



## EXTERNAL OPINION

External Opinion # EX-2003-1004

**To:** Gerald R. Brennan  
Senior Attorney  
Warren County Legal Services  
P.O. Box 900  
30 Schuyler Place  
Morristown, New Jersey 07963-0900

**Date:** March 7, 2003

**Subject:** Inquiry About Prohibited Political Activity Under 45 C.F.R. Part 1608

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Dear Mr. Brennan:

I am writing in response to your recent letter in which you inquired whether it would be a violation of 45 C.F.R. Part 1608 for you to run for a town council position in a partisan political campaign. At the time of your inquiry, you were a senior staff attorney with the Legal Aid Society of Morris County (LASMC), which merged with other Legal Services Corporation (LSC) grantees to form Warren County Legal Services (WCLS), Inc. effective January 1, 2003. You indicated that you work full-time for your local LSC grantee. Of the salary you receive from the LSC grantee, approximately eleven percent (11%) comes from your program's LSC grant, with the majority of your position being funded by state money from the New Jersey Division of Mental Health and Hospitals.<sup>1</sup> Approximately eighty-seven percent (87%) of your gross professional income comes from the legal aid office for which you work.

Section 1006(e)(2) of the LSC Act prohibits LSC recipient staff attorneys from being candidates for any partisan elective public office.<sup>2</sup> 42 U.S.C. ' 2996e(e)(2). This restriction is implemented on LSC grantees through Part 1608 of the LSC regulations. 45 U.S.C. ' 1608.5(c).

“Staff attorney” is defined by the LSC Act as:

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<sup>1</sup> You indicated that your position would be funded in approximately the same amount by an LSC grant after the merger of LASMC with other programs.

<sup>2</sup> Section 1006(e)(2) applies Chapter 15 of the Hatch Act to LSC employees and recipient staff attorneys. This chapter of the Hatch Act generally prohibits certain partisan electoral activities by state and local employees.

an attorney who receives more than one-half of his annual professional income from a recipient organized solely for the provision of legal assistance to eligible clients under this title. 42 U.S.C. ' 2996a(7).

By regulation, LSC defines “staff attorney” as

an attorney more than one-half of whose annual professional income is derived from the proceeds of a grant from the Legal Services Corporation or is received from a recipient, subrecipient, grantee, or contractor that limits its activ

unreasonableness of the result produced by one among alternative possible interpretations of a statute is reason for rejecting that interpretation in favor of another which would produce a reasonable result.” at 522. Based on this principle, the language “recipient organized solely for the provision of legal assistance to eligible clients under [the LSC Act]” should be read in a way that produces a reasonable result relative to the LSC Act and its legislative history.

The word “recipient” appears in multiple contexts in the LSC Act, and is defined as “any grantee, contractee, or recipient of financial assistance described in . . . [‘ 1006(a)(1)(A) of the LSC Act].” 42 U.S.C. ‘ 2996a. Section 1006(a)(1)(A) of the LSC Act grants the Corporation authority to:

provide financial assistance to qualified programs furnishing legal assistance to eligible clients, and to make grants to and contracts with (i) individuals, partnerships, firms, corporations, and nonprofit organizations and (ii) State and local governments [under certain limited situations] . . . for the purpose of providing legal assistance to eligible clients. . . .<sup>5</sup>

Fundamentally, a “recipient” is a ‘ 1006(a)(1)(A) program that provides direct legal assistance to eligible clients. Such work is generally done by LSC’s “basic field programs.”<sup>6</sup>

The phrase “organized solely for the purpose of providing legal assistance to eligible clients” appears in two places in the LSC Act as a modifier of the term “recipient.” Section 1007(c) of the Act requires any recipient “organized solely for the purpose of providing legal assistance to eligible clients” to meet specific governing body requirements,<sup>7</sup> and ‘ 1002(7) defines “staff attorney” as “an attorney who is paid more than one-half of his annual





Generally, the Corporation's actions over the course of its existence have been consistent with this interpretation. In the first report it presented to Congress on the study of alternative programs mandated by ' 1007(g), for example, LSC clearly identified its basic field programs as staff attorney programs and stated that of its 289 local programs, 287 were "staff attorney programs" and two were "judicare projects." Legal Services Corporation Delivery Sys. Study, July 1977, 9.<sup>13</sup> The Corporation has consistently interpreted the "organized solely" phrase in ' 1007(c) of the Act to refer to its basic field programs, and it has for that reason required all basic field programs to comply with governing body requirements enumerated in that section, regardless of whether such programs use non-LSC funds to provide legal services to ineligible clients. Similarly, the Corporation has required all basic field programs to comply with other requirements of the Act relating to staff attorneys (such as ' 1006(d)(5), which restricts certain class actions suits, and ' 1007(a)(8), which sets out attorney hiring restrictions), regardless of whether those programs use non-LSC funds to provide services to clients ineligible under the LSC Act.

The one exception to LSC's otherwise consistent interpretation of the phrase "organized solely" to refer to its basic field programs has been the issuance of some legal opinions interpreting Part 1608 of LSC's Regulations. Although many of the 1608 opinions do not address this issue at all, and two of the prior opinions reach the same conclusion set forth herein,<sup>14</sup> a number of prior opinions on this subject have held that programs that accept non-LSC funds to serve clients ineligible under the LSC Act do not qualify as recipients "organized solely for the provision of legal assistance to eligible clients" under the LSC Act. As stated on page 2 above, this office believes that the better reasoned and more justified construction of the prohibitions on political activitic0.the LSC "( ct do nota0hat tdtat t-19.25 -1.1

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