



U.S. OFFICE OF SPECIAL COUNSEL

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August 25, 2011

Chief Deputy Robert Gualtieri  
Pinellas County Sheriff's Office  
10750 Ulmerton Road  
Largo, FL 33778

Re: OSC File No. HA-11-3209

Dear Mr. Gualtieri:

The Office of Special Counsel (OSC) has completed its review of allegations that you have engaged in activity prohibited by the Hatch Act. Specifically, it was alleged that you are a candidate in the 2012 partisan election for Pinellas County Sheriff while employed as chief deputy/general counsel of the Pinellas County Sheriff's Office. For the reasons explained below, OSC has concluded that your current candidacy is in violation of the law.

The Hatch Act places certain restrictions on the political activity of public employees. Specifically, federal employees are subject to the Act pursuant to 5 U.S.C. §§ 7321-7326. In addition, the Act applies to employees whose principal position 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 the United States or an agency thereof. 5 U.S.C. §§ 1501-1508. 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). The Hatch Act prohibits these employees from, among other things, being candidates in an election in which any candidate represents, for example, the Republican or Democratic Party.<sup>1</sup> 5 U.S.C. § 1502(a)(3).

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<sup>1</sup> The Hatch Act's prohibition against candidacy "extends not merely to the formal announcement of candidacy but also to the preliminaries leading to such announcement and to canvassing or soliciting support or doing or permitting to be done any act in furtherance of candidacy." 86 Cong. Rec. 2938-2940 (September 1939) (quoting Civil Service Commission, Federal Civil Service Commission, 1226 (D.C. 1939)).

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The Board has long held that employees with supervision or responsibility for the general business affairs of an agency or department receiving federal grants are covered by the Hatch Act by virtue of such supervision or responsibility. See Special Counsel v. Molina-Crespo, No. CB-1216-05-0002-T-1 (March 25, 2005) (Initial Decision), aff'd sub nom. Molina-Crespo v. Merit Sys. Prot. Bd., 547 F.3d 651 (6th Cir. 2008) (Executive Director of the Lorain County Children and Families First Council found to be covered by the Hatch Act because, among other things, he identified revenue and funding sources for his agency and supervised employees who worked on federally funded programs.); see also In re Palmer, 2 P.A.R. 590 (1959), remanded, Palmer v. United States Civ. Serv. Comm'n, 191 F. Supp. 495 (S.D. Ill. 1961), rev'd, 297 F.2d 450, 454 (7th Cir. 1962), cert. denied, 369 U.S. 849 (1962) (individual who supervises employees who work on federally funded programs is subject to the Hatch Act because of his oversight responsibilities for those activities, even if his salary is not federally funded and he has no direct duties in connection with those programs); In re Sheridan, 2 P.A.R. 309 (1948); In re Grant, 2 P.A.R. 156, 157 (1944) (Deputy State Engineer was found to be covered by the Hatch Act because of supervisory responsibilities.)

Per your position description, you are “the designated authority of the Sheriff in the overall management of the Office and shall be authorized, during the absence of the Sheriff, to make decisions on his behalf.” In addition, your job requires “advanced administrative, supervisory, and technical work[,] exercising overall command of the principal organization components of the agency.” You also “supervise[], direct[], and coordinate[], through subordinate officers, the principal organizational components, and the administrative activities of planning, directing, [and] controlling, yearly budget preparation and implementation.” Indeed, according to your campaign website, you “manage the daily operations of all Sheriff’s Office functions.” We understand that you directly supervise several agency employees, including the heads of the grants administration office, the patrol operations bureau, the investigative operations bureau, the detention and corrections bureau, the support services bureau, the inspections bureau, and the general counsel’s office.

According to the information OSC received, the Pinellas County Sheriff’s Office currently receives grants from a number of federal agencies including the Department of Justice (DOJ), Department of Defense, Department of Health and Human Services, Drug Enforcement Agency, Department of Homeland Security, Department of Transportation, Office of National Drug Control Policy, the United States Marshals Service, and the Secret Service. In particular, the office receives a Community Oriented Policing Services grant from DOJ to develop facial recognition applications that are compatible with federal systems. Captain Gregory Handsel is the project leader for this grant. In addition, Kathy Corr, head of the grants administration office, serves as project director for the DOJ-funded after school program. You directly supervise both Captain Handsel and Ms. Corr.

Based on the above, we have concluded that you have duties in connection with federally financed activities. Specifically, you are responsible for the overall management of

the agency, which, as stated above, participates in several federally financed activities. Moreover, you directly supervise two individuals who act as project directors for programs financed by federal grants. In addition, as second in command, you are vested with the authority to act in the sheriff's absence. Consequently, you are covered by the Hatch Act and are prohibited from being a candidate in a partisan election.

This letter serves as notice that OSC has reasonable grounds to conclude that your current candidacy in the partisan election for Sheriff of Pinellas County is in violation of the Hatch Act. Rather than pursue disciplinary action against you at this time, we are providing you with an opportunity to come into compliance with the law. As I explained to you during our August 24, 2011, telephone conversation, you may discontinue your candidacy for sheriff or you may resign, effective immediately, from your employment with the Pinellas County Sheriff's Office.

If you decide 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. In addition, you must stop all campaign activities, including organizing or encouraging a write-in candidacy, and no longer hold yourself out as a candidate.

Failure to pursue one of these options could result in disciplinary action charges being brought against you before the Merit Systems Protection Board, which could result in your removal from your employment. 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 (e.g., a copy of your withdrawal or resignation letter), no later than **Friday, September 9, 2011**.

If you have any questions regarding this matter, please contact me at (202) 254-3642.

Sincerely,

A handwritten signature in black ink, appearing to read 'CSM', with a long horizontal line extending to the right.

Carolyn S. Martorana  
Attorney, Hatch Act Unit