(6); (b)(7)(C)

This letter from the U.S. Office of Special Counsel (OSC) responds to your request for an advisory opinion regarding the Hatch Act.¹ Specifically, you asked whether the Hatch Act prohibits you from running for mayor of (b)(6); (b)(7)(C). As described below, OSC has determined that the election for mayor of (b)(6); (b)(7)(C) is a partisan one for purposes of the Hatch Act. Therefore, your current candidacy is in violation of the Hatch Act and you must either withdraw from the race or resign your federal employment in order to come into compliance with the law.

The Hatch Act governs the political activity of federal civilian executive branch employees, including employees of the Department of Defense (DOD). *See generally* 5 U.S.C. §§ 7321-7326. Among other restrictions, a covered employee may not be a candidate for election to a partisan political office.² 5 U.S.C. § 7323(a)(3). “Partisan political office” means any office for which a candidate is nominated or elected as representing a party whose electors received votes in the last preceding presidential election, *e.g.*, the Democratic or Republican Party. 5 C.F.R. § 734.101. The Hatch Act does not prohibit a covered employee from running as a candidate in a nonpartisan election. 5 C.F.R. § 734.207(b) and Example 1.

State or local law typically designates whether the election for a particular office is partisan or nonpartisan. However, a law designating an election as nonpartisan creates only a rebuttable presumption that the election is nonpartisan for purposes of the Hatch Act. *See Special Counsel v. Yoho*, 15 M.S.P.R. 409, 413 (1983). Evidence showing that partisan politics entered a candidate’s campaign—such as the candidate’s acceptance of partisan political support or advertisement of a political party’s endorsement—may rebut this presumption. *See McEntee*

¹ OSC is authorized by 5 U.S.C. § 1212(f) to issue opinions interpreting the Hatch Act.

² The Hatch Act also prohibits covered employees from: (1) using their official authority or influence to interfere with an election; (2) soliciting, accepting, or receiving political contributions; (3) soliciting or discouraging political activity by any person who has business pending before their employing office; and (4) engaging in political activity while on duty, in uniform, in the federal workplace, or using a government-owned or -leased vehicle. 5 U.S.C. §§ 7323(a)(1)-(2), (4), 7324(a).

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v. Merit Sys. Prot. Bd., 404 F.3d 1320, 1325-26 (Fed. Cir. 2005) (citing *In re Broering*, 1 P.A.R. 778, 779 (1955)).

In evaluating whether a nominally nonpartisan race has become partisan for purposes of the Hatch Act, we have looked to such factors as whether a candidate has sought and received the endorsement of a political party; whether the party advertises its endorsement, either online or through printed documents; and whether the candidate has advertised the endorsement in either campaign materials or public forums. One of your opponents in the race, (b)(6);

(b)(6); (b)(7)(C) has sought and received the endorsement of the (b)(6); Party of (b)(6);

(b)(6); (b)(7)(C). The (b)(6); has advertised its endorsement of (b)(6); on its

website and will be including the endorsement on at least one mailed document, its 2018

(b)(6); Voter Guide. Furthermore, you indicated that (b)(6); has spoken about the endorsement during public events. We have concluded that these actions have rebutted the

presumption that the race for mayor of (b)(6); (b)(7)(C) is nonpartisan.

This letter serves as notice that OSC has reasonable grounds to conclude that your candidacy in the partisan election for mayor of (b)(6); (b)(7)(C) is in violation of the Hatch Act. At this time, we are providing you with an opportunity to come into compliance with the law. As stated above, you must either withdraw your candidacy or resign from your federal employment.

If you choose to resign from your employment with DOD, please provide us with a copy of the resignation letter you submit to your agency. If you choose to withdraw your candidacy, you must inform the appropriate election official that you are withdrawing from the election and follow his or her instructions as to what actions are necessary to effectuate your withdrawal. If you are unable to have your name removed from the ballot, you must publicly announce your withdrawal (*e.g.*, issue a press release, write a letter to the editor) and provide supporting documentation to OSC. Lastly, you must stop all campaign activities, including organizing or encouraging a write-in candidacy, and no longer hold yourself out as a candidate.

Please advise us in writing of your decision, and provide documentation reflecting the action you choose to take in order to come into compliance with the Hatch Act, no later than

Friday, October 12, 2018. Please contact OSC attorney Eric Johnson at (202) 804-

(b)(6); (b)(7)(C) or (b)(6); (b)(7)(C) @osc.gov if you have any questions.

(b)(6); (b)(7)(C)

Sincerely,

(b)(6); (b)(7)(C)

Ana Galindo-Marrone
Chief, Hatch Act Unit



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

November 5, 2018

(b)(6); (b)(7)(C)

Via email to: (b)(6); (b)(7)(C)

Re: OSC File No. AD-18- (b)(6); (b)(7)(C)

Dear (b)(6); (b)(7)(C)

This letter responds 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 interpreting the Hatch Act. Specifically, you ask whether the Hatch Act prohibits you from being a candidate in an election for Clerk-Treasurer of (b)(6); (b)(7)(C). We understand that you work for the (b)(6); (b)(7)(C) Police Department. As explained below, the Hatch Act does not prohibit you from being a candidate for Clerk-Treasurer.

The Hatch Act governs the political activity of certain state and local employees. See 5 U.S.C. §§ 1501-1508. State and local employees whose salaries are paid completely, directly or indirectly, by loans or grants made by the United States or a federal agency may not be candidates in partisan elections for public office. See 5 U.S.C. § 1502(a)(3).

OSC has confirmed that the election for Clerk-Treasurer is a partisan election. A representative of the (b)(6); (b)(7)(C) Election and Voter Registration Board confirmed to us that candidates for Clerk-Treasurer are nominated in a party primary election and that candidates' party designations appear on the ballot. Therefore, the Hatch Act prohibits your candidacy if your salary is paid completely by loans or grants made by the United States or a federal agency.

You represented to us that your salary is not fully federally funded. Additionally, (b)(6); (b)(7)(C) of the (b)(6); (b)(7)(C) Police Department told us that federal grants fund no part of your salary. We have concluded, based the information before us, that your salary is not funded completely by loans or grants made by the United States or a federal agency. Therefore, the Hatch Act does not prohibit your candidacy for Clerk-Treasurer of (b)(6); (b)(7)(C).

Please note that although the Hatch Act does not prohibit you from being a candidate for partisan political office, you may be subject to the Hatch Act's other two restrictions. State and local employees who perform job duties in connection with a program or activity financed with federal grants or loans are prohibited from: (1) using their official authority or influence to affect the results of an election; and (2) coercing, attempting to coerce, commanding, or advising another employee to engage in political activity. See 5 U.S.C. § 1502(a)(1)-(2); § 1501(4). Examples of activities that violate these two prohibitions include: campaigning in

U.S. Office of Special Counsel

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uniform or using pictures of yourself in uniform for campaign purposes; telling other employees to volunteer for a political campaign or give a campaign contribution; and asking subordinate employees to engage in political activity in support of or opposition to a candidate for partisan political office

Please contact me at 202-804-(b)(6);
(b)(7)(C) if you have any additional questions.

Sincerely,

(b)(6); (b)(7)(C)

Erica S. Hamrick
Deputy Chief
Hatch Act Unit



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

October 3, 2018

(b)(6); (b)(7)(C)

Re: OSC File No. AD-19- (b)(6); (b)(7)(C)

Dear (b)(6); (b)(7)(C)

This letter is to confirm that the Hatch Act does not prohibit you from running for U.S. Congress while you are receiving payments from the (b)(6); (b)(7)(C) pursuant to the (b)(6); (b)(7)(C)

The Hatch Act governs the political activity of federal civilian executive branch employees. See 5 U.S.C. §§ 7321-7326. Among other restrictions, a covered employee may not be a candidate for election to a partisan political office. 5 U.S.C. § 7323(a)(3). Covered employees are those individuals, other than the president and the vice president, employed or holding office in an executive agency other than the Government Accountability Office, within the competitive service, or in the United States Postal Service (USPS) or the Postal Rate Commission. 5 C.F.R. § 734.101.

I understand that you currently receive (b)(6); (b)(7)(C) benefits from (b)(6); (b)(7)(C) pursuant to the (b)(6); (b)(7)(C). The payments are based upon your (b)(6); (b)(7)(C) service as an employee of the (b)(6); (b)(7)(C). Although you currently receive payments from (b)(6); (b)(7)(C), you are not employed by, nor do you hold office in, (b)(6); (b)(7)(C) or any other federal agency. You also are not employed by, nor do you hold office in, the federal competitive service, the USPS, or the Postal Rate Commission. You are therefore not an employee for purposes of the Hatch Act and, accordingly, you are not subject to the Hatch Act. Because you are not subject to the Hatch Act, you are not prohibited by it from being a candidate for partisan political office.

Please contact Office of Special Counsel attorney Eric Johnson at (202) 804- (b)(6); (b)(7)(C) if you have any questions.

Sincerely,

(b)(6); (b)(7)(C)

Erica Hamrick
Deputy Chief, Hatch Act Unit



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

November 5, 2018

(b)(6); (b)(7)(C)

VIA EMAIL

(b)(6); (b)(7)(C)

Re: OSC File No. AD-19-

(b)(6); (b)(7)(C)

Dear

(b)(6); (b)(7)(C)

This letter is in response to your request for an advisory opinion concerning the Hatch Act.¹ Specifically, you asked whether the Hatch Act prohibits (b)(6); (b)(7)(C) a Railroad Retirement Board (RRB) employee, from being a candidate in the nonpartisan election for (b)(6); (b)(7)(C) City Council, (b)(6); (b)(7)(C). As explained below, the U.S. Office of Special Counsel (OSC) has concluded that the Hatch Act does not prohibit (b)(6); (b)(7)(C) from being a candidate for the city council position.

The Hatch Act governs the political activity of federal civilian executive branch employees, including RRB employees.² Among other things, the Hatch Act prohibits employees from being candidates for partisan political office.³ An election is partisan if any candidate is to be nominated or elected as representing, for example, the Republican or Democratic Party.

You explained and OSC confirmed that the election for the city council position is nonpartisan. While the Hatch Act prohibits candidacy in a partisan election, it does not prohibit candidacy in a nonpartisan election. Accordingly, the Hatch Act does not prohibit (b)(6); (b)(7)(C) from being a candidate for the city council position.

Usually a nonpartisan election is designated as such by state or local law. The law, however, creates only a rebuttable presumption that an election is nonpartisan.⁴ Evidence showing that partisan politics actually entered a candidate's campaign may rebut this presumption.⁵ But no bright-line rule exists that identifies the type or amount of conduct (either

¹ The U.S. Office of Special Counsel is authorized pursuant to 5 U.S.C. § 1212(f) to issue opinions interpreting the Hatch Act.

² See generally 5 U.S.C. §§ 7321-7326.

³ 5 U.S.C. § 7323(a)(3). Covered employees are also 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; knowingly soliciting or discouraging the political activity of any individual with business before their employing office; and engaging in political activity while on duty, in a government building, while wearing an official uniform or insignia, or using an official vehicle. 5 U.S.C. § 7323(a) and § 7324.

⁴ See *Special Counsel v. Yoho*, 15 M.S.P.R. 409, 413 (1983).

⁵ See *McEntee v. Merit Sys. Prot. Bd.*, 404 F.3d 1320 (Fed. Cir. 2005).

U.S. Office of Special Counsel

Page 2

by the candidate or party) needed to prove that a statutorily designated nonpartisan election, in fact, became a partisan one.⁶

Each case will present a unique combination of facts that will either show that the candidate was politically independent or not.⁷ So, the ultimate answer regarding what activity may change a nonpartisan election into a partisan one rests on the totality of the circumstances.⁸ Accordingly, a nonpartisan election could become partisan if, for instance, one of the candidates were to: participate in and win a party caucus; hold himself out as having the party's political support by advertising this in his speeches, flyers or mailings; seek and advertise the political party's endorsement; or receive party support in the form of supplies (e.g., wooden stakes for signs, bulk mail permit), campaign volunteers, campaign publications (e.g., flyers, posters) or use of party headquarters. Please note that the foregoing list is illustrative only and is not an exhaustive list of the unique combination of facts that could change a nonpartisan election into a partisan one.

In conclusion, while the Hatch Act does not prohibit (b)(6); (b)(7)(C) from being a candidate in the nonpartisan election for the City of (b)(6); (b)(7)(C) city council position, (b)(6); (b)(7)(C) should refrain from engaging in any of the types of activities discussed above. If you have any questions, please contact Jacqueline Yarbrow at (202) 804- (b)(6); (b)(7)(C)

Sincerely,

(b)(6); (b)(7)(C)

Erica S. Hamrick
Deputy Chief
Hatch Act Unit

⁶ *McEntee*, 404 F.3d at 1334.

⁷ See *Campbell v. Merit Sys. Prot. Bd.*, 27 F.3d 1560, 1566 (Fed. Cir. 1994).

⁸ See *id.*



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

November 5, 2018

(b)(6); (b)(7)(C)

VIA EMAIL

(b)(6); (b)(7)(C)

Re: OSC File No. AD-19-

(b)(6); (b)(7)(C)

Dear

(b)(6); (b)(7)(C)

This letter is in response to your request for an advisory opinion concerning the Hatch Act.¹ Specifically, you asked whether the Hatch Act prohibits you from being a candidate in the nonpartisan election for Village Commissioner in the Village of (b)(6); (b)(7)(C). As explained below, the U.S. Office of Special Counsel (OSC) has concluded that the Hatch Act does not prohibit you from being a candidate for Village Commissioner.

The Hatch Act governs the political activity of certain state and local government employees in order to protect the public workforce from partisan political influence and ensure the nonpartisan administration of laws.² Only those state and local government employees who work in the executive branch, or an agency or department thereof, and whose principal employment is in connection with an activity financed in whole or in part by loans or grants made by the United States or a federal agency are subject to the Hatch Act.³ Such employees may not be a candidate for elective office, if the employee's salary is paid completely by loans or grants made by the United States or a federal agency.⁴ Additionally, the Hatch Act does not prohibit a state or local employee from being a candidate in a nonpartisan election.⁵

You explained that the election for Village Commissioner is a nonpartisan one, and OSC confirmed that this election has been designated as such.⁶ In addition, you provided information showing that your salary is not entirely federally funded but rather is funded from state sources — the Natural Areas Acquisition Fund and the Forestry Development Fund.

Accordingly, the Hatch Act does not prohibit you from being a candidate for elective office, including for Village Commissioner. And even if your salary were entirely federally

¹ The U.S. Office of Special Counsel is authorized pursuant to 5 U.S.C. § 1212(f) to issue opinions interpreting the Hatch Act.

² See generally 5 U.S.C. §§ 1501-1508.

³ 5 U.S.C. § 1501(4).

⁴ 5 U.S.C. § 1502(a)(3). The Hatch Act also prohibits covered employees from using their official authority or influence for the purpose of interfering with or affecting the result of an election and coercing, attempting to coerce, commanding, or advising another state or local government employee to engage in political activity. 5 U.S.C.

§ 1502(a)(1)-(2).

⁵ See 5 U.S.C. § 1503.

