



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

August 9, 1977

ATTORNEY GENERAL OPINION NO. 77- 256

Mr. Bert Cantwell
Sheriff of Wyandotte County
710 North Seventh Street
Kansas City, Kansas 66101

Re: Counties--Employees--Political Activities

Synopsis: Rules 15 and 17 of the Merit Commission of Wyandotte County, restricting political activity of officers and employees of the sheriff's department in said county are in certain respects overbroad and impermissibly vague and indefinite. Public employees may not be prohibited from the expression of political opinions and views, but such employees may be prohibited from taking an active part in political management or political campaigns.

* * *

Dear Sheriff Cantwell:

You request my opinion concerning Rules 15, 16 and 17 of the Merit Commission of Wyandotte County. Specifically, the questions are raised whether the rules infringe upon the employee's constitutionally protected right of free speech, and whether the rules define the prohibited conduct with sufficient specificity.

Rule No. 15 provides thus:

"No political opinions are to be expressed by members of the Department, and employees shall not engage in political discussions to the detriment of good discipline, nor shall

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they speak lightly or slightinglly of the race,
nationality, creed, or beliefs of any person."

Public employees do not forfeit the right to hold and express political opinions as a result of such employment. Thus, the first clause of this rule is clearly overbroad. The second clause, prohibiting employees from engaging in "political discussions" to the "detriment of good discipline," imposes an uncertain and indefinite limitation on the employees' First Amendment rights. The term "political discussion" is so broad as to include a mere exchange of political views, clearly protected First Amendment activity. The caution that discussions shall not be engaged in to the "detriment of good discipline" provides a highly elastic and indefinite limitation upon those rights, and in my judgment, this clause is likewise impermissibly vague and uncertain. The third clause is neither vague nor indefinite, in my judgment, and constitutes a reasonable exercise of departmental supervision. Although it could be drawn with greater precision, it is reasonably clear that insulting and offensive statements regarding race, nationality, creed or beliefs of any person are forbidden, and that employees of the department, acting in the performance of their duties and under color of state law, are not authorized to disparage persons on the basis of their beliefs, race, nationality or creed.

Rule No. 16 states thus:

"No employee, in the classified service, shall be an officer or employee of any political party or organization actively engaged in the work or campaigns of any political party or any candidate for public office, or contribute work, money or property of value, to any political party or organization, or to any candidate for public office."

The language of this rule is substantially identical to several statutory provisions, including K.S.A. 19-4315. It is reasonably definite in its terms, and does not restrict any constitutionally protected First Amendment rights, in my judgment.

Rule No. 17 states thus:

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"No employee of the Department covered by these regulations shall, while an employee of the Department, engage in political activity or become a candidate for any political office."

The term "political activity" is undefined, and is sufficiently indefinite to include, once again, mere exchanges of political views. In my judgment, the prohibition against "political activity" is overbroad and excessively indefinite. The prohibition against being a candidate for political office is comparable to similar provisions in the Hatch Act, 5 U.S.C. § 1502, which have been held to be constitutional. It might be helpful to consider amending this regulation to include a prohibition similar to that used in the Hatch Act prior to its amendment in 1974, against employees taking an "active part in political management or in political campaigns."

Yours truly,



CURT T. SCHENDIER
Attorney General

CTS:JRM:kj