

ELECTIONS: Prohibition against "political activity" by members of and employees of St. Louis City Board of Election Commissioners is not violated by attendance at political meetings nor by voluntary contributions to political parties, provided that participation in such activity is limited to that extent.



October 29, 1954

Honorable Michael J. Doherty, Chairman  
St. Louis City Board of Election Commissioners  
208 South Twelfth Boulevard  
St. Louis 2, Missouri

Dear Sir:

Reference is made to your request for an official opinion of this department reading as follows:

"The Board of Election Commissioners are desirous of securing from your office an opinion concerning certain portions of Section 118.040 R.S. Mo. 1949.

"The said Section provides as follows:

"No Commissioner shall hold any office in any political party, nor engage in any political activity of any kind while serving as such Commissioner."

"Another part of said Section prescribes the right to employ assistants and recites the following:

"and shall be subject to the same restrictions and subscribe to the same oath as members of the Board."

"Inquiry One: 'May an assistant or assistants of this office attend a political dinner of his or her political belief, and may they make contributions to said dinner?'

"Two: 'May they attend a political meeting, even though they take no part other than attending?'

Hon. Michael J. Doherty, Chairman

"Three: 'May they make voluntary contributions to their respective political parties, even though they take no part other than above stated?'

"Four: 'May they attend any kind of a political gathering whatsoever of the political party they are serving under as a member of this office, even though they take no part other than being present at such?'

"The above stated matters have come to the attention of certain members of the Board regarding inquiries on same, and the Board is anxious to know if the words in said Section wherein it refers to assistants, their appointments, etc., and particularly the words 'and shall be subject to the same restrictions' apply to and mean or be construed to read the same as that which relates to the Commissioners, to-wit: 'nor engage in any political activity of any kind while serving as such Commissioner.'

"The Board will appreciate your opinion on the above stated matters."

Your quoted excerpts from the statute under consideration, namely, Section 118.040, RSMo 1949, are verbatim, and therefore we will not requote such statute.

In the construction of statutes, the most important rule is that such construction is to be for the purpose of ascertaining the intent of the General Assembly in enacting the statute under consideration. In arriving at such intent, other statutes dealing with the same subject matter may be considered, as well as the history surrounding the enactment of such statute and the apparent purpose for which enacted.

With these rules in mind, we have examined all of Chapter 118, RSMo 1949, relating to the registration of voters and the conduct of elections in cities containing over 600,000 inhabitants. Our examination of this chapter indicates that the legislative scheme is to provide a bipartisan supervisory board to oversee the registration of voters and the conduct of elections in such cities, the mechanics of which are to be carried out through bipartisan employees. We note that the supervising

Hon. Michael J. Doherty, Chairman

commission is constituted of two representatives each of the two major political parties. We note, too, that all of the employees of such commission are to be selected equally from each of the two major parties. We note, too, that the judges and clerks of election to be selected by such commission are to be divided equally between the two major political parties. In other words, at no place in the entire chapter is there any expression of intent to disassociate the commission nor its employees nor the judges and clerks of election from political parties as such. As a matter of fact, a person without known political affiliations would be ineligible for appointment as a member of the commission and from employment as an administrative employee or judge or clerk of election.

Having seen fit to establish such a bipartisan agency, the General Assembly has gone one step further and included a prohibition against such persons engaging in "political activities." This surely could not be construed to mean that immediately upon appointment to any place in the over-all administrative scheme that the appointee should no longer maintain any political affiliations. To so construe the statute would lead to an absurd result and would have the effect of thwarting the legislative intent that through the bipartisan selection of the commission, employees, judges and clerks of election, a system of checks and balances is to be established and maintained. It thereupon becomes necessary to determine the sense in which the General Assembly used the term "political activity" in the statute under consideration.

It seems to us that this term, as used in such statute, means more than mere passive affiliation with a political party. It seems that a more reasonable construction of the term is one embracing active participation through the holding of official positions, serving as the agent of a party in the solicitation of funds, speaking at public meetings in favor of the principles of a particular political party, and other similar activities. In other words, it seems to us that the term implies affirmative, active participation in the affairs of a political party rather than mere membership therein.

Adverting to your letter of inquiry, we note that each question relates to more or less passive association with the affairs of a political party. Applying to the facts outlined the definition of "political activity" which we feel to be the proper one, we are led to the belief that a commissioner or an employee may properly attend political meetings, provided that at such meetings such commissioner or employee is not a speaker, urging others to

Hon. Michael J. Doherty, Chairman

adopt his political beliefs. We further believe that a voluntary contribution to be used by a political party is not such a "political activity" as is proscribed by the statute.

CONCLUSION

In the premises, we are of the opinion that the prohibition against "political activity" by the members of the St. Louis City Board of Election Commissioners, its employees, and the judges and clerks of election appointed by such commission, does not preclude attendance by such persons at political meetings nor the making of voluntary contributions to a political party, provided that such person does not participate as a speaker or officer arranging or conducting such meeting, and, provided further, that such person does not solicit funds from other persons for the benefit of such political party.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Will F. Berry, Jr.

Yours very truly,

John M. Dalton  
Attorney General

WFB/vtl