⁶ See 65 Ill. Stat. 5/4-3-16.

U.S. Office of Special Counsel

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funded, the Hatch Act would not prohibit you from being a candidate for Village Commissioner because the election for this position is nonpartisan. If you have any questions, please contact Jacqueline Yarbrow at (202) 804-

(b)(6);
(b)(7)(C)

Sincerely,

(b)(6); (b)(7)(C)

Erica S. Hamrick
Deputy Chief
Hatch Act Unit



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

December 17, 2018

(b)(6); (b)(7)(C)

VIA ELECTRONIC MAIL: (b)(6); (b)(7)(C)

Re: OSC File No. AD-19 (b)(6); (b)(7)(C)

Dear (b)(6); (b)(7)(C)

This letter is in response to your request for an advisory opinion concerning the Hatch Act. Pursuant to 5 U.S.C. § 1212(f), the U.S. Office of Special Counsel (OSC) is authorized to issue opinions interpreting the Hatch Act. You ask whether the Hatch Act prohibits you from being a candidate in the (b)(6); 2019 election for mayor of the Incorporated Village of (b)(6); (b)(7)(C). (b)(6); (b)(7)(C) OSC understands that you are employed by the Federal Aviation Administration (FAA). Your question is addressed below.

The Hatch Act governs the political activity of federal civilian executive branch employees, including FAA employees.¹ Among other things, the Hatch Act prohibits employees from being candidates for partisan political office.² A partisan political office is any office for which any candidate is nominated, or elected, as representing a party any of whose candidates for Presidential elector received votes in the most recent Presidential election.³ Examples of parties that meet this definition include the Republican or Democratic Party.

OSC understands from reviewing local laws and relevant guidance that candidates for mayor may run with political party affiliation, such as the Republican or Democratic Party. If that were to happen, the mayoral election would be partisan, and the Hatch Act would prohibit you from running.

But the attorney for the Incorporated Village of (b)(6); (b)(7)(C) represented to OSC that candidates for village elections rarely run with national political party affiliation. Instead, candidates

¹ See generally 5 U.S.C. §§ 7321-7326.

² 5 U.S.C. § 7323(a)(3). Covered employees are also 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; knowingly soliciting or discouraging the political activity of any individual with business before their employing office; and engaging in political activity while on duty, in a government building, while wearing an official uniform or insignia, or using an official vehicle. 5 U.S.C. § 7323(a) and § 7324. Political activity is defined as activity directed toward the success or failure of a political party, partisan political group, or candidate for partisan political office. 5 C.F.R. § 734.101.

³ This definition does not include any office or position within a political party or affiliated organization. See 5 C.F.R. § 734.101.

U.S. Office of Special Counsel

Page 2

generally create their own political parties, like the “Save the Trees Party.” Because these created “parties” did not field candidates in the last Presidential election, their inclusion in the mayoral election would not deem it a partisan one. Accordingly, provided the 2019 mayoral election does not include candidates running with national political party affiliation, the Hatch Act does not prohibit you from being a candidate.

Please contact Hatch Act Unit Attorney Kelley Nobriga at (202) 804-(b)(6);
(b)(7)(C) if you have any questions.

Sincerely,

(b)(6); (b)(7)(C)

Erica S. Hamrick
Deputy Chief, Hatch Act Unit



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

December 17, 2018

(b)(6); (b)(7)(C)

VIA ELECTRONIC MAIL:

(b)(6); (b)(7)(C)

Re: OSC File No. AD-19-

(b)(6); (b)(7)(C)

Dear (b)(6);
(b)(7)(C)

This letter responds 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 interpreting the Hatch Act. Specifically, you ask several questions related to the activities of the

(b)(6); (b)(7)(C)

a union that represents (b)(6); (b)(7)(C) employees.¹

Your questions are addressed below.

The Hatch Act governs the political activity of federal civilian executive branch employees, other than the President and Vice President.² Accordingly, only those (b)(6); (b)(7)(C) members who are civilians and employed by or holding office in an executive branch agency are covered by the Hatch Act. Such employees 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 employing office.³ Employees are also prohibited from engaging in political activity while on duty, in a government building, while wearing an official uniform or insignia, or using an official vehicle.⁴ Political activity is defined as activity directed toward the success or failure of a political party, partisan political group, or candidate for partisan political office.⁵

1. If an (b)(6); (b)(7)(C) member receives on an agency email account an (b)(6); (b)(7)(C) email that constitutes political activity, may the member forward that email to (b)(6); (b)(7)(C) personal email account?

Because the message in the email constitutes political activity, the Hatch Act prohibits federal employees from forwarding that email to others while on duty or in the workplace. We have advised, however, that merely forwarding such an email to the employee's personal email account,

¹ You also ask several questions related to lobbying. Because OSC is only authorized to interpret the Hatch Act, we do not address these questions.

² See generally 5 U.S.C. §§ 7321-7326.

³ See 5 U.S.C. § 7323(a)(1)-(4).

⁴ See 5 U.S.C. § 7324.

⁵ See 5 C.F.R. § 734.101.

U.S. Office of Special Counsel

Page 2

without more, does not violate the Hatch Act. Therefore, even if the message constitutes political activity, the member may forward the message to (b)(6) own personal email account, even while on duty or in the workplace.⁶ But if the member forwards such an email to (b)(6) personal email account, as previously mentioned, the member may not then forward the email from (b)(6) personal account to others while (b)(6) is still on duty or in the workplace.

2. If an (b)(6); (b)(7)(C) member receives on an agency email account an (b)(6); (b)(7)(C) email that constitutes political activity, may the member forward that email to the personal email account of another person?

As stated above, an employee may not engage in political activity while on duty or in the workplace, to include forwarding a message that constitutes political activity. Therefore, a member receiving such an email is prohibited from forwarding the email to any person while on duty or in the workplace.

3. Can the (b)(6); (b)(7)(C) send to members an email containing a website link to where members can donate to the (b)(6); political action committee? If so, can an (b)(6); (b)(7)(C) member who is covered by the Hatch Act send the email on behalf of (b)(6);

The Hatch Act does not prohibit federal employees from receiving information that solicits political contributions, but they may not forward or otherwise further distribute the solicitation to any person. Similarly, an (b)(6); member covered by the Hatch Act may not send an email that solicits political contributions.

The above rule has one exception that applies only to union political action committees.⁷

Applied here, an (b)(6); member may solicit, accept, or receive a political contribution from other (b)(6); members if: (1) the member solicited is not a subordinate employee; (2) the contribution is only for the (b)(6); political action committee; and (3) the activity occurs while the members are off duty and away from the workplace.⁸ Under this exception, an (b)(6); member may send to other (b)(6); members messages that solicit contributions to (b)(6); political action committee. Upon receipt of such a message, however, (b)(6); (b)(7)(C) members may not forward the message to non (b)(6); members.

Please contact OSC Hatch Act Unit Attorney Kelley Nobriga at (202) 804 (b)(6); (b)(7)(C) if you have any questions.

Sincerely,

(b)(6); (b)(7)(C)

Erica S. Hamrick
Deputy Chief, Hatch Act Unit

⁶ This opinion does not address any agency rules or policies that may apply to this activity.

⁷ See 5 U.S.C. § 7323(a)(2)(A)-(C).

⁸ An employee on official time for union business is considered to be on duty for purposes of the Hatch Act. See 5 C.F.R. § 734.306 (Example 12).



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

November 28, 2018

(b)(6); (b)(7)(C)

VIA ELECTRONIC MAIL: (b)(6); (b)(7)(C)

Re: OSC File No. AD-19- (b)(6); (b)(7)(C)

Dear (b)(6); (b)(7)(C)

This letter from the U.S. Office of Special Counsel (OSC) responds to your request for an advisory opinion regarding the Hatch Act.¹ Specifically, you asked whether you, the current chief of police of the (b)(6); (b)(7)(C) Police Department in (b)(6); (b)(7)(C) may use photographs of yourself in uniform from your other law enforcement positions in connection with your candidacy for elective office. As described below, the Hatch Act does not prohibit such activity.

The Hatch Act governs the political activity of certain state and local government employees in order to protect the public workforce from partisan political influence and ensure the nonpartisan administration of laws.² Only those state and local government employees whose principal employment is in the executive branch, or an agency or department thereof, and who have duties in connection with an activity financed in whole or in part by loans or grants made by the United States or a federal agency are subject to the Hatch Act.³ Such employees generally may not: (1) use their official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office; (2) coerce, attempt to coerce, command, or advise another state or local government employee to engage in political activity; or (3) be a candidate for elective office, if the employee's salary is paid completely by loans or grants made by the United States or a federal agency.⁴

You currently serve as chief of police in (b)(6); (b)(7)(C). You work approximately 40 hours per week in that position and earn an annual salary of approximately (b)(6); (b)(7)(C). Separately,

¹ OSC is authorized by 5 U.S.C. § 1212(f) to issue opinions interpreting the Hatch Act.

² See generally 5 U.S.C. §§ 1501-1508.

³ 5 U.S.C. § 1501(4). We assume for purposes of this advisory opinion that your principal employment as chief of police of the (b)(6); (b)(7)(C) Police Department involves duties in connection with federally-financed activities, and therefore that you are subject to the Hatch Act.

⁴ 5 U.S.C. § 1502(a)(1)-(3)

U.S. Office of Special Counsel

Page 2

you work part-time for both the (b)(6); (b)(7)(C) County Sheriff's Office and the (b)(6); (b)(7)(C) Police Department. In the former position you work up to 27 hours per month and are paid approximately (b)(6) per hour; in the latter position you work up to 30 hours per month and are paid approximately (b)(6) per hour. You also previously worked for the sheriff's office in both (b)(6); (b)(7)(C) County and (b)(6); County. You are contemplating running for elective office and have asked whether, as part of your campaign materials, you may use photographs of yourself (1) in either a (b)(6); County Sheriff's Office or (b)(6); Police Department uniform, and (2) in either an (b)(6); County or (b)(6); County sheriff's office uniform.

We have interpreted the statutory restriction on an employee using official authority or influence to affect an election to prohibit most covered employees from using an official title or wearing an agency uniform while engaging in political activity.⁵ However, this restriction only applies with regard to a covered employee's principal employment. In your case, you both spend the most time at, and earn the most income from, your position as chief of police of the (b)(6); (b)(7)(C) Police Department. Thus, that position is your principal employment for purposes of the Hatch Act.

Because you are principally employed by the (b)(6); (b)(7)(C) Police Department, you may not identify yourself by your official title (e.g., (b)(6); (b)(7)(C)), or use photographs of yourself in your (b)(6); Police Department uniform, in any of your campaign materials.⁶ The Hatch Act does not similarly restrict you from referring to your other current or former positions with law enforcement agencies or from using photographs of yourself in those agencies' uniforms. Accordingly, you would not violate the Hatch Act by using photographs of yourself in an (b)(6); Police Department uniform or the uniforms of the (b)(6); County, (b)(6); County, or (b)(6); County sheriff's offices. Note that this advisory opinion is limited to whether the Hatch Act prohibits you from using such photographs. State or local laws and/or law enforcement agency policies may prohibit you from using photographs of yourself in uniform, and we recommend that you consult with private counsel or the relevant agency if you have questions about any such laws or policies.

Please contact OSC attorney Eric Johnson at (202) 804-(b)(6); (b)(7)(C) if you have any additional questions.

Sincerely,

(b)(6); (b)(7)(C)

Ana Galindo-Marrone
Chief, Hatch Act Unit

⁵ There is a limited exception, not applicable here, for covered employees who are also elected officials.

⁶ You may, however, refer to your current position as part of a general biography or resume. Please refer to OSC's September 17, 2013 guidance "The Hatch Act Modernization Act of 2012 – OSC's Guidance Regarding the Use of Official Title by State and Local Employees Who Are Now Permitted to Be Candidates in Partisan Elections," available at <https://osc.gov/pages/advisory-opinions.aspx>, for more information about appropriate references to your official title.



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

December 17, 2018

(b)(6); (b)(7)(C)

VIA ELECTRONIC MAIL:

(b)(6); (b)(7)(C)

Re: OSC File No. AD-19-

(b)(6); (b)(7)(C)

Dear

(b)(6); (b)(7)(C)

This letter responds 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 interpreting the Hatch Act. You ask whether the Hatch Act prohibits U.S. Attorney (b)(6); (b)(7)(C) from attending events, such as an election night watch party, hosted by a political party or candidate for partisan political office.¹ Your question is addressed below.

The Hatch Act governs the political activity of federal civilian executive branch employees, including U.S. Department of Justice employees.² Among other things, the Hatch Act prohibits covered employees from using their official authority or influence for the purpose of affecting the result of an election.³ For example, employees may not use their official title while engaging in political activity, use government resources or their official influence to advance or oppose candidates for partisan office, or ask subordinates to engage in political activity.

Even though the events at issue are hosted by a political party and/or candidate for partisan political office, the Hatch Act does not prohibit (b)(6); (b)(7)(C) from attending these events in (b)(6); (b)(7)(C) personal capacity. However (b)(6); (b)(7)(C) should not attend such events in (b)(6); (b)(7)(C) official capacity as U.S. Attorney.

¹ OSC understand that, per U.S. Department of Justice policy, U.S. Attorney (b)(6); (b)(7)(C) is subject to additional restrictions on (b)(6); (b)(7)(C) political activity than what the Hatch Act imposes. See 5 C.F.R. § 734.104. However, this opinion only addresses the Hatch Act's restrictions.

² See generally 5 U.S.C. §§ 7321-7326.

³ See 5 U.S.C. § 7323(a)(3). Covered employees are also prohibited from: 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 employing office. 5 U.S.C. § 7323(a)(1)-(4). The Hatch Act also prohibits employees from engaging in political activity while on duty, in a government building, while wearing an official uniform or insignia, or using an official vehicle. 5 U.S.C. § 7324. Political activity is defined as activity directed toward the success or failure of a political party, partisan political group, or candidate for partisan political office. 5 C.F.R. § 734.101.

Please contact OSC Hatch Act Unit Attorney Kelley Nobriga at (202) 804-(b)(6);
(b)(7)(C) if you have any questions.

Sincerely,

(b)(6); (b)(7)(C)

Erica S. Hamrick
Deputy Chief, Hatch Act Unit



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

February 1, 2019

(b)(6); (b)(7)(C)

VIA ELECTRONIC MAIL:

(b)(6); (b)(7)(C)

Re: OSC File No. AD-19 (b)(6); (b)(7)(C)

Dear (b)(6); (b)(7)(C)

This letter responds to your request for an advisory opinion concerning the Hatch Act. Pursuant to 5 U.S.C. § 1212(f), the U.S. Office of Special Counsel (OSC) is authorized to issue opinions interpreting the Hatch Act. You ask whether the Hatch Act prohibits a Social Security Administration (SSA) employee from soliciting funds related to an election for speaker of the U.S. House of Representatives. Your questions are addressed below.

