Coates' Canons Blog: Running for Office: The Hatch Act is Nearly Dead

By Robert Joyce

Article: https://canons.sog.unc.edu/running-for-office-the-hatch-act-is-nearly-dead/

This entry was posted on March 12, 2014 and is filed under Elections, Employment

When an employee of a city or county wants to run for elective office, three legal considerations have traditionally leapt to mind—North Carolina's criminal conflicts of interest statute, the state's common law principle of incompatibility of office, and the federal Hatch Act.

The first two are alive and well and kick up trouble for candidates every once in a while. They apply in only one limited situation—when the employee wishes to run for office in the very city or county that is the employer. An employee of Morganton can run for mayor of Hickory without concern about the conflicts of interest statute or the incompatibility doctrine. But when an employee of Scotland County wishes to run for county commissioner in Scotland County itself, there may be a problem with one or both. For a full discussion of these considerations, see Frayda Bluestein's excellent post **here.**

But the third consideration—the federal Hatch Act—is nearly dead. Congress all but killed it effective January 2013.

How it used to be

For seventy years before that, the Hatch Act prohibited many, many state and local government employees from becoming candidates for election to office in partisan elections, whether in their own jurisdictions or elsewhere. That prohibition applied to employees of the state and of cities and counties whose principal employment was in connection with an activity which was financed in whole or in part by federal funds.

The question of whether a particular employee was in fact in a position connected with an activity funded in whole or in part from federal funds was frequently an easy question to answer, just by looking at the budgetary funding source for the position. In other instances, however, the answer was not so clear.

The answer was not found simply by looking at the source of funds for the individual's salary. It was entirely possible for a person to be paid from funds supplied by the city council or the county commissioners, and not from federal funds, but still be covered by the Hatch Act, because his or her employment was "in connection with" federally-funded activities, even though the salary was not federally-funded. For example, in a 2002 opinion by the federal enforcement agency, the executive officer of a North Carolina county sheriff's office was found to be employed in connection with federal funds because he was responsible for administrative functions and grant writing for several programs funded with federal funds (Community Oriented Police Services program, Violence Against Women grant program, Local Law Enforcement Block Grant program, and the Drug Control and System Improvement Grant program). The source of funds for his salary was not at issue. Similarly, in a 2003 opinion, the acting director of a North Carolina health department was found to be covered because of her "oversight responsibilities" for federal programs.

How it is now

In December 2012, President Obama signed the Hatch Act Modernization Act. It made a few changes with respect to federal employees—who have been the main targets of the Hatch Act all along—and a few changes with respect to employees of the government of the District of Columbia. But its real thrust was to free up thousands of state and local government employees across the country from the prohibition on becoming candidates for election in partisan races.

It accomplished that goal by one simple change.

Now, a state or local government employee is banned from running only “if the salary of the employee is paid completely, directly or indirectly, by loans or grants made by the United States or a Federal agency.”

Completely. The employee is banned from running only if his or her salary is paid completely by federal funds. What a change! Under the old Hatch Act, a state or local government employee was banned from running, no matter what the source of salary funds was, if the work was in connection with a federally-funded activity. Now, it doesn’t matter whether the work is in connection with a federally-funded activity; all that matters is whether the source of funds for the salary is federal dollars.

What it means

Federal law no longer will prohibit a state or local government employee from running for election in a partisan race unless that employee’s salary is paid entirely with federal funds.

Two other considerations remain fully in play, however, where the employee wants to run for election in the very city or county of employment: the North Carolina conflicts of interest statute may apply and the common law doctrine of incompatibility of office may apply.

In addition, a city or county may, by ordinance, have placed its own restrictions on the right of its employees to run for office. Such restrictions have generally been upheld against constitutional challenges, but I am not aware of any North Carolina cases on the issue. In an opinion on a slightly different subject, the North Carolina Attorney General in a 1984 made passing reference to the possibility of a “local act or legitimate local ordinance requir[ing] dismissal of employees who are candidates for political office.” That brief reference does not mean that such restrictions would necessarily be lawful in this state, but it is an indication that they may.

Links

- canons.sog.unc.edu/?p=1599