

ONE HUNDRED ELEVENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM  
2157 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6143

Majority (202) 225-6051  
Minority (202) 225-6074

June 8, 2010

The Honorable William Reukauf  
Acting U.S. Special Counsel  
U.S. Office of Special Counsel  
1730 M Street, N.W., Suite 218  
Washington, DC 20036-4505

Dear Mr. Reukauf:

Pursuant to the authority of the Office of Special Counsel (“OSC”) to investigate violations of the Hatch Act, I am writing to request an investigation of likely prohibited political activity.<sup>1</sup> Specifically, I am referring White House Chief of Staff Rahm Emanuel for a violation of the Hatch Act’s prohibition on the use of official authority or influence by federal employees for the purpose of interfering with or affecting the result of an election.<sup>2</sup> This referral is based on evidence alleged by White House Counsel Robert F. Bauer and Rep. Joseph Sestak.

Allegations of a Hatch Act violation first appeared in the *Philadelphia Inquirer* in February 2010. According to the *Inquirer*, Rep. Sestak made the disclosure that the White House offered him a high ranking federal job in exchange for his commitment to leave the 2010 Pennsylvania Democratic Primary race for the U.S. Senate seat occupied by Sen. Arlen Specter. Rep. Sestak’s disclosure came during an interview with veteran Philadelphia newsman Larry Kane during a taping of a news show for the Comcast Network. According to the *Inquirer*:

Rep. Joe Sestak (D., Pa.) said yesterday that the White House offered him a federal job in an effort to dissuade him from challenging Sen. Arlen Specter in the state's Democratic primary.

\* \* \*

‘Was it [the job] high-ranking?’ Kane asked. Sestak said yes, but added that he would ‘never leave’ the Senate race for a deal.

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<sup>1</sup> 5 U.S.C. § 1216 (a)(2).

<sup>2</sup> 5 U.S.C. § 7323(a)(1).

\* \* \*

Sestak said he recalled the White House offer coming in July, as he was preparing to formally announce his Senate candidacy in August.

\* \* \*

'I'm not going to say who or how and what was offered,' Sestak said in an interview. 'I don't feel it's appropriate to go beyond what I said,' because the conversation was confidential.

\* \* \*

'He asked me the question, and I had to answer it honestly,' Sestak said of his exchange with Kane.<sup>3</sup>

Rep. Sestak's account is prima facie evidence that an individual in the White House violated the Hatch Act's prohibition against using official authority or influence for the purpose of interfering with or affecting the result of an election. The facts alleged by Rep. Sestak were subsequently confirmed by the White House.

On May 28, 2010, Mr. Bauer issued a memorandum, "Review of Discussions Relating to Congressman Sestak" (the "Sestak Memo"). The Sestak Memo acknowledges that Rahm Emanuel, a restricted federal official, used his official authority to offer jobs within the Administration for the purpose of convincing Rep. Sestak not to run in the 2010 Pennsylvania Democratic Primary.

According to the Sestak Memo:

[A]s the Congressman has publicly and accurately stated, options for Executive Branch service were raised with him. Efforts were made in June and July of 2009 to determine whether Congressman Sestak would be interested in service on a Presidential or other Senior Executive Branch Advisory Board, which would avoid a divisive Senate primary, allow him to retain his seat in the House, and provide him with an opportunity for additional service to the public in a high-level advisory capacity for which he was highly qualified.

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<sup>3</sup> Thomas Fitzgerald, *Sestak Says Federal Job Was Offered to Quit Race*, PHILA. INQUIRER, Feb. 19, 2010.

The White House Chief of Staff [Rahm Emanuel] enlisted the support of former President Clinton who agreed to raise with Congressman Sestak options of service on a Presidential or other Senior Executive Branch Advisory Board. Congressman Sestak declined the suggested alternatives, remaining committed to his Senate candidacy.<sup>4</sup>

The evidence contained in the Sestak Memo confirmed Rep. Sestak's initial allegations of a Hatch Act violation. The Hatch Act prohibits (1) restricted federal officials from (2) using official authority or influence for the purpose of (3) interfering with or affecting the result of an election.<sup>5</sup> The Sestak Memo proffered a set of facts that satisfy each of those elements:

1. White House Chief of Staff Rahm Emanuel, a federal official subject to the restrictions of the Hatch Act, took action:

The **White House Chief of Staff** enlisted the support of former President Clinton who agreed to raise with Congressman Sestak options of service ....<sup>6</sup>

2. Mr. Emanuel used the official authority of his position as White House Chief of Staff to extend a job offer to Rep. Sestak:

Efforts were made in June and July of 2009 to **determine whether Congressman Sestak would be interested in service on a Presidential or other Senior Executive Branch Advisory Board** ....<sup>7</sup>

3. Mr. Emanuel offered Rep. Sestak a job for the purpose of enticing him to withdraw from the Pennsylvania Senate race in order to avoid a divisive Primary; Rep. Sestak's withdrawal from the Senate race would have affected the outcome of the 2010 Democratic Primary election:

[W]hich would **avoid a divisive Senate primary**, allow him to retain his seat in the House .... Congressman Sestak declined the suggested alternatives, remaining committed to his Senate candidacy.<sup>8</sup>

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<sup>4</sup> Memorandum from White House Counsel Robert F. Bauer, "Review of Discussion Relating to Congressman Sestak," May 28, 2010 at 1 [hereinafter Sestak Memorandum].