The Hatch Act governs the political activity of federal civilian executive branch employees, including SSA employees.¹ Employees may not, among other things, knowingly solicit, accept, or receive political contributions from any person.² A political contribution is defined as any payment by a person that is given to, for example, a candidate for partisan political office for a political purpose.³

OSC understands that the Speaker of the House is selected by members of the U.S. Congress. This selection process does not meet the Hatch Act's definition of election, which includes only a primary, special, runoff, or general election.⁴ Accordingly, so long as the funds solicited are only for the purpose of selecting a Speaker of the House and are not used for a political purpose, i.e., supporting a political party or candidate for partisan political office, the activity is not prohibited by the Hatch Act.

¹ See generally 5 U.S.C. §§ 7321-7326.

² See 5 U.S.C. § 7323(a)(2). Covered employees are also prohibited from: using their official authority or influence for the purpose of affecting the result of an election; knowingly soliciting or discouraging the political activity of any individual with business before their employing office; and engaging in political activity while on duty, in a government building, while wearing an official uniform or insignia, or using an official vehicle. 5 U.S.C. § 7323(a) and § 7324. Political activity is defined as activity directed toward the success or failure of a political party, partisan political group, or candidate for partisan political office. 5 C.F.R. § 734.101.

³ See 5 C.F.R. § 734.101. A political purpose is defined as "an objective of promoting or opposing a political party, candidate for partisan political office, or partisan political group." 5 C.F.R. § 734.101.

⁴ See 5 C.F.R. § 734.101.

U.S. Office of Special Counsel

Page 2

Your remaining questions 3 and 4 do not implicate the Hatch Act and, as such, we cannot answer those questions. Please contact Hatch Act Unit Attorney Kelley Nobriga at (202) 804-(b)(6);
(b)(7)(C) if you have any questions.

Sincerely,

(b)(6); (b)(7)(C)

Erica S. Hamrick
Deputy Chief, Hatch Act Unit



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

December 17, 2018

(b)(6); (b)(7)(C)

VIA ELECTRONIC MAIL:

(b)(6); (b)(7)(C)

Re: OSC File No. AD-19

(b)(6); (b)(7)(C)

Dear

(b)(6); (b)(7)(C)

This letter responds to your request for an advisory opinion concerning the Hatch Act. Pursuant to 5 U.S.C. § 1212(f), the U.S. Office of Special Counsel (OSC) is authorized to issue opinions interpreting the Hatch Act. You ask whether the Hatch Act prohibits Assistant U.S. Attorney (AUSA) (b)(6); (b)(7)(C) from being a candidate in the 2019 election for city council member of (b)(6); (b)(7)(C). As explained below, the Hatch Act does not prohibit AUSA (b)(6); (b)(7)(C) from being a candidate for city council.

The Hatch Act governs the political activity of federal civilian executive branch employees, including U.S. Department of Justice employees.¹ Among other things, the Hatch Act prohibits employees from being candidates for partisan political office.² A partisan political office is any office for which any candidate is nominated, or elected, as representing a party any of whose candidates for Presidential elector received votes in the most recent Presidential election.³ Examples of parties that meet this definition include the Republican or Democratic Party.

According to the (b)(6); (b)(7)(C) City Clerk's Office, the election for city council is nonpartisan. While the Hatch Act prohibits candidacy in a partisan election, it does not prohibit candidacy in a nonpartisan election. Therefore, the Hatch Act does not prohibit AUSA (b)(6); (b)(7)(C) from being a candidate in the nonpartisan election for city council.

¹ See generally 5 U.S.C. §§ 7321-7326.

² 5 U.S.C. § 7323(a)(3). Covered employees are also 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; knowingly soliciting or discouraging the political activity of any individual with business before their employing office; and engaging in political activity while on duty, in a government building, while wearing an official uniform or insignia, or using an official vehicle. 5 U.S.C. § 7323(a) and § 7324. Political activity is defined as activity directed toward the success or failure of a political party, partisan political group, or candidate for partisan political office. 5 C.F.R. § 734.101.

³ This definition does not include any office or position within a political party or affiliated organization. See 5 C.F.R. § 734.101.

Usually a nonpartisan election is designated as such by state or local law. The law, however, creates only a rebuttable presumption that an election is nonpartisan.⁴ Evidence showing that partisan politics actually entered a candidate's campaign may rebut this presumption.⁵ But no bright-line rule exists that identifies the type or amount of conduct (either by the candidate or party) needed to prove that a statutorily designated nonpartisan election, in fact, became a partisan one.⁶

Each case will present a unique combination of facts that will either show that the candidate was politically independent or not.⁷ So, the ultimate answer regarding what activity may change a nonpartisan election into a partisan one rests on the totality of the circumstances.⁸ Accordingly, a nonpartisan election could become partisan if, for instance, one of the candidates were to: participate in and win a party caucus; hold himself out as having the party's political support by advertising this in his speeches, flyers or mailings; seek and advertise the political party's endorsement; or receive party support in the form of supplies (e.g., wooden stakes for signs, bulk mail permit), campaign volunteers, campaign publications (e.g., flyers, posters) or use of party headquarters. Please note, that the foregoing list is illustrative only and is not an exhaustive list of the unique combination of facts that could change a nonpartisan election into a partisan one.

In conclusion, while the Hatch Act does not prohibit AUSA (b)(6); (b)(7)(C) from being a candidate in the nonpartisan election for city council, (b)(6); (b)(7)(C) should refrain from engaging in any of the types of activities discussed above. Please contact Hatch Act Unit Attorney Kelley Nobriga at (202) 804-(b)(6); (b)(7)(C) if you have any questions.

Sincerely,

(b)(6); (b)(7)(C)

Erica S. Hamrick
Deputy Chief, Hatch Act Unit

⁴ See *Special Counsel v. Yoho*, 15 M.S.P.R. 409, 413 (1983).

⁵ See *McEntee v. Merit Sys. Prot. Bd.*, 404 F.3d 1320 (Fed. Cir. 2005).

⁶ *McEntee*, 404 F.3d at 1334.

⁷ See *Campbell v. Merit Sys. Prot. Bd.*, 27 F.3d 1560, 1566 (Fed. Cir. 1994).

⁸ See *id.*



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218

Washington, D.C. 20036-4505

202-804-7000

February 4, 2019

(b)(6); (b)(7)(C)

VIA ELECTRONIC MAIL:

(b)(6); (b)(7)(C)

Re: OSC File No. AD-19-

(b)(6); (b)(7)(C)

Dear (b)(6); (b)(7)(C)

This letter responds to your request for an advisory opinion concerning the Hatch Act. Pursuant to 5 U.S.C. § 1212(f), the U.S. Office of Special Counsel (OSC) is authorized to issue opinions interpreting the Hatch Act. You ask whether employees of the (b)(6); (b)(7)(C) are subject to the provisions of the Hatch Act. As explained below, OSC has concluded that (b)(6); employees are not covered by the Hatch Act.

The Hatch Act governs the political activity of certain individuals employed by a federal, state, or local executive branch agency.¹ However, OSC understands that (b)(6) functions as an organization independent of any state or federal characterization. Indeed, the (b)(6); (b)(7)(C) Court of Appeals concluded in 2008 that (b)(6) employees were not (b)(6); (b)(7)(C) government employees.² And while the court did not take a position on whether (b)(6) employees are considered federal employees, it did state that “(b)(6); (b)(7)(C)”

The court’s statement was based on the fact that, according to the (b)(6); (b)(7)(C) employees are treated as federal employees “solely” for purposes of various U.S. Code, title 5 provisions.⁴ The Hatch Act is not within those enumerated provisions.⁵ Accordingly, OSC has concluded that (b)(6) employees are not subject to the provisions of the Hatch Act. Please contact Hatch Act Unit Attorney Kelley Nobriga at (202) 804-

(b)(6); (b)(7)(C) if you have any questions.

Sincerely,

(b)(6); (b)(7)(C)

Erica S. Hamrick
Deputy Chief, Hatch Act Unit

¹ Restrictions on federal employees differ from those on state and local employees. See 5 U.S.C. §§ 7321-7326 and §§ 1501-1508.

(b)(6); (b)(7)(C)

² *Id.* at 74.

⁴ *Id.*

(b)(6); (b)(7)(C)



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

April 4, 2019

(b)(6); (b)(7)(C)

VIA EMAIL

(b)(6); (b)(7)(C)

Re: OSC File No. AD-18

(b)(6); (b)(7)(C)

Dear

(b)(6); (b)(7)(C)

This letter is in response to your request for an advisory opinion concerning the Hatch Act.¹ You indicated that a Federal Election Commission (FEC) employee (b)(6); (b)(7)(C) is considering running for one of two nonpartisan political offices, and you shared a series of questions (b)(6); (b)(7)(C) asked about the Hatch Act's application to various campaign activities that could rebut the presumption that the elections are nonpartisan. (b)(6); (b)(7)(C) seeks approval for two categories of activities: (1) campaign activities that closely identify (b)(6); (b)(7)(C) with the (b)(6); (b)(7)(C) Party and use party support and (2) general campaign activities like fundraising and seeking endorsements. As explained more fully below, generally (b)(6); (b)(7)(C) may engage in the latter category, but as to the former, OSC strongly cautions (b)(6); (b)(7)(C) against engaging in activities that closely connect (b)(6); (b)(7)(C) to the (b)(6); (b)(7)(C) Party because such campaign activities are similar or identical to those undertaken by the candidates found to have violated the Hatch Act in two controlling Federal Circuit cases, *McEntee* and *Campbell*.² Additionally, the U.S. Office of Special Counsel (OSC) responds to (b)(6); (b)(7)(C) general campaign activity questions.

A. Hatch Act's Application to FEC Employees

The Hatch Act governs the political activity of federal civilian executive branch employees, including FEC employees.³ Among other things, the Hatch Act prohibits employees from being candidates for partisan political office.⁴ An election is partisan if any candidate is to be nominated or elected as representing a political party, for example, the Republican or Democratic Party. In addition, employees in certain agencies, such as the FEC, are "further restricted" and prohibited from actively participating in partisan political management and campaigning.⁵ Such employees are

¹ The U.S. Office of Special Counsel is authorized pursuant to 5 U.S.C. § 1212(f) to issue opinions interpreting the Hatch Act. This opinion does not address any other statutes, rules, or regulations outside of the Hatch Act, and we encourage (b)(6); (b)(7)(C) to seek ethical advice from the appropriate individuals.

² See *McEntee v. Merit Sys. Prot. Bd.*, 404 F.3d 1320 (Fed. Cir. 2005) and *Campbell v. Merit Sys. Prot. Bd.*, 27 F.3d 1560 (Fed. Cir. 1994).

³ See generally 5 U.S.C. §§ 7321-7326.

⁴ 5 U.S.C. § 7323(a)(3). Covered employees are also 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; knowingly soliciting or discouraging the political activity of any individual with business before their employing office; and engaging in political activity while on duty, in a government building, while wearing an official uniform or insignia, or using an official vehicle. 5 U.S.C. § 7323(a) and § 7324.

⁵ See 5 U.S.C. § 7323(b)(2); 5 C.F.R. § 734.401(a).

prohibited from engaging in activity that is "in concert" with a political party, partisan group, or candidate for partisan political office.⁶

The Hatch Act does not, however, prohibit candidacy for nonpartisan political office. You indicated that (b)(6); (b)(7)(C) is considering running for either city council or mayor in (b)(6); (b)(7)(C) both of which are nonpartisan offices. Accordingly, the Hatch Act does not prohibit (b)(6); (b)(7)(C) from being a candidate for these offices, provided said elections are nonpartisan.

B. Factors Rebutting the Presumption an Election is Nonpartisan

Usually a nonpartisan election is designated as such by state or local law. The law, however, creates only a rebuttable presumption that an election is nonpartisan.⁷ In *McEntee v. Merit Systems Protection Board*, the court found that evidence showing that partisan politics actually entered a candidate's campaign for an ostensibly nonpartisan political office may rebut this presumption.⁸ In *Campbell v. Merit Systems Protection Board*, the court stated that each case will present a unique combination of facts that will either show that the candidate was politically independent or not.⁹ As a result, the ultimate answer regarding what activity may change a nonpartisan election into a partisan one rests on the totality of the circumstances.¹⁰ Accordingly, a nonpartisan election could become partisan if, for instance, one of the candidates were to engage in the following activities: participate in and win a party caucus; hold himself out as having the party's political support by advertising this in his speeches, flyers, or mailings; seek and advertise the political party's endorsement; or receive party support in the form of supplies (e.g., wooden stakes for signs, bulk mail permit), campaign volunteers, campaign publications (e.g., flyers, posters), or use of party headquarters.¹¹

C. (b)(6); (b)(7)(C) Questions

1. May (b)(6); (b)(7)(C) do the following: (1) describe (b)(6); (b)(7)(C) official position in a way that identifies an FEC Commissioner as a (b)(6); (b)(7)(C) (2) refer to (b)(6); (b)(7)(C) prior candidacy in a (b)(6); (b)(7)(C) primary; (3) describe elected officials from whom (b)(6); (b)(7)(C) receives endorsements as (b)(6); (b)(7)(C) (4) speak to a partisan group in pursuit of nonpartisan office; and (5) utilize volunteers from a political party?

Considering the similarities between (b)(6); (b)(7)(C) proposed activities and the candidates' activities in *McEntee* and *Campbell*, OSC advises that (b)(6); (b)(7)(C) should refrain from actions that tend to suggest (b)(6); (b)(7)(C) is coordinating with, supported by, or otherwise endorsed by a political party or

⁶ See, e.g., *Blaylock v. U.S. Merit Sys. Prot. Bd.*, 851 F.2d 1348, 1354 (11th Cir. 1988) (concluding that the statutory prohibition against taking an "active part in political management or in political campaigns" encompasses active participation in, on behalf of, or in connection with, the organized efforts of political parties or partisan committees, clubs, and candidates).

⁷ See *Special Counsel v. Yoho*, 15 M.S.P.R. 409, 413 (1983).

⁸ See *McEntee v. Merit Sys. Prot. Bd.*, 404 F.3d 1320 (Fed. Cir. 2005). But no bright-line rule exists that identifies the type or amount of conduct (either by the candidate or party) needed to prove that a statutorily designated nonpartisan election, in fact, became a partisan one.

⁹ See *Campbell v. Merit Sys. Prot. Bd.*, 27 F.3d 1560, 1566 (Fed. Cir. 1994).

¹⁰ See *id.*

¹¹ Please note that the foregoing is illustrative only and is not an exhaustive list of the unique combination of facts that could rebut the presumption that an election is nonpartisan.

U.S. Office of Special Counsel

Page 3

partisan political group.¹² If (b)(6); (b)(7)(C) engages in all or many of (b)(6); (b)(7)(C) proposed activities, it would suggest that (b)(6); (b)(7)(C) lacks political independence and rebut the nonpartisan presumption.

