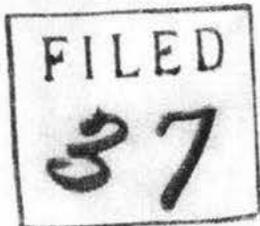


CIVIL DEFENSE: Governor, by rule, may require loyalty oath

GOVERNOR: of civil defense employees.

OFFICERS:



1-23-52

January 23, 1952

Honorable Ralph W. Hammond
Civil Defense Agency
Jefferson City, Missouri

Dear Sir:

This department is in receipt of your request for an official opinion, which reads as follows:

"The Congress has appropriated grant-in-aid funds to the states for use in certain categories of the civil defense program. These funds are administered by the Federal Civil Defense Administration under Public Law 920, Eighty-first Congress. Whereas the State of Missouri at the present time does not have funds for matching these grant-in-aid monies, certain of the various political sub-divisions are interested in securing this aid and have funds for such purpose. The Federal Civil Defense Administration, however, will deal only with the states in this matter, and the administrator has established regulations concerning the allocations of these funds.

"Among these regulations is a provision requiring an oath to be taken by all persons serving as members of a civil defense organization. Specifically, FCDA Regulations, Section 1705.3 is quoted in part as follows:

1705.3 Conditions of Contributions. The Administrator will make contributions to the States, on the basis of programs or projects approved by him, for the purchase of materials, equipment, and facilities for training and education subject to the following conditions: **

(n) Loyalty Oath. No request for financial assistance for training and education shall be approved by the Administrator unless (1)

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the State law requires that each person, other than a Federal employee, who is appointed to serve in a State or local organization for civil defense shall take an oath in writing before a person authorized to administer oaths, which oath shall be substantially as follows:

"I _____, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same, that I take this obligation freely without any mental reservation or purpose of evasion and that I will well and faithfully discharge the duties upon which I am about to enter.

"And I do further swear (or affirm) that I do not advocate, nor am I a member or an affiliate of any organization, group, or combination of persons that advocates the overthrow of the Government of the United States by force or violence; and that during such time as I am a member of the (name of civil defense organization), I will not advocate nor become a member or an affiliate of any organization, group, or combination of persons that advocates the overthrow of the Government of the United States by force or violence."

or (2) the State certifies that it has directed the State civil defense agency to require that each person, other than a Federal employee, who is appointed to serve in a State or local organization for civil defense, shall, before entering upon his duties, take such an oath in writing before a person authorized to administer oaths.'

"In view of the requirements of FCDA regulations, an opinion is requested as to whether the Governor has the authority to require on behalf of the state that all persons serving in a state or local organization for civil defense shall be required to take such an oath."

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Senate Committee Substitute for Senate Bill No. 66, passed by the 66th General Assembly, and known as the Civil Defense Act, provides in Section 26.180 as follows:

"1. The Governor shall have general direction and control of the Civil Defense Agency, and shall be responsible for the carrying out of the provisions of this act. In performing his duties under this act, the Governor is authorized to cooperate with the federal government, with other states, and with private agencies in all matters pertaining to civil defense.

"2. Prior to an emergency as defined in this law, the Governor shall have the following powers:

(1) To make, amend, and rescind the necessary orders, rules and regulations to carry out the provisions of this act within the limits of the authority conferred upon him herein, with due consideration of the plans of the Federal Government;

(2) To prepare a comprehensive plan and program for the civil defense of this state, such plan and program to be integrated into and coordinated with the civil defense plans of the Federal Government and of other states to the fullest possible extent, and to coordinate the preparation of plans and programs for civil defense by the political subdivisions of this state, such plans to be integrated into and coordinated with the civil defense plan and program of this state to the fullest possible extent."

It is well settled in this state that when the right to make rules and regulations is granted by the General Assembly such power must be exercised in such a way that the rule does not nullify the expressed will of the Legislature. State ex rel. Springfield Warehouse & Transfer Co. v. Public Service Commission, 225 S.W. (2d) 792. Further, the rule must be reasonable. King v. Priest, 206 S.W. (2d) 547.

