

LABOR ORGANIZATION:
NEGOTIATION:
PUBLIC BODY:
POLITICAL SUBDIVISION:
CITIES:
SCHOOLS & SCHOOL DISTRICTS:
COLLECTIVE BARGAINING:
STATE:
STATE OFFICERS:
STATE BOARDS AND COMMISSIONS:

1. A representative of a public body may in its discretion meet with a representative of employees and talk about problems of mutual interest. This does not include the right or power to engage in collective bargaining. 2. If an understanding is reached between representatives of the public body and representatives of the employees the understanding shall be reduced to writing, but does not constitute a contract, and shall be submitted to the public body for appropriate action. 3. Any public body has the right and power to discuss matters of mutual interest with its employees or their representatives.

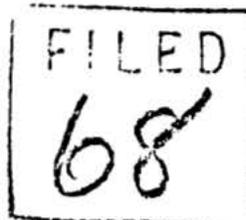
May 6, 1966

OPINION NO. 68 (1966)
No. 437 (1965)

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Gentlemen:

Your request for an opinion on labor organizations and their relations, under our present law, to municipal corporations has been carefully considered. Specifically you asked:

(1) Whether the word "negotiation", found in Section 105.520 RSMo Cum. Supp. 1965, should be interpreted as meaning "collective bargaining";

(2) Whether the phrase "shall be reduced to writing" found in Section 105.520, supra, means to enter into a contract (with a union) and

Rep. Garrett, Davis and Schapeler:

(3) Must a public body enter into negotiations with a union if its employees are represented by that labor organization?

At the outset this office acknowledges with thanks and appreciation the invaluable assistance that counsel and officials of both labor organizations and public bodies have given us in the form of expression of views and ideas and in the form of extensive legal research and memoranda.

In this opinion, although not comprehensive of all possible questions that may or could arise under these statutes, we will nevertheless undertake to discuss some of the apparent problems that arise.

For convenience, the pertinent portions of the Constitution of Missouri and the statutes are set forth below:

"Article I, Section 29 - Organized labor and collective bargaining --That employees shall have the right to organize and to bargain collectively through representatives of their own choosing."

"105.500 - 'Public body', defined --As used in sections 105.500 to 105.530, 'public body' means the state of Missouri or any officer, board or commission of the state, or any other political subdivision of or within the state."

"105.510 - Public employees may join labor organizations and bargain collectively -- exceptions-- not to be discharged or discriminated against.-- Employees except police, deputy sheriffs, Missouri state highway patrol, Missouri national guard, all teachers of all Missouri schools, colleges and universities, of any public body shall have the right to form and join labor organizations and to present proposals to any public body relative to salaries and other conditions of employment through representatives of their own choosing. No such employee shall be discharged or discriminated against because of his exercise of such right, nor shall any person or group of persons, directly or indirectly, by intimidation or coercion, compel or attempt to compel any such employee to join or refrain from joining a labor organization."

Rep. Garrett, Davis and Schapeler:

"105.520 -- Public bodies may negotiate with labor organizations. --Any public body may engage in negotiations relative to salaries and other conditions of employment of the public body employees, with labor organizations. Upon the completion of negotiations the results shall be reduced to writing and presented to the governing or legislative body in the form of an ordinance or resolution for appropriate action."

"105.530 - Law not to be construed as granting right to strike.-- Nothing contained in sections 105.500 to 105.530 shall be construed as granting a right to employees covered hereby to strike."

It is noted that the statutes set out above are new in this state and were first enacted in 1965 (Laws 1965 p --S.B. No. 112, 73rd General Assembly). We have no judicial precedent in this state on the interpretation of these statutes.

In March 1957, this office issued Attorney General Opinion No. 68, to Honorable W. H.S. O'Brien, wherein we held that:

(1) Employees of a county highway commission may organize a labor union;

(2) A county court lacks the power to enter into a collective bargaining with a labor union representing the employees; and

(3) A county court lacks the power to enter into and execute a contract of employment with a labor union representing the employees of a county highway commission.. (A copy of the opinion is attached).