To explain, both *McEntee* and *Campbell* concerned two candidates who engaged in activities that injected partisan politics into their respective races.¹³ In finding that the nonpartisan presumption was rebutted in *McEntee*'s case, the court considered, among other things, that *McEntee* distributed material promoting his Republican Party connections; his campaign materials identified him as the "only conservative Republican" in the race; *McEntee* highlighted the party affiliations of several endorsers in his campaign materials; and leaders of the local and state Republican Party publicly supported *McEntee* by appearing at his press events and helping him to solicit contributions.¹⁴

Similarly, in *Campbell*, the court upheld the finding that *Campbell*'s campaign activities in connection with a race for city council rebutted the nonpartisan presumption. The court considered that *Campbell* created a separate endorsement system by which he was endorsed by the local Democratic Party; released campaign materials highlighting his party endorsement; used party headquarters as an office; allowed party members to promote his candidacy; and used the party's volunteers and other resources to conduct his campaign.¹⁵

(b)(6); (b)(7)(C) proposed activities suggest that (b)(6); (b)(7)(C) intends to cloak (b)(6); (b)(7)(C) in the mantle of the (b)(6); (b)(7)(C) Party during (b)(6); (b)(7)(C) ostensibly nonpartisan candidacy for positions in (b)(6); (b)(7)(C). Although there is no bright line for the level of activity on (b)(6); (b)(7)(C) part that would establish (b)(6); (b)(7)(C) to be acting in concert with a political party, the more steps (b)(6); (b)(7)(C) takes to identify (b)(6); (b)(7)(C) with a particular political party, the greater the risk (b)(6); (b)(7)(C) candidacy will be found to have lost its independence. If (b)(6); (b)(7)(C) goal in associating (b)(6); (b)(7)(C) candidacy with partisan elected officials is to have voters associate (b)(6); (b)(7)(C) candidacy with a political party, then (b)(6); (b)(7)(C) is likely to compromise the independence of (b)(6); (b)(7)(C) candidacy. Accordingly, OSC advises that should (b)(6); (b)(7)(C) engage in all or many of (b)(6); (b)(7)(C) suggested activities, (b)(6); (b)(7)(C) will likely violate the Hatch Act.

2. May (b)(6); (b)(7)(C) fundraise from elected officials who hold partisan office? Beyond receiving such funds, may (b)(6); (b)(7)(C) solicit them?

For Hatch Act purposes, a political contribution is defined as any gift, subscription, loan, advance, or deposit of money or anything of value, made for any political purpose.¹⁶ And political purpose means an objective of promoting or opposing a political party, candidate for partisan political office, or partisan political group.¹⁷ Accordingly, because (b)(6); (b)(7)(C) would be fundraising for (b)(6); (b)(7)(C) candidacy for a nonpartisan political office, the Hatch Act would not prohibit (b)(6); (b)(7)(C) from (b)(6); (b)(7)(C) soliciting, accepting, or receiving contributions from any individual for that election.

3. Does the Hatch Act restrict (b)(6); (b)(7)(C) ability to run with a slate of candidates?

¹² See *McEntee*, 404 F.3d 1320 and *Campbell*, 27 F.3d 1560.

¹³ *McEntee* involved a candidate for nonpartisan political office while *Campbell* concerned a candidate running as an independent for partisan political office in a designated locality. See *McEntee v. Merit Sys. Prot. Bd.*, 404 F.3d 1320 (Fed. Cir. 2005) and *Campbell*, 27 F.3d 1560.

¹⁴ See *McEntee*, 404 F.3d 1320.

¹⁵ See *Campbell v. Merit Sys. Prot. Bd.*, 27 F.3d 1560 (Fed. Cir. 1994).

¹⁶ 5 C.F.R. § 734.101.

¹⁷ *Id.*

Generally, the Hatch Act would prohibit (b)(6); (b)(7)(C) from running in coordination with individuals who are candidates for partisan political office. But (b)(6); provides an example of a slate of candidates that operated independently of a political party and only involved candidates for municipal nonpartisan office. The Hatch Act would not prohibit (b)(6); from coordinating with a slate of nonpartisan candidates like the one described in (b)(6); example provided no partisan politics are involved in the slate's activities.

4. As (b)(6); (b)(7)(C) does not formally supervise anyone, does (b)(6); (b)(7)(C) have any subordinates for purposes of the Hatch Act?

A subordinate employee is one who is under (b)(6); (b)(7)(C) supervisory authority, control, or administrative direction.¹⁸ Supervisory authority can extend beyond formal administrative power. Accordingly, OSC would need further information to determine if (b)(6); (b)(7)(C) has subordinates for purposes of the Hatch Act.

5. May (b)(6); (b)(7)(C) secure and promote the endorsements of local elected officials who hold partisan office?

The Hatch Act does not prohibit (b)(6); (b)(7)(C) from seeking and promoting endorsements from anyone, including local elected officials who hold partisan political office. But highlighting the party affiliations of these endorsers may raise Hatch Act concerns as outlined in OSC's response to the first question.

As OSC has explained above, the law permits (b)(6); (b)(7)(C) to be a candidate for city council or mayor, provided the elections for said offices are and remain nonpartisan.¹⁹ And as (b)(6); (b)(7)(C) begins candidacy for office, we encourage (b)(6); (b)(7)(C) to seek continued guidance on any activities that may implicate the Hatch Act. If you have any questions, please contact Hatch Act Unit Attorney Jacqueline Yarbro at (202) 804-(b)(6); (b)(7)(C).

Sincerely,

(b)(6); (b)(7)(C)

Ana Galindo-Marrone
Chief, Hatch Act Unit

¹⁸ See *id.*

¹⁹ We note that (b)(6); (b)(7)(C) is considering running for local office in (b)(6); (b)(7)(C) which is a designated locality under the Hatch Act. 5 C.F.R. § 733.107. A federal employee who resides in a designated locality may run as an independent candidate for election to partisan political office, provided the election is for local office in said locality. See 5 U.S.C. § 7325, 5 C.F.R. §§ 733.105-733.107. Therefore, if (b)(6); (b)(7)(C) is a resident of (b)(6); (b)(7)(C), the Hatch Act would not prohibit (b)(6); (b)(7)(C) from being a candidate in the race for city council or mayor even if it were to become partisan. However, the law would still require that (b)(6); (b)(7)(C) remain an independent candidate. See *Campbell*, 27 F.3d 1560.



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

February 22, 2019

(b)(6); (b)(7)(C)

VIA EMAIL

(b)(6); (b)(7)(C)

Re: OSC File No. AD-18

(b)(6); (b)(7)(C)

Dear

(b)(6); (b)(7)(C)

This letter is in response to your request for an advisory opinion concerning the Hatch Act.¹ You asked if you, a (b)(6); County Department of Social Services (b)(6); (b)(7)(C) employee, are covered by the Hatch Act and specifically whether the Hatch Act prohibits you from displaying a photograph of President Donald Trump at work. As explained below, the U.S. Office of Special Counsel (OSC) has determined that you are covered by the Hatch Act but that it would not prohibit you from displaying a photograph of President Trump at work.

The Hatch Act applies to certain state and local employees who are 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.² Employees who are covered by the Hatch Act may not: (1) use their official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for office; or (2) coerce, attempt to coerce, command, or advise a state or local officer or employee to pay, lend, or contribute anything of value for political purposes.³

OSC reviewed documents and determined that (b)(6); (b)(7)(C) receives several federal block grants, including funds from the Temporary Assistance for Needy Families (TANF) program. The TANF federal block grant provides half of the funds for the fraud department at (b)(6); (b)(7)(C). You are a human services specialist in the (b)(6); (b)(7)(C) fraud department, and in your position you conduct investigations to reclaim fraudulently obtained federal benefits, like TANF funds. You also explained that you are not a supervisor and that you do not interact with members of the public in your office space. In addition, you told OSC that the photograph you seek to display in your office appears to be the official photograph of President Trump and does not include any references to campaign-related materials.

Based on the information that you provided, OSC has concluded that you have duties in connection with federally funded programs and are subject to the Hatch Act's restrictions as

¹ The U.S. Office of Special Counsel is authorized pursuant to 5 U.S.C. § 1212(f) to issue opinions interpreting the Hatch Act.

² 5 U.S.C. § 1501(4).

³ 5 U.S.C. § 1502 (a)(1)-(2). Additionally, the Hatch Act prohibits only those employees whose salaries are entirely federally funded from being candidates for partisan political office. See 5 U.S.C. § 1502(a)(3).

U.S. Office of Special Counsel

Page 2

outlined above.⁴ However, the Hatch Act does not prohibit you from displaying in your workplace a photograph of President Trump like the one you described. If you have any questions, please contact Jacqueline Yarbrow at (202) 804-

(b)(6);
(b)(7)(C)

Sincerely,

(b)(6); (b)(7)(C)

Erica S. Hamrick
Deputy Chief
Hatch Act Unit

⁴ The information you provided was not sufficient to determine whether your salary is entirely federally funded. Accordingly, we are unable to opine as to whether you would be prohibited from being a candidate for partisan political office.



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

February 13, 2019

(b)(6); (b)(7)(C)

VIA ELECTRONIC MAIL:

(b)(6); (b)(7)(C)

Re: OSC File No. AD-19-

(b)(6); (b)(7)(C)

Dear

(b)(6); (b)(7)(C)

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 interpreting the Hatch Act. You ask whether the Hatch Act prohibits you from being a candidate for partisan political office. OSC understands that you are a conservation police officer with the (b)(6); (b)(7)(C). As explained below, the Hatch Act does not prohibit you from being a candidate in a partisan election.

The Hatch Act governs the political activity of certain state and local government employees in order to protect the public workforce from partisan political influence and ensure the nonpartisan administration of government programs.¹ Among other things, the Hatch Act prohibits state and local employees whose salaries are entirely federally funded from being candidates for partisan political office.²

According to the information provided by (b)(6); (b)(7)(C) through (b)(6); (b)(7)(C) your salary is not entirely federally funded. Therefore, the Hatch Act does not prohibit you from being a candidate for partisan political office.

Please note that although the Hatch Act does not prohibit you from being a candidate for partisan political office, you are subject to the Hatch Act's other two restrictions.³ State and local government employees who perform job duties in connection with a program or activity financed with federal grants or loans are prohibited from: (1) using their official authority or influence to affect the results of an election; and (2) coercing, attempting to coerce, commanding, or advising another employee to engage in political activity.⁴ Examples of activities that violate these two prohibitions include: campaigning while in uniform; using pictures of yourself in uniform for campaign purposes; telling other employees to volunteer for a political campaign or give a campaign

¹ See 5 U.S.C. §§ 1501-1508.

² See 5 U.S.C. § 1502(a)(3).

³ OSC understands that you have duties in connection to a (b)(6); (b)(7)(C) program funded in part by the U.S. Coast Guard.

⁴ See 5 U.S.C. § 1502(a)(1)-(2); § 1501(4).

contribution; and asking subordinate employees to engage in political activity in support of or opposition to a candidate for partisan political office.

Please contact OSC Hatch Act Unit Attorney Kelley Nobriga at (202) 804-(b)(6); (b)(7)(C) if you have any questions.

Sincerely,

(b)(6); (b)(7)(C)

Erica S. Hamrick
Deputy Chief, Hatch Act Unit



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7090

February 12, 2019

(b)(6); (b)(7)(C)

VIA ELECTRONIC MAIL: (b)(6); (b)(7)(C)

Re: OSC File No. AD-19: (b)(6); (b)(7)(C)

Dear (b)(6);
(b)(7)(C)

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 interpreting the Hatch Act. You ask whether the Hatch Act prohibits you from being a candidate in the partisan election for mayor of the City of (b)(6); (b)(7)(C). OSC understands that you are the director of (b)(6); (b)(7)(C) for the City of (b)(6); (b)(7)(C). As explained below, the Hatch Act does not prohibit you from being a candidate for mayor.

The Hatch Act governs the political activity of certain state and local government employees in order to protect the public workforce from partisan political influence and ensure the nonpartisan administration of government programs.¹ Among other things, the Hatch Act prohibits state and local employees whose salaries are entirely federally funded from being candidates for partisan political office.²

According to the information provided by City of (b)(6); (b)(7)(C) Comptroller (b)(6); (b)(7)(C) your salary is 80 percent federally funded. Accordingly, because your salary is not entirely federally funded, the Hatch Act does not prohibit you from being a candidate for mayor.

Please note that although the Hatch Act does not prohibit you from being a candidate for partisan political office, you are subject to the Hatch Act's other two restrictions. State and local government employees who perform job duties in connection with a program or activity financed with federal grants or loans are prohibited from: (1) using their official authority or influence to affect the results of an election; and (2) coercing, attempting to coerce, commanding, or advising another employee to engage in political activity.³ Examples of activities that violate these two prohibitions include telling other employees to volunteer for a political campaign or give a campaign

¹ See 5 U.S.C. §§ 1501-1508.

² See 5 U.S.C. § 1502(a)(3).

³ See 5 U.S.C. § 1502(a)(1)-(2); § 1501(4).

contribution and asking subordinate employees to engage in political activity in support of or opposition to a candidate for partisan political office.

Please contact OSC Hatch Act Unit Attorney Kelley Resendes at (202) 804-(b)(6);
(b)(7)(C) if you have any questions.

Sincerely,

(b)(6); (b)(7)(C)

Erica S. Hamrick
Deputy Chief, Hatch Act Unit



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

February 13, 2019

(b)(6); (b)(7)(C)

Via email: (b)(6); (b)(7)(C)

Re: OSC File No. AD-19 (b)(6); (b)(7)(C)

Dear (b)(6); (b)(7)(C)

This letter is in response to your request for an advisory opinion concerning the Hatch Act.¹ Specifically, you ask whether the Hatch Act prohibits you from running in a partisan election for district attorney. We understand that you work at (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) a private nonprofit organization. As explained below, you are not subject to the provisions of the Hatch Act.

The Hatch Act restricts the political activity of certain individuals employed by federal, state, or local executive branch agencies.² The Hatch Act applies to employees of private nonprofit organizations only if the statutes through which those organizations are funded contain a provision stating that the recipient organizations are deemed to be state or local government agencies for the purposes of the Hatch Act.³ In your request for an advisory opinion, you stated that Legal Services Corporation (LSC) funds, in part (b)(6); (b)(7)(C). Although LSC is a non-profit organization founded by Congress, the statute establishing LSC contains no provision stating that recipients of its funds are state or local agencies.⁴ Therefore, employees of (b)(6); (b)(7)(C) are not covered by the Hatch Act, and the Act does not prohibit your candidacy in a partisan election.

Please contact me at 202-804- (b)(6); (b)(7)(C) if you have any additional questions.

Sincerely,

(b)(6); (b)(7)(C)

Erica S. Hamrick
Deputy Chief, Hatch Act Unit

¹ The U.S. Office of Special Counsel (OSC) is authorized to issue opinions interpreting the Hatch Act, pursuant to 5 U.S.C. § 1212(f).

² See 5 U.S.C. §§ 7321-7326 and §§ 1501-1508.

³ To date, the statutes authorizing Head Start and the Community Services Block Grant are the only statutes containing such provision. See 42 U.S.C. §§ 9851 and 9918(b).

⁴ See 42 U.S.C. §§ 2996-2996l.



