

United States Senate

WASHINGTON, DC 20510-0803

April 7, 2017

The Honorable Carolyn N. Lerner
Special Counsel
U.S. Office of Special Counsel
1730 M Street, NW
Washington, DC 20036

Dear Special Counsel Lerner:

As you know, the Hatch Act generally prohibits certain categories of political activities for all covered employees.¹ While the Hatch Act prohibits covered employees from engaging in political activity in an official capacity at any time, or while on duty or in the workplace, there are additional restrictions for covered employees in their personal capacity.² Specifically, as you know, guidance issued by your office on the use of social media and Hatch Act compliance notes that the Hatch Act prohibits federal employees from referring to their official titles or positions while engaged in political activity at any time.³ I write today to request your assistance with a review of a tweet by Dan Scavino Jr., Assistant to the President and Director of Social Media.

On April 1, 2017, Mr. Scavino sent the following tweet that raised serious concerns:

@realDonaldTrump is bringing auto plants & jobs back to Michigan. @justinamash is a big liability. #TrumpTrain, defeat him in primary.

Although Mr. Scavino used his personal Twitter account, and not his official White House Twitter account, these two accounts are nearly indistinguishable. Both his official and personal Twitter accounts use the same profile and background images, which, as of the date of Mr. Scavino's tweet, are, respectively, an image of Mr. Scavino in the Oval Office and of President Donald Trump giving a speech in front of the America flag. Mr. Scavino's nearly identical Twitter pages could easily create the impression that he is acting in an official capacity when engaging in political activity on his personal account.

Mr. Scavino's tweet may have also violated other Hatch Act regulations that prohibit certain categories of political activities. Specifically, the Office of Personnel Management's regulations state:

¹ 5 U.S.C. § 7321 *et seq.* (2015).

² 5 U.S.C. § 7323(a)(1) (2015).

³ *The Hatch Act: Frequently Asked Questions on Federal Employees and the Use of Social Media and Email*, U.S. OFFICE OF SPECIAL COUNSEL (revised December 18, 2015), available at [https://osc.gov/Resources/FAQ%20Hatch%20Act%20Employees%20and%20Social%20Media%20\(revised%2012-18-2015\).pdf](https://osc.gov/Resources/FAQ%20Hatch%20Act%20Employees%20and%20Social%20Media%20(revised%2012-18-2015).pdf).

An employee covered under this subpart may not participate in political activities: while he or she is on duty...while he or she is any room or building occupied in the discharge of official duties by an individual employed or holding office in the Government of the United States or any agency or instrumentality thereof....⁴

In this case, it is unclear whether Mr. Scavino was on official duty or on federal property when he sent this tweet from his personal Twitter account. It is also unclear whether Mr. Scavino's tweet encouraged individuals to make political contributions. As you know, social media guidance for federal employees issued by the Office of Special Counsel specifically prohibits the encouragement of political contributions.⁵

As the Special Counsel, you have authority to review potential Hatch Act violations. I request that you use the authority Congress granted you under the Hatch Act of 1939, as amended, to "receive any allegation of a prohibited personnel practice and shall investigate the allegation to the extent necessary to determine whether there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is to be taken."⁶

I request that you review Mr. Scavino's tweet and act promptly on the basis of your findings. I also ask you to report back to my staff with any recommendation for disciplinary action, if warranted. If you or members of your staff have any questions about this request, please do not hesitate to ask your staff to contact [REDACTED] 202-224-2627.

With best personal regards, I am

Sincerely yours,



Tom Carper
U.S. Senator

cc: Kathleen M. McGettigan
Acting Director
U.S. Office of Personnel Management

Don McGahn
White House Counsel
Office of the White House Counsel

⁴ 5 C.F.R. § 734.406(a) (2016).

⁵ *The Hatch Act: Frequently Asked Questions on Federal Employees and the Use of Social Media and Email*, U.S. OFFICE OF SPECIAL COUNSEL (revised December 18, 2015), available at [https://osc.gov/Resources/FAQ%20Hatch%20Act%20Employees%20and%20Social%20Media%20\(revised%2012-18-2015\).pdf](https://osc.gov/Resources/FAQ%20Hatch%20Act%20Employees%20and%20Social%20Media%20(revised%2012-18-2015).pdf); 5 U.S.C. § 7323(a)(2) (2015).

⁶ 5 U.S.C. § 1214 (2015).