A reading of the opinion clearly establishes that its result is bottomed on an en banc decision of the Missouri Supreme Court decided in 1947 and styled as the City of Springfield v. Clouse, et al, 206 S.W. 2d 539. Because of its importance to the problem and to establish a precedent (at least as to the law prior to 1965) we shall quote extensively from it. We believe this opinion to be declaratory of law under our Missouri Constitution and relevant to your current questions. The court said:

Rep. Garrett, Davis and Schapeler:

"* * *All citizens have the right, preserved by the First Amendment to the United States Constitution and Sections 8 and 9 of Article I of the 1945 Missouri Constitution, Sections 14 and 29, Art. 2, Constitution of 1875, to peaceably assemble and organize for any proper purpose, to speak freely and to present their views and desires to any public officer or legislative body. Employees had these rights before Section 29, Article I, 1945 Constitution was adopted. * * *" (l.c. 542)

"* * *Nevertheless, the organization and activity in organizations of public officers and employees is subject to some regulation for the public welfare. See United Public Workers v. Mitchell, 330 U. S. 75, 67 S.Ct. 556, 91 L. Ed. --; Oklahoma v. United States Civil Service Commission, 330 U.S. 127, 67 S.Ct. 544, 91 L.Ed. --; King v. Priest, Mo. Sup., 206 S.W. 2d 547, and cases therein cited. This is because a public officer or employee, as a condition of the terms of his public service, voluntarily gives up such part of his rights as may be essential to the public welfare or be required for the discipline of a military or police organization.

[3] Therefore, we start with the proposition that there is nothing improper in the organization of municipal employees into labor unions; and that no new constitutional provisions were necessary to authorize them. However, collective bargaining by public employees is an entirely different matter. * * *" (l.c. 542)

"Indeed defendants' counsel recognize (as did the sponsors of Section 29 in the Constitutional Convention) that wages and hours must be fixed by statute or ordinance and cannot be the subject of bargaining. In the argument in this case, en banc, it was conceded that a city council cannot be bound in any such bargaining; that it must provide the terms of working conditions, tenure and compensation

Rep. Garrett, Davis and Schapeler:

by ordinance; and that it likewise by ordinance may change any of them the next day after they have been established." (l.c. 543)

* * * * *

"This is confusing collective bargaining with the rights of petition, peaceable assembly and free speech. Certainly public employees have these rights for which Mr. Wood was contending; and can properly exercise them individually, collectively or through chosen representatives, subject, of course, to reasonable legislative regulation as to time, place and manner in the interest of efficient public service for the general welfare of all the people. However, persons are not engaging in collective bargaining when they tell their senator, representative or councilman what laws they believe they should make. Neither are they engaging in collective bargaining with executive or administrative officers when they urge them to exercise discretionary authority within standards and limits which they have received or must receive from the legislative branch, or ask them to make recommendations to the legislative branch for further legislation." (l.c. 543)

"* * * But legislative discretion cannot be lawfully bargained away and no citizen or group of citizens have any right to a contract for any legislation or to prevent legislation. The only field in which employees have ever had established collective bargaining rights, to fix the terms of their compensation, hours and working conditions, by such collective contracts, was in private industry." (l.c. 543)

* * * * *

"* * * Thus the Convention did not settle the matter of public employees in labor organizations and their functions in governmental relations but left the matter to the legislature and the courts. While these debates are instructive as to the background and development of this proposal, nevertheless what was submitted to the people for adoption was Section 29 and not any delegate's speech about it. See Adamson v. People of State of California, 67 S.Ct. 1672, 91 L.Ed. --, and concurring opinion of Justice

Rep. Garrett, Davis and Schapeler:

Frankfurter, 67 S.Ct. loc.cit. 1682; see also Household Finance Corporation v. Shaffner, Mo. Sup., 203 S.W. 2d 734, loc.cit. 737. Furthermore, the people voted on the adoption of an entire Constitution so that Section 29 must be construed in connection with all the provisions of the Constitution of which it is a part, many of which have long been essential parts of our basic law." (l.c. 544)