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

February 13, 2019

(b)(6); (b)(7)(C)

Via email: (b)(6); (b)(7)(C)

Re: OSC File No. AD-19 (b)(6); (b)(7)(C)

Dear (b)(6); (b)(7)(C)

This letter responds to your request for an advisory opinion concerning the Hatch Act.¹ You posed five questions, the answers to which are set out below. You explained to OSC that you are an employee of the Department of Veterans Affairs (VA) and are considering running to be the chair of the (b)(6); (b)(7)(C) Party of (b)(6); (b)(7)(C) a partisan political group.

The Hatch Act governs the political activity of federal civilian executive branch employees, including VA employees.² Most relevant to your inquiries, the Hatch Act prohibits employees from soliciting, accepting, or receiving political contributions.³ The definition of political contribution includes “any gift, subscription, loan, advance, or deposit of money or anything of value, made for any political purpose.”⁴ Political purpose is defined as having “an objective of promoting or opposing a political party, candidate for partisan political office, or partisan political group.”⁵

1. As chair of the (b)(6); (b)(7)(C) Party of (b)(6); (b)(7)(C) may you call individuals to solicit contributions to the party?

No. The (b)(6); (b)(7)(C) Party of (b)(6); (b)(7)(C) is a partisan political group. Therefore, soliciting contributions to the group or on behalf of the group falls under the Hatch Act’s prohibition against soliciting political contributions.

¹ The U.S. Office of Special Counsel (OSC) is authorized to issue opinions interpreting the Hatch Act, pursuant to 5 U.S.C. § 1212(f).

² See 5 U.S.C. §§ 7321-7326.

³ 5 U.S.C. § 7323(a)(2). The Hatch Act also prohibits federal employees from: using their official authority or influence to affect the result of an election; soliciting or discouraging the political activity of any person who has business before their employing office; and being a candidate for partisan political office. 5 U.S.C. § 7323. Additionally, employees may not engage in political activity while on duty, in a federal room or building, while wearing an official uniform or insignia, or using a government vehicle. 5 U.S.C. § 7324.

⁴ 5 U.S.C. § 7322(3)(A).

⁵ 5 C.F.R. § 734.101.

U.S. Office of Special Counsel

Page 2

2. As chair of the (b)(6); (b)(7)(C) Party of (b)(6); (b)(7)(C) may you solicit federal and state officeholders and candidates for contributions to the party to help fund voter persuasion and get-out-the-vote programs?

No. Because these contributions are made for the purpose of supporting the (b)(6); (b)(7)(C) Party of (b)(6); (b)(7)(C) and its get-out-the-vote efforts, they are political contributions for the purposes of the Hatch Act. Accordingly, the Hatch Act prohibits you from soliciting such contributions.

3. May the (b)(6); (b)(7)(C) Party of (b)(6); (b)(7)(C) send emails on your behalf, as the chair of the party, that include hyperlinks to contribute to the party?

No. Because you are prohibited from soliciting political contributions, your name may not appear on any communication that solicits such contributions. Thus, although the Hatch Act does not prohibit the (b)(6); (b)(7)(C) Party of (b)(6); (b)(7)(C) from soliciting, you may not allow the party to use your name when doing so.⁶

4. As chair of the (b)(6); (b)(7)(C) Party of (b)(6); (b)(7)(C) may you speak at fundraising events hosted by the party, so long as you do not solicit contributions or serve as Master of Ceremonies?

Yes. Although the Hatch Act prohibits you from soliciting political contributions, it does not prohibit you from appearing and speaking at political fundraisers as long as you do not personally solicit contributions,⁷ or serve as host or Master of Ceremonies.⁸

5. As chair of the (b)(6); (b)(7)(C) Party of (b)(6); (b)(7)(C) may you call individuals to invite them to political fundraisers hosted by the party at which you will be a guest speaker?

No. The Hatch Act prohibition on soliciting political contributions includes inviting individuals to political fundraisers. Accordingly, you may not call individuals to invite them to political fundraisers hosted by the (b)(6); (b)(7)(C) Party of (b)(6); (b)(7)(C) at which you will be a guest speaker.

Please contact me at 202-804-(b)(6); (b)(7)(C) if you have any additional questions.

Sincerely,

(b)(6); (b)(7)(C)

Erica S. Hamrick
Deputy Chief
Hatch Act Unit

⁶ See, e.g., 5 C.F.R. § 734.208 (Example 4).

⁷ See 5 C.F.R. § 734.303(b); see also 5 C.F.R. § 734.208 (Example 2).

⁸ See 5 C.F.R. § 734.303.



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

February 14, 2019

(b)(6); (b)(7)(C)

Via email (b)(6); (b)(7)(C)

Re: OSC File No. AD-19 (b)(6); (b)(7)(C)

Dear (b)(6); (b)(7)(C)

This letter is in response to your request for an advisory opinion concerning the Hatch Act.¹ Specifically, you ask whether the Hatch Act prohibits an employee of (b)(6); (b)(7)(C) which operates a public transit system in (b)(6); (b)(7)(C) from being a candidate in a partisan political election.

The Hatch Act restricts the political activity of individuals employed by certain state or local executive branch agencies.² That Hatch Act prohibits a state or local employee from being a candidate for partisan political office if that employee's salary is paid entirely with loans or grants from the federal government.³ You explained to OSC that the federal government, (b)(6); (b)(7)(C) County, and the city of (b)(6); (b)(7)(C) each contribute funds to (b)(6); (b)(7)(C). You further explained that (b)(6); (b)(7)(C) funds flow into a single pool, such that no one employee is paid by one source of funding. We conclude, therefore, that the salary of the employee for whom you sought this advisory opinion is not paid fully with federal funds. Accordingly, the Hatch Act does not prohibit the employee's candidacy for partisan political office.

Please contact me at 202-804-(b)(6); (b)(7)(C) if you have any additional questions.

Sincerely,

(b)(6); (b)(7)(C)

Erica S. Hamrick
Deputy Chief
Hatch Act Unit

¹ The U.S. Office of Special Counsel (OSC) is authorized to issue opinions interpreting the Hatch Act, pursuant to 5 U.S.C. § 1212(f).

² See 5 U.S.C. §§ 1501-1508.

³ 5 U.S.C. § 1502(a)(3).



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

February 14, 2019

(b)(6); (b)(7)(C)

VIA ELECTRONIC MAIL: (b)(6); (b)(7)(C)

Re: OSC File No. AD-19 (b)(6); (b)(7)(C)

Dear (b)(6); (b)(7)(C)

This letter is in response to your request for an advisory opinion concerning the Hatch Act. Pursuant to 5 U.S.C. § 1212(f), the U.S. Office of Special Counsel (OSC) is authorized to issue opinions interpreting the Hatch Act. You ask whether the Hatch Act prohibits you from being a candidate in the election for supervisor of (b)(6); (b)(7)(C) in (b)(6); (b)(7)(C) County (b)(6); (b)(7)(C). OSC understands that you are employed by the U.S. Army Corps of Engineers (USACE). Your question is addressed below.

The Hatch Act governs the political activity of federal civilian executive branch employees, including USACE employees.¹ Among other things, the Hatch Act prohibits employees from being candidates for partisan political office.² A partisan political office is any office for which any candidate is nominated, or elected, as representing a party any of whose candidates for Presidential elector received votes in the most recent Presidential election.³ Examples of parties that meet this definition include the Republican or Democratic Party.

According to the information provided by the circuit clerk of (b)(6); (b)(7)(C) County, candidates for supervisor have the option to run with political party affiliation, and there is currently one Democratic candidate for supervisor of (b)(6); (b)(7)(C). Because the election for supervisor of (b)(6); (b)(7)(C) includes a candidate running with political party affiliation, the election is partisan, and the Hatch Act prohibits you from being a candidate in the election.

¹ See generally 5 U.S.C. §§ 7321-7326.

² 5 U.S.C. § 7323(a)(3). Covered employees are also 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; knowingly soliciting or discouraging the political activity of any individual with business before their employing office; and engaging in political activity while on duty, in a government building, while wearing an official uniform or insignia, or using an official vehicle. 5 U.S.C. § 7323(a) and § 7324. Political activity is defined as activity directed toward the success or failure of a political party, partisan political group, or candidate for partisan political office. 5 C.F.R. § 734.101.

³ This definition does not include any office or position within a political party or affiliated organization. See 5 C.F.R. § 734.101.

Please contact OSC Hatch Act Unit Attorney Kelley Nobriga at (202) 804-(b)(6);
(b)(7)(C) if you have any questions.

Sincerely,

(b)(6); (b)(7)(C)

Erica S. Hamrick
Deputy Chief, Hatch Act Unit



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

February 22, 2019

(b)(6); (b)(7)(C)

VIA EMAIL

(b)(6); (b)(7)(C)

Re: OSC File No. AD-19- (b)(6); (b)(7)(C)

Dear (b)(6); (b)(7)(C)

This letter is in response to your request for an advisory opinion concerning the Hatch Act.¹ Specifically, you asked whether the Hatch Act would prohibit you, an intermittent United States Census Bureau employee, from forming an exploratory committee for a congressional seat or being a candidate in a congressional election. As explained below, OSC has determined that the Hatch Act does not prohibit you from being a candidate.

The Hatch Act governs the political activity of federal civilian executive branch employees.² While the Hatch Act permits most employees to actively participate in partisan political management and partisan political campaigns, it prohibits employees from, among other things, being candidates for public office in partisan elections.³ However, an individual who works on an irregular or occasional basis is subject to the Hatch Act's prohibitions only when she is on duty.⁴ And such an employee may be a candidate for partisan political office provided she does not engage in active campaigning while on duty.⁵ The Hatch Act regulations define occasional as "occurring infrequently, at irregular intervals, and according to no fixed or certain scheme; acting or serving for the occasion or only on particular occasions."⁶

You explained that as an intermittent U.S. Census Bureau employee you conduct interviews to collect data for two government surveys. You receive notice through an online portal that interviews are available, and once the work is assigned you travel in your local area to complete the interviews. These tasks are neither regularly scheduled nor predictably available. You stated that on average you complete three interviews a month and that each interview takes

¹ The U.S. Office of Special Counsel is authorized pursuant to 5 U.S.C. § 1212(f) to issue opinions interpreting the Hatch Act.

² 5 U.S.C. §§ 7321-7326.

³ 5 U.S.C. § 7323(a)(3). The Hatch Act also prohibits employees from using their official authority or influence to affect an election; knowingly soliciting, accepting, or receiving political contributions; knowingly soliciting or discouraging the political activity of anyone with business before their employing office; and engaging in political activity while on duty, in a federal room or building, wearing an official uniform, or using a government vehicle. 5 U.S.C. §§ 7323, 7324.

⁴ 5 C.F.R. § 734.601.

⁵ *Id.*

⁶ 5 C.F.R. § 734.101.

U.S. Office of Special Counsel

Page 2

about half a day to complete. You noted that this month you have not conducted any interviews for the U.S. Census Bureau.

Based on the information that you provided about your employment, OSC has concluded that you are an irregular or occasional employee for purposes of the Hatch Act. Accordingly, the Hatch Act does not prohibit you from forming an exploratory committee for a congressional seat or from being a candidate in a congressional election. Please note, however, that you are subject to the Hatch Act's prohibitions while you are on duty, and therefore you may not actively campaign while conducting your official U.S. Census Bureau duties.

If you have any questions, please contact Jacqueline Yarbrow at (202) 804-

(b)(6);
(b)(7)(C)

Sincerely,

(b)(6); (b)(7)(C)

Erica S. Hamrick
Deputy Chief
Hatch Act Unit



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

February 14, 2019

(b)(6); (b)(7)(C)

VIA ELECTRONIC MAIL:

(b)(6); (b)(7)(C)

Re: OSC File No. AD-19

(b)(6); (b)(7)(C)

Dear

(b)(6); (b)(7)(C)

This letter responds to your request for an advisory opinion concerning the Hatch Act. Pursuant to 5 U.S.C. § 1212(f), the U.S. Office of Special Counsel (OSC) is authorized to issue opinions interpreting the Hatch Act. You ask whether the Hatch Act prohibits you from being a candidate for mayor of (b)(6); (b)(7)(C). OSC understands that you are a city carrier with the U.S. Postal Service (USPS). As explained below, the Hatch Act does not prohibit you being a candidate for mayor.

The Hatch Act governs the political activity of federal civilian executive branch employees, including USPS employees.¹ Among other things, the Hatch Act prohibits employees from being candidates for partisan political office.² A partisan political office is any office for which any candidate is nominated, or elected, as representing a party any of whose candidates for Presidential elector received votes in the most recent Presidential election.³ Examples of parties that meet this definition include the Republican or Democratic Party.

According to the (b)(6); (b)(7)(C) City Clerk's Office, the election for mayor is nonpartisan. While the Hatch Act prohibits candidacy in a partisan election, it does not prohibit candidacy in a nonpartisan election. Therefore, the Hatch Act does not prohibit you from being a candidate in the nonpartisan election for mayor.

¹ See generally 5 U.S.C. §§ 7321-7326; 39 U.S.C. § 410.

² 5 U.S.C. § 7323(a)(3). Covered employees are also 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; knowingly soliciting or discouraging the political activity of any individual with business before their employing office; and engaging in political activity while on duty, in a government building, while wearing an official uniform or insignia, or using an official vehicle. 5 U.S.C. § 7323(a) and § 7324. Political activity is defined as activity directed toward the success or failure of a political party, partisan political group, or candidate for partisan political office. 5 C.F.R. § 734.101.

³ This definition does not include any office or position within a political party or affiliated organization. See 5 C.F.R. § 734.101.

Usually a nonpartisan election is designated as such by state or local law. The law, however, creates only a rebuttable presumption that an election is nonpartisan.⁴ Evidence showing that partisan politics actually entered a candidate's campaign may rebut this presumption.⁵ But no bright-line rule exists that identifies the type or amount of conduct (either by the candidate or party) needed to prove that a statutorily designated nonpartisan election, in fact, became a partisan one.⁶

Each case will present a unique combination of facts that will either show that the candidate was politically independent or not.⁷ So, the ultimate answer regarding what activity may change a nonpartisan election into a partisan one rests on the totality of the circumstances.⁸ Accordingly, a nonpartisan election could become partisan if, for instance, one of the candidates were to: participate in and win a party caucus; hold himself out as having the party's political support by advertising this in his speeches, flyers or mailings; seek and advertise the political party's endorsement; or receive party support in the form of supplies (e.g., wooden stakes for signs, bulk mail permit), campaign volunteers, campaign publications (e.g., flyers, posters) or use of party headquarters. Please note, that the foregoing list is illustrative only and is not an exhaustive list of the unique combination of facts that could change a nonpartisan election into a partisan one.

In conclusion, while the Hatch Act does not prohibit you from being a candidate in the nonpartisan election for mayor, you should refrain from engaging in any of the types of activities discussed above. Please contact Hatch Act Unit Attorney Kelley Nobriga at (202) 804-(b)(6);
(b)(7)(C) if you have any questions.

Sincerely,

(b)(6); (b)(7)(C)

Erica S. Hamrick
Deputy Chief, Hatch Act Unit

⁴ See *Special Counsel v. Yoho*, 15 M.S.P.R. 409, 413 (1983).

⁵ See *McEntee v. Merit Sys. Prot. Bd.*, 404 F.3d 1320 (Fed. Cir. 2005).

