

OFFICE OF THE ATTORNEY GENERAL

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MAY 14 1985

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Mr. Allen L. Tapley
Administrative Director of Courts
Administrative Office of Courts
817 South Court Street
Montgomery, Alabama 36130

Employees - Employers - Employment -
Political Activities - Merit System -
Offices and Officers

State employees may seek public
office, on their own time. State
employees seeking public office must
comply with §17-1-7, Code of Alabama
1975 and where applicable §36-26-38,
Code of Alabama 1975.

Dear Mr. Tapley:

The Attorney General is in receipt of your recent request for an opinion in which you pose three questions concerning the applicability of §§36-26-38 and 17-1-7(a)(3), to employees and officers of the judicial system. Your specific questions are:

1. Unless there is a specific statute or provision of law governing a particular position or office do the above-cited provisions authorize state employees to seek nomination and election to any public office without having to take a leave of absence without pay to do so?
2. If the answer to question one is in the affirmative, are there any conditions or restrictions regarding state employment that apply to such persons while seeking office?

Mr. Allen L. Tapley

Page Two

3. If the answer to question one is in the negative under what conditions or restrictions can a state employee, both merit and confidential, seek election to a state, county or municipal office?

We will answer each of your questions in order.

Section 17-1-7(a)(3) provides:

No person in the employment of the State of Alabama, whether classified or unclassified, shall be denied the right to participate in city, county or state political activities to the same extent as any other citizen of the State of Alabama, including endorsing candidates and contributing to campaigns of his choosing, provided, however, any person within the classified service must comply with §36-26-38.

Subsection (a)(4) allows persons employed by a city, a county, or the State to join political clubs, organizations, and political parties. Subsection (a)(5) allows persons employed by a city, a county, or the State to publicly support issues, circulate petitions and contribute freely to political candidates. No part of §17-1-7(a) sets out limitations upon employees of the State of Alabama. Subsections (b) and (c) do set out limitations including prohibitions against using official authority or positions to influence votes and a specific prohibition against the use of state funds, property, or time for any political activities. In §17-1-7(c) the following prohibition is found:

...Any person who is in the employment of the State of Alabama must be on approved leave to engage in such political action or such person must be on personal time before or after work and on holidays...

Subsection (c) also goes on to provide that solicitations by supervisory employees from subordinate employees and coercion to assist in political activities are forbidden.

Mr. Allen L. Tapley
Page Three

Therefore, the answer to question one is that a state employee is not necessarily required to be on a leave of absence when seeking public office. The employee may continue to hold down their state job as long as the political activities conducted by the employee are done on their personal time, i.e., not on state work time.

The answer to question number two is contained in question number one. The restrictions to be placed upon state employees political activities are found in §17-1-7 and where applicable §36-26-39. The Office of the Attorney General has recently issued several opinions concerning political activities. I have attached Opinion No. 85-00265 and Opinion No. 84-00369 for your further information.

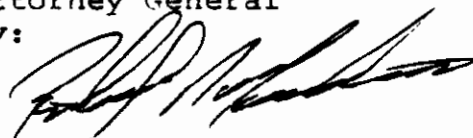
Since the answer to the question number one was in the affirmative it is unnecessary to answer question number three.

We hope that we have fully and completely answered your questions and if we may provide you with further information please feel free to contact this office at this time.

Sincerely yours,

CHARLES A. GRADDICK
Attorney General

By:



RICHARD N. MEADOWS
Assistant Attorney General

CAG:RNM:mth
Attachments

OFFICE OF THE ATTORNEY GENERAL



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MAR 19 1985

Honorable William G. Hause
HARDWICK, HAUSE, SEGREST & NORTHCUTT
P. O. Box 1469
Dothan, Alabama 36302

Municipalities - Employees -
Employers - Employment -
Political Activities

The extent to which employees
of the City of Dothan may
participate in city, county,
state and federal elections
discussed.

Dear Mr. Hause:

The Attorney General is in receipt of your request for an opinion concerning the extent to which employees of the City of Dothan are allowed to participate in city, county, state and federal elections.

You have posed five specific questions concerning the extent to which employees of the City of Dothan may participate in political activities. Each question will be answered individually.

1. Please advise if city employees may participate in city elections, county elections, state elections and federal elections.

Employees of the City of Dothan may participate in county elections, state elections and federal elections. Section 17-1-7, Code of Alabama 1975, allows the employee of any city to participate in county and state political activities to the same extent as any other citizen of the State including endorsing candidates and by contributing to campaigns.