"* * *The principle of separation of powers is stated in Article II, Art. III, 1875 Const., which provides that 'the powers of government shall be divided into three distinct departments * * *each of which shall be confided to a separate magistracy'; and that 'no person, or collection of persons, charged with the exercise of powers properly belonging to one of these departments, shall exercise any power properly belonging to either of the others.' This establishes a government of laws instead of a government of men; a government in which laws authorized to be made by the legislative branch are equally binding upon all citizens including public officers and employees. The legislative power of the state is vested in the General Assembly by Section 1 of Article III. Sec. 1, Art. IV. 1875 Const. The members of the legislative branch represent all the people, and speak with the voice of all of the people, including those who are public officers and employees. In the exercise of their legislative powers, they must speak through laws which must be equally binding upon all and not through contracts. Even the making of public contracts must be authorized by law. See Sec. 39(4) Article III, 1945 Const., Sec. 48, Art. IV, 1875 Const. Laws must be made by deliberation of the lawmakers and not by bargaining with anyone outside the lawmaking body. These same governmental principles and constitutional provisions apply also to municipalities because their legislative bodies exercise part of the legislative power of the state. See City of Springfield v. Smith, 322 Mo. 1129, 19 S.W. 2d 1; Ex parte Lerner, 281 Mo. 18, 218 S. W. 331 and cases cited; see also Sections 6613-6617 as to legislative powers of the city council of second class cities. The City's organization and powers come from the General Assembly which is authorized by Section 15, Article VI, Sec. 7, Art. IX, 1875 Const. to provide for the organization

Rep. Garrett, Davis and Schapeler:

and classification of cities and towns with the limitation that 'the number of such classes shall not exceed four; and the powers of each class shall be defined by general laws so that all such municipal corporations of the same class shall possess the same powers and be subject to the same restrictions.' It is inconceivable that the Constitutional Convention intended to invalidate all of the statutes, enacted through the years under this authority, concerning the operation of municipalities in fixing and regulating compensation, tenure, working conditions and other matters concerning public officers and employees.

[8,9] Under our form of government, public office or employment never has been and cannot become a matter of bargaining and contract. State ex rel. Rothrum v. Darby, 345 Mo. 1002, 137 S.W. 2d 532; see also Nutter v. City of Santa Monica, 74 Cal. App.2d 292, 168 P.2d 741, loc.cit. 745; Miami Water Works Local No. 654 v. City of Miami, 157 Fla. 445, 26 So. 2d 194, loc.cit. 197, 165 A.L.R. 967; Mugford v. Mayor and City Council of Baltimore, 185 Md. 266, 44 A.2d 745, loc.cit. 747, 162 A.L.R. 1101. This is true because the whole matter of qualifications, tenure, compensation and working conditions for any public service, involves the exercise of legislative powers. Except to the extent that all the people have themselves settled any of these matters by writing them into the Constitution, they must be determined by their chosen representatives who constitute the legislative body. It is a familiar principal of constitutional law that the legislature cannot delegate its legislative powers and any attempted delegation thereof is void. 11 Am.Jur. 921, Sec 214; 16 C.J.S. Constitutional Law, §133; A.L.A. Schechter Poultry Corporation v. United States, 295 U.S. 495, 55 S.Ct. 837, 79 L.Ed. 1570, 97 A.L.R. 947. If such powers cannot be delegated, they surely cannot be bargained or contracted away; and certainly not by any administrative or executive officers who cannot have any legislative powers. Although executive and administrative officers may be vested with a certain amount of discretion and may be authorized to act or make regulations in accordance with certain fixed standards, nevertheless the matter of making such standards involves the exercise of legislative powers. Thus qualifications,

tenure, compensation and working conditions of public officers and employees are wholly matters of lawmaking and cannot be the subject of bargaining or contract. Such bargaining could only be usurpation of legislative powers by executive officers; and, of course, no legislature could bind itself or its successor to make or continue any legislative act. * * * (l.c. 544, 545)

"* * *The question involved herein is a question of power rather than one of what function is involved. 'Missouri cities have or can exercise only such powers as are conferred by express or implied provisions of law; their charters being a grant and not a limitation of power, subject to strict construction, with doubtful powers resolved against the city.' Taylor v. Dimmit, 336 Mo. 330, 78 S.W. 2d 841, 843, 98 A.L.R. 995. Fixing compensation, hours and tenure require the exercise of legislative powers in exactly the same way for all employees of the City, whether governmental or corporate, at least under the organization of second class cities in this state.* * *" (l.c. 546)

