



U.S. OFFICE OF SPECIAL COUNSEL

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April 20, 2006

Ms. Mary Lynne Newell
Sixth Judicial District Attorney
201 North Copper
P.O. Box 1025
Silver City, NM 88062

Re: OSC File No. AD-06-0147

Dear Ms. Newell:

This letter is in response to your request for an advisory opinion concerning the Hatch Act. The Office of Special Counsel (OSC) is authorized pursuant to 5 U.S.C. § 1212(f) to issue opinions under the Act. Specifically, you ask whether an attorney in the Sixth Judicial District Attorney's Office ("DA's Office"), who is entirely funded by the federal High Intensity Drug Trafficking Area ("HIDTA") program, must resign from his position because of his current candidacy in a partisan election. We have reviewed this matter, and as explained below, we do not believe that the attorney at issue is covered by the provisions of the Hatch Act, and thus, the Act does not prohibit his candidacy in a partisan election.

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). Coverage is not dependent on the source of an employee's salary, nor is it dependent upon whether the employee actually administers the funds or has policy duties with respect to them. See Special Counsel v. Williams, 56 M.S.P.R. 277, 283-84 (1993), aff'd, Williams v. M.S.P.B., 55 F.3d 917 (4th Cir. 1995). An employee covered by the Act may not, among other things, be a **candidate for public office in a partisan election**, i.e., an election in which any candidate represents, for example, the Republican or Democratic Party.

You explained that in New Mexico, the DA's Office is not in the executive branch of government; they are part of the judicial branch. Accordingly, because the Hatch Act applies only to employees in executive agencies, an attorney in the DA's Office is not covered by the provisions of the Act. Therefore, the Act does not prohibit such an attorney from being a candidate in a partisan election, even if his salary is entirely funded by a federal grant. Consequently, the attorney does not have to resign from his position with the DA's Office to be in compliance with the Hatch Act.

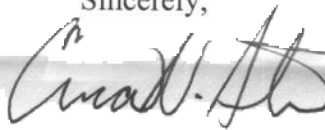
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You have expressed concern that because the attorney's salary is funded by the HIDTA program, receipt of this federal grant funding might make the Hatch Act apply to him. However, as we have discussed, whether the HIDTA grant agreement with the federal government requires that employees paid by its funding be subject to the restrictions of the Hatch Act is a contractual matter that OSC is not in a position to address. This is an issue that can only be addressed by the grantor, which you explained is the Office of National Drug Control Policy.

Please contact me at (202) 254-3650 if you have any additional questions regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Erica N. Stern", is written over a horizontal grey brushstroke.

Erica N. Stern
Attorney
Hatch Act Unit