SCHOOLS:
TEACHERS:

Section 168.116 of House Bill 120 of the 75th General Assembly which will become a law if approved by the Governor is constitutional and forbids only those activities by a school teacher included in the management of a campaign for the election or defeat of a member or members of a board of education by which he is employed.

OPINION NO. 353

August 26, 1969

FILED
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Honorable Donald J. Gralike
State Representative
District 49
648 Buckley Road
St. Louis, Missouri 63125

Dear Representative Gralike:

This official opinion is issued in response to your request for a ruling.

Your question concerns the effect of Section 168.116 of House Bill 120 of the 75th General Assembly which states, "No teacher shall take part in the management of the campaign for the election or defeat of members of a board of education by which he is employed. . . ." Such bill will become a law if approved by the Governor. Your letter asks:

> "I would like to know to what extent a teacher is limited in a campaign for school board members where he is employed. Does this only pertain to managing a campaign? Can a teacher still hand out campaign material in the district and at the polls? Is it permissable for a teacher to work on a telephone committee in behalf of a school board candidate? Is a teacher within his legal rights when he displays a bumper sticker on his automobile in behalf of a school board candidate?"

A constitutional question is raised by the above cited section of the Teacher Tenure Act. The section restricts the right of teachers to engage in political activity and such activity is protected conduct under the First Amendment of the United States Constitution. Sweezy v. New Hampshire, 354 U.S. 234, 250 (1956). Therefore, we must first decide whether the section can stand at all and if so answer your question as to its scope.

First Amendment rights are not absolute and in special situations are subject to limited restrictions. American Communications Assn., C.I.O. v. Douds, Regional Director of The National Labor Relations Board, 339 U.S. 382, 399 (1949). In the case which upheld the Hatch Act limitations on political activity of public employees, the Supreme Court said, ". . . The essential rights of the First Amendment in some instances are subject to the elemental need for order without which the guarantees of civil rights to others would be a mockery. . . ." United Public Workers of America v. Mitchell, 330 U.S. 75, 95 (1946).

But before First Amendment rights can be restricted it is required that a substantial public interest be involved. American Communications Assn., C.I.O., supra; Parker v. Board of Education of Prince George's County, Maryland, 237 F.Supp. 222 (D.Md. 1965); Gilmore v. James, 274 F.Supp. 75, 91 (N.D.Tex. 1967). In addition, the restrictive statute must be narrowly drawn. In Shelton v. Tucker, 364 U.S. 479 (1960), the United States Supreme Court overthrew an Arkansas statute which required teachers to file affidavits annually listing every organization to which they had belonged for the previous five years. The court said at page 488:

> "In a series of decisions this Court has held that even though the governmental purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved. The breadth of legislative abridgment must be viewed in the light of less drastic means for achieving the same basic purpose."

It must be determined whether the statute in question has a sufficiently compelling public purpose to justify the restrictions imposed. The process is a balancing of the extent of the abridgment against the value of the public interest. American Communications Assn., C.I.O., supra.

The public purpose for which this statute was written was apparently to prevent the disruption of schools and school boards by political campaigns. This is a valid public purpose in view of the Supreme Court decision upholding the Hatch Act, supra, and the decisions in several states. In Minielly v. State, 411 P.2d 69 (Ore. 1966), the Oregon Supreme Court overthrew an Oregon statute which forbade civil servants to run for elective office. The court said, at page 73, that a state may adopt regulations which ". . .bear a reasonable relation to the promotion of efficiency, integrity, and

discipline of the public service and which are not arbitrary or discriminatory." In Fort v. Civil Service Commission of the County of Alameda, 392 P.2d 385 (Cal. 1964) the California Supreme Court ruled invalid a county charter provision that prohibited civil servants taking any part in the political management or affairs of any political campaign or election. The court said at page 389:

> "No one can reasonably deny the need to limit some political activities such as the use of official influence to coerce political action, the solicitation of political contributions from fellow employees, and the pursuit of political purposes during those hours that the employee should be discharging the duties of his position. A strong case, we think, can also be made for the view that permitting a public employee to run or campaign against his own superior has so disruptive an effect on the public service as to warrant restriction. . . ."

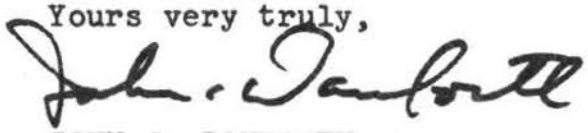
The means used to protect the public interest involved do not seem broader than necessary nor does the statute appear unnecessarily vague. The restriction is limited to a special kind of political campaign and forbids only the most active participation in such campaign.

The section which we interpret here does not stifle First Amendment freedoms by leaving a teacher uncertain as to the activity hereafter condemned. "Management" connotes control. ". . . A manager is defined as one who has control of a business or business establishment. . ." Williams v. Corbett, 286 P.2d 115, 118 (Ore. 1955). ". . .'Manager' ordinarily means one who has the conduct or direction of anything. . . ." People v. Boyden, 129 N.E.2d 37, 41 (Ill. App. 1955). ". . . Management means control, superintendence or guidance. . . ." Application of David Vogel, 268 N.Y.S.2d 237, 240 (App. Div. 1966). As long as a teacher has no share of the control or guidance of a campaign for or against one of his own school board members, he is safely within the perimeter of protected conduct. He may display bumper stickers. He may hand out campaign material, or work on a telephone committee so long as such activity does not result in his managing in whole or in part the campaign for the election or defeat of a member or members of the board of education by which he is employed. It is only necessary that he avoid exacerbation of relations between board members and teachers by initiating or taking part in the running of a campaign against or for a board member.

CONCLUSION

It is the conclusion of this office that Section 168.116 of House Bill 120 of the 75th General Assembly which will become a law if approved by the Governor is constitutional and forbids only those activities by a school teacher included in the management of a campaign for the election or defeat of a member or members of a board of education by which he is employed.

Yours very truly,



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