

OPINION NO. 65-133**Syllabus:**

1. An engineer, employed by a non-charter municipality on a part-time basis but holding a regular and permanent position on an annual salary payable monthly, is the head of a subdivision of the city under the supervision of the City Director of Public Service and as such is an employee in the classified civil service as provided in Section 143.08, Revised Code.

2. As used in Section 143.41, Revised Code, the word "politics" is limited in meaning to partisan politics and, therefore, the service of such city engineer, during the part time when he is not on such duty, as state legislative agent for the Ohio State Automobile Association, is not taking part in partisan politics and does not constitute a violation of such section.

To: E. Raymond Morehart, Fairfield County Pros. Atty., Lancaster, Ohio
 By: William B. Saxbe, Attorney General, July 26, 1965

You request my opinion on the following questions:

"The city engineer of Lancaster, Ohio, a non-charter municipality, receives an annual salary (payable monthly) for his employment, as established by ordinance, and is authorized by ordinance to engage in any private engineering practice which does not conflict with city duties. The engineer is presently registered with the Secretary of the State of Ohio as a legislative agent for the Ohio State Automobile Association. His registration card states that the subject matter of representation relates to all legislation affecting private passenger vehicles, including highway safety.

"The Civil Service Commission has asked me to request your opinion on the following points:

"1. Is an engineer, employed by a non-charter municipality on a part-time basis, an employee in the classified service as so defined by the Civil Service statutes of the State of Ohio?

"2. Does the activity of the city engineer, as above described, constitute a violation of Section 143.41 of the Ohio Revised Code; in particular, the part of said section which enunciates that no employee in the classified service of the city shall take part in politics other than to vote as he pleases and to express freely his political opinions?"

Your questions call for consideration of several statutes.

The following quotations are from Section 143.08, Revised Code:

"The civil service of the state and the several counties, cities, city health districts, and city school districts thereof shall be divided into the unclassified service and the classified service.

"(A) The unclassified service shall comprise the following positions, which shall not be included in the classified service, * * *

* * * * * * * *

"(3) * * * and the members of all

boards and commissions and all heads of departments appointed by the mayor, or if there is no mayor such other similar chief appointing authority of any city or city school district; * * *

"* * * * *"

"(B) The classified service shall comprise all persons in the employ of the state and the several counties, cities, city health districts, and city school districts thereof, not specifically included in the unclassified service, * * *

"* * * * *"

Section 735.01, Revised Code, reads as follows:

"In each city there be a department of public service which shall be administered by a director of public service. The director shall be an elector of the city and shall be appointed by the mayor. He shall make rules and regulations for the administration of the affairs under his supervision."

Section 735.04, Revised Code, provides as follows:

"The director of public service may establish such subdepartment as is necessary and determine the number of superintendents, deputies, inspectors, engineers, harbor masters, clerks, laborers, and other persons necessary for the execution of the work and the performance of the duties of this subdepartment."

In Opinion No. 1312, Opinions of the Attorney General for 1916, page 375, the then Attorney General stated:

"By the express provisions of paragraph 1 of section 486-1, G.C., as amended 106 O.L., 400. section 143.01, Revised Code the civil service law of this state applies only to 'all offices and positions of trust or employment in the service of the state and the counties, cities and city school districts thereof.' * * *

"A city engineer is the head of a subdepartment of the department of public service in a city. Section 4327, G.C. section 735.04, Revised Code He is, therefore, in the classified civil service as only the heads of departments are exempted under the provisions of paragraph 3 of section 486-8, G.C., section 143.08, Revised Code * * *

"* * * * *"

Thus, I am led to the conclusion that the city engineer about whom you inquire is in the classified civil service.

Section 143.41, Revised Code, contains restrictions on the activities of employees in the classified civil service, as follows:

"No officer or employee in the classified service of the state, the several counties, cities, and city school districts thereof, shall directly or indirectly, orally or by letter, solicit or receive, or be in any manner concerned in soliciting or receiving any assessment, subscription, or contribution for any political party or for any candidate for public office; nor shall any person solicit directly or indirectly, orally or by letter, or be in any manner concerned in soliciting any such assessment, contribution, or payment from any officer or employee in the classified service of the state and the several counties, cities, or city school districts thereof; nor shall any officer or employee in the classified service of the state, the several counties, cities, and city school districts thereof, be an officer in any political organization or take part in politics other than to vote as he pleases and to express freely his political opinions."