⁶ *McEntee*, 404 F.3d at 1334.

⁷ See *Campbell v. Merit Sys. Prot. Bd.*, 27 F.3d 1560, 1566 (Fed. Cir. 1994).

⁸ See *id.*



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

February 21, 2019

(b)(6); (b)(7)(C)

VIA EMAIL

(b)(6); (b)(7)(C)

Re: OSC File No. AD-19

(b)(6); (b)(7)(C)

Dear (b)(6); (b)(7)(C)

This letter is in response to your request for an advisory opinion concerning the Hatch Act.¹ Specifically, you asked whether the Hatch Act would prohibit you, a (b)(6); (b)(7)(C) Department of Transportation (b)(6); (b)(7)(C) employee, from being a candidate for (b)(6); court judge. As explained below, OSC has concluded that the Hatch Act does not prohibit you from being a candidate for partisan political office.

The Hatch Act governs the political activity of certain state and local government employees in order to protect the public workforce from partisan political influence and ensure the nonpartisan administration of laws.² Only those state and local government employees whose principal employment is in the executive branch, or an agency or department thereof, and who have duties in connection with an activity financed in whole or in part by loans or grants made by the United States or a federal agency are subject to the Hatch Act.³ Such employees may not: (1) use their official authority or influence for the purpose of interfering with or affecting the result of an election; (2) coerce, attempt to coerce, command, or advise another state or local government employee to engage in political activity; or (3) be a candidate for elective office, if the employee's salary is paid entirely by loans or grants made by the United States or a federal agency.⁴

You are an enforcement officer with (b)(6); (b)(7)(C). OSC confirmed with your employer that no part of your salary is federally funded and that you do not have any duties in connection with federally funded activities. Accordingly, you are not covered by the Hatch Act, and it does not prohibit you from being a candidate for (b)(6); court judge. If you have any questions, please contact Jacqueline Yarbrow at (202) 804- (b)(6);

Sincerely,

(b)(6); (b)(7)(C)

Erica S. Hamrick
Deputy Chief, Hatch Act Unit

¹ The U.S. Office of Special Counsel is authorized pursuant to 5 U.S.C. § 1212(f) to issue opinions interpreting the Hatch Act.

² See generally 5 U.S.C. §§ 1501-1508.

³ 5 U.S.C. § 1501(4).

⁴ 5 U.S.C. § 1502(a)(1)-(3).



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

April 29, 2019

(b)(6); (b)(7)(C)

VIA EMAIL

(b)(6); (b)(7)(C)

Re: OSC File No. HA-19

(b)(6);
(b)(7)(C)

Dear

(b)(6); (b)(7)(C)

This letter is in response to your request to the U.S. Office of Special Counsel (OSC) for an advisory opinion concerning the Hatch Act.¹ Specifically, you asked whether the Hatch Act would prohibit you from running for local partisan political office. As explained below, OSC has concluded that the Hatch Act would not prohibit you from being a candidate in this election.

The Hatch Act governs the political activity of certain state and local government employees in order to protect the public workforce from partisan political influence and ensure the nonpartisan administration of government programs.² Among other things, the Hatch Act prohibits state and local employees whose salaries are entirely federally funded from being candidates for partisan political office.³

You explained that you are an employee with the (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) and that you plan to run for local partisan political office. OSC confirmed with your agency that, while you provide Medicaid services that are partially funded by the federal government, your salary is not one hundred percent federally funded.

Because your salary is not entirely federally funded, the Hatch Act does not prohibit you from running for local partisan political office. However, please note that although the Hatch Act does not prohibit you from being a candidate, you are subject to the Hatch Act's other two restrictions while you are in your current position. State and local government employees who perform job duties in connection with a program or activity financed with federal grants or loans are prohibited from: (1) using their official authority or influence to affect the results of an election; and (2) coercing, attempting to coerce, commanding, or advising another employee to engage in political activity.⁴ Examples of activities that violate these two prohibitions include telling other employees to volunteer for a political campaign or give a campaign contribution and asking subordinate employees to engage in political activity in support of or opposition to a candidate for partisan political office.

¹ The U.S. Office of Special Counsel is authorized pursuant to 5 U.S.C. § 1212(f) to issue opinions interpreting the Hatch Act.

² See 5 U.S.C. §§ 1501-1508.

³ See 5 U.S.C. § 1502(a)(3).

⁴ See 5 U.S.C. § 1502(a)(1)-(2); § 1501(4).

If you have any questions, please contact Hatch Act Unit Attorney Jacqueline Yarbrow at
(202) 804- (b)(6); (b)(7)(C)

Sincerely,

(b)(6); (b)(7)(C)

Erica S. Hamrick
Deputy Chief
Hatch Act Unit



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

February 27, 2019

(b)(6); (b)(7)(C)

VIA ELECTRONIC MAIL:

(b)(6); (b)(7)(C)

Re: OSC File No. AD-19-

(b)(6); (b)(7)(C)

Dear

(b)(6); (b)(7)(C)

This letter responds to your request for an advisory opinion concerning the Hatch Act. Pursuant to 5 U.S.C. § 1212(f), the U.S. Office of Special Counsel (OSC) is authorized to issue opinions interpreting the Hatch Act. You ask whether the Hatch Act prohibits you from being a candidate for city council in (b)(6); (b)(7)(C). OSC understands that you are an (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) with the U.S. Department of Commerce (Commerce). As explained below, the Hatch Act does not prohibit you from being a candidate for city council.

The Hatch Act governs the political activity of federal civilian executive branch employees, including Commerce employees.¹ Among other things, the Hatch Act prohibits employees from being candidates for partisan political office.² A partisan political office is any office for which any candidate is nominated, or elected, as representing a party any of whose candidates for presidential elector received votes in the most recent presidential election.³ Examples of parties that meet this definition include the Republican or Democratic Party.

According to the (b)(6); (b)(7)(C) County Election's Department, the election for (b)(6); (b)(7)(C) City Council is nonpartisan. While the Hatch Act prohibits candidacy in a partisan election, it does not prohibit candidacy in a nonpartisan election. Therefore, the Hatch Act does not prohibit you from being a candidate in the nonpartisan election for city council.

¹ See generally 5 U.S.C. §§ 7321-7326.

² 5 U.S.C. § 7323(a)(3). The Hatch Act also prohibits employees 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; knowingly soliciting or discouraging the political activity of any individual with business before their employing office; and engaging in political activity while on duty, in a government building, while wearing an official uniform or insignia, or using an official vehicle. 5 U.S.C. § 7323(a) and § 7324. Political activity is defined as activity directed toward the success or failure of a political party, partisan political group, or candidate for partisan political office. 5 C.F.R. § 734.101.

³ This definition does not include any office or position within a political party or affiliated organization. See 5 C.F.R. § 734.101.

Usually a nonpartisan election is designated as such by state or local law. The law, however, creates only a rebuttable presumption that an election is nonpartisan.⁴ Evidence showing that partisan politics actually entered a candidate's campaign may rebut this presumption.⁵ But no bright-line rule exists that identifies the type or amount of conduct (either by the candidate or party) needed to prove that a statutorily designated nonpartisan election, in fact, became a partisan one.⁶

Each case will present a unique combination of facts that will either show that the candidate was politically independent or not.⁷ So, the ultimate answer regarding what activity may change a nonpartisan election into a partisan one rests on the totality of the circumstances.⁸ Accordingly, a nonpartisan election could become partisan if, for instance, one of the candidates were to: participate in and win a party caucus; hold himself out as having the party's political support by advertising this in his speeches, flyers, or mailings; seek and advertise the political party's endorsement; or receive party support in the form of supplies (e.g., wooden stakes for signs, bulk mail permit), campaign volunteers, campaign publications (e.g., flyers, posters), or use of party headquarters. Please note, that the foregoing list is illustrative only and is not an exhaustive list of the unique combination of facts that could change a nonpartisan election into a partisan one.

In conclusion, while the Hatch Act does not prohibit you from being a candidate in the nonpartisan election for city council, you should refrain from engaging in any of the types of activities discussed above. Please contact Hatch Act Unit Attorney Kelley Resendes at (202) 804-

(b)(6); (b)(7)(C) if you have any questions.

Sincerely,

(b)(6); (b)(7)(C)

Erica S. Hamrick
Deputy Chief, Hatch Act Unit

⁴ See *Special Counsel v. Yoho*, 15 M.S.P.R. 409, 413 (1983).

⁵ See *McEntee v. Merit Sys. Prot. Bd.*, 404 F.3d 1320 (Fed. Cir. 2005).

⁶ *McEntee*, 404 F.3d at 1334.

⁷ See *Campbell v. Merit Sys. Prot. Bd.*, 27 F.3d 1560, 1566 (Fed. Cir. 1994).

⁸ See *id.*



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

March 13, 2019

(b)(6); (b)(7)(C)

VIA ELECTRONIC MAIL:

(b)(6); (b)(7)(C)

Re: OSC File No. AD-19 (b)(6); (b)(7)(C)

Dear (b)(6); (b)(7)(C)

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 interpreting the Hatch Act. You ask whether the Hatch Act prohibits you from being a candidate in the partisan election for supervisor of (b)(6); (b)(7)(C) County, (b)(6); (b)(7)(C) OSC understands that you are a maintenance technician II with the (b)(6); (b)(7)(C) Department of Transportation. (b)(6); (b)(7)(C) As explained below, the Hatch Act does not prohibit you from being a candidate for supervisor.

The Hatch Act governs the political activity of certain state and local government employees in order to protect the public workforce from partisan political influence and ensure the nonpartisan administration of government programs.¹ Among other things, the Hatch Act prohibits state and local employees whose salaries are entirely federally funded from being candidates for partisan political office.²

According to the information provided by (b)(6); (b)(7)(C) through your supervisor (b)(6); (b)(7)(C) your salary is not federally funded. Therefore, the Hatch Act does not prohibit you from being a candidate in the partisan election for (b)(6); (b)(7)(C) County Supervisor.

Please note that although the Hatch Act does not prohibit you from being a candidate for partisan political office, you may be subject to the Hatch Act's other two restrictions. State and local government employees who perform job duties in connection with a program or activity financed with federal grants or loans are prohibited from: (1) using their official authority or influence to affect the results of an election; and (2) coercing, attempting to coerce, commanding, or advising another employee to engage in political activity.³ Examples of activities that violate these two prohibitions include: campaigning while in uniform; using pictures of yourself in uniform for campaign purposes; telling other employees to volunteer for a political campaign or give a campaign contribution; and asking subordinate employees to engage in political activity in support of or opposition to a candidate for partisan political office.

¹ See 5 U.S.C. §§ 1501-1508.

² See 5 U.S.C. § 1502(a)(3).

³ See 5 U.S.C. § 1502(a)(1)-(2); § 1501(4).

Please contact OSC Hatch Act Unit Attorney Kelley Resendes at (202) 804-(b)(6);
(b)(7)(C) if you have any questions.

Sincerely,

(b)(6); (b)(7)(C)

Erica S. Hamrick
Deputy Chief, Hatch Act Unit



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

March 8, 2019

(b)(6); (b)(7)(C)

VIA EMAIL

(b)(6); (b)(7)(C)

Re: OSC File No. AD-19

(b)(6); (b)(7)(C)

Dear

(b)(6); (b)(7)(C)

This letter is in response to your request for an advisory opinion concerning the Hatch Act.¹ Specifically, you asked whether the Hatch Act would prohibit you, a (b)(6); (b)(7)(C) Department of State Police Sergeant, from being a candidate for (b)(6); (b)(7)(C) County Circuit Court Clerk, a partisan political office. As explained below, the Hatch Act does not prohibit you from being a candidate for clerk.

The Hatch Act governs the political activity of certain state and local government employees in order to protect the public workforce from partisan political influence and ensure the nonpartisan administration of laws.² Only those state and local government employees whose principal employment is in the executive branch, or an agency or department thereof, and who have duties in connection with an activity financed in whole or in part by loans or grants made by the United States or a federal agency are subject to the Hatch Act.³ A covered employee may not be a candidate for elective office, if the employee's salary is paid completely by loans or grants made by the United States or a federal agency.⁴

The U.S. Office of Special Counsel confirmed with the (b)(6); (b)(7)(C) Department of State Police that your salary is not federally funded. Accordingly, the Hatch Act does not prohibit you from being a candidate for partisan political office.⁵ If you have any questions, please contact Hatch Act Unit Attorney Jacqueline Yarbrow at (202) 804- (b)(6);

Sincerely,

(b)(6); (b)(7)(C)

Erica S. Hamrick
Deputy Chief, Hatch Act Unit

¹ The U.S. Office of Special Counsel is authorized pursuant to 5 U.S.C. § 1212(f) to issue opinions interpreting the Hatch Act.

² See generally 5 U.S.C. §§ 1501-1508.

³ 5 U.S.C. § 1501(4).

⁴ 5 U.S.C. § 1502(a)(3). Covered employees also may not use their official authority or influence for the purpose of interfering with or affecting the result of an election, or coerce, attempt to coerce, command, or advise another state or local government employee to engage in political activity. 5 U.S.C. § 1502(a)(1)-(2). Examples of activities that violate these two prohibitions include telling other employees to volunteer for a political campaign or give a campaign contribution, asking subordinate employees to engage in political activity in support of or opposition to a candidate for partisan political office, or campaigning while in your official capacity or wearing an official uniform.

⁵ Please be advised that if you have duties in connection with federally funded programs, you may be bound by the Hatch Act's restrictions against the use of official authority and coercion of other employees. See 5 U.S.C. § 1502(a)(1)-(2).



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

March 22, 2019

(b)(6); (b)(7)(C)

VIA EMAIL

(b)(6); (b)(7)(C)

Re: OSC File No. AD-19- (b)(6); (b)(7)(C)

Dear (b)(6); (b)(7)(C)

This letter is in response to your request for an advisory opinion concerning the Hatch Act.¹ Specifically, you asked whether a United States Postal Service (USPS) employee could be a candidate in a partisan election for (b)(6); Board of Education even though the local political parties "dual endorse" all candidates. As explained below, the U.S. Office of Special Counsel (OSC) has concluded that the Hatch Act prohibits the USPS employee's candidacy for the board of education.

The Hatch Act governs the political activity of federal executive branch employees, including USPS employees.² And the Hatch Act prohibits employees from being candidates for partisan political office.³ A partisan political office means any office for which *any* candidate is nominated or elected as representing a party any of whose candidates for presidential elector received votes in the last preceding election at which presidential electors were selected, but does not include any office or position within a political party or affiliated organization.⁴

It is our understanding that the employee currently holds a seat on the (b)(6); Board of Education and that (b)(6) was appointed to the seat following a vacancy. You explained that the employee's term expires on (b)(6); 2019, and that (b)(6) would stand for reelection on November 5, 2019, if permitted. You also told OSC that over the last several elections the local political parties have maintained an agreement to endorse each other's candidates for the board of education. Due to the local rules governing the board, you explained that the practical effect of this agreement is that no candidate loses the election unless a third party candidate runs for a position.

¹ The U.S. Office of Special Counsel is authorized pursuant to 5 U.S.C. § 1212(f) to issue opinions interpreting the Hatch Act.

