

A recent newspaper article stated that a police officer in Winooski is prohibited by the Hatch Act from running for a seat in the state House of Representatives. Does the federal Hatch Act apply to state and local employees?

The Hatch Act is a federal law that restricts the political activity of certain employees of federal, state, county or municipal executive agencies. 5 U.S.C. § 7321-7326 and 5 U.S.C. § 1501-1508. An employee covered by the Hatch Act cannot use his or her authority to influence elections, make campaign contributions, or run for office.

Title 5 Section 1501 of the United States Code addresses state and local employees covered by the Hatch Act. According to this provision of the United States Code, 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* fall under the Hatch Act.

Accordingly, the short answer is that the Hatch Act does apply to certain municipal employees. However, several requirements must be met for the Hatch Act to take effect for a local employee.

First, the employee must be “principally” employed by the executive branch of a municipality. This requirement has been interpreted to mean “that employment to which an individual devotes the most time, and from which he derives the most income.” *Smyth v. U.S. Civil Service Commission*, 291 F. Supp. 568 (E.D.Wis 1968). Accordingly, if an employee works 25 hours for the public works department and 30 hours as a private computer consultant, and the employee earns more money as a computer consultant, the individual is probably not subject to the Hatch Act.

Second, the employee’s responsibilities must be connected with federally funded programs. This provision has been interpreted to mean that if “as a normal and foreseeable incident of his principal position or job” an employee “performs duties in connection with an activity financed in whole or in part by federal funds,” that employee is subject to the Hatch Act. *Special Counsel v. Gallagher*, 44 M.S.P.R. 57 (1990). Thus, a municipal employee who works on programs or projects that receive any federal funds may fall under the Hatch Act.

Municipal employees covered by the Hatch Act are prohibited from being a candidate in any election where any of the candidates in the race are representing a political party. 5 U.S.C. § 1503. Accordingly, the Hatch Act prohibits covered municipal employees from running for the state house of representatives or senate. However, a covered municipal employee could seek a local elective office as long as no candidate seeking the office is representing a political party.

Finally, school board members and teachers are not subject to the Hatch Act. The federal law specifically exempts individuals 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. § 1503(4)(B). This exemption clearly

includes teachers and other school employees. School board members appear to be covered under this exemption as well. However, because school board members are really volunteers, they probably do not qualify as employees under the Hatch Act.

VLCT News, October 2000