A close reading of the Clouse case establishes a parallel between that case and the present statutes in our opinion. In support of this view, we cite a recognized canon of statutory construction that when a court of last resort has declared the law, the General Assembly is presumed to be aware of that declaration when it adopts an enactment on the same subject (Mack Motor Truck Corporation v. Wolfe, 303 S.W. 2d 697, 700; Jacob v. Missouri Valley Drainage District, 163 S.W. 2d 930, 939). The court, in the Wolfe case, supra, said:

"[4-7] The General Assembly must be presumed to have been aware of the state of the common law relating to the priority of a Missouri artisan's common-law lien over all recorded Missouri chattel mortgages, as declared by the Kirtley case and others, when it enacted Sections 430.010 - 430.050, V.A.M.S., creating the statutory lien. For when a court of last resort has declared the law, the General Assembly is presumed to be aware of that declaration when it adopts an enactment on the same subject. * * *"

Rep. Garrett, Davis and Schapeler

We conclude therefore the General Assembly did have in mind and intended to adopt the principles enunciated in the Clouse case. It is our opinion that the Clouse case defines and sets forth the constitutional framework upon which the legislature did construct the present legislation.

The word 'negotiate' is defined in Websters New International Dictionary (2nd Ed) P. 1638: "To hold intercourse or treat with a view to coming to terms upon some matter, as a purchase or sale, a treaty etc; to conduct communication or conferences as a basis of agreement."

"Negotiation"; "Act or process of negotiating; a treating with another with a view of coming to terms as for a sale or purchase or in international affairs;" Our common understanding of the word "negotiate" is "talk" "communicate" or engage in a dialogue respecting particular subject matters. We have found nothing to mean that the word "negotiation" means more than the parties meet together to discuss their differences with a view of reaching an understanding.

As used in the statutes (Section 105.520, supra), we find the words "Any public body may engage in negotiation. * * *"

"An accepted dictionary definition of 'may' is 'permission'. Permission to do a thing is not a requirement or order that it be done." (Byers Bros. Real Estate and Insurance Agency v. Campbell, 353 S.W. 2d 102, 108).

The Missouri Supreme Court in State v. Wymore, 119 S.W. 2d 941, 944, has this to say about the words, "may" and "shall":

"* * *On reading the article it will be noted that the words 'may' and 'shall' are used many times in the several sections. They were used advisedly and must be given their usual and ordinary meaning. It is the general rule that in statutes, the word 'may' is permissive only and the word 'shall' is mandatory. * * *"

Accordingly, we believe that a public body or its representatives in its discretion, may negotiate with a labor organization. It is not required to do so since the word, may, is permissive and certainly it is not required to engage in negotiations. There is no language that indicates that negotiations may be equated with "collective bargaining". "Collective bargaining" results in an accord which

Rep. Garrett, Davis, and Schapeler:

will result in an agreement as to terms which will govern the many inter-related problems between the employer and the employee. See our opinion, Attorney General No. 68, dated March 15, 1957, to Honorable W.H. S. O'Brien, supra.

It has been urged by some that the words, "shall have the right to form and join labor organizations and to present proposals to any public body," (Found in Section 105.500) should be taken to mean that the labor group or union shall (used in mandatory sense) engage in collective bargaining with a public body. We cannot agree. It does mean, in our opinion that the employees have the absolute right to organize and the group shall have the right to present or petition any public body for redress of their grievances. This constitutes no more than a recognition or restatement by the legislature of the constitutional rights of a citizen "to peaceably assemble and organize for any proper purpose, to speak freely and to present their views and desires to any public officer or legislative body." (Springfield v. Clouse, l.c. 542).

We conclude therefore that a representative of a public body may in its discretion, meet with a representative of employees but not for collective bargaining as that term is commonly understood but to discuss problems or disputes respecting public body employee relationships.

Regarding your second question, Section 105.520, supra, reads in pertinent parts --

"* * *Upon completion of the negotiations, the results shall be reduced to writing and presented to the governing or legislative body in the form of an ordinance or resolution for appropriate action."