² See 5 U.S.C. §§ 7321-7326; 39 U.S.C. § 410.

³ 5 U.S.C. § 7323(a)(3). The Hatch Act also prohibits employees 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; knowingly soliciting or discouraging the political activity of any individual with business before their employing office; and engaging in political activity while on duty, in a government building, while wearing an official uniform or insignia, or using an official vehicle. See 5 U.S.C. § 7323(a)(1)-(2), (4); 5 U.S.C. § 7324.

⁴ 5 C.F.R. § 734.101.

U.S. Office of Special Counsel

Page 2

OSC confirmed with the (b)(6); (b)(7)(C) County Registrar's Office that the board of education elections are partisan and that candidates appear on the ballot with party designations. Accordingly, and regardless of the agreement between the political parties, the Hatch Act prohibits the USPS employee's candidacy for the (b)(6); Board of Education.⁵ If you have any questions, please contact Hatch Act Unit Attorney Jacqueline Yarbrow at (202) 804-(b)(6); (b)(7)(C)

Sincerely,

(b)(6); (b)(7)(C)

Erica S. Hamrick
Deputy Chief
Hatch Act Unit

⁵ You asked if the employee could run for a board position if (b)(6) did so without party affiliation. Because other candidates would still appear on the ballot with party designation, the board of education election would remain partisan. Accordingly, the employee would be prohibited from being a candidate.



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

April 2, 2019

(b)(6); (b)(7)(C)

Re: OSC File No. AD-19-

(b)(6); (b)(7)(C)

Dear

(b)(6); (b)(7)(C)

This letter is in response to your request for an advisory opinion concerning the Hatch Act.¹ Specifically, you ask whether the Hatch Act prohibits you from wearing a hat that includes the text "Make America Great Again" while you are at work for the U.S. Postal Service (USPS).

The Hatch Act restricts the political activity of federal civilian executive branch employees, including USPS employees.² Employees are prohibited from, among other things, engaging in political activity while on duty, in a federal room building, wearing a uniform or official insignia, or using a government vehicle.³ Political activity is defined as any activity directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group.⁴ On March 5, 2018, OSC issued guidance stating that because President Donald Trump is a candidate for reelection, activity in support of or in opposition to his candidacy constitutes political activity for the purposes of the Hatch Act.⁵ Accordingly, the use or display of "Make America Great Again," "MAGA," or any other materials or slogans from President Trump's 2016 or 2020 campaigns constitutes political activity.

The hat you described in your request for this advisory opinion includes the text "Make America Great Again," a slogan used in support of President Trump's candidacy for partisan political office. Therefore, wearing or otherwise displaying this hat constitutes political activity for the purposes of the Hatch Act, and the Act prohibits you from wearing it while on duty, in a federal room or building, wearing a uniform or other official insignia, or using a government vehicle. Please contact me at 202-804-

(b)(6);
(b)(7)(C)

Sincerely,

(b)(6); (b)(7)(C)

Erica S. Hamrick
Deputy Chief, Hatch Act Unit

¹ The U.S. Office of Special Counsel (OSC) is authorized to issue opinions interpreting the Hatch Act, pursuant to 5 U.S.C. § 1212(f).

² See 5 U.S.C. §§ 7321-7326; 39 U.S.C. § 410.

³ 5 U.S.C. § 7324(a)(1)-(4).

⁴ 5 C.F.R. § 734.101.

⁵ See OSC's March 5, 2018 "Updated Guidance Regarding the Hatch Act and President Trump Now That He Is Officially a Candidate for Reelection," available at:

<https://osc.gov/Resources/Candidate%20Trump%20Hatch%20Act%20Guidance%203-5-2018.pdf> (enclosed).



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

March 29, 2019

(b)(6); (b)(7)(C)

VIA ELECTRONIC MAIL:

(b)(6); (b)(7)(C)

Re: OSC File No. AD-19

(b)(6); (b)(7)(C)

Dear (b)(6); (b)(7)(C)

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 interpreting the Hatch Act. You ask whether the Hatch Act prohibits you from using pictures of yourself in an official (b)(6); County Sheriff's Office (b)(6); uniform to promote your anticipated candidacy in the partisan election for sheriff of (b)(6); County. (b)(6); OSC understands that you are currently a lieutenant with (b)(6); but your last day at (b)(6); (b)(7)(C)

Employees covered by the Hatch Act 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.² A state or local employee covered by the Hatch Act is prohibited from: (1) using his official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for office; or (2) coercing, attempting to coerce, commanding, or advising a state or local officer or employee to pay, lend, or contribute anything of value for political purposes.³

You explained that you will announce and promote your candidacy for sheriff after (b)(6); your last day of employment with (b)(6); (b)(7)(C). Once you are no longer employed with (b)(6); the Hatch Act would not prohibit you from using pictures of yourself in an official (b)(6); uniform to promote your candidacy.⁴

However, you explained that on (b)(6); 2019, you will be employed by the (b)(6); Police Department (b)(6); and have duties in connection with a federally funded program.⁵ Thus, you will be covered by the Hatch Act in your (b)(6); position and subject to the two prohibitions discussed above. Therefore, you will be prohibited from: using pictures of yourself in an official (b)(6); uniform (b)(7)(C)

¹ OSC understands that you have not yet announced your candidacy for sheriff but intend to do so (b)(6); (b)(7)(C)

² 5 U.S.C. § 1501(4).

³ 5 U.S.C. § 1502(a)(1)-(2). Additionally, the Hatch Act prohibits only those employees whose salary is fully federally funded from being candidates for public office in a partisan election. 5 U.S.C. § 1502(a)(3).

⁴ Because your activity would occur after you are no longer a (b)(6); employee, OSC makes no determination as to whether you are currently covered by the Hatch Act in your (b)(6); position.

⁵ You explained to OSC that you will be working with a (b)(6); program that receives federal funding to prevent driving while under the influence. You also explained that your salary will not be entirely federally funded.

in campaign advertisements, web pages, signs, or literature; campaigning while in uniform; using your official title, or otherwise trading on the influence of your position, while engaged in political activity; campaigning while representing (b)(6); in an official capacity, even if not in uniform; telling other employees to volunteer for a political campaign or give a campaign contribution; and asking subordinate employees to engage in political activity in support of or opposition to a candidate for partisan political office.

Should you have any questions, please contact OSC Hatch Act Unit Attorney Kelley Resendes at (202) 804- (b)(6); (b)(7)(C)

Sincerely,

(b)(6); (b)(7)(C)

Erica S. Hamrick
Deputy Chief, Hatch Act Unit



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

April 4, 2019

(b)(6); (b)(7)(C)

VIA EMAIL

(b)(6); (b)(7)(C)

Re: OSC File No. AD-19

(b)(6); (b)(7)(C)

Dear

(b)(6); (b)(7)(C)

This letter is in response to your request to the U.S. Office of Special Counsel (OSC) for an advisory opinion concerning the Hatch Act.¹ Specifically, you asked whether the Hatch Act would prohibit you from running for local partisan political office. As explained below, OSC has concluded that the Hatch Act would not prohibit you from being a candidate in this election.

The Hatch Act governs the political activity of certain state and local government employees in order to protect the public workforce from partisan political influence and ensure the nonpartisan administration of government programs.² Among other things, the Hatch Act prohibits state and local employees whose salaries are entirely federally funded from being candidates for partisan political office.³

In a telephone conversation with an OSC attorney, you explained that you are under an employment contract as the executive director of the (b)(6); (b)(7)(C) Housing Authority, your contract expires in (b)(6); (b)(7)(C) 2019, and it will not be renewed. However, you plan to run for local office, and the primary for that election is in May 2019. But you informed OSC that your salary is only 80 percent federally funded.

According to the information you provided to our office, because your salary is not entirely federally funded, the Hatch Act does not prohibit you from running for local partisan political office. However, please note that although the Hatch Act does not prohibit you from being a candidate, you are subject to the Hatch Act's other two restrictions while you are in your current position. State and local government employees who perform job duties in connection with a program or activity financed with federal grants or loans are prohibited from: (1) using their official authority or influence to affect the results of an election; and (2) coercing, attempting to coerce, commanding, or advising another employee to engage in political activity.⁴ Examples of

¹ The U.S. Office of Special Counsel is authorized pursuant to 5 U.S.C. § 1212(f) to issue opinions interpreting the Hatch Act.

² See 5 U.S.C. §§ 1501-1508.

³ See 5 U.S.C. § 1502(a)(3).

⁴ See 5 U.S.C. § 1502(a)(1)-(2); § 1501(4).

U.S. Office of Special Counsel

Page 2

activities that violate these two prohibitions include telling other employees to volunteer for a political campaign or give a campaign contribution and asking subordinate employees to engage in political activity in support of or opposition to a candidate for partisan political office.

If you have any questions, please contact Hatch Act Unit Attorney Jacqueline Yarbrow at (202) 804-(b)(6); (b)(7)(C)

Sincerely,

(b)(6); (b)(7)(C)

Erica S. Hamrick
Deputy Chief
Hatch Act Unit



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

April 1, 2019

(b)(6); (b)(7)(C)

VIA E-MAIL:

(b)(6); (b)(7)(C)

Re: OSC File No. AD-19-

(b)(6);
(b)(7)(C)

Dear

(b)(6); (b)(7)(C)

This letter is in response to your request for an advisory opinion concerning the Hatch Act.¹ Specifically, you ask whether participation in a Master of Public Administration (MPA)

(b)(6);
(b)(7)(C)

class at the (b)(6); University School of

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

constitutes political activity for purposes of the Hatch Act. Our guidance is below.

The Hatch Act governs the political activity of federal civilian executive branch employees and prohibits them 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 employing office.² The Hatch Act also prohibits employees from engaging in political activity while on duty, in a government building, while wearing an official uniform or insignia, or using an official vehicle.³ Political activity is defined as activity directed toward the success or failure of a political party, partisan political group, or candidate for partisan political office.⁴ In addition, employees in certain agencies and positions, such as career members of the senior executive service, are “further restricted” and prohibited from actively participating in partisan political management and campaigning.⁵ Such employees are prohibited from engaging in any political activity that is “in concert” with a political party, partisan group, or candidate for partisan political office.⁶

¹ The U.S. Office of Special Counsel (OSC) is authorized pursuant to 5 U.S.C. § 1212(f) to issue opinions interpreting the Hatch Act.

² 5 U.S.C. § 7323(a)(1)-(4).

³ 5 U.S.C. § 7324.

⁴ 5 C.F.R. § 734.101.

⁵ See 5 U.S.C. § 7323(b)(2); 5 C.F.R. § 734.401(a).

⁶ See, e.g., *Blaylock v. U.S. Merit Sys. Prot. Bd.*, 851 F.2d 1348, 1354 (11th Cir. 1988) (concluding that “the statutory prohibition against taking an ‘active part in political management or in political campaigns’

U.S. Office of Special Counsel

Page 2

At issue is participation by federal employees, including some who are further restricted under the Hatch Act, in the MPA (b)(6); class (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) You explained that the (b)(6); class acts as a consulting company for a real-world client and that the project for this particular class is to develop a set of quantitative metrics for two non-profit groups that are interested in supporting funding for science research. The ultimate goal of the (b)(6); (b)(7)(C) which the class participants will develop, is to enable voters to know how well legislators supported science research and how much legislators use science, or evidence-based research, in their legislative decision-making. You explained that (b)(6); (b)(7)(C) is one of the two clients, and it plans to use the (b)(6); (b)(7)(C) results in an application it has developed to assist voters learn how legislators have or have not supported science research and education.

You ask whether the employees who are developing the (b)(6); (b)(7)(C) as part of their participation in the (b)(6); class are engaging in political activity for purposes of the Hatch Act. OSC has considered this issue and the fact that the employees' work will be used in an application to help inform voters' decision-making. But, ultimately, the employees are working on this project to complete the course requirements to earn an MPA and not for the purpose of promoting or opposing a candidate or political party. Therefore, based on these unique circumstances, we have concluded that the Hatch Act does not restrict the employees' participation in the class project.

Please contact me at (202) 804-(b)(6); (b)(7)(C) if you have any questions regarding this matter.

Sincerely,

(b)(6); (b)(7)(C)

Erica S. Hamrick
Deputy Chief
Hatch Act Unit

encompasses only active participation in, on behalf of, or in connection with, the organized efforts of political parties or partisan committees, clubs, and candidates"); 5 C.F.R. § 734.402.



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

April 24, 2019

(b)(6); (b)(7)(C)

VIA ELECTRONIC MAIL:

(b)(6); (b)(7)(C)

Re: OSC File No. AD-19-

(b)(6); (b)(7)(C)

Dear

(b)(6); (b)(7)(C)

This letter is in response to your request for an advisory opinion concerning the Hatch Act. Pursuant to 5 U.S.C. § 1212(f), the U.S. Office of Special Counsel (OSC) is authorized to issue opinions interpreting the Hatch Act. You ask several questions about whether the Hatch Act prohibits you from being a candidate in the election for board of supervisors in (b)(6); County, (b)(6); (b)(7)(C). OSC understands that you are employed by the U.S. Postal Service (USPS). Your questions are addressed below.

1. Does the Hatch Act prohibit you from being a candidate for board of supervisors?

The Hatch Act governs the political activity of federal civilian executive branch employees, including USPS employees.¹ Among other things, the Hatch Act prohibits employees from being candidates for partisan political office.² A partisan political office is any office for which any candidate is nominated, or elected, as representing a party any of whose candidates for Presidential elector received votes in the most recent Presidential election.³ Examples of parties that meet this definition include the Republican or Democratic Party.

According to the information provided by the (b)(6); (b)(7)(C) County Circuit Clerk's Office, the board of supervisors position is partisan political office. Accordingly, the Hatch Act prohibits you from being a candidate in the election for that office.

¹ See generally 5 U.S.C. §§ 7321-7326; 39 U.S.C. § 410.

² 5 U.S.C. § 7323(a)(3). Covered employees are also 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; knowingly soliciting or discouraging the political activity of any individual with business before their employing office; and engaging in political activity while on duty, in a government building, while wearing an official uniform or insignia, or using an official vehicle. 5 U.S.C. § 7323(a) and § 7324.

³ This definition does not include any office or position within a political party or affiliated organization. See 5 C.F.R. § 734.101.

2. Would the Hatch Act prohibit you from being a candidate if you worked only part-time for USPS?

Employees who work on an irregular or occasional basis are subject to the Hatch Act's prohibitions only when on duty.⁴ The Hatch Act regulations define occasional as "occurring infrequently, at irregular intervals, and according to no fixed or certain scheme; acting or serving for the occasion or only on particular occasions."⁵ However, employees who have regular tours of duty do not meet the Hatch Act's definition of occasional. To illustrate, a part-time employee who works every Saturday does not work on an irregular or occasional basis and is subject to the Hatch Act at all times.⁶

You explained that if you were a part-time employee at USPS, you would work on an as-needed basis but be guaranteed to work at least one scheduled day per week. Because you would work at least one regularly scheduled day per week, you would not meet the Hatch Act's definition of occasional or irregular. Therefore, even if you worked part time for USPS, the Hatch Act still would prohibit you from being a candidate in the partisan election for board of supervisors.

