



STATE OF KANSAS

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May 14, 1984

ATTORNEY GENERAL OPINION NO. 84- 40

Bert Cantwell
Superintendent
Kansas Highway Patrol
122 S.W. Seventh Street
Topeka, Kansas 66603

Re: State Boards, Commissions and Authorities--Kansas
Highway Patrol--Patrol Created; Restrictions

Synopsis: In conformity with the provisions of K.S.A. 1983
Supp. 74-2113(e), as amended by Section 1 of 1984
Senate Bill No. 745, members of the Kansas Highway
Patrol: 1. May be members of political clubs, but
not officers of said clubs or members of a committee
of such a club; 2. May not work as a volunteer for
a partisan candidate, but may work as a volunteer for
a non-partisan candidate for public office; 3. May
put a political sign in their yards; 4. May place
a candidate's bumper sticker on their personal
automobiles; 5. May contribute money to a candidate's
campaign committee, but may not engage in fund-raising
activities for a partisan candidate; 6. May be a
candidate in a nonpartisan contest for city council
or school board; 7. May not be a partisan candidate
for a political office, even if they take a leave
of absence without pay prior to filing for the office,
with the understanding they would either resign or
come back to work once the outcome of the election
is known; 8. May attend a political rally when on
an off-duty status, provided the member does not
engage in any prohibited activity at said rally.
Cited herein: K.S.A. 1983 Supp. 74-2113, as amended
by 1984 Senate Bill No. 745, 5 U.S.C.A. §7324, U.S.
Const., First Amend.

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Dear Mr. Cantwell:

You request our interpretation of K.S.A. 1983 Supp. 74-2113(e), as amended by Section 1 of 1984 Senate Bill No. 745. Specifically, you have submitted a list of political activities (enumerated below), and inquire whether members of the Kansas Highway Patrol are prohibited from engaging in such activities by the aforesaid statute.

K.S.A. 1983 Supp. 74-2113(e) [as amended] provides as follows:

"No member of the patrol, including the superintendent, shall in any way be active or participate in any political contest in any primary, general or special election or participate in politics, except to cast such member's ballot. For any violation of this provision, the offender shall be summarily removed by the superintendent from the patrol." (Emphasis added.)

As the underscored portion of the above-quoted statute indicates, a member of the patrol may not "participate in politics." The parameters of this prohibition are none too clear, and it might be argued that, since the statute impacts upon rights granted all citizens under the First Amendment to the U.S. Constitution, it is invalid due to facial overbreadth. Therefore, it is necessary to consider whether the statute is overbroad, and invalid on its face, or whether it can be saved through a limiting construction.

In Broadrick v. Oklahoma, 413 U.S. 601, 37 L.Ed.2d 830 (1973), the U.S. Supreme Court considered an overbreadth attack upon an Oklahoma statute, patterned after the federal Hatch Act, which, in part, prohibited classified employees from taking part in the "affairs of any political party or in any political campaign." See 37 L.Ed2d at 834; 5 U.S.C.A. §7324(a)(2). The plaintiff state employees had engaged in partisan political activities in violation of the aforementioned statute, and challenged its validity on the grounds of vagueness and overbreadth. The Supreme Court held that the statute was clearly constitutional as applied to the conduct with which the employees were charged, i.e. partisan political activity, and further held that, because the statute was not "substantially overbroad," the employees could not challenge the statute on the ground that it might be unconstitutionally applied to others. In so holding, the court noted that the traditional rules of standing were altered in the First Amendment

area to permit "attacks on overly broad statutes with no requirements that the person making the attack demonstrate that his own conduct could not be regulated by a statute drawn with the requisite narrow specificity." Id., 37 L.Ed.2d at 840. However, the court stated that the application of the overbreadth doctrine has been employed "sparingly and only as a last resort," and has not been invoked "when a limiting construction has been or could be placed on the challenged statute." Id., 37 L.Ed.2d at 841. Further, the court found that overbreadth must be "substantial" before a statute regulating conduct will be invalidated on its face. In this regard, the court determined that the Oklahoma statute was not substantially overbroad, relying on prior interpretations by the state's attorney general and the state personnel board that restricted the scope of the statute to "partisan political activity."

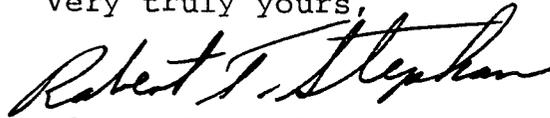
Officials at the Kansas civil service board indicate that the board has not had occasion to construe the prohibition against "participating in politics" included within K.S.A. 1983 Supp. 74-2113(e) [as amended]. Neither has this office had occasion to construe or limit the application of said statute. However, the West Virginia Supreme Court, in interpreting a state statute generally proscribing "political activity," which statute had not been limited by any administrative interpretation, held that the statute only proscribed those political activities, the limitation of which the U.S. Supreme Court had decided was constitutionally permissible and included within the federal Hatch Act. Weaver v. Schaffer, 290 S.E.2d 244 (W.Va. Sup. Ct. 1980). In our judgment, K.S.A. 1983 Supp. 74-2113(e) [as amended] should be interpreted as prohibiting the same political activities as the statute which was construed in the Weaver case. In this regard, the following activities were held to be prohibited in Weaver: (1) holding a party office; (2) working at the polls; (3) acting as a party paymaster for other party workers; (4) organizing a political party or club; (5) actively participating in fund-raising activities for a partisan candidate or political party; (6) becoming a partisan candidate for, or campaigning for, an elective public office; (7) actively managing the campaign of a partisan candidate for public office; (8) initiating or circulating a partisan nominating petition or soliciting votes (i.e., campaigning) for a partisan candidate for public office; (9) serving as a delegate, alternate or a proxy to a political party convention.

In response to your specific questions, and in accordance with the above-cited authorities, it is our opinion that the members of the Highway Patrol:

1. May be members of political clubs, but not officers of said clubs or members of a committee of such a club;

2. May not work as a volunteer for a partisan candidate, but may work as a volunteer for a non-partisan candidate for public office;
3. May put a political sign in their yards;
4. May place a candidate's bumper sticker on their personal automobiles;
5. May contribute money to a candidate's campaign committee, but may not engage in fund-raising activities for a partisan candidate;
6. May be a candidate in a nonpartisan contest for city council or school board;
7. May not be a partisan candidate for a political office, even if they take a leave of absence without pay prior to filing for the office, with the understanding they would either resign or come back to work once the outcome of the election is known;
8. May attend a political rally when on an off-duty status, provided the member does not engage in any prohibited activity at said rally.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General