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MERIT SYSTEM:

(1) Employees may voluntarily join or belong to a political club. (2) Employees may be solicited for membership. (3) Employees may make voluntary political contributions. (4) Unlawful to solicit political contributions from Merit System employees.

May 5, 1949

FILED

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Hon. Ralph J. Turner
Director, Personnel Division
Dept. of Business and Administration
Jefferson City, Missouri

Dear Sir:

This is in reply to your request for an opinion, which reads, in part, as follows:

- 5-9*
- (Mimeo copies available 7-23-54)*
- "(1) Are Merit System employees prohibited under Section 43(e), Laws of Missouri, 1945, Page 1180, from voluntarily joining or belonging to any organization, association, or club, sponsored by a political party?
- "(2) Is it permissible under Section 43(d), Laws of Missouri, 1945, Page 1180, for any individual to solicit Merit System employees for membership in any organization, association or club sponsored by a political party?
- "(3) May Merit System employees make voluntary contributions to a political party, political candidate, any political publication or for any political purpose whatsoever under Section 43(d), Laws of Missouri, 1945, Page 1180?
- "(4) Is it permissible for any individual to solicit contributions from Merit System employees for a political party, political candidate, any political publication or for any political purpose whatsoever under Section 43(d), Laws of Missouri, 1945, Page 1180?"

We will answer your questions in the order submitted.

1. Are Merit System employees prohibited from voluntarily joining or belonging to a political organization or club?

Section 43(e), Laws of Missouri, 1945, page 1180 (Section 12851.42(e), Mo. R. S. A.), 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 this 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."

In order to answer your question, we believe it well to set out the provisions of Section 43(e), supra, so as to determine what prohibitions are contained therein. In this manner said section reads:

No employee selected under the provisions of this act:

(1) Shall be a member of any national, state, or local committee of a political party, or an officer of a partisan political club, or

(2) shall take any part in the management or affairs of any political party, or

(3) (shall take any part) in any political campaign, except to exercise his right as a citizen to express his opinion and to cast his vote.

By a breakdown of Section 43(e), supra, we are unable to find any provision therein which directly prohibits membership in a political club. It is quite apparent that a Merit System employee may not be a member of a political party committee, and it is clearly spelled out in the act that he may not be an officer of a partisan political club.

In construing this act, we believe that the rule of strict construction should be applied. This, for either or both of two reasons. First, the statute would probably be construed in law as a penal statute. The test whether a law is penal, in the strict and primary sense, is whether the wrong sought to be redressed is a wrong to the public or a wrong to the individual. The term is, however, frequently extended to include any act which imposes a penalty, or creates a forfeiture, as a punishment for the transgression of its provisions, or the commission of some wrong, or the neglect of some duty. (50 Am. Jur., page 34.) Section 43(g), Laws of Missouri, 1945, page 1180, provides as follows:

"Any officer or employee in a position subject to this act who violates any of the foregoing provisions of this section shall forfeit his office or position."

It has been a well-settled general rule that penal statutes are subject to a strict construction. More accurately, it may be said that such laws are to be interpreted strictly against the state and liberally in favor of the accused. The rule is founded on the tenderness of the law for the rights of individuals; its object is to establish a certain rule, by conformity to which mankind would be safe, and the discretion of the court limited. (50 Am. Jur., page 430.) In the interpretation of a penal statute, the tendency is to give it careful scrutiny, and to construe it with such strictness as to safeguard the rights of the defendant. Hence, penal statutes are not to be extended in their operation to persons, things, or acts not within their descriptive terms, or the fair and clear import of the language used. Acts in and of themselves innocent and lawful cannot be held to be criminal unless there is a clear and unequivocal expression of the legislative intent to make them such. Whatever is not plainly within the provisions of a penal statute should be regarded as without its intendment. Such a statute should not be interpreted to impose restrictions on conduct not specifically enumerated in the legislative act, or to include cases omitted by the legislature, and which do not fall within the scope of the law. (50 Am. Jur., pages 433, 434.) Even

though Section 43(e), supra, were not considered as a penal statute, the rule of strict construction would still apply for the reason that the statute is a derogation of the natural rights of employees subject to the Merit System Act. The rule in this regard is well set out in the text of 50 Am. Jur., pages 421, ff., as follows:

