



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

September 29, 2011

[REDACTED]  
[REDACTED]  
[REDACTED]  
VIA EMAIL ([REDACTED]) & US MAIL

Re: OSC File No. HA-11-3734

Dear [REDACTED]

This letter is in response to a complaint you filed with the Office of Special Counsel ("OSC") alleging that Robert Wayne Ivey's candidacy for sheriff in Brevard County, Florida, violates the Hatch Act due to his employment as resident agent-in-charge for the Florida Department of Law Enforcement ("FDLE") in Brevard and Volusia Counties. After reviewing this matter, even if the allegations were substantiated, we believe that we would be unable to obtain any meaningful disciplinary action because Mr. Ivey resigned from his employment with FDLE. Therefore, we make no conclusions as to the merits of the allegations and are closing our file without any further action.

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). See also In re Palmer, 2 P.A.R. 590 (1959), remanded, Palmer v. United States Civil Service Commission, 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). 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.

Allegations such as those described above ordinarily would trigger an investigation by this office, and, if the facts warranted, OSC would file a complaint for disciplinary action



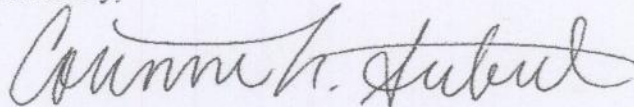
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before the Merit Systems Protection Board ("Board"). Further, if the Board determines that an employee violated the Hatch Act, the Board may decide that the violation warrants the removal of the employee from his employment and notify his employing agency of such a determination. 5 U.S.C. §§ 1505-1506. We note, however, that Mr. Ivey resigned from his employment with FDLE effective September 22, 2011. Therefore, even if we were to conclude that Mr. Ivey's activities violated the Hatch Act, we would be unable to obtain any meaningful disciplinary action in this matter.

Accordingly, we are closing the above-referenced file without further action. Please contact me at 202-254-3635 if you have any questions concerning this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Corinne R. Seibert", written in a cursive style.

Corinne R. Seibert  
Attorney  
Hatch Act Unit