

source of an employee's salary or whether the employee administers the funds or has policy duties with respect to such funds. See Williams v. U.S. Merit Systems Protection Board, 55 F. 3d 917 (4th Cir. 1995). However, if the employee's connection with the federally-funded activity is a casual or accidental occurrence, i.e. *de minimis*, then, the Act does not apply.

A review of the OSC's advisory opinions shows that if an employee has no connection to a federally-funded activity, he or she will not be considered a covered employee and therefore, will not be subject to the Act. For instance, in OSC Advisory Opinion File No. AD-06, the OSC found that a Captain/Supervisor in a County Sheriff's Office was not subject to the Act because the federal grants received by the Sheriff's Office were for purposes unrelated to his job duties. He was not paid by federal funds, he did not supervise the employees who were paid with federal funds, and he was not involved with and did not perform any duties under the programs that were federally funded. The only connection he had with the federal grants is that he might use a piece of equipment that was purchased with federal funds.

A similar holding was reached in Simmons v. Stanton, 502 F. Supp. 932 (W.D. MI 1980). In that case, the court found that an undersheriff was improperly terminated when he announced he was considering running for sheriff. Because no federal funds were used to pay the undersheriff or fund the activities that constituted his principal employment activities, the court held that the Act did not apply to the undersheriff.

The Act precludes a covered state or local employee from being a candidate for an elective, partisan office. See 5 U.S.C. §1502(a)(3); Williams. This prohibition includes the preliminaries leading to the announcement of candidacy, such as canvassing or soliciting support, and the formal announcement of candidacy. See OSC Opinion SHA-01. An employee may be terminated for participating in such candidate activities. See 5 U.S.C. §1505. If the employee has been informed that he or she is a covered employee and continues with his or her candidacy, termination is more likely. See Williams; Minnesota Department of Jobs and Training v. Merit Systems Protection Board, 875 F. 2d 179 (8th Cir. 1989). To avoid termination, an employee is required to resign prior to participating in any candidate activities.

Applying these principles to the FHP Trooper, it is our opinion that if the trooper participates in the DUI checkpoint program and receives federally-funded, overtime pay, he is a covered employee under the Act and must resign his position prior to any candidate activities. Under these circumstances, the trooper is participating in a program financed in part with federal funds and is receiving a portion of those funds as overtime pay. Accordingly, under the OSC's opinions, the Act does apply to the trooper.

The more difficult question is whether a trooper must resign if he participates in the program but does not receive any federally-funded, overtime pay. Under those circumstances, the trooper is not receiving any federal funds, but he is still participating in an activity that is partially funded by a federal grant. Are the trooper's duties with the DUI checkpoint program sufficient to constitute his principal employment duties? Is the mere participation in the program without the receipt of any federal funds enough to subject him to the Act? In our opinion, the trooper is still subject to the Act since his participation in the program is a normal and foreseeable incident of his position. See OSC Advisory Opinion File No. AD-06; Williams, 55 F. 3d at 921 (holding that the Act applies to an employee who administered federal funds through oversight authority, but did not actually receive any of the federal funds).

However, to obtain a definitive answer, we recommend asking for an advisory opinion from the OSC. Although reliance on an opinion from local officials may not insulate the trooper against a violation of the Act, an opinion from the OSC would provide such protection. An advisory opinion may be obtained by sending a written request to: U.S. Office of Special Counsel, 1730 M Street, NW, Suite 218, Washington, DC 20036. Alternatively, an individual may call the OSC at 1-800-854-2824 or (202) 254-3650.

CONCLUSION

In sum, it is our opinion that the Hatch Act applies to a trooper whose job duties are in connection with a federally financed program, such as the DUI checkpoint program, but we recommend requesting an advisory opinion from the OSC to obtain a definitive answer, especially if the trooper does not receive any federally-funded, overtime pay.

The Top Ten signs the case is getting thrown out

1. The defendant has the same last name as the Mayor.
2. Under cross-examination, your partner says the reason for the stop was "boredom."
3. State's Exhibit A is a blown-up photo of your arm on which you scribbled the police report in green magic marker.
4. Two words - 9th Circuit.
5. Cruiser cam audio records your special version of the Miranda warning: "You have the right to an attorney. If you cannot afford one, you're s*** out of luck because the public defender is a moron."
6. "At that point, your honor, I could not find my gun, badge or pants."
7. Local courts have only enough money to prosecute five cases a year.
8. "The K-9 ate my incident summary, your Honor."
9. The charge? "Failure to not be a smart-a**."
10. D.A. graduated from Sierra Nevada Online Community College School of Law.

I hope this information is useful to all our "future politicians." If you have any questions about the memorandum, don't call me! (Just Kidding!) ●

"Resign to Run" Clarified

In a recent opinion from the Florida Division of Elections (DE 08-04, April 16, 2008), **Donald Palmer**, Director, finally put to rest the question about whether law enforcement officers need to resign from their job to run for elected office.

Florida Statute 99.012(3)(a) states that no officer "may qualify as a candidate for another public office, whether state, district, county, or municipal, if the terms or any part thereof run concurrently with each other, without resigning from the office he or she presently holds."

A number of law enforcement officers were of the opinion that this meant that they could not run for office without resigning from their current source of income. Not very fair is it?

In DE 08-04, the Division opines that no, officers do not have to resign: there is an exemption to this provision of law.

Section 99.012(4) indicates that a person who is a "subordinate officer, deputy sheriff, or police officer must

resign effective upon qualifying...if the person is seeking to qualify for a public office that is currently held by an officer who has authority to appoint, employ, promote, or otherwise supervise that person and who has qualified as a candidate for reelection to that office." [Emphasis added]

So in other words, if you are a deputy sheriff and want to run for the county commission or school board or the state house, you do not have to resign from your current job. You can even run for sheriff if the current sheriff is not running for reelection.

If you run for office and get elected, you will still have to resign from your law enforcement position—otherwise you would be holding two offices. The only exception is for school board.

This opinion does not address the federal Hatch Act provision which has much more effect on law enforcement officers. Please read **Hal Johnson's** article on the previous page for more on the Hatch Act. ●

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