

March 13, 1973

OPINION LETTER NO. 69
Answer by letter-Wood



Mr. Joseph Jaeger, Jr.
Director of Parks
State Park Board
Post Office Box 176
Jefferson City, Missouri 65101

Dear Mr. Jaeger:

This is in response to your question as to whether the State Park Board has the authority to restrict the political activities of its employees along the lines set forth in the Board's Administrative Memorandum No. 8 dated January 1, 1967. This memorandum, in its entirety, is here set out with emphasis on the portion restricting activity.

"The declared policy of the Missouri State Park Board with regard to political activities of the Missouri State Park Board employees is as follows:

The employees of the Missouri State Park Board are free to think and vote as they please politically. They cannot hold any political office or serve as committeemen or in any other capacity with political organizations. The people of the State expect this department to be on a nonpolitical, impartial basis and we expect our employees to act so that this expectation may be fulfilled.

"The status of no employee of the Missouri State Park Board shall be affected in any way either by his contribution to any party's campaign

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fund or his failure to so contribute. Employees are free to make their decisions as to contributions to campaign funds.

"The employees of the Missouri State Park Board are under no political obligations so far as employment or tenure is concerned, and their employment shall be retained on the basis of satisfactory service or conduct."

The statutory powers of the Park Board include the authority to employ a director and such other officers and employees as it may deem necessary, to determine their qualifications and compensation and to prescribe their duties. Section 253.060, RSMo. The Board may also make and promulgate all reasonable rules and regulations germane to its purposes, including rules relating to its organization and internal management. Section 253.035, RSMo.

We believe that Administrative Memorandum No. 8 is a proper exercise of these delegated statutory powers provided it does not infringe upon the constitutionally protected civil rights of the employees. First Amendment, United States Constitution; Article I, §§ 8 and 9, Missouri Constitution. In passing upon an Oklahoma statute of similar purport to Administrative Memorandum No. 8, a federal court in that jurisdiction stated:

"We conclude that the Oklahoma Legislature has the power to regulate, within reasonable limits, the political conduct of state employees in order to promote efficiency and integrity in the public service. . . .

"We conclude that the constitutional guarantees of free speech and association are not absolutes and this Court must balance the extent of these freedoms against a legislative enactment designed as a safeguard against the evils of political partisanship by state employees. . . .

"We find that a government's interest in avoiding the danger of having promotions and discharges of civil servants motivated by political ramifications rather than merit is highly desirable. This interest is of such an importance that it may properly be classified as a compelling governmental interest, and a showing of a compelling governmental

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interest is sufficient to justify some encroachment upon an individual's first amendment rights. . . .

"We find that the provisions of unnumbered paragraphs six and seven of Title 74 O.S.1971, § 818, prohibiting political activity by state employees, are directly related to the State's goal of prohibiting partisan political activity. Said provisions allow state employees to participate in political decisions at the ballot box and prohibit only the partisan activity that would threaten efficiency and integrity and does not restrict public and private expressions on public affairs and personalities so long as the employee does not channel his activity towards party success. These prohibitions do not unduly infringe upon protected rights under the First Amendment to the United States Constitution. . . ." Broadrick v. State of Oklahoma ex rel. Oklahoma State Personnel Board, 338 F.Supp. 711, 715-716 (W.D. Okla. 1972) (prob. juris. noted 34 L.Ed.2d 510, December 11, 1972)

The constitutionality of the Federal Hatch Act has been sustained by the United States Supreme Court. United Public Workers v. Mitchell, 330 U.S. 75 (1947); Oklahoma v. United States Civil Service Commission, 330 U.S. 127 (1947). The current validity of these decisions has been challenged by some lower federal courts (e.g., Hobbs v. Thompson, 448 F.2d 456 (5th Cir. 1971)), but until they are overruled by the Supreme Court we consider them binding precedent. Recently, a federal court in the District of Columbia declared invalid that portion of the Hatch Act adopting as the standard of prohibited political conduct all rulings of the Civil Service Commission antedating passage of the Act (1940). National Association of Letter Carriers, AFL-CIO v. United States Civil Service Commission, 346 F.Supp. 578 (D.C. 1972) (prob. juris. noted 34 L.Ed.2d 510, December 11, 1972). In so doing, however, the court recognized the validity of the essential purpose of the Act to restrict political activity by government employees:

"There is an obvious, well-established governmental interest in restricting political activities by federal employees which was asserted long before enactment of the Hatch Act. Many federal employees have been prevented from running for political office and engaging

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in the more obvious forms of partisan political activity since the passage of the Civil Service Act in 1883.

"The Hatch Act provides in pertinent part that any employee of an Executive agency or an employee of the District of Columbia may not take an active part in political management or political campaigns of a partisan nature and is subject to removal or suspension without pay for violation. The appropriateness of this governmental objective was recognized by the Supreme Court of the United States when it endorsed the objectives of the Hatch Act.

* * *

". . . Government employment should, of course, carry some well-defined limitations upon participation in partisan political matters, but Congress may not by reason of this desirable objective neutralize such a large segment of the populace from expressing any opinion of any 'political' issue with the intent of somehow influencing someone else. In the end everything may appear political, all speech may intend to influence, and conformity is imposed in the fashion of more regimented, less democratic governments." 346 F.Supp. at 579-580, 583-584

In our opinion, Administrative Memorandum No. 8 of the Missouri State Park Board does not exceed the permissible scope of governmental restriction on the political activities of its employees. We, therefore, believe that the Park Board is authorized to limit its employees' political activities in the manner described in the memorandum.

Yours very truly,

JOHN C. DANFORTH
Attorney General