



U.S. OFFICE OF SPECIAL COUNSEL

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Washington, D.C. 20036-4505

**Federal Hatch Act Advisory:
Voter Registration Drives in the Workplace**

April 14, 2004

Mr. _____

Re: OSC File No. AD-04-xxxx

Dear Mr. _____:

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 binding opinions under the Act. Specifically, you ask us to reconsider an opinion we issued on April 6, 1984, regarding voter registration drives conducted by unions and to provide guidance on how a union that has endorsed a candidate can conduct a nonpartisan voter registration drive in a federal workplace. Although the Hatch Act was amended subsequent to our previous opinion on this subject, the guiding principles of that opinion remain current and relevant to the present analysis, as explained below.

On April 6, 1984,¹ OSC issued an advisory opinion concluding that voter registration drives, sponsored or conducted by a union that has endorsed partisan candidates and has issued public statements to its members emphasizing the importance of voter registration in advancing the campaigns of these candidates, ineluctably must be partisan for purposes of the Hatch Act. Accordingly, we advised that participation by federal employees in such drives would constitute taking an active part in political campaigns and, thus, would be prohibited political activity under the Act.

As you know, Congress passed legislation in 1993 that significantly amended the Hatch Act as it applies to most federal employees. Most federal employees are now permitted to actively participate in partisan political management and partisan political campaigns.² The amendments, however, specifically prohibited any political activity in the workplace. Thus, federal employees are now prohibited from, among other things,

¹ At that time, federal employees were prohibited from taking an active part in political management or political campaigns.

² Federal employees in certain specified agencies and positions remain subject to the Hatch Act prohibitions in effect prior to the 1993 amendments and are not permitted to actively participate in partisan political management and partisan political campaigns. See 5 U.S.C. § 7323(b).

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engaging in political activity while on duty, in any room or building occupied in the discharge of official duties by an individual employed or holding office in the Government of the United States or any agency or instrumentality thereof, while wearing a uniform or official insignia identifying the office or position of the employee, or using any vehicle owned or leased by the Government of the United States or any agency or instrumentality thereof. 5 U.S.C. § 7324. Political activity has been 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. Therefore, the Hatch Act would prohibit a federal employee, while on duty or in his or her workplace, from participating in a partisan voter registration drive, e.g., a drive aimed at helping a political party or candidate succeed.

In determining whether a voter registration drive is partisan, OSC considers all of the circumstances surrounding the drive. Some of the factors relevant to this inquiry, as discussed in our 1984 opinion, include: 1) the political activities of the sponsoring organization; 2) the degree to which that organization has become identified with the success or failure of a partisan political candidate, issue or party (e.g., whether it has endorsed a candidate); 3) the nexus, if any, between the decision to undertake a voter registration drive and the other political objectives of the sponsor; 4) whether particular groups are targeted for registration on the basis of their perceived political preference; and 5) the nature of publicity circulated to targets of the drive immediately prior to or during the drive.

In your letter requesting this advisory opinion, you state that AFGE conducts voter registration in a “strictly non-partisan fashion.” However, as we explained in our 1984 opinion, because voter registration is frequently used as a tool in partisan political campaigns, we cannot accept at face value the assertion that a planned registration drive is nonpartisan. This is particularly true once a union has endorsed a candidate for partisan political office, because at that point, the union has become identified with the success of the endorsed candidate. As such, it is not enough for the union to agree not to solicit registrants on the basis of political party or candidate preference or not to advocate or display support for a particular party or candidate during the drive. If the union’s voter registration drive is part of an effort to advance the campaign of its endorsed candidate, federal employees would not be able to participate, because the Hatch Act prohibits them from engaging in activity directed towards the success of a candidate for partisan political office while on duty or in a federal building.

In sum, the issue you present to our office requires a very fact specific analysis. In light of the above, we believe it would be difficult for a union, or any other organization, to conduct a truly nonpartisan voter registration drive once it has endorsed a candidate for partisan political office. Keep in mind, though, that because of the 1993 amendments, most federal employees are now able to participate in partisan voter registration drives, provided that they are not conducted while on duty, in a government office or building, while wearing an official uniform or insignia, or using a government vehicle. Thus,

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viable means exist by which unions can encourage its members to exercise their fundamental right to vote and participate in the democratic process.

Please contact OSC attorney Erica Stern at 202-254-3650 if you have additional questions regarding this matter.

Sincerely yours,

_____/s/_____

Scott J. Bloch
Special Counsel