Section 17-1-7 also allows employees of a city to become members of political clubs and organizations including state and national political parties. In subsection (a)(5) of Section 17-1-7 employees of a city are given the right to publicly support issues of public welfare, circulate petitions and contribute freely to causes of their choosing. Section 23 of the City of Dothan Civil Service Act does prohibit city employees from seeking a city office. Section 17-1-7 does not grant the right to a city employee to seek a city office and this section may not restrict participation in federal elections. (See question 5 below for the extent to which city employees may participate in city politics.) Therefore, it is the opinion of the Attorney General that employees of the City of Dothan may participate in county, state and federal elections to the extent allowed by Section 17-1-7 and Section 23 of the City of Dothan Civil Service Act.

2. Please advise: May city employees continue to hold their city position while running for, and if elected, to a city, county, state or federal office?

An employee of the city may not campaign or otherwise participate in political activities during normal working hours. The extent to which a city employee may use an appropriate type of leave to participate in political activities would be determined by the policies of the City of Dothan as allowed by the City of Dothan Civil Service Act. If a city employee were to be elected to a county, state, or federal office the possibility of a violation of Article XVII, Section 280 of the Constitution of Alabama of 1901 would arise. This section prevents a person from holding two offices of profit at the same time. It is the opinion of the Attorney General that the answer to this question would depend upon the office held and the particular leave policies of the City of Dothan. As noted above a city employee may not remain in his position and seek a city office. (See Questions 4 & 5 below)

3. May city employees actively campaign for candidates to be elected in city, county, state and federal offices?

Section 17-1-7 (a)(1) allows a city employee to participate in a county or state political activity to the same extent as any other citizen of the State of Alabama. It is the opinion of the Attorney General that an employee of

the City of Dothan may not participate in city political activities except as allowed in Section 17-1-7 (a)(4) or (5) and the Civil Service Act of the City of Dothan. (See Questions 4 & 5 below)

4. May city employees place campaign posters and literature in support of their candidates on their private property such as automobiles and yard signs?

The City of Dothan Civil Service Act provides in Section 23 (e) that a classified employee of the City of Dothan may exercise his right as a citizen privately to express his opinion and to cast his vote. It is the opinion of the Attorney General that the placing of a campaign poster in a yard or a bumper sticker on a private automobile is an expression of free speech as allowed both under the City of Dothan Civil Service Act and the First Amendment of the United States Constitution.

5. May city employees wear lapel buttons and distribute campaign literature for candidates seeking a political office in the city, county, state or federal government?

Section 17-1-7 (a)(1) allows the city employee to participate in county and state political activities to the same extent as any other citizen of the State of Alabama. Therefore, those portions of the City of Dothan Civil Service Act which conflict with Section 17-1-7 are repealed or superseded by implication. See Fletcher v. Tuscaloosa Federal Savings and Loan Association, 314 So.2d 51 (1975); Connor v. State, 153 So.2d 787 (1963). The City of Dothan Civil Service Act in Section 23 (e) does allow employees in the classified service to express their opinion and to vote for a candidate of their choice. It is the opinion of the Attorney General that the City of Dothan Civil Service Act and Section 17-1-7 do not allow city employees to support candidates for city office other than as expression of their personal opinion. Thus contributions to and active participation in political campaigns by classified city employees is not allowed by Section 17-1-7 and is prohibited by the Civil Service Act of the City of Dothan. It is sometimes difficult to draw a line and delineate exactly what amounts to an expression of an individual's personal opinion and active participation in a political campaign. The

Honorable William G. Hause
Page Four

Attorney General is extremely reluctant to determine when the wearing of a lapel button exceeds the expression of personal political opinion and becomes campaigning within the individual's workplace. The Attorney General believes that local officials are best able to determine the application of the local act specifying the extent to which city employees may campaign for city candidates.

We have enclosed two prior opinions of the Attorney General dealing with city employees and political activities. These opinions are an opinion of the Attorney General dated June 4, 1982 to the Honorable James M. Campbell and opinion of the Attorney General dated June 28, 1982 addressed to the Honorable Don Siegelman.

We hope that we have fully and completely answered your questions and if we may provide you with any further information, please feel free to call upon this office at any time.

