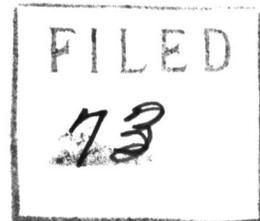


May 3, 1978

OPINION LETTER NO. 73

Honorable Marvin Proffer  
State Representative, District 155  
Rural Route 1  
Jackson, Missouri 63755



Dear Representative Proffer:

This letter is in response to your request for an opinion of this office which asks:

"May a corporate employer, which has employees in the state of Missouri subject to the National Labor Relations Act, participate in a campaign in connection with a change in the Missouri constitution which would prohibit the execution or enforcement of an agreement requiring membership in or financial support of a labor organization as a condition of employment?"

Section 129.075, RSMo, is presently effective. In this respect, see our Opinion No. 86-1978, copy enclosed. Such section provides:

"Notwithstanding the provisions of this chapter prohibiting corporations from participating in political actions and in contributing to candidates, it shall not be unlawful for such corporation to participate in any campaign in connection with a change in any law directly affecting such corporation."

Honorable Marvin Proffer

It is not the function of this office to determine questions of federal law.

29 U.S.C.A. § 164(b), provides as follows:

"Nothing in this subchapter shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law."

Therefore, it appears that the adoption of a "right to work law" in this state would redefine for employers in Missouri subject to the National Labor Relations Act the scope of their obligation to bargain collectively with their employees. Thus, it is our view that such a proposed change in the Missouri Constitution would directly affect such a corporate employer under the provisions of Section 129.075.

We also wish to point out that Senate Bill No. 839, Second Regular Session, 79th General Assembly, has been truly agreed to and finally passed and sent to the Governor for his approval, and, if approved, will as of August 13, 1978, repeal Sections 129.070 and 129.075, RSMo, as well as certain other sections designated therein. In addition, if such bill is approved by the Governor, certain other sections in Chapter 129 will be repealed effective September 8, 1978. New provisions relating to the subject of campaign practices will, if such bill is approved, be respectively effective on such dates. Therefore, if such bill is approved, after such dates, the provision of Senate Bill No. 839 will have to be considered.

Further, the United States Supreme Court in the case of First National Bank of Boston v. Bellotti, 46 LW 4371 (April 26, 1978) held unconstitutional a Massachusetts statute which prohibited corporations incorporated in or doing business in Massachusetts from making contributions or expenditures for the purpose of influencing or affecting the vote on any question submitted to the voters other than a question materially affecting any of the property, business or assets of the corporation.

We conclude that, in these premises, a proposed change in the Missouri Constitution providing a "right to work law" would

Honorable Marvin Proffer

directly affect a corporate employer having employees in the State of Missouri subject to the National Labor Relations Act, and such corporate employer would be able to participate in a campaign to support such a constitutional amendment under the provisions of Section 129.075, RSMo.

Very truly yours,

JOHN ASHCROFT  
Attorney General

Enclosure: Op. Ltr. No. 86,  
3/22/78, Douth