3. Under what circumstances, if any, could you become a candidate in the partisan election for board of supervisors?

As previously mentioned, the Hatch Act prohibits you, as a USPS employee, from being a candidate in the partisan election for board of supervisors. Therefore, you would have to resign from USPS to be a candidate in the election.

Please contact OSC Hatch Act Unit Attorney Kelley Resendes at (202) 804-(b)(6);
(b)(7)(C) if you have any questions.

Sincerely,

(b)(6); (b)(7)(C)

Erica S. Hamrick
Deputy Chief, Hatch Act Unit

⁴ See 5 C.F.R. § 734.601.

⁵ See 5 C.F.R. § 734.101.

⁶ See *Kane v. Merit Systems Protection Bd.*, 210 F.3d 1379, 1382 (2000) (concluding that a USPS employee who worked every Saturday had a regular tour of duty and, as such, was not an irregular or occasional employee for purposes of the Hatch Act).



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

May 21, 2019

(b)(6); (b)(7)(C)

VIA ELECTRONIC MAIL:

(b)(6); (b)(7)(C)

Re: OSC File No. AD-19-

(b)(6); (b)(7)(C)

Dear

(b)(6); (b)(7)(C)

This letter is in response to your request for an advisory opinion concerning the Hatch Act. Pursuant to 5 U.S.C. § 1212(f), the U.S. Office of Special Counsel (OSC) is authorized to issue opinions interpreting the Hatch Act. You ask whether the Hatch Act prohibits you from being a candidate in the 2020 partisan election for county executive in (b)(6); (b)(7)(C) County, (b)(6); (b)(7)(C) OSC understands that you are seeking part-time, temporary employment with the U.S. Census Bureau (Census) as a field representative. Your question is addressed below.

The Hatch Act governs the political activity of federal civilian executive branch employees, including Census employees.¹ Among other things, the Hatch Act prohibits employees from being candidates for partisan political office.² A partisan political office is any office for which any candidate is nominated, or elected, as representing a party any of whose candidates for Presidential elector received votes in the most recent Presidential election.³ Examples of parties that meet this definition include the Republican or Democratic Party.

However, employees who work on an irregular or occasional basis are subject to the Hatch Act's prohibitions only while on duty.⁴ The Hatch Act regulations define occasional as "occurring infrequently, at irregular intervals, and according to no fixed or certain scheme; acting or serving for the occasion or only on particular occasions."⁵

You explained that, as field representative, you would be a temporary employee who, among other things, collects census data by conducting door-to-door surveys. You would set your own

¹ See generally 5 U.S.C. §§ 7321-7326.

² 5 U.S.C. § 7323(a)(3). Covered employees are also 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; knowingly soliciting or discouraging the political activity of any individual with business before their employing office; and engaging in political activity while on duty, in a government building, while wearing an official uniform or insignia, or using an official vehicle. 5 U.S.C. § 7323(a) and § 7324.

³ This definition does not include any office or position within a political party or affiliated organization. See 5 C.F.R. § 734.101.

⁴ See 5 C.F.R. § 734.601.

⁵ See 5 C.F.R. § 734.101.

schedule, which could include weekdays and weekends, to meet with supervisors and complete your assigned surveys. Your schedule would vary based on your availability and the agency's fluctuating workload, but you explained that you anticipate working approximately 20 hours a week.⁶

Accordingly, given the flexibility of your schedule and temporary nature of your employment, you would be an irregular or occasional employee under the Hatch Act who is subject to the Act's prohibitions only while on duty. Therefore, provided you do not campaign or otherwise promote your candidacy while on duty, your candidacy for county executive would not violate the Hatch Act.

Please contact OSC Hatch Act Unit Attorney Kelley Resendes at (202) 804-(b)(6);
(b)(7)(C) if you have any questions.

Sincerely,

(b)(6); (b)(7)(C)

Erica S. Hamrick
Deputy Chief, Hatch Act Unit

⁶ You also explained that you would work for Census for approximately four to six months and that you have not been guaranteed any future employment with the agency.



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

June 11, 2019

(b)(6); (b)(7)(C)

VIA ELECTRONIC MAIL:

(b)(6); (b)(7)(C)

Re: OSC File No. AD-19

(b)(6); (b)(7)(C)

Dear

(b)(6); (b)(7)(C)

This letter is in response to your request for an advisory opinion concerning the Hatch Act. Pursuant to 5 U.S.C. § 1212(f), the U.S. Office of Special Counsel (OSC) is authorized to issue opinions interpreting the Hatch Act. You ask whether the Hatch Act prohibits you from starting (b)(6); (b)(7)(C) a 501(c)(3) nonprofit organization. OSC understands that you work for the U.S. Department of Veterans Affairs (VA). As explained below, the Hatch Act does not prohibit you from engaging in this activity.

The Hatch Act governs the political activity of federal civilian executive branch employees, including VA employees.¹ The Hatch Act prohibits employees from the following: using their official authority or influence for the purpose of affecting the result of an election; being candidates for partisan political office; knowingly soliciting, accepting, or receiving political contributions from any person; knowingly soliciting or discouraging the political activity of any individual with business before their employing office; and engaging in political activity while on duty, in a government building, while wearing an official uniform or insignia, or using an official vehicle.² The Hatch Act regulations define political activity as activity directed toward the success or failure of a political party, partisan political group, or candidate for partisan political office.³

You explained that the purpose of (b)(6); (b)(7)(C) would be to help veterans by, among other things, explaining VA benefits and services while giving them (b)(6); (b)(7)(C). You said the nonprofit organization would not engage in any political activity. Based on what you have described, there are no Hatch Act concerns with you starting this nonprofit organization. But this opinion addresses only the Hatch Act. You should speak with VA ethics officials about any other rules or regulations that may apply to your proposed activity. Please contact OSC Hatch Act Unit Attorney Kelley Resendes at (202) 804-(b)(6); (b)(7)(C) if you have any questions.

Sincerely,

(b)(6); (b)(7)(C)

Erica S. Hamrick
Deputy Chief, Hatch Act Unit

¹ See generally 5 U.S.C. §§ 7321-7326.

² 5 U.S.C. § 7323(a) and § 7324.

³ 5 C.F.R. § 734.101.



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

July 2, 2019

(b)(6); (b)(7)(C)

VIA EMAIL

(b)(6); (b)(7)(C)

Re: OSC File No. AD-19

(b)(6); (b)(7)(C)

Dear

(b)(6); (b)(7)(C)

This letter is in response to your request for an advisory opinion concerning the Hatch Act. The U.S. Office of Special Counsel is authorized pursuant to 5 U.S.C. § 1212(f) to issue opinions interpreting the Hatch Act. Specifically, you asked whether the Hatch Act would prohibit you, an Assistant United States Attorney with the U.S. Department of Justice (DOJ), from being a candidate for city council president for the city of (b)(6); (b)(7)(C). As explained below, the Hatch Act does not prohibit your candidacy.

The Hatch Act governs the political activity of federal civilian executive branch employees, including DOJ employees.¹ Among other things, the Hatch Act prohibits employees from being candidates for public office in partisan elections.² An election is partisan if any candidate is nominated or elected as representing, for example, the Republican or Democratic Party.

OSC called the (b)(6); (b)(7)(C) Board of Elections Director and confirmed that the (b)(6); (b)(7)(C) City Council election is nonpartisan and that party affiliation is not listed on the ballot. While the Hatch Act prohibits candidacy in a partisan election, it does not prohibit candidacy in a nonpartisan election. Accordingly, the Hatch Act does not prohibit you from being a candidate for city council president.

Usually a nonpartisan election is designated as such by state or local law. The law, however, creates only a rebuttable presumption that an election is nonpartisan.³ Evidence showing that partisan politics actually entered a candidate's campaign may rebut this presumption.⁴ But no bright-line rule exists that identifies the type or amount of conduct (either

¹ See generally 5 U.S.C. §§ 7321-7326.

² 5 U.S.C. § 7323(a)(3).

³ See *Special Counsel v. Yoho*, 15 M.S.P.R. 409, 413 (1983).

⁴ See *McEntee v. Merit Sys. Prot. Bd.*, 404 F.3d 1320 (Fed. Cir. 2005).

U.S. Office of Special Counsel
Page 2

by the candidate or party) needed to prove that a statutorily designated nonpartisan election, in fact, became a partisan one.⁵

Each case will present a unique combination of facts that will either show that the candidate was politically independent or not.⁶ So, the ultimate answer regarding what activity may change a nonpartisan election into a partisan one rests on the totality of the circumstances.⁷ Accordingly, a nonpartisan election could become partisan if, for instance, one of the candidates were to: participate in and win a party caucus; hold himself out as having the party's political support by advertising this in his speeches, flyers or mailings; seek and advertise the political party's endorsement; or receive party support in the form of supplies (e.g., wooden stakes for signs, bulk mail permit), campaign volunteers, campaign publications (e.g., flyers, posters) or use of party headquarters. Please note, that the foregoing list is illustrative only and is not an exhaustive list of the unique combination of facts that could change a nonpartisan election into a partisan one.

In conclusion, while the Hatch Act does not prohibit you from being a candidate in the nonpartisan election for the (b)(6); (b)(7)(C) City Council, you should refrain from engaging in any of the types of activities discussed above. If you have any questions, please contact me at (202) 804 (b)(6); (b)(7)(C)

Sincerely,

(b)(6); (b)(7)(C)

Erica S. Hamrick
Deputy Chief
Hatch Act Unit

⁵ *Id.* at 1334.

⁶ See *Campbell v. Merit Sys. Prot. Bd.*, 27 F.3d 1560, 1566 (Fed. Cir. 1994).

⁷ See *id.*



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

June 27, 2019

(b)(6); (b)(7)(C)

VIA ELECTRONIC MAIL:

(b)(6); (b)(7)(C)

Re: OSC File No. AD-19

(b)(6); (b)(7)(C)

Dear

(b)(6); (b)(7)(C)

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 interpreting the Hatch Act. Specifically, you ask whether the Hatch Act prohibits you from being a candidate in the election for (b)(6); (b)(7)(C) City Council (b)(6); (b)(7)(C) for the City of (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) OSC understands that you are employed by the U.S. Department of Justice (DoJ). As explained below, the Hatch Act does not prohibit your candidacy.

The Hatch Act governs the political activity of federal civilian executive branch employees, including DoJ employees.¹ As such, employees are prohibited from: being candidates for public office in partisan elections; 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; and knowingly soliciting or discouraging the political activity of any individual with business before their employing office.² The Hatch Act also prohibits employees from engaging in political activity while on duty, in a government building, while wearing an official uniform or insignia, or using an official vehicle.³ Political activity is defined as activity directed toward the success or failure of a political party, partisan political group, or candidate for partisan political office.⁴

According to the (b)(6); (b)(7)(C) County Clerk's Office, the election for (b)(6); (b)(7)(C) City Council (b)(6); (b)(7)(C) for the City of (b)(6); (b)(7)(C) is nonpartisan. While the Hatch Act prohibits candidacy in a partisan election, it does not prohibit candidacy in a nonpartisan

¹ See generally 5 U.S.C. §§ 7321-7326.

² 5 U.S.C. § 7323(a)(1)-(4).

³ 5 U.S.C. § 7324.

⁴ 5 C.F.R. § 734.101.

election. Therefore, the Hatch Act does not prohibit you from being a candidate in the nonpartisan election for City of (b)(6); (b)(7)(C) city council.

Usually a nonpartisan election is designated as such by state or local law. Such classification however, creates only a rebuttable presumption that an election is nonpartisan.⁵ Evidence showing that partisan politics actually entered a candidate's campaign may rebut this presumption.⁶ But no bright-line rule exists that identifies the type or amount of conduct (either by the candidate or party) needed to prove that a statutorily designated nonpartisan election, in fact, became a partisan one.⁷

Each case will present a unique combination of facts that will either show that the candidate was politically independent or not.⁸ Thus, the ultimate answer regarding what activity may change a nonpartisan election into a partisan one rests on the totality of the circumstances.⁹ Accordingly, a nonpartisan election could become partisan if, for instance, one of the candidates were to: participate in and win a party caucus; hold himself out as having the party's political support by advertising this in his speeches, flyers or mailings; seek and advertise the political party's endorsement; or receive party support in the form of supplies (e.g., wooden stakes for signs, bulk mail permit), campaign volunteers, campaign publications (e.g., flyers, posters) or use of party headquarters. Please note, that the foregoing list is illustrative only and is not an exhaustive list of the unique combination of facts that could change a nonpartisan election into a partisan one.

In conclusion, while the Hatch Act does not prohibit you from being a candidate in the nonpartisan election for City Council (b)(6) for the City of (b)(6); (b)(7)(C) you should refrain from engaging in any of the types of activities discussed above. If you have any questions you can reach me at (202) 804- (b)(6); (b)(7)(C)

Sincerely,

(b)(6); (b)(7)(C)

Erica S. Hamrick
Deputy Chief
Hatch Act Unit

⁵ See *Special Counsel v. Yoho*, 15 M.S.P.R. 409, 413 (1983).

⁶ See *McEntee v. Merit Sys. Prot. Bd.*, 404 F.3d 1320, 1332 (Fed. Cir. 2005).

⁷ See *Id.* at 1334.

⁸ See *Campbell v. Merit Sys. Prot. Bd.*, 27 F.3d 1560, 1566 (Fed. Cir. 1994).

⁹ See *Id.*



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-804-7000

July 15, 2019

(b)(6); (b)(7)(C)

VIA ELECTRONIC MAIL:

(b)(6); (b)(7)(C)

Re: OSC File No. AD-19-

(b)(6); (b)(7)(C)

Dear

(b)(6); (b)(7)(C)

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 interpreting the Hatch Act. You ask whether the Hatch Act prohibits you from being a candidate for mayor of (b)(6); (b)(7)(C). OSC understands that you are an adult education instructor for (b)(6); (b)(7)(C). Your question is address below.

The Hatch Act governs the political activity of certain state and local government employees in order to protect the public workforce from partisan political influence and ensure the nonpartisan administration of government programs.¹ Among other things, the Hatch Act prohibits state and local employees whose salaries are entirely federally funded from being candidates for partisan political office.² Notwithstanding the preceding, the Hatch Act does not apply to individuals employed by educational or research institutions, establishments, agencies, or systems that are supported in whole or in part by a state or political subdivision thereof, or by a recognized religious, philanthropic, or cultural organization.³

OSC understands that (b)(6); (b)(7)(C) is an educational institution. Because you are employed by an educational institution, you are not subject to the restrictions of the Hatch Act. Please contact OSC Hatch Act Unit Attorney Kelley Resendes at (202) 804-(b)(6); (b)(7)(C) if you have any questions.

Sincerely,

(b)(6); (b)(7)(C)

Erica S. Hamrick
Deputy Chief, Hatch Act Unit

¹ See generally 5 U.S.C. §§ 1501-1508.

² See 5 U.S.C. § 1502(a)(3).

³ See 5 U.S.C. § 1501(4)(B).