Sincerely yours,

CHARLES A. GRADDICK
Attorney General

By:



RICHARD N. MEADOWS
Assistant Attorney General

CAG:RNM:mth
Attachments

82-00366

OFFICE OF THE ATTORNEY GENERAL



CHARLES A. GRADDICK
ATTORNEY GENERAL
STATE OF ALABAMA

JUN 4 1982

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Honorable James M. Campbell
Member, House of Representatives
District No. 59
Post Office Box 2003
Anniston, AL 36302

Elections - Municipalities -
Candidates

City employees may participate
in County and State political
activities to the same extent
as any other citizen notwith-
standing the provisions of
Section 15 of the Anniston
Civil Service Act.

Dear Representative Campbell:

The Office of the Attorney General has received your opinion request dated May 5, 1982. In the request you ask whether employees of the City of Anniston can participate in county and state political activities notwithstanding the provisions of Act 53 - 592, Section 15, page 7 (the Anniston Civil Service Act).

Section 15 provides:

No employee shall make, solicit
or receive any assessment, donation,
subscription or contribution for
any political purpose whatsoever,

Honorable James M. Campbell
Member, House of Representatives
Page 2.

or be a member of a committee or an officer of a political party, or take any part in its management or affairs except to exercise his right as a citizen to express his opinion and cast his vote; no employee shall assist any candidate for nomination or election to public office, or make any public statement in support of or against any such candidate, or participate in any manner whatever in the campaign of any candidate in any general or primary election; and no employee shall receive any appointment or advancement as a reward for his support of a candidate for office or a political party; nor shall he be dismissed, suspended or reduced in rank or pay as punishment for his failure to support any candidate for political office.

Code of Alabama 1975, § 17-1-7 provides, in pertinent part, that:

(a)(1) No person in the employment of any city, whether classified or unclassified, shall be denied the right to participate in county and state political activities to the same extent as any other citizen of the state of Alabama, including endorsing candidates and contributing to campaigns of his choosing.

Honorable James M. Campbell
Member, House of Representatives
Page 3.

It unequivocally states that no person in the employment of any city shall be denied the right to participate in political activities on state and county levels. Thus, it is the opinion of this office that Section 15 of the Anniston Civil Service Act is clearly in conflict with § 17-1-7 to the extent that it denies city employees this right.

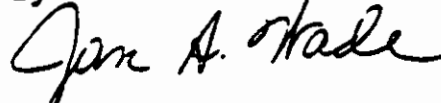
Where a new law covers the subject-matter of a former law, "and is inconsistent with it, and evidently intended to supersede and take the place of it, it repeals the old law by implication." Fletcher v. Tuscaloosa Federal Savings & Loan Ass'n., 294 Ala. 173, 314 So. 2d 51 (1975). This applies to conflicts between general and local laws. Connor v. State, 275 Ala. 230, 153 So. 2d 787 (1963). Therefore, it appears that the enactment of § 17-1-7 impliedly repealed the inconsistent portions of Section 15. Although city employees may be prohibited from participating in city political activities, they cannot be prohibited from participating at the state and county levels.

I do hope this response sufficiently answers your inquiry. If, however, we may be of further assistance, please do not hesitate to contact us.

Very truly yours,

CHARLES A. GRADDICK
Attorney General

By-



JAN A. WADE
Assistant Attorney General

JAW:db

OFFICE OF THE ATTORNEY GENERAL



CHARLES A. GRADDICK
ATTORNEY GENERAL
STATE OF ALABAMA

JUN 28 1982

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Honorable Don Siegelman
Secretary of State
State Capitol
Montgomery, Alabama 36130

State Employees - Employees,
Employers, Employment -
Political Activities

Discussion of state employee
political activities.

Dear Mr. Siegelman:

You have requested an opinion regarding various aspects of state employees' involvement in political activities which reads, in part, as follows:

"We have had numerous inquiries as to where in the law it states that employees of the state cannot participate in campaigns for state offices, and I would like to pose the following questions in order to give well-founded and precise information to state employees:

"What can state employees do as campaign workers in campaigns for people running for state office?

"Can employees of the state run for state office themselves?

"If state employees must resign to run for state office (or county employees must resign to run for county office), when must they resign?

Honorable Don Siegelman
Page Two

"Time is, of course, of the essence in getting this information to the people, therefore I would greatly appreciate your prompt attention."

In response to your inquiries, state employees are prohibited under the Alabama merit system law from participating in political campaigns. Section 36-26-38, Code of Alabama 1975, provides, in pertinent part:

"...No employee in the classified service shall be a member of any national, state or local committee of a political party or an officer of a partisan political club or a candidate for nomination or election to any public office 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 privately to express his opinion and to cast his vote;..."

