STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL

December 13, 2017

Opinion No. 17-54

County Teacher as a Candidate for Partisan Political office

Question

Does either the Tennessee or the federal Hatch Act prohibit a county teacher from qualifying and running as a candidate for partisan political office?

Opinion

The Tennessee Hatch Act would not prohibit a county teacher from qualifying and running as a candidate for partisan political office. However, only the U.S. Office of Special Counsel ("OSC") is authorized to issue advisory opinions under the Hatch Act, including opinions on whether an individual's proposed political activity is prohibited under the Act.

ANALYSIS

Tennessee's "Little Hatch Act" is designed to prohibit political intimidation or coercion of or by any public officer or employee. Tenn. Code Ann. § 2-19-202(b). The definition of "public officers and employees" includes teachers. Tenn. Code Ann. § 2-19-201(3). Section 2-19-202(a) of the Act prohibits a public officer or employee from using his official position, authority, or influence to intimidate, coerce or command another officer or employee to vote for or against any measure, party, or person. Tenn. Code Ann. § 2-19-204 prohibits a public officer or employee from promising any benefits provided principally from public funds as a consideration, favor or reward for any political activity, support or opposition to any candidate, party or measure in an election. Similarly, Tenn. Code Ann. § 2-19-205 prohibits any public officer or employee from depriving or threatening to deprive any person of employment or other benefits provided principally from public funds for any political activity, support or opposition to any candidate, party or measure in any election.

The Little Hatch Act also seeks to prohibit the inappropriate use of public employees and property for political purposes. It prohibits teachers from using any building or land owned by a local education agency, including equipment and vehicles, for campaign or political advertising on behalf of any party, committee or candidate for partisan or nonpartisan political office. Tenn. Code Ann. § 2-19-206(d)(2). It also prohibits any teacher employed by a local education agency from engaging actively in a political campaign on behalf of any party, committee, or candidate for partisan or nonpartisan public office, attending political meetings or rallies, or otherwise performing political campaign duties or functions during those hours of the day when the teacher is required to be performing school duties. Tenn. Code Ann. § 2-19-207(c)(2). Thus, while the provisions of the Little Hatch Act would prohibit a county teacher from engaging in certain

political activities during the time the teacher is to be performing school duties, the Act does not prohibit that teacher from qualifying and running as a candidate for partisan political office, assuming that the teacher otherwise complies with the requirements of the Act.

The federal Hatch Act limits certain political activities of federal employees, as well as some state, D.C., and local government employees who work in connection with federally funded programs. It does generally prohibit a state or local employee from being a candidate for partisan elective office if that employee is employed in connection with an activity financed with federal funds. 5 U.S.C. § 1502(a)(3). But the definition of "state or local officer or employee" specifically "does not include" an "individual employed by an educational or research institution, establishment agency, or system which is supported in whole or in part by a State or political subdivision thereof." 5 U.S.C. § 1501(4)(B). The legislative history of this exclusion indicates that the exclusion was intended to apply to teachers. *See Special Counsel v. Suso*, 26 M.S.P.R. 673, 678 (1985) (citing H.R.Rep. No. 2296, 77th Cong., 2d Sess. (1942)).

However, only the U.S. Office of Special Counsel ("OSC") is authorized to issue advisory opinions under the Hatch Act, including opinions on whether an individual's proposed political activity is prohibited under the Act. *See* 5 U.S.C. § 1212(f). Accordingly, a county teacher planning to qualify and run as a candidate for partisan political office should contact the OSC to request an advisory opinion about his or her political activity under the Hatch Act. Requests for an advisory opinion may be made by phone ((800) 85-HATCH), fax ((202) 254-3700), or email: hatchact@osc.gov.

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