The basic guide for the interpretation of any statute is to seek the lawmakers' intention for the whole act; and, if possible, to effectuate that result. Words should be given their plain, ordinary meaning to promote the object and purpose of the statute. (Julian v. Mayer, et al, 391 S.W. 2d 864; May Department Store v. Weinstein, 395 S.W. 2d 525).

We believe labor relations in the public employment field are distinct and quite different from the procedures found in private industry. In private industry, both parties engage in a

Rep. Garrett, Davis and Schapeler:

process of collective bargaining with an ultimate goal of a valid agreement, enforceable at law, between unions representing the employees and the employer. In the field of labor relations involving public employment, the purpose of "negotiations" is to decide if joint recommendations can be arrived at between the representatives to be presented to the principals of the parties. If so, this understanding is then reduced to the form of an ordinance or resolution to be submitted to the legislative or governing body of the public body "for appropriate action". Such action might be to affirm, modify or deny, and would be unilateral in character. This procedure affords due process required in the Clouse case and recognition of the "separation of powers" doctrine. In public employment the relation between employer and employee may be altered because of changes in legislation or rules at any time. In private industrial relations, contracts defining employer--employee relations normally are for a given period and binding on both parties under the contract provisions.

We conclude, that a public body, in its discretion, may (used in a permissive connotation) negotiate with a representative of the employees. Although understanding is not required, if an understanding is reached, the results shall (used in a mandatory sense) be reduced to writing and presented to the governing or legislative body in the form of an ordinance or resolution for acceptance, rejection, modification or other appropriate action by the public body. This does not mean that when the understanding is reduced to writing, that the public body shall (used in a mandatory sense) enter into a contract but only that the written understanding will be presented to the governing or legislative body of the public body in the form of an ordinance or resolution for appropriate action. (See Springfield v. Clouse, supra). The governing or legislative body may unilaterally take whatever action, in its discretion, that it deems appropriate (Springfield v. Clouse, supra).

Respecting your third question, a public body has or can exercise only such powers as are conferred by express or implied provisions of law. (Springfield v. Clouse, supra). We have herein discussed the grant of authority to "negotiate" with representatives of employees as being permissive, we conclude that a public body may, in its discretion, enter into negotiations.

This opinion undertakes to respond to the inquiries propounded in your request. There are a number of other facets of this problem, however, that should be recognized and at least to some extent considered.

Rep. Garrett, Davis and Schepeler:

Among these problems is the meaning of "public body". Section 105.500, RSMo Cum. Supp. 1965, defines public body as meaning "the State of Missouri or any officer, board or commission of the state, or any other political subdivision of or within the state." This immediately raises a number of very vexing questions. For example, are state colleges and universities included or excluded from the ambit of Senate Bill 112 (Section 105.500 to 105.530, RSMo Cum. Supp. 1965). It will be observed that Section 105.510 commences as follows:

"Employees except police, deputy sheriffs, Missouri state highway patrol, Missouri national guard, all teachers of all Missouri schools, colleges and universities, of any public body shall have the right to form and join labor organizations * * *"

It will be observed that the language above referred to commencing with the second word in the section, the word "except" - to and including "universities" may be exceptions or exclusions from the coverage of that section of the statute. It therefore appears that the use of the words colleges and universities in the exception clause would mean that although a state college or state university may be a public body within the meaning of Section 105.500 their employees are excluded from the operation of Section 105.510. On the other hand the clause "all teachers of all Missouri schools, colleges and universities" may be read as a single thought. That is, that the subject of the clause is "teachers" and that the exclusion is intended to refer to teachers of all Missouri schools including as an exception teachers of colleges and universities. We believe that the latter view is the one intended by the legislature. This presents a most anomalous and ambiguous situation in the construction of this statute. We believe that the latter view is the one intended by the legislature. That is, that only "teachers" are intended to be excluded in Section 105.510.

Even though it may be argued that the term colleges and universities is not applicable to Section 105.510, yet Section 105.520 may be applicable to colleges and universities. With respect, however, to the problem of the University of Missouri there is a further complication respecting the provision of Section 9(a) Article IX of the Constitution which provides "The government of the State University shall be vested in a board of curators consisting of nine members appointed by the governor, by and with the advice and consent of the senate." This raises some very serious and perplexing questions as to what statutes, if any, passed by the Legislature are applicable to the State University.

