

STATE MERIT SYSTEM:
EMPLOYEES: POLITICAL
ACTIVITIES PROHIBITED
WHEN:

Personnel Advisory Board Rule 15.4(b) prohibits employees under State Merit System from being candidates for nomination or election to public office, or engaging in political activities while holding such position. Merit system employee cannot become candidate for election of director to city school board without resigning or securing leave of absence. May attend political mass meeting but cannot take active part except to express opinion or vote on any proposition if afforded the opportunity.

JOHN M. DALTON
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May 1, 1953

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Honorable J. Rex James
Administrative Officer
The Division of Health
Jefferson City, Missouri

J. C. Johnsen

Dear Mr. James:

This department is in receipt of your recent request for a legal opinion which reads, in part, as follows:

"Section 15.4b of the Personnel Division Rules and Regulations, quoting the original Personnel Act, prohibits employees under the act from holding any public office. In the opinion of the Attorney General does this apply to such elective offices as City School Boards?"

The further question was propounded involving the same subject matter and reads as follows:

"Also, what is your opinion as to people under the Merit System attending political mass meetings, or taking any active part in the meetings?"

Chapter 36, RSMo. 1949, entitled "State Merit System," together with any new laws or amendments embodies all the statutory provisions relating to the Merit System in Missouri.

Chapter 36.070 of said chapter empowers the State Merit System Board to make proper rules and regulations for the administration of the Merit System laws and reads as follows:

"The board shall have power to prescribe such rules and regulations not inconsistent with the provisions of this chapter as it deems suitable

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and necessary to carry out the provisions of this chapter. Such rules and regulations shall be effective when filed with the secretary of state as provided by law."

The Merit System Board, in exercising the power conferred upon it by the above quoted section, has promulgated a number of rules and regulations for the administration of laws contained in Chapter 36, supra, among which is Section 15.4(b), supra, the applicable portion of which reads as follows:

"* * *'No employee selected under the provisions of this act shall be a member of any national, state, or local committee of a political party, or an officer of a partisan political club, or shall take any part in the management or affairs of any political party or in any political campaign, except to exercise his right as a citizen to express his opinion and to cast his vote. No employee in a position subject to the act shall be a candidate for nomination or election to any public office except after resigning, or obtaining a regularly granted leave of absence, from such position.' (Act, Sec. 43(e).)

"'No person elected to public office shall, while holding said office, be appointed to any position in the classified service.' (Act, Sec. 43(f).)"

The above quoted regulation appears to be based upon subsections 5, 6 and 7, of Section 36.150, RSMo. 1949, and the regulation is practically a word for word duplication of said statute. We find it unnecessary to quote said section herein, but call attention to it as the apparent authority for making said regulation.

As noted above, said regulation prohibits any state employee, holding a classified position under the Merit System, from being a candidate for nomination or election to any public office during the time he is so employed except after he resigns or obtains a regularly granted leave of absence from his position. The rule further prohibits a public officer, while holding said office from being appointed to any classified position under the merit system.

In order to arrive at a correct answer to the first inquiry, it is necessary for us to determine whether or not the position of school director is a public office within the meaning of Rule 15.4(b), supra.

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Various definitions of the terms "public office" and "public officer" have been given and adopted by the courts of this state, among which are those referred to by the Supreme Court of Missouri in the case of State ex rel. Zevely v. Hackman, 300 Mo. 59. At l.c. 65, the court said:

"From the very language of the statute quoted we must approach this question by first ascertaining what is an officer, and whether or not Zevely comes within that application.

"Counsel for respondents have collected from all over the country a large number of definitions and adjudications defining 'offices' and 'officers,' and in my opinion, I can do no better than to reproduce them in this connection.

* * * * *

"An office is a public charge or employment, and the term seems to comprehend every charge or employment in which the public are interested. Every office is considered public, the duties of which concern the public. (People v. Hayes, 7 How. Prac. (N. Y.) l.c. 250.)

"In the most general and comprehensive sense a 'public office is an agency for the State and a person whose duty it is to perform this agency is a 'public officer.' Stated more definitely a 'public office' is a charge or trust conferred by public authority for a public purpose, the duties of which involve in their performance the exercise of some portion of sovereign power, whether great or small. A public officer is an individual who has been elected or appointed in the manner prescribed by law, who has a designation or title given to him by law, and who exercises the functions concerning the office assigned to him by law. (State ex rel. Smith v. Theus, 38 So. 870-72, 114 La. 1098; cited in State ex rel. v. Maroney, 191 Mo. l.c. 545.)