<sup>5</sup> 5 U.S.C. § 7323(a)(1).

<sup>6</sup> Bauer Memorandum, May 28, 2010, at 1 (emphasis supplied).

<sup>7</sup> *Id.* (emphasis supplied).

<sup>8</sup> *Id.* (emphasis supplied).

The Hatch Act prohibition on using official authority or influence for the purpose of affecting the result of an election extends to the White House Chief of Staff. Only the President and Vice-President are exempt from the Act's restriction on using official authority or influence for the purpose of interfering with or affecting the result of an election. The Hatch Act covers all officials of the executive agencies and departments, even agency and department heads appointed by the President with advice and consent of the Senate, as well as all officials, staff and aides in the offices of the President and Vice President.<sup>9</sup>

In the Sestak Memo, Mr. Bauer claimed that clearing the field for a candidate preferred by the White House was not problematic because "the Democratic Party leadership had a legitimate interest in averting a divisive primary fight and a similarly legitimate concern about the Congressman vacating his seat in the House ...."<sup>10</sup> Averting divisive primary campaigns and protecting a Democratic seat in the U.S. House of Representatives are purely political concerns and as such, federal officials are prohibited from using their official authority or influence to address them.

Essentially, Rahm Emanuel was leveraging the power and access of his official position to advance the political interests of the Democratic Party by affecting the result of the Pennsylvania Democratic Primary. This is precisely the sort of behavior forbidden by the Hatch Act. A final determination of whether or not Mr. Emanuel's actions violated the Hatch Act is rightfully made by OSC investigators following a thorough review, not by the Office of the White House Counsel.

Thank you for your attention to this important matter. For your ready reference, attached are (1) the *Philadelphia Inquirer* article containing Rep. Sestak's initial allegations, and (2) the Sestak Memo. Please contact the Committee at (202) 225-5074 with any questions about this request.

Sincerely,



Darrell Issa  
Ranking Member

cc: The Honorable Edolphus Towns, Chairman

Attachments

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<sup>9</sup> CRS Report 98-885A, "Hatch Act and Other Restrictions in Federal Law on Political Activities of Government Employees," Oct. 23, 1998.

<sup>10</sup> *Id.* at 2.

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Posted on Fri, Feb. 19, 2010

# Sestak says federal job was offered to quit race

## Not so, says White House

By Thomas Fitzgerald

Inquirer Staff Writer

Rep. Joe Sestak (D., Pa.) said yesterday that the White House offered him a federal job in an effort to dissuade him from challenging Sen. Arlen Specter in the state's Democratic primary.

The disclosure came during an afternoon taping of *Larry Kane: Voice of Reason*, a Sunday news-analysis show on the Comcast Network. Sestak would not elaborate on the circumstances and seemed chagrined after blurting out "yes" to veteran news anchor Kane's direct question.

"Was it secretary of the Navy?" Kane asked.

"No comment," Sestak said.

"Was it [the job] high-ranking?" Kane asked. Sestak said yes, but added that he would "never leave" the Senate race for a deal.

A White House spokesman this morning strongly denied Sestak had been offered yesterday. Before the spokesman issued the denial a senior Pennsylvania Democrat yesterday said White House officials there were angered by Sestak's account.

After yesterday's taping, Sestak said he recalled the White House offer coming in July, as he was preparing to formally announce his Senate candidacy in August. He declined to identify who spoke to him or the job under discussion. Sestak also would not say whether the person who approached him worked for the administration or was an intermediary for the offer.

"I'm not going to say who or how and what was offered," Sestak said in an interview. "I don't feel it's appropriate to go beyond what I said," because the conversation was confidential.

Sestak, 58, a retired Navy admiral, has said that some Pennsylvania Democratic leaders have tried to entice him to drop his campaign with promises of support for other offices in the future. He also has said that Sen. Robert Menendez of New Jersey, chairman of the Democratic Senatorial Campaign Committee, urged him to run when Specter was still a Republican, then tried to force him out after Specter switched parties.

But Sestak has brushed aside talk of White House pressure.

"He asked me the question, and I had to answer it honestly," Sestak said of his exchange with Kane. Sestak said he had declined the job offer immediately and added, "The person said, 'I knew you'd say that.' "

It's no secret that leading Democrats are backing Specter, a five-term incumbent who switched from the GOP last spring, soon after providing the critical vote for President Obama's \$787 billion stimulus program.

Obama endorsed Specter at the White House and has raised money for him. Gov. Rendell has been vocal in calling Sestak's challenge harmful to the party, as has state chairman T.J. Rooney.