This law has been modified by Section 17-1-7(3), Code of Alabama 1975, which states that "No person in the employment of the state of Alabama, whether classified or unclassified, shall be denied the right to participate in city or county political activities to the same extent as any other citizen of the state of Alabama, including endorsing candidates and contributing to campaigns of his choosing." (Emphasis added)

Because this section authorizes state employees to participate only in city and county political activities, the prohibition of Section 36-26-38 still applies with regard to state political activities.

Your first question is "What can state employees do as campaign workers in campaigns for people running for state office?" Section 36-26-38 provides that a state employee must not take any part in the "management or affairs of any political party or political campaign, except to exercise his right as a citizen privately to express his opinion and to cast his vote." While this language is not specific, it would

Honorable Don Siegelman
Page Three

seem to prohibit state employees from endorsing candidates and contributing to campaigns, inasmuch as Section 17-1-7(3) specifically authorizes these activities with regard to city and county campaigns.

It should be noted that the Supreme Court of the United States in Broadrick v. Oklahoma, 413 U.S. 601, 37 L. Ed. 2d 830, 92 S. Ct. 2908 (1973) upheld an Oklahoma state merit system act which is almost identical to Alabama's Section 36-26-38. However, the Court in Broadrick did not address the question of whether such activities as placing bumper stickers on cars or wearing campaign buttons were unlawful.

This office has long taken the position that Section 36-26-38 is not a strict prohibition against all political expression and that pursuant to an employee's right to express his opinion privately he may 1) wear political buttons while not at work, 2) place a bumper sticker on his car, or 3) attend political meetings purely as a spectator. Opinion to Hon. Tom Drake, Sept. 23, 1975, Quarterly Report of the Attorney General, Vol. 160, p. 28.

In response to your second question, this office has previously ruled that pursuant to Section 36-26-38 a state employee may not run for state office unless he resigns or takes a leave of absence. Opinion to Lewis W. Headley, Aug. 30, 1973, Quarterly Reports of the Attorney General, Vol. 152, p. 19. The determination of whether a leave of absence will be granted is within the discretion of the employer. If a leave of absence is not granted, the state employee must resign in order to run for state office.

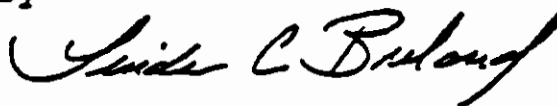
In response to your third question, it is my opinion that a state employee must resign or take a leave of absence no later than the date that he qualifies for a particular office because it is at that time that he officially becomes a candidate for nomination or election to a public office in conflict with Section 36-26-38. However, if the employer begins to campaign prior to the time that he qualifies or to do anything that is otherwise prohibited by Section 36-26-38, he should resign at that time.

Honorable Don Siegelman
Page Four

These are questions that frequently arise in all areas of state and local government, and it is my hope that this opinion is of some help in answering them.

Sincerely,

CHARLES A. GRADDICK
Attorney General
By-



LINDA C. BRELAND
Assistant Attorney General

LCB:bb

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JUL 20 1984

Representative Steve Hettinger
301 Randolph Avenue
Huntsville, Alabama 35801

Boards of Education - Employees,
Employers, Employment -
Political Activities

An employee of Alabama Educational
Television Commission is not
prohibited from running for the
Huntsville City School Board.

Dear Representative Hettinger:

The Attorney General is in receipt of your request for an opinion wherein you posed two questions based upon whether or not a State Merit System employee may be a candidate for the Huntsville City School Board. The specific questions posed are:

- (1) Can Mr. Kling be denied use of his accumulated annual leave to campaign?
- (2) Can Mr. Kling be terminated (or have his job eliminated) if he wins the election?

The Alabama Legislature, during its 1983 Regular Session, passed Act No. 83-497 which amended §§ 17-1-7 and 36-26-38 Code of Alabama 1975. Act No. 83-497 (Regular Session 1983), more commonly known as the Equality of Citizenship Act, amended these sections to remove certain prohibitions against a State Merit System employee seeking public office.

Section 17-1-7, Code of Alabama 1975 provides in subsection (3) that no employee of the State of Alabama

whether classified or unclassified shall be denied the right to participate in City, County or State political activities to the same extent as any other citizen of the State. Subsection (3) is qualified by the statement that "Any person within the classified service must comply with § 36-26-38."