"A rule of strict construction is generally applied to the interpretation of statutes in derogation of rights, either of the public or of individuals, or in derogation of their natural rights, or rights which have been enjoyed from time immemorial. This rule has been applied to rights of life, liberty, and the pursuit of happiness. It prevails in cases of statutes which are in derogation of contract rights, or which impose restrictions on the conduct of business, or which are restrictive of a free economy. Statutes which take from or circumscribe the rights of citizens, either as given them by the common law or by former statutes and contracts arising thereunder affecting such rights, must be strictly construed against those seeking the deprivation, or circumscription of such rights under contract, and in favor of those whose rights are so affected. The general rule is that the scope of such statutes is not to be extended beyond the usual meaning of their terms. Indeed, no act should be construed as infringing upon such rights except by irresistibly clear, unambiguous, and peremptory language bearing no other construction. The burden lies on those who seek to establish that the legislature intended to take away the private rights of individuals, to show that by express words or by necessary implications such an intention appears. On the other hand, a statute involving a personal privilege or right conferred upon an individual by the constitution, is to be liberally construed in favor of the individual.

"The general rule is that statutes in derogation of the 'common right' are subject to a strict construction. 'Common right' is a term applied to rights, privileges, and immunities appertaining to, and enjoyed by, all citizens equally and in common, and which have their foundation in the common law. A strict construction is accordingly accorded to a statute which is in derogation of the equal rights of all. The rule has also been applied to a statute conferring special privileges upon one class in a community not enjoyed by others.

"Statutory authority in derogation of the common right may not be implied or inferred from vague or doubtful language, but must be given in express terms or by necessary implication. The statute is not to be extended beyond the exact and express requirements of the language used, but is confined to the subject specified including such as are necessarily within the contemplation of the legislation under review. A person claiming the benefit of the statute must bring himself plainly within its provisions.

"The general rule is that statutes enacted for the protection of personal liberty are to be liberally construed, and that statutes in derogation of personal liberty are to be strictly construed. Under this rule, no act of the legislature is to be construed as infringing upon the constitutional right of liberty, or upon liberties which have been enjoyed without question from time immemorial, except by clear, unambiguous, and peremptory language."

In approaching this problem we have examined Civil Service statutes from many jurisdictions and have also considered the

Civil Service sections of the charters of Kansas City and the City of St. Louis. Section 19 of Article 18 of the Charter of the City of St. Louis, as amended, concerning political activities of persons in the classified service, contains stronger language than is to be found in Section 43(e), supra. This section, however, carefully safeguards the right of city employees to belong to political organizations, to cast their votes as they please and to express privately their opinions upon political questions (State ex inf. McKittrick v. Kirby, 349 Mo. 988, l.c. 990). Likewise, Section 126 of Article 5 of the Charter of Kansas City does not in express terms forbid employees in the classified service, and others specified, from becoming a member of a political club. It does state: "No officer or employee in the classified service of the city * * * shall be a member or officer of any committee of any political party."

In the case of State ex rel. Weber v. Birick, 192 N.E. 172, the court was considering a case on appeal wherein a person in the classified service of the city of Cleveland was summarily discharged for the reason, "Partisan Political Activity." The section of the charter which prohibited political activity read very similar to the one which we now have under consideration. In the opinion the court said, l.c. 174:

"'Partisan political activity' is a very general term covering about everything and anything that has to do with matters political. There may be political activities that are not comprehended within the kinds enumerated in Section 140. This section specifically enumerates what activities are inhibited thereby. No classified employees shall influence political action of any person or body or coerce political action, or interfere with any nomination or election to public office, or act as an officer of a political organization or take part in a

political campaign or serve as a member of a committee of any such organization or circulate or seek signatures to any petition for primary or election or act as a worker in favor of or against any candidate for public office. It is not difficult to think of other activities of a clear political character that may not be within these classifications of activities."

From a careful reading of the act, and applying the rule of strict construction which we think is proper in this case under the above authorities, we believe that Merit System employees are not prohibited from voluntarily joining or belonging to a political organization or club. However, by the express terms of Section 43(e), supra, they may not be an officer of such club.

2. Is it permissible for any individual to solicit Merit System employees for membership in a political organization or club?

We have seen that the answer to your first question is that a Merit System employee may voluntarily join or belong to a political organization or club. For the same reasons as outlined above in answer to that question, we are unable to find any prohibition under Section 43(e), supra, against solicitation of Merit System employees for such membership. However, we believe it pertinent to consider Section 43(d), Laws of Missouri, 1945, page 1180 (Section 12851.42(d), Mo. R.S.A.), which reads as follows:

"No person shall orally or by letter, or otherwise, levy or solicit any financial assistance or subscription for any political party or candidate, political fund, or publication, for any political purpose whatsoever from any employee in a position subject to this act; and no employee in a position subject to this act shall act as agent in receiving or accepting any financial contribution or subscription, or assignment of pay, for any political purpose whatsoever. No person shall use, or threaten to use, any direct or indirect coercive means to compel an employee in a position subject to this act to give such

assistance, subscription, or support, nor in retaliation for the failure of such employee to give such assistance, subscription or support."

