



OFFICE OF LEGAL AFFAIRS
INTERNAL OPINION

EXTERNAL OPINION # EX-2006-1005

Internal Opinion # IN-2002-2001

To: Danilo Cardona
Director, Office of Compliance and Enforcement

Date: May 8, 2002

Subject: Meaning of "intentionally identify" in 45 CFR 1608.4(a)

You asked for an opinion from this Office regarding whether an LSC grantee employee's use of his or her title/affiliation on campaign literature in non-partisan elections "intentionally identifies" the grantee with the employee's campaign in violation of 45 CFR Part 1608.4(a).

Background

As you have presented the situation, the Deputy Director of Passaic County Legal Aid Society, an LSC grantee, is running for an "At-large" seat for a local government council. You have indicated that this is a non-partisan elective public office.¹ Campaign literature distributed by the employee contains the following statement: "He manages a multi-million dollar budget as the Deputy Director of Passaic County Legal Aid."

Question Presented

You inquire whether the use of the candidate's title and affiliation with his LSC grantee employer is a violation of 45 CFR Part 1608.4(a), which provides, in relevant part, that:

No employee shall intentionally identify the Corporation or a recipient with any partisan or non-partisan political activity, or with the campaign of any candidate for public or party office.

¹ You have indicated that the employee is running for a non-partisan elective office. We take this assertion at face value and this Opinion does not address whether or not the elective office the attorney seeks is, in fact, nonpartisan and assumes that the employee is not in violation of section 1608.5(c), which prohibits grantee staff attorneys from being candidates for partisan elective public office. You may wish to be aware, however, of recent guidance from the Office of Special Counsel, the agency responsible for monitoring Hatch Act compliance for Federal and State and local government employees, which cautions that state and local laws which designate elections and offices as non-partisan "create only a rebuttable assumption that an election is nonpartisan" and that [e]vidence showing that partisan politics actually enter the campaigns of the candidates . . . may transform a nonpartisan election into a partisan one." Office of Special Counsel Advisory Letter of January 16, 2002, re: OSC File No. AD-01-0064.

Brief Answer

No, the listing of title and affiliation of current employment on campaign literature for informational purposes does not "intentionally identify" the grantee with the employee's campaign and, therefore, does not constitute a violation of 45 CFR 1608.4(a)

Analysis

As noted above, section 1608.4(a) of LSC's regulations prohibits employees (of the Corporation or of grantees) from "intentionally identify[ing] ... a recipient with any partisan or nonpartisan political activity, or with the campaign of any candidate for public or party office." This provision implements section 1006(e)(1) of the LSC Act, which contains the same prohibition. Nowhere in the Act or the regulation, however, is the phrase "intentionally identify" defined, nor is the term discussed in the preamble to the regulation in which this provision was adopted (41 FR 25900, June 23, 1976).

In the absence of other direction on what actions constitute "intentional identification" of a program with a political activity or campaign, the longstanding OLA interpretation of section 1608.4(a) has been that it is intended to refer to such actions which would make it appear that the program itself was engaged in political activities (partisan or non-partisan) or that the program supported or endorsed any candidate for public office. *See, e.g.*, Letter of August 31, 1981, from Linda Perle, Assistant General Counsel, LSC, to Ellen Smith, Director, Piedmont Legal Services. Although there have been only a few opinions on the subject, they have consistently found an employee's listing of his or title and affiliation for informational purposes on his or her campaign literature for nonpartisan office does not constitute "intentional identification" of the program with the campaign.

Most recently, this Office issued an Opinion to OCE, dated December 14, 2000, which reiterated this conclusion.² That opinion, quoting from a September 18, 1981 Office of General Counsel Opinion issued to Douglas Rogers, Executive Director of the Legal Aid Society of Columbus, stated:

It would be improper, for example, for an employee to state or imply, by words, pictures, or otherwise, that the Corporation or a program endorses particular political views or candidates[,] . . . a candidate may properly indicate that he or she is employed by a program where such information

² We note that your memorandum indicated that you could find no opinions on point. We are providing another copy of the December 14, 2000, opinion, along with copies of the External Opinions from 1981 for your reference. We note also, regarding the May 21, 1980 Opinion to which you refer in your inquiry, that OLA could not locate a copy of this Opinion, nor did OCE have a copy. However, as the Opinions cited and relied upon in this Opinion, which are more recent than the 1980 Opinion, are clearly on point, OLA believes that the 1980 Opinion is irrelevant to the inquiry.

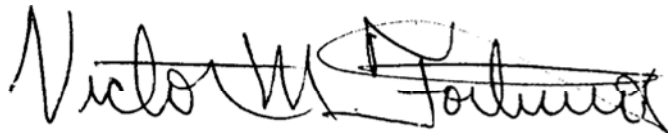
is intended to provide the electorate with basic background information on the candidate.

See also, Letter of August 31, 1981, from Linda Perle, Assistant General Counsel, LSC, to Ellen Smith, Director, Piedmont Legal Services (“campaign literature should use the name of the program for identification purposes only”).

Very truly yours,



Mattie C. Condray
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Office of Legal Affairs



Victor M. Fortuno
General Counsel
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Attachments

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OFFICE OF LEGAL AFFAIRS

To: William Sulik, Office of Compliance and Enforcement
From: Dawn M. Browning, Assistant General Counsel
Date: 12/14/00
Subject: Inquiry Regarding 45 C.F.R. § 1608.4(a)
cc: Vic Fortuno, General Counsel
Danilo Cardona, Director, Office of Compliance and Enforcement

On December 14, 2000, you inquired of the Office of Legal Affairs whether it would violate 45 C.F.R. §1608.4(a) for an employee of a recipient who was running for re-election for public office to list his/her employer as "[name of recipient] Legal Aid Society." Section 1608.4(a) prohibits an employee of a recipient from intentionally identifying the Corporation or a recipient with any partisan or nonpartisan political activity, or with the campaign of any candidate for public or party office.

By way of background, you indicated that the employee relevant to this inquiry is not a "staff attorney" as defined by the LSC Regulations, and he was already an elected official at the time he was hired, so his current re-election campaign does not implicate violations of other sections of Part 1608, such as §1608.5(c).

The answer to your inquiry is that it is *not* a violation of §1608.4(a) for a candidate to merely identify himself/herself as an employee of a particular recipient. I am attaching for your review a copy of an Office of General Counsel opinion issued to Douglas Rogers, Executive Director of the Legal Aid Society of Columbus, on September 11, 1981, which directly answers your question. The opinion states that while

It would be improper, for example, for an employee to state or imply, by words, pictures, or otherwise, that the Corporation or a program endorses particular political views or candidates[,] . . . a candidate may properly indicate that he or she is employed by a program where such information is intended to provide the electorate with basic background information on the candidate.

I hope this information adequately answers your inquiry. If you need any further assistance with respect to this issue, please do not hesitate to contact us.