Section 36-26-38, Code of Alabama 1975 in subsection (a) provides in part:

"...No employee in the classified service shall be a member of any national, State or local committee of a political party or an officer of a partisan political club or a candidate for nomination or election to any public office or shall take any part in the management or affairs of any political party or in any political campaign, except on his personal time and to exercise his right as a citizen privately to express his opinion and to cast his vote; provided, however, that nothing in this section shall prohibit any person in the classified service from serving out the term of a party office for which he had been elected at the time this chapter goes into effect."

The 1983 amendment to § 36-26-38 added the phrase "except on his personal time." This amendment removed the prohibition that a Merit System employee could not participate in political activities.

Section 17-1-7 in subsection (c) provides:

"No person in the employment of the State of Alabama, whether classified or unclassified, shall use any State funds, property or time, for any political activities. Any person who is in the employment of the State of Alabama must be on approved leave to engage in such political action or such person must be on personal time before or after work or on holidays...."

Rule 670-X-13-.04, Use of Annual Leave of the Rules of the State Personnel Board provides:

"Employees may use annual leave accumulated with the approval of their respective appointing authorities, at the time they prefer, subject always to the right of the appointing authorities to plan the work under their control and to authorize leave at such time as the employee can best be spared."

This rule of the State Personnel Board fully recognizes that an appointing authority or employer should not allow the work of his department or agency to suffer due to the desire of an employee to exercise his or her accumulated annual leave. Therefore, approved leave as discussed in § 17-1-7(c) means leave approved consistent with Rule 670-X-13-.04, Rules of the State Personnel Board.

The specific questions posed in your request for an opinion includes the question, "Can the employee be denied use of his accumulated annual leave to campaign?" It is the opinion of the Attorney General that the answer to that question is that the employee may be denied annual leave to campaign if the appointing authority makes a determination that the work of the department will not be able to be performed if the employee is on leave for an extended period of time. It is the opinion of the Attorney General that the appointing authority may not deny the employee the use of his accumulated annual leave merely for the reason that the employee intends to seek public office.

The second question asked, is whether the employee may be terminated (or have his job eliminated) if he wins the election. Section 36-26-38 in subsection (a) provides:

"No person shall be appointed or promoted to or demoted or dismissed from any position in the classified service or in any way favored or discriminated against with respect to employment in the classified service because of his political or religious opinions or affiliations...."

Any employee in the classified service may engage in political action or political activities on personal time before and after work, holidays and during approved leave."

It is the opinion of the Attorney General that neither § 17-1-7 nor § 36-26-38 allows the employee to be terminated (or have his job eliminated) merely because he has sought and won public office. However, Article XVII, § 280 of the Constitution of Alabama of 1901 provides that no person shall hold two offices of profit at one and the same time under this State. Since a State Merit position is not an office of profit, Article 17 § 280 of the Constitution of Alabama does not prohibit the holding of a seat on the Huntsville City Board of Education while being a State Merit System employee. If the employee is elected he must take appropriate steps to ensure that his normal and regular duties as a state employee are fulfilled.

One further qualification to the fact situation posed and the answers enumerated above should be made. Both §§ 36-26-38 and 17-1-7 make it perfectly clear that the employee must either be on approved leave or strictly limit his campaigning to personal time. Even if the employee is not on approved leave, he may campaign after work hours or on weekends, holidays, etc. Both sections use strong terms to specifically prohibit the campaigning for any public office while on State time or while using any State equipment or facilities.

In your request for an opinion you also mentioned that the employee has been informed by the appointing authority that Departmental policy, conflict of interest, and/or ethical considerations have been given as reasons for not allowing the person to seek public office without jeopardizing his job. None of these considerations override specific State law allowing the employee to seek public office. The State law is clear that employees of the State of Alabama shall not be denied the right to participate in political activities to the same extent that is allowed all other citizens of the State. This would subject state employees to those same laws that govern the political participation of all citizens of this State.

Representative Steve Hettinger
Page 5

This opinion does not consider any possible implications of the federal Hatch Act which could apply to this fact situation.

I sincerely hope that we have fully and completely answered your questions, and if we may provide you with any further information, please feel free to contact this office at anytime.

Sincerely yours,

CHARLES A. GRADDICK
ATTORNEY GENERAL

By-



RICHARD N. MEADOWS
ASSISTANT ATTORNEY GENERAL

RNM:fmcc