"A 'public office' is an agency for the State, and the person whose duty it is to perform this agency is a 'public officer;' the essence of it is the duty of performing an agency; that is, of doing some act or acts, or a series of acts,

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for the State. (Malone v. Williams, 103 S.W. 798.)

"An 'officer' is simply an agent of the public, whose power of attorney is the law, which prescribes his duties and limits his authority to such acts only as are necessary and incidental to a proper discharge of such duties as it imposes. (Callaghan v. McGown, 90 S.W.(Tex.) l.c. 327.)"

Again in the case of State ex inf. McKittrick v. Whittle, 333 Mo. 705, it was held that a school district is a political subdivision of the State of Missouri within the meaning of the nepotism amendment of the state constitution, and that a school director is a public officer within the meaning of said constitutional amendment. At l.c. 710, the court said:

"The courts have undertaken to give definitions in many cases; and while these have been controlled more or less by laws of the particular jurisdictions, and the powers conferred and duties enjoined thereunder, still all agree substantially that if an officer receives his authority from the law and discharges some of the functions of government he will be a public officer.' (State ex rel. v. Bus, 135 Mo. 325, l.c. 331, 332, 36 S.W. 636.) To the same effect, State ex rel. Zevely v. Hackmann, 300 Mo. 59, l.c. 66, 67, 254 S.W. 53; Hasting v. Jasper County, 314 Mo. 144, l.c. 149, 150, 282 S.W. 700.

"Thus it also appears that a school director is a public officer within the meaning of said section of the Constitution."

In Section 29 of the title of "Schools," 47 Am. Jur. 316, school officers are held to be public officers and said section reads, in part, as follows:

"The affairs of schools and school districts are usually intrusted to state or local officers variously known as superintendents, trustees, directors, and the like. In some jurisdictions, boards of education are public corporations, created by statute for public

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educational purposes. School officers constitute an administrative body, charged with the duty of administering the law governing the public schools within their districts. They are public officers. * * *

From the foregoing it appears that the general definitions given of "public office" and "public officer" are fully applicable to the members of a board of school directors; consequently, the position of school director would be a public office and a person who occupies that position would be a public officer within the meaning of said definitions.

Said school director is a public officer, for the reasons given above, and in answer to the first inquiry of your opinion request, it is out thought that the provisions of Section 15.4(b) of the Rules and Regulations, supra, are fully applicable to the situation referred to in the opinion request. It is our further thought that under the provisions of said section any employee of the State of Missouri holding a classified position under the Merit System is prohibited by said regulation from becoming a candidate for election to the office of director of a city school board while holding said position. However, if he resigns his position or obtains a regularly granted leave of absence, he may thereafter run for that office without violating said regulation.

We next take up for consideration the second inquiry of the opinion request, which we interpret as asking whether or not state employees under the Merit System may, under the provisions of Section 15.4(b) of the Personnel Division Rules and Regulations, attend political mass meetings or take any active part in said meetings.

It is noted that this section does not provide that state employees under the Merit System are prohibited from attending political meetings of any kind, but that said section does prohibit such employees from being members of any national, state, or local committee of a political party, or officers of any partisan political club and that they shall take no part in the management of the affairs of any political party or political campaign.

When Merit System employees attend political mass meetings, it is believed that under the provisions of Section 15.4(b), supra, that such employees are prohibited from taking any active part in said meeting except to express their opinions and to vote upon any matter before the meeting, if and when said employees are

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afforded the opportunity to do so.

Therefore, in answer to the second inquiry of the opinion request, it is our thought that employees under the Merit System may attend political mass meetings without violating the provisions of Section 15.4(b), supra, of the Merit System regulations, but that said employees are prohibited from taking any active part in the meeting except to express their opinions and to vote upon any proposition before the meeting, if and when the opportunity to exercise said rights, or either of them, are presented.

CONCLUSION

It is the opinion of this department that Rule 15.4(b) promulgated by the Personnel Advisory Board of the State of Missouri, under authority of Chapter 36, RSMo. 1949, entitled "State Merit System" prohibiting any state employee, while holding a classified position under the Merit System, from becoming a candidate for nomination or election to any public office is applicable to that of school director, consequently a state employee while holding a classified position under the merit system cannot become a candidate for election to the office of director of a city school board unless he first resign or obtain a regularly granted leave of absence from his position.

It is the further opinion of this department that one holding a classified position under the State Merit System is not prohibited by said Rule 15.4(b) from attending any political mass meeting but that while in attendance he can take no active part in said meeting except that he may exercise the right to express his opinion and to vote upon any proposition presented if afforded the opportunity to do so.

This opinion, which I hereby approve, was prepared by my assistant, Mr. Paul N. Chitwood.

Yours very truly,

JOHN M. DALTON
Attorney General

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