



# Hatch Act Does Not Apply to Employee Who Merely Uses Equipment Purchased with Federal Funds

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The United States Office of Special Counsel (OSC) issued an advisory opinion regarding coverage of the Hatch Act, a federal law restricting the political activity of some government employees, as well as some employees of Community Action Agencies (CAAs) and Head Start grantees. The OSC determined that the law did not apply to a captain/supervisor who worked for a county sheriff's office and that the employee therefore could run for office in a partisan election.<sup>1</sup>

The Hatch Act applies to executive branch federal employees and to state and local employees who are principally employed in connection with programs financed in whole or in part by federal loans or grants.<sup>2</sup> By virtue of the federal laws authorizing the Head Start and Community Service Block Grant (CSBG) programs, which deem organizations receiving funding under those programs to be state or local agencies for purposes of the Hatch Act, Head Start employees and some CAA employees are also covered by some or all of the law's political activity restrictions.<sup>3</sup>

Under the state and local employee version of the Hatch Act (which also applies to covered CAA and Head Start employees), covered employees are prohibited from running for office in a partisan election (candidacy in a non-partisan election is permitted),<sup>4</sup> using their official authority to affect the results of an election or nomination, and coercing (directly or indirectly), commanding or advising a state or local employee to make a political contribution. Asking a subordinate to make a political contribution is considered coercion.<sup>5</sup>

However, it is important to note that not all political activity by covered state and local employees is prohibited by the Hatch Act. Activities that are permitted for all state and local employees include campaigning for and holding office in a political club or organization, contributing money to political organizations, and attending political fundraising functions.<sup>6</sup> Additionally, any state or local employee may vote in any election, express his or her views on political issues, and campaign for candidates.<sup>7</sup> All of these permitted activities must be conducted in the employee's capacity as a private citizen, on his or her own time, and not using resources of his or her employer.

Whether or not a particular state or local employee is covered by the Hatch Act is determined by whether he or she is principally employed in connection with a program financed in whole or in part by federal loans or grants.<sup>8</sup> The individual at issue in this advisory opinion was employed as a

captain/supervisor at a county sheriff's office, which was funded by five federal grants. These included three grants from the U.S. Department of Justice, a traffic safety grant from the Governor's Highway Safety Office, and a reimbursement from the U.S. Marshal's Service for housing federal inmates.

In the case of two of the Department of Justice grants and the traffic safety grant, the federal funds paid for the salaries and other benefits and costs associated with specific personnel whose jobs related to those grants. The captain/supervisor was not paid with these funds, nor did the captain/supervisor supervise those employees who were. Therefore, the OSC determined that the captain/supervisor did not perform duties associated with those grants.

With respect to the U.S. Marshal's Service reimbursement for housing federal inmates, the amount of the *per diem* reimbursement was calculated based in part on the salaries of detention center personnel. The salaries of law enforcement personnel at the sheriff's office who neither performed detention functions nor supervised those who did were not taken into account. The OSC determined that the captain/supervisor neither performed detention duties nor supervised those who did, and therefore did not perform any duties associated with the U.S. Marshal's Service reimbursement.

The only grant to which the captain/supervisor was found to have any connection was the third Department of Justice grant, the purpose of which was to purchase equipment to support mobile data terminals in patrol cars. The connection was that the captain/supervisor may use the equipment purchased by the grant. However, the OSC determined that, with respect to a grant used to purchase equipment, only those employees who apply for the federal grants, purchase the equipment, or supervise employees engaging in those activities are subject to the Hatch Act. The OSC advised that merely using the equipment is too attenuated a connection to the grant to lead to coverage by the Hatch Act. Since the OSC determined that the captain/supervisor did not fall within the restrictions of the Hatch Act, that employee was free to run in a partisan election for public office.

This OSC advisory opinion reflects the very fact-specific nature of a determination as to whether a particular employee is covered by the Hatch Act. In this case, where it found that the only connection to a federal grant – use of equipment purchased with federal funds – was very attenuated, OSC concluded that the Hatch Act did not apply to the employee. CAAs, some of whose employees may be covered by the Hatch Act, and others not, would be well-advised to carefully review potential connections between the employee and the CSBG or Head Start-funded programs, and seek legal counsel and possibly an OSC advisory opinion, before making a determination as to Hatch Act coverage.

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<sup>1</sup> OSC File No. AD-06.

<sup>2</sup> 5 U.S.C. §§ 7321-7326 (federal employees) and 5 U.S.C. §§ 1501-1508 (state and local employees).

<sup>3</sup> The CSBG Act states: "For purposes of chapter 15 of Title 5, any entity that assumes responsibility for planning, developing, and coordinating activities under this chapter and receives assistance under this chapter shall be deemed to be a State or local agency. For purposes of paragraphs (1) and (2) of section 1502(a) of such title, any entity receiving assistance under this chapter shall be deemed to be a State or local agency." 42 U.S.C. § 9918(b)(1). The Head Start Act contains a similar provision. See 42 U.S.C. § 9851(a).

<sup>4</sup> According to 5 U.S.C. § 1503 (Nonpartisan candidacies permitted): "[A]ny State or local officer or employee [is not prohibited by the Hatch Act] from being a candidate in any election if none of the candidates is to be nominated or elected at such election as representing a party any of whose candidates for Presidential elector received votes in the last preceding election at which Presidential electors were selected." In connection with CSBG and Head Start, this particular prohibition applies only to those entities that assume responsibility for planning, developing, and coordinating CSBG or Head Start activities and receive CSBG or Head Start funds. If an entity does engage in those planning, developing, and coordinating activities, but does not receive CSBG or Head

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Start funds, only the second and third prohibitions apply.

<sup>5</sup> See *Special Counsel v. Purnell*, 37 M.S.P.R. 184, 195 (1988) and *Special Counsel v. Gallagher*, 44 M.S.P.R. 57, 66 (1990).

<sup>6</sup> Office of Special Counsel, Political Activity and the State and Local Employee, at 4 and 6, available online at [www.osc.gov/documents/hatchact/ha\\_sta.pdf](http://www.osc.gov/documents/hatchact/ha_sta.pdf).

<sup>7</sup> See *id.* and 5 U.S.C. § 1502(b).

<sup>8</sup> CAPLAW received an OSC Advisory Opinion in 1999 stating that OSC interprets the Head Start and CSBG statutes' language to apply the Hatch Act only to those employees of a nonprofit CAA who actually work with the CSBG and Head Start programs (as opposed to those employees who may work with other federally-funded programs).