

1976 S.C. Op. Att'y. Gen. 94 (S.C.A.G.), 1976 S.C. Op. Att'y. Gen. No. 4280, 1976 WL 22900

Office of the Attorney General

State of South Carolina

Opinion No. 4280

March 4, 1976

**\*1 A STATE OR LOCAL EMPLOYEE WHOSE DUTIES ARE CONCERNED WITH THE IMPLEMENTATION OF A PROGRAM WHICH IS SUPPORTED IN FULL OR IN PART BY FEDERAL FUNDS MAY NOT BE A CANDIDATE FOR A PUBLIC OFFICE WHICH IS OBTAINED THROUGH A PARTISAN ELECTION.**

To: John W. Lyle, Jr., R.S.  
District Director  
Environmental Health Services  
Central Midlands Health District  
1221 Gregg Street  
Columbia, S. C. 29201

**QUESTION(S) PRESENTED:**

May an employee of a county health department be a candidate for sheriff of that county and retain his position as an employee? If there are restrictions, do they apply to the Democratic primary? If he may not be a candidate, at what point in his campaign must he resign from the health department?

**STATUTES, CASES, ETC., INVOLVED:**

[United States Code, Title 5, Sections 1501 to 1508](#); Section 18 of the South Carolina Department of Health and Environmental Control's 'Manual of Administrative Policy, Procedure, and Information'; United States Civil Service Commission's publication, 'State and Local Employees Political Participation'; and Section 23-400.72 of the South Carolina Code of Laws, 1962, as amended.

**DISCUSSION OF THE ISSUES:**

The principal question asks whether an employee of a county health department must resign from his position if he becomes a candidate for sheriff of that county. The primary issue in determining permissible political activities of state or local employees focuses on the question of whether the employee, in the course of his duties, is concerned with the carrying out of a program which is supported in part or in full by federal funds. If the employee is not concerned with such duties, neither the State nor the South Carolina Department of Health and Environmental Control imposes any restrictions on the limits of the employee's political activities. He may campaign, run for public office, and retain his position simultaneously so long as he does so on his own time.

However, if the employee's duties concern the carrying out of a program supported in full or in part by federal funds, the Federal Campaign Act (Public Law 93-443, Title IV, Section 401). Which amended the Hatch Act ([5 U.S.C. 1501-1508](#)), applies. The individual who has been inquired about, is employed as an inspector by a county health department, which is a subunit of the South Carolina Department of Health and Environmental Control. That state agency receives a certain amount of funds from the Federal Government to use in the implementation of chair programs. The agency then distributes a portion of these funds to individual county health departments, including the one in question, which

use the federal funds in the implementation of their programs. On page one of 'State and Local Employees Political Participation', a 1975 publication of the United States Civil Service Commission, which is the federal agency having responsibility for the enforcement of the Hatch Act, under the heading of Federal Financing, it is stated that many State and County Public Health Programs receive financial assistance from the Federal Government, and in so doing, their employees come within the provisions of the Hatch Act.

**\*2** In determining whether an individual is covered by the Hatch Act, one may also wish to consider with what funds the employee is paid, although the actual test concerns his duties. The annual salary of the individual involved here consists of \$2,283.00 of federal money and \$8,133.00 of State money. The fact that federal funds are used to retain the individual's services in the implementation of programs of the county health department seems to support the proposition that the county health department is, in fact, a federally funded agency. In view of all of the above factors, it appears that the individual's duties are concerned with the carrying out of a program which is supported in part by federal funds, and therefore is subject to the provisions of the Hatch Act.

Section 18(c) of the South Carolina Department of Health and Environmental Control's 'Administrative Policy, Procedure and Information' and [Section 1502\(a\)\(3\) of Title V of the United States Code](#), which is a relevant portion of the Hatch Act, both clearly specify that a state or local employee who is subject to the Hatch Act may not be a candidate for a public office which is obtained through a partisan election. [Section 1502\(c\) of Title V of the United States Code](#) states the exceptions to [Section 1502\(a\)\(3\)](#) above, but candidacy for sheriff of a county is not included among those exceptions.

Under the heading of Candidacy on page three of the aforementioned publication, 'State and Local Employees Political Participation', reference is made to the provision stating, 'A State or local employee subject to the Hatch Act may not be a candidate in a partisan election for any public office which is obtained through a partisan election such as a primary, special, or general election. Primary and run-off elections to nominate candidates of political parties are partisan even though no party designation appears on the ballot.' This appears to answer the inquiry as to whether the restrictions apply to the Democratic Primary.

As to the question concerning the point at which an employee who wishes to run for office must resign his position with the State or local agency, the answer seems to center around the point at which the employee becomes a candidate. Presumably, the employee becomes a candidate when he, pursuant to Section 23-400.72 of the South Carolina Code of Laws of 1962, as amended, files his notice of candidacy and pledge and pays the registration fee. Therefore, an employee must resign his position with the agency on or before the date when he registers as a candidate for a partisan election.

#### CONCLUSION:

An employee of a State or local agency, whose duties are concerned with the implementation of a program supported in full or in part by federal funds, who wishes to become a candidate for a public office which is obtained through a partisan election, must resign his position with that agency on or before he files his notice of candidacy and pledge, even if he is to be a candidate for only a primary election.

**\*3** Randolph R. Mahan  
Assistant Attorney General

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