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ATTORNEY GENERAL OPINION NO. 87- 153

Frank A. Caro, Jr.  
General Counsel  
Kansas Corporation Commission  
Fourth Floor, Docking State Office Building  
Topeka, Kansas 66612-1571

Re: State Boards, Commissions and Authorities--State Corporation Commission--Corporation Commission; Qualifications and Oaths of Members, Secretary and Attorney

Synopsis: The clear and unambiguous language of K.S.A. 74-605 prohibits a commissioner from serving as a duly elected member on the state committee of a political party. The statute does not, however expressly prohibit a commissioner from serving as a delegate or alternate to a national party convention, and therefore it is our opinion that the statute permits such activity. Cited herein: K.S.A. 74-605.

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Dear Mr. Caro:

As General Counsel for the Kansas Corporation Commission you request an opinion regarding the qualifications placed on a corporation commissioner. Specifically, you inquire whether K.S.A. 74-605 precludes a commissioner from serving either as a duly elected member on the state committee of a political party or as a chosen delegate or alternate to his or her national party convention.

K.S.A. 74-605 states in part:

"No person owning any bonds, stock or property in any railroad company or other common carrier or public utility, or who is in the employment of, or who is in any way or manner pecuniarily interested in, any railroad company or other common carrier or public utility, shall be eligible, except as hereinafter provided, to the office of commissioner, attorney or secretary of said commission, nor shall such commissioner, attorney or secretary hold any office of profit or any position under any committee of any political party, or hold any other position of honor, profit or trust under or by virtue of any of the laws of the United States or of the state of Kansas. Said commissioners shall be qualified electors of the state, and shall not while such commissioners engage in any occupation or business inconsistent with their duties as such commissioners."  
(Emphasis added.)

Generally, the purpose of statutes that restrict the political activities of public employees is not to arbitrarily restrict those employees from politics, but to promote the integrity of civil service by freeing them from political pressures. See United Public Workers v. Mitchell, 330 U.S. 75, 67 S.Ct. 556, 91 L.Ed. 75 (1947). However, in order to withstand constitutional challenge, a statute prohibiting political activity must give adequate warning of what activities are proscribed. The statute must adequately describe the proscribed conduct in terms that the ordinary person exercising ordinary common sense can understand and comply with. Broadrick v. Oklahoma, 413 U.S. 601, 608, 93 S.Ct. 2908, 2914, 37 L.Ed. 830, 837 (1973); United State Civil Service Commission v. National Association of Letter Carriers, 413 U.S. 548, 579, 93 S.Ct. 2880, 2897, 37 L.Ed.2d 796, 816 (1973).

The Kansas statute in question, K.S.A. 74-605, expressly prohibits, upon threat of dismissal, a commissioner from simultaneously holding the office of commissioner and holding any office of profit, any position under any committee of any political party or any other position of honor, profit or

trust under the laws of the state or the federal government. In keeping with Broadrick and Letter Carriers, supra, we must determine first whether the proscribed conduct is adequately described in terms that an ordinary person exercising common sense can understand and comply with, and second whether the conduct in question, serving as state committeeman or as a delegate to a national convention, comes within the plain and understandable language describing the proscribed conduct in K.S.A. 74-605.

In Broadrick v. Oklahoma, 413 U.S. 601, 93 S.Ct. 2908, 37 L.Ed. 830 (1973) a statute similar to K.S.A. 75-605 was challenged as vague, failing to distinguish between proscribed and permitted conduct. The challenged paragraph of 74 Okla. Stat. Ann. §818 states:

"[7] No employee in the classified service shall be a member of any national, state or local committee of a political party, or an officer or member of a committee of a partisan political club, or a candidate for nomination or election to any paid public office, or shall take 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." (Emphasis added.)

The U.S. Supreme Court found that the language was not vague and further that it was all but frivolous to suggest that it failed to adequately warn of what activities it proscribes. 413 U.S. at 607, 93 S.Ct. at 2913, 37 L.Ed.2d at 837. But cf. Lecci v. Cahn, 360 F. Supp. 759 (Ed. N.Y., 1973).

Given no ambiguity in the language of K.S.A. 74-605, does serving as state committeeman come within the proscribed conduct? Kansas courts have not addressed this issue, but other jurisdictions with statutes similar to ours, have found that membership as a committeeman comes clearly within the proscribed conduct of being a member of a committee of a political party. In Wasniewski v. State Civil Service Commission, 299 A.2d 676 (Pa. 1973) an employee was found to have violated the following pertinent part of 71 P.S. §741.904: "No person in the classified service shall serve as a member of any committee of any political party" when he served as a committeeman for the Democratic Party in the 31st Ward, 23rd division in Philadelphia. See Jackson


v. Coffrey, 368 N.E. 2d 1259 (Ohio 1977) (membership on a county party central committee found within proscription of being an officer in any political organization); See also United Public Workers v. Mitchell, 330 U.S. 75, 67 S.Ct. 556, 91 L.Ed. 754 (1947) (membership and service as a ward committeeman was within the prohibition of §9 of the Hatch Act prohibiting an active part in political management and political campaigns). We are persuaded by these other jurisdictions and thus it is our opinion that serving as a state committeeman comes within the proscribed activity found in K.S.A. 74-605.


Conversely, it is our opinion that serving as a delegate to a national party convention does not come within the proscribed activity found in K.S.A. 74-605. We are persuaded by both our conclusion that the language of the statute is clear and understandable and by case law from other jurisdictions. In Louisville v. FitzGerald, 600 S.W.2d 456 (Ky. 1978) the Kentucky Supreme Court addressed whether, under a statute similar to ours, a civil service employee was precluded from serving as a delegate to a national party convention. The statute, K.R.S. 90-220(2) prohibited service as a "member of any campaign committee or governing committee of any political organization." The court states: "This court holds that those acts which are not prohibited in plain and understandable language or by necessary implication therefrom are permitted." 600 S.W.2d at 457. We agree.

Generally in cases where the courts have found a violation, the express language of the statute has given reasonable notice of what activity is proscribed. See generally, "Validity, construction, and effect of state statutes restricting political activities of public officers or employees," 51 A.L.R. 4th 702 (1987). But c.f. Louisville Lodge No. 6, Fraternal Order of Police v. Burton, 518 S.W.2d 777 (Ky. 1975) (while the prohibition against candidacy was not express, it was so obvious as to be considered as expressed in plain and understandable language. 518 S.W.2d at 779). In addition, statutes expressly prohibiting a person from being a delegate to a convention have also included express language prohibiting membership in a committee of a political party, thereby refuting the necessary implication argument. See Weaver v. Shaffer, 290 S.E.2d 244, 250 (W. Va. 1980); Haines v. Commonwealth, State Civil Service Comm., 428 A.2d 759 (Pa. 1981).

In conclusion, it is our opinion that the clear and unambiguous language of K.S.A. 74-605 prohibits a commissioner from serving as a duly elected member on the state committee of a political party. The statute does not, however expressly prohibit a commissioner from serving as a delegate or alternate to a national party convention, and therefore it is our opinion that the statute permits such activity.

Very truly yours,

  
ROBERT T. STEPHAN  
Attorney General of Kansas

  
Guen Easley  
Assistant Attorney General

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