If the solicitation of Merit System employees for membership in a political organization or club also involved a solicitation of financial assistance for such political party, we believe that such activity is forbidden by virtue of Section 43(d), supra. In this respect we refer to the rule contained in 50 Am. Jur., page 435, which reads as follows:

"A strict construction of penal statutes does not require the words to be construed so narrowly as to exclude cases that may be said to be fairly covered by them. * * In short, although criminal statutes are to be strictly construed in favor of the defendant, the courts are not authorized so to interpret them as to emasculate the statutes."

And, again in 50 Am. Jur., page 428, the rule is stated:

"Although a rule of strict construction is applied to a statute in derogation of the common law, it should nevertheless be construed sensibly and in harmony with the purpose of the statute, so as to advance and render effective such purpose and the intention of the legislature. The strict construction should not be pushed to the extent of nullifying the beneficial purpose of the statute, or lessening the scope plainly intended to be given thereto."

Therefore, in answer to your second question, we believe the rule to be that the mere solicitation of Merit System employees for membership in a political organization or club is not forbidden, but if such solicitation ultimately resulted in the seeking of financial assistance for a political party or candidate there would be a violation of Section 43(d), supra.

3. May Merit System employees make voluntary contributions to a political party, political candidate, any political publication, or for any political purpose whatsoever?

In answer to your question No. 2 we have set out Section 43(d), which generally prohibits solicitation of financial assistance for political purposes. Said section also prohibits a Merit System employee from acting as an agent in receiving or accepting any financial contribution for a political purpose. Lastly, it forbids the use of coercive means to compel a Merit System employee to give such assistance for political purposes.

For the reasons outlined in our answer to your question No. 1, we believe that Section 43(d) should be strictly construed and that cases which do not fall plainly within its provisions should be regarded as without its intendment. The act does not forbid the making of voluntary contributions for a political purpose, nor do we see how such a prohibition could be read into the act.

Again, in interpreting these sections, we refer to similar sections contained in the city charters in this state. Section 17 of Article 18 in the Charter of the City of St. Louis reads, in part, as follows:

" * * * No person in the classified service shall be under any obligation to contribute to any political fund or to render any political service, and no such person shall do so or be removed or otherwise prejudiced for refusing to do so.
* * * " (Underscoring ours.)

Section 126 of Article 5 of the Charter of Kansas City reads, in part, as follows:

" * * * No officer ^{or} of employee in the classified service of the city, or auditor, director of personnel, or member of the personnel board, shall directly or indirectly give, pay, lend, or contribute any part of his salary or compensation or any money or other valuable thing to any person on account of, or to be applied to, the promotion of any political party or any political purpose whatever. * * * "

Thus, it is seen that in other Merit System (or Civil Service) Acts it was apparently thought that language similar to that in question here was not sufficient to prohibit voluntary political contributions. So, as seen above, more language was employed.

From a consideration of all the above, we believe that Merit System employees may make voluntary contributions to a political party, political candidate, any political publication, or for any political purpose whatsoever. The statute is directed at the solicitation of financial assistance and safeguards Merit System employees from coercion to compel contributions and from retaliation for the failure to make contributions. However, we believe it well to point out separately that a Merit System employee may not act as agent in receiving or accepting financial contributions for a political purpose.

4. Is it permissible for any individual to solicit political contributions from Merit System employees?

The first part of Section 43(d), supra, reads as follows:

"No person shall orally or by letter, or otherwise, levy or solicit any financial assistance or subscription for any political party or candidate, political fund, or publication, for any political purpose whatsoever from any employee in a position subject to this act; * * *"

We think it unnecessary to apply any rules of construction in answer to your last question. The law is well settled that where a statute is clear and unambiguous on its face there is no ground for the application of the rules for construction of statutes. Therefore, the answer to your last question is "no." It is not permissible for an individual to solicit political contributions from Merit System employees.

Conclusion.

Therefore, it is the opinion of this department that:

1. Merit System employees may voluntarily join or belong to a political organization or club.

2. The mere solicitation of Merit System employees for membership in a political organization or club is not forbidden.

3. Merit System employees may make voluntary contributions to a political party, political candidate, any political publication, or for any political purpose.

4. It is not permissible for any person to solicit contributions from Merit System employees for political purposes.

Respectfully submitted,

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APPROVED:

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