



STATE OF KANSAS

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Attorney General

February 10, 1975

Opinion No. 75- 55

The Honorable Edward F. Reilly, Jr.
State Senator
3rd Floor - State Capitol Building
Topeka, Kansas 66612

Dear Senator Reilly:

K.S.A. 75-2953(b) provides thus:

"Any officer or employee in the state classified service shall resign from the service upon filing as a candidate for public office: Provided, That the provisions of this subsection shall not apply to a public officer or employee if the public office filed for is: (a) Elected on a nonpartisan basis and (b) no compensation will be received for his services, if elected, and (c) the officer or employee is not a resident of a first-class city and (d) the officer or employee is not a resident of a county whose population exceeds three hundred thousand (300,000).

You indicate that several employees of the State of Kansas at the Kansas State Penitentiary at Lansing, Kansas, have filed for election to the city commission in Leavenworth. You inquire whether they may serve in the offices to which they seek election and retain their position as employees of the Kansas State Penitentiary.

Under K.S.A. 75-2953(b), an officer or employee in the state classified service must forfeit his employment upon filing for public office unless all of four conditions are met: 1) the office must be elected on a nonpartisan basis, 2) the candidate would receive no compensation for his services in said office if elected, and 3) the candidate resides in neither a city of the first class nor a county whose population exceeds 300,000. Thus, a state employee

The Honorable Edward F. Reilly, Jr.
Page Two
February 10, 1975

in the classified service who resides in the City of Topeka must lose his employment upon filing for election to the board of education of a unified school district, for example, although the same employee could continue his employment with the state upon filing for such an office if he resided in a city of the second or third class in Shawnee County. Yet again, a state employee who resided in a city of the second or third class in Sedgwick County would be required to forfeit his state employment upon filing for a board of education position, although a similar employee who resided in a city of comparable class in another county would be free to continue with his state employment upon filing. Of employees in the classified service at the Kansas State Penitentiary, one who resided in the City of Lansing, a city of the third class, would be able to continue his public employment despite his candidacy for a nonpartisan public office for which he received no compensation, such as a board of education seat, whereas a classified employee at the same institution would have to forego his state employment upon filing for a similar office in the City of Leavenworth.

Certainly, a state may place reasonable restrictions upon the political activities of its employees. In a case involving the Hatch Act, *United Public Workers*, 330 U.S. 75, 91 L. ed. 755 (1947), the Court pointed out that "the practice of excluding classified employees from party offices and personal political activity at the polls has been in effect for several decades." It is a reasonable exercise of the power of the state to restrict those in its classified public service from partisan political candidacies, certainly. However, this restriction must be applied evenhandedly and uniformly.

The guiding principle governing classifications such as that created by this statute was well stated in *Gilbert v. Mathews*, 186 Kan. 672, 352 P.2d 58 (1960):

"The controlling principle is that if legislative action is arbitrary and has no reasonable relation to a purpose which it is competent for the government to effect, the legislature transcends the limits of its power in interfering with the rights of persons affected by the legislation, but if there is reasonable relation to an object within governmental authority, the exercise of the legislative discretion is not subject to judicial review." 186 Kan. at 678.

The Honorable Edward F. Reilly, Jr.
Page Three
February 10, 1975

Traditionally, as pointed out above, the courts have upheld prohibitions against political activity by classified public officers and employees, citing the legitimate governmental interest in the efficiency, integrity and competency of the service which might be affected adversely by the involvement of such employees in active political candidacies. When the state enforces such restrictions, justifiable in themselves, against some employees, but not against others similarly situated but for their place of residence, a factor which has no relation whatever to the interests justifying the restrictions in the first place, there results an patently arbitrary and unreasonable classification. That, in our opinion, is the effect of those exceptions to K.S.A. 75-2953(2), which except from its prohibition the candidacies of certain employees based only on the population of their county of residence, or the classification of the city in which they reside. Accordingly, it is our opinion that the state may not terminate the employment of any officer or employee in the classified service who files as a candidate for a public office which is nonpartisan and for which no compensation is to be received if elected, merely because the candidate resides in a city of the first class or in a county whose population exceeds three hundred thousand.

Yours very truly,



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