The constitutionality of a requirement that public employees must take a loyalty oath was before the Supreme Court of the United States in *Garner v. Board of Pub. Wks. of Los Angeles*,

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341 U.S. 716, 71 S. Ct. 909, 95 L. Ed. 1317. The court upheld the constitutionality of an ordinance of the City of Los Angeles which required every person who held an office or position in the service of the city to take an oath similar to the one required by the rules and regulations of the Federal Civil Defense Administration. The court, through Mr. Justice Clark, said:

" * * * The provisions operating thus prospectively were a reasonable regulation to protect the municipal service by establishing an employment qualification of loyalty to the State and the United States. Cf *Gerende v. Board of Supervisors of Elections*, 341 US 56, ante, 745, 71 S Ct 565 (1951). Likewise, as a regulation of political activity of municipal employees, the amendment was reasonably designed to protect the integrity and competency of the service. This Court has held that Congress may reasonably restrict the political activity of federal civil service employees for such a purpose, *United Public Workers v. Mitchell*, 330 US 75, 102, 103, 91 L ed 754, 774, 775, 67 S Ct 556 (1947), and a State is not without power to do as much.

"The Charter amendment defined standards of eligibility for employees and specifically denied city employment to those persons who thereafter should not comply with these standards. While the amendment deprived no one of employment with or without trial, yet from its effective date it terminated any privilege to work for the city in the case of persons who thereafter engaged in the activity proscribed."

While the above case involved ordinances which required the loyalty oath, still the same conclusion was arrived at in the cases of *Steiner v. Darby*, 88 Cal. App. (2d) 481, 199 P. (2d) 429, and *Hirschman v. Los Angeles County*, 231 P. (2d) 140, which dealt with a resolution of the Board of Supervisors of Los Angeles County. In the *Steiner* case the court said:

" * * * Certainly it is clear that a private employer would be perfectly justified in requiring an employee to submit to questioning and examination before leaving his place of employment in order to ascertain whether the

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employee was stealing property of the employer, and he might obviously question his employee as to whether he intended to take or destroy the employer's property. A servant employed by the People is held to an even higher standard, and his employer, the People, not only may, but it is their duty through their authorized representatives to make proper inquiry as to his fitness for the position which he occupies and as to his intentions and acts relative to his loyalty to the People."

In the Hirschman case Presiding Justice Moore said:

"The principle involved is not whether a constitutional guaranty has been violated but rather is it the right of the state or an arm of its government to prescribe moral and ethical as well as educational standards of those engaged in public service. Not only must an employee devote the prescribed hours to his work and apply thereto the necessary intelligence, but he is obliged to refrain from such deception as contracting an interest inconsistent with his duties and to this end he is subject to regulation. * * * It would be not only monstrously oppressive to require a county to retain an employee who has adopted an attitude hostile to the state, * * * but it would undermine authority and induce the employee of treasonable persuasion to bite the hand that feeds him. * * *"

The Supreme Court of Oklahoma, in the case of Board of Regents v. Updegraff, 237 P. (2d) 131, decided October 18, 1951, and rehearing denied November 6, 1951, held that the statutory requirement of a loyalty oath for teachers, professors and other employees of the Oklahoma Agricultural College was proper and constitutional.

In view of the above authorities it will be seen that the Governor, under the authority granted him by Senate Committee Substitute for Senate Bill No. 66, to make rules and regulations in order to carry out the Civil Defense Act with due consideration of the plans of the Federal government, may make a rule and regulation requiring all persons serving in state or local organizations for civil defense to take a loyalty oath.

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CONCLUSION

It is therefore the opinion of this department that the Governor may, by rule and regulation, require all persons serving in state and local organizations for civil defense to take a "loyalty" oath.

Respectfully submitted,

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APPROVED:

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