In the first, second and third paragraphs of the syllabus in the case Heidtman v. Shaker Heights, 99 Ohio App., 415, the Court of Appeals stated:

"1. A penal statute must be strictly construed.

"2. The primary duty of a court in the construction of a statute is to give effect to the intention of the Legislature enacting it, and such intention is to be sought in the language employed and the apparent purpose to be subserved, and such a construction adopted which permits the statute and its various parts to be construed as a whole and to give effect to the paramount object to be attained.

"3. The paramount object of the Legislature in enacting Section 143.41, Revised Code, prohibiting employees in the classified service from taking part in politics was to make such employees independent of any political party control for appointment to and continuance in office and to enable them to perform their duties unaffected by such party's fortune in political affairs. Its intent, therefore, was to prevent activity on the part of such employees in partisan politics."

This judgment of the Court of Appeals was affirmed by the Supreme Court in Heidtman v. Shaker Heights, 163 Ohio St., 109, from which the following two paragraphs are quoted from pages 118, 119 and 120:

* * * * *

"It will be observed that in the foregoing statute Section 143.41, Revised Code the first thing that is prohibited is the soliciting of contributions for a political party or a candidate for public office. This seems to indicate that the statute has reference to partisan politics, whether Republican, Democratic, independent, or otherwise. The latter part of the statute prohibits one in the classified service from being an officer in a political organization or taking part in politics, and the query is, is taking part in politics confined to partisan politics or is there a broader meaning so as to cover the activities of plaintiffs in the present case?

* * * * *

"Where legislation is silent as to the meaning of a word contained therein, and that word has both a wide and a restricted meaning, courts, in interpreting such legislation, must give such word a meaning consistent with other provisions of the legislation and of the objective to be achieved thereby. Under such logic, the word, 'politics,' as used in Section 486-23 Section 143.41, Revised Code must be defined as politics in its narrower partisan sense, and, therefore, the activities of plaintiffs in circulating the parts of the initiative petition did not constitute taking part in politics as that term is used in the statute.

* * * * *

The Heidtman case, supra, produced a modern standard to be used in the determination of what constitutes "political activity." In Opinion No. 3393, Opinions of the Attorney General for 1962, page 887, my predecessor in office made the following comment:

* * * * *

"Under Heidtman, supra, the word 'politics' as used in Section 143.41, supra, should be defined in its narrower partisan sense. Thus, a person in the classified service may vote and express his opinions freely, but he may also participate in politics and government activity so long as it is not connected with what the court refers to as 'partisan politics'; and in determining what consti-

tutes 'political activity' under such section we must turn to the second part of the definition from Funk and Wagnalls New Standard Dictionary (1952), which is relied upon by the Supreme Court in the Heidtman case. Such definition refers to 'political affairs in a party sense' and from this I conclude that a classified employee is prohibited under Section 143.41, supra, from participating in an activity that is associated with some political party, or in which such employee seeks office, or where such employee becomes involved in 'party intrigues, political wire-pulling or trickery.'

" * * * * * * * * * *"

It is rather obvious that the Ohio State Automobile Association is not a partisan political organization. Hence, observing the standard presented in the Heidtman case, supra, serving as its state legislative agent on legislation affecting private passenger vehicles, including highway safety would not, of itself, be engaging in partisan politics.

Accordingly, in response to your request my opinion is as follows:

1. An engineer, employed by a non-charter municipality on a part-time basis but holding a regular and permanent position on an annual salary payable monthly, is the head of a subdivision of the city under the supervision of the City Director of Public Service and as such is an employee in the classified civil service as provided in Section 143.08, Revised Code.

2. As used in Section 143.41, Revised Code, the word "politics" is limited in meaning to partisan politics and, therefore, the service of such city engineer, during the part time when he is not on such duty, as