



U.S. OFFICE OF SPECIAL COUNSEL
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October 4, 2018

Mr. Robert Weaver

VIA ELECTRONIC MAIL: [REDACTED]

Re: OSC File Nos. AD-18-0050 and HA-19-0119

Dear Mr. Weaver:

This letter from the U.S. Office of Special Counsel (OSC) responds to your request for an advisory opinion regarding the Hatch Act.¹ Specifically, you asked whether the Hatch Act prohibits you from running for mayor of El Cajon, California. As described below, OSC has determined that the election for mayor of El Cajon, California, is a partisan one for purposes of the Hatch Act. Therefore, your current candidacy is in violation of the Hatch Act and you must either withdraw from the race or resign your federal employment in order to come into compliance with the law.

The Hatch Act governs the political activity of federal civilian executive branch employees, including employees of the Department of Defense (DOD). *See generally* 5 U.S.C. §§ 7321-7326. Among other restrictions, a covered employee may not be a candidate for election to a partisan political office.² 5 U.S.C. § 7323(a)(3). “Partisan political office” means any office for which a candidate is nominated or elected as representing a party whose electors received votes in the last preceding presidential election, *e.g.*, the Democratic or Republican Party. 5 C.F.R. § 734.101. The Hatch Act does not prohibit a covered employee from running as a candidate in a nonpartisan election. 5 C.F.R. § 734.207(b) and Example 1.

State or local law typically designates whether the election for a particular office is partisan or nonpartisan. However, a law designating an election as nonpartisan creates only a rebuttable presumption that the election is nonpartisan for purposes of the Hatch Act. *See Special Counsel v. Yoho*, 15 M.S.P.R. 409, 413 (1983). Evidence showing that partisan politics entered a candidate’s campaign—such as the candidate’s acceptance of partisan political support or advertisement of a political party’s endorsement—may rebut this presumption. *See McEntee*

¹ OSC is authorized by 5 U.S.C. § 1212(f) to issue opinions interpreting the Hatch Act.

² The Hatch Act also prohibits covered employees from: (1) using their official authority or influence to interfere with an election; (2) soliciting, accepting, or receiving political contributions; (3) soliciting or discouraging political activity by any person who has business pending before their employing office; and (4) engaging in political activity while on duty, in uniform, in the federal workplace, or using a government-owned or -leased vehicle. 5 U.S.C. §§ 7323(a)(1)-(2), (4), 7324(a).

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v. Merit Sys. Prot. Bd., 404 F.3d 1320, 1325-26 (Fed. Cir. 2005) (citing *In re Broering*, 1 P.A.R. 778, 779 (1955)).

In evaluating whether a nominally nonpartisan race has become partisan for purposes of the Hatch Act, we have looked to such factors as whether a candidate has sought and received the endorsement of a political party; whether the party advertises its endorsement, either online or through printed documents; and whether the candidate has advertised the endorsement in either campaign materials or public forums. One of your opponents in the race, incumbent mayor Bill Wells, has sought and received the endorsement of the Republican Party of San Diego County (RPSDC). The RPSDC has advertised its endorsement of Mr. Wells on its website and will be including the endorsement on at least one mailed document, its 2018 Republican Voter Guide. Furthermore, you indicated that Mr. Wells has spoken about the endorsement during public events. We have concluded that these actions have rebutted the presumption that the race for mayor of El Cajon is nonpartisan.

This letter serves as notice that OSC has reasonable grounds to conclude that your candidacy in the partisan election for mayor of El Cajon, California, is in violation of the Hatch Act. At this time, we are providing you with an opportunity to come into compliance with the law. As stated above, you must either withdraw your candidacy or resign from your federal employment.

If you choose to resign from your employment with DOD, please provide us with a copy of the resignation letter you submit to your agency. If you choose 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. If you are unable to have your name removed from the ballot, you must publicly announce your withdrawal (*e.g.*, issue a press release, write a letter to the editor) and provide supporting documentation to OSC. Lastly, you must stop all campaign activities, including organizing or encouraging a write-in candidacy, and no longer hold yourself out as a candidate.

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, no later than **Friday, October 12, 2018**. Please contact OSC attorney Eric Johnson at (202) [REDACTED] or [REDACTED] if you have any questions.

Sincerely,



Ana Galindo-Marrone
Chief, Hatch Act Unit