Rep. Garrett, Davis and Schapeler:

Nevertheless, we have been unable to find any constitutional or other legal impediment that would deny the power or authority to the Board of Curators of the University of Missouri to voluntarily negotiate with its employees.

One of the next problems that arises is what political subdivisions are included within the meaning of public body? Section 105.500 defines public body and provides:

"As used in sections 105.500 to 105.530, 'public body' means the state of Missouri or any officer, board or commission of the state, or any other political subdivision of or within the state."

We find no particular difficulty in determining that a public body includes department heads of the State of Missouri, and all of the many Boards and Commissions of the State which have been established pursuant to law.

This leaves a vast area of other political and municipal corporations in which there may be doubt as to whether they are a "political subdivision of or within the state". In some situations the Courts have held cities not a political subdivision of the state (See Article V, Section 3 Constitution, and cases cited 2 VAMS page 31, et seq.). On the other hand the Courts have held cities to be political subdivisions under Article X, Section 15 of the Constitution. This however can be explained because the definition there expressly includes cities as well as other types political and municipal corporations. Again under the nepotism provision of the 1875 Constitution the Supreme Court held that political subdivisions included cities (Const. 1875, Article XIV, Section 13) (State ex rel v. Ferguson, 64 S.W. 2d 97). This may have been one reason for the change in the language of the nepotism provision in the 1945 Constitution (Article VII, Section 6).

While we recognize many technical difficulties in construing "political subdivision of or within the state" to include cities we nevertheless incline to the view that the legislature was not viewing the terms in their narrower sense but in their broader and more comprehensive sense. It is therefore our view that the legislature intended "political subdivision" to include cities, towns and villages.

We do not overlook the limitations placed upon the legislature and possibly to this Act now under consideration by Section 22 of

Rep. Garrett, Davis and Schapeler:

of Article VI applica e to Constitutional Charter Cities. The impact of this constitutional provision upon this Act will need to await further clarification by the Courts under facts yet to arise.

With respect to the application of political subdivision to school districts we again encounter many of the same difficulties observed above with respect to cities. No reason, however, has come to our attention why the same principles are not applicable. We therefore conclude that school districts are within the meaning of political subdivision.

That area commonly known as labor relations negotiations between labor and management usually encompasses the broad area often referred to as "Wages, hours and conditions of employment" include among them the following without attempting to be all inclusive; wages, hours of employment, seniority, vaction, sick leave, hiring, discharge and discipline, sanitary conditions, promotion, lay off, work assignment, classification, skill and experience, pensions, insurance and many others. It is well known that this is merely a partial listing of the many areas in which employer and employee negotiations are conducted. Because the power and authority of public officials and public bodies are so limited and circumscribed by law it is manifestly impossible to lay down broad lines for guidance on each of these various subjects. Each topic must be considered in the light of the express and implied statutory authority which the public officials and public bodies have in resolving misunderstandings, disputes or disagreements that exist between employees and each of the public bodies. By way of example, the subject of tenure. By and large most employees of the state can not have tenure because by law all employees of the state are employees "at will" and can not be subject to a contract for a term. Each area of employer and employee relations must therefore be considered in the light of the applicable law affecting that particular area.

CONCLUSIONS

This office concludes:

1. That a representative of a public body may in its discretion meet with a representative of employees and talk about problems of mutual interest. This does not include the right or power to engage in collective bargaining.

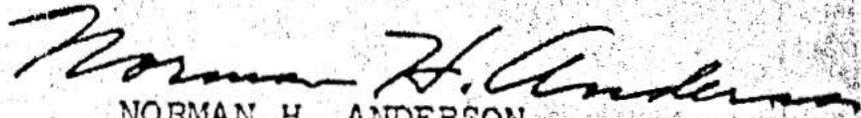
Rep. Garrett, Davis and Schapeler:

2. If an understanding is reached between representatives of the public body and representatives of the employees the understanding shall be reduced to writing, but does not constitute a contract, and shall be submitted to the public body for appropriate action.

Any public body has the right and power to discuss matters of mutual interest with its employees or their representatives.

The foregoing opinion which I hereby approve was prepared by my Assistant Richard C. Ashby.

Yours very truly,


NORMAN H. ANDERSON
Attorney General