Party leaders are worried that an expensive primary could weaken an incumbent Democratic senator in what is shaping up to be a Republican year, and also about the possibility of losing the House seat that Sestak won in 2006. He is only the second Democrat since the Civil War to represent the Delaware County-centered Seventh District.

An added concern: possibly losing the seat in Harrisburg occupied by the leading Democratic candidate to replace Sestak in Congress, State Rep. Bryan Lentz. Democrats have a 104-99 majority in the state House; control of the chamber is crucial with Pennsylvania expected to lose a congressional district next year in the reapportionment that follows the census.

Still, Sestak's account was startling.

"Clearly, the offers are made," said Ross Baker, a Rutgers University political science professor who specializes in Congress. "When a White House wants to preempt a challenge, they'll dangle something. But it is almost never uttered."

In addition, Baker said, conversations in such cases are nuanced, and savvy operators know not to use explicit quid pro quo language.

He said he could not, off hand, think of another instance in which a candidate has divulged an approach from White House officials. Baker said that, in theory, that might be an advantageous gambit for a candidate who, like Sestak, is positioning his campaign as an outsider and wants to demonstrate that "the big guys" are worried about the challenge.

Nachama Soloveichik, spokeswoman for former Rep. Pat Toomey, the leading GOP candidate for the Senate seat, said she had no information on Sestak's story but added: "It's just like Arlen Specter to get an insider Washington deal to try to save his political

career."

Christopher Nicholas, Specter's campaign manager, declined to comment on the report or the Toomey campaign comment.

Last week, after Sestak received nominating petitions for the House from the Pennsylvania secretary of state, talk buzzed in political circles that he would give up the Senate race and run for reelection.

He says he is running only for the Senate, and volunteers are circulating nominating petitions for that office.

Legally, Sestak could circulate two sets of petitions, and experts say there is no prohibition on running for two offices simultaneously.

*Larry Kane: Voice of Reason* is set to air Sunday at 9:30 p.m.; audio of the interview will be on the KYW NewsRadio Web site tomorrow. The show will be rebroadcast at 5:30 p.m. Wednesday.

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Contact staff writer Thomas Fitzgerald at 215-854-2718

or [tfitzgerald@phillynews.com](mailto:tfitzgerald@phillynews.com).

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THE WHITE HOUSE

Washington

May 28, 2010

MEMORANDUM FROM ROBERT F. BAUER, WHITE HOUSE COUNSEL

SUBJECT: Review of Discussions Relating to Congressman Sestak

Recent press reports have reflected questions and speculation about discussions between White House staff and Congressman Joe Sestak in relation to his plans to run for the United States Senate. Our office has reviewed those discussions and claims made about them, focusing in particular on the suggestion that government positions may have been improperly offered to the Congressman to dissuade him from pursuing a Senate candidacy.

We have concluded that allegations of improper conduct rest on factual errors and lack a basis in the law.

*Secretary of the Navy.* It has been suggested that the Administration may have offered Congressman Sestak the position of Secretary of the Navy in the hope that he would accept the offer and abandon a Senate candidacy. This is false. The President announced his intent to nominate Ray Mabus to be Secretary of the Navy on March 26, 2009, over a month before Senator Specter announced that he was becoming a member of the Democratic Party in late April. Mabus was confirmed in May. At no time was Congressman Sestak offered, nor did he seek, the position of Secretary of the Navy.

*Uncompensated Advisory Board Options.* We found that, as the Congressman has publicly and accurately stated, options for Executive Branch service were raised with him. Efforts were made in June and July of 2009 to determine whether Congressman Sestak would be interested in service on a Presidential or other Senior Executive Branch Advisory Board, which would avoid a divisive Senate primary, allow him to retain his seat in the House, and provide him with an opportunity for additional service to the public in a high-level advisory capacity for which he was highly qualified. The advisory positions discussed with Congressman Sestak, while important to the work of the Administration, would have been uncompensated.

White House staff did not discuss these options with Congressman Sestak. The White House Chief of Staff enlisted the support of former President Clinton who agreed to raise with Congressman Sestak options of service on a Presidential or other Senior Executive Branch Advisory Board. Congressman Sestak declined the suggested alternatives, remaining committed to his Senate candidacy.

*Relationship to Senate Campaign.* It has been suggested that discussions of alternatives to the Senate campaign were improperly raised with the Congressman. There was no such impropriety. The Democratic Party leadership had a legitimate interest in averting a divisive primary fight and a similarly legitimate concern about the Congressman vacating his seat in the House. By virtue of his career in public service, including distinguished military service, Congressman Sestak was viewed to be highly qualified to hold a range of advisory positions in which he could, while holding his House seat, have additional responsibilities of considerable potential interest to him and value to the Executive Branch.

There have been numerous, reported instances in the past when prior Administrations -- both Democratic and Republican, and motivated by the same goals -- discussed alternative paths to service for qualified individuals also considering campaigns for public office. Such discussions are fully consistent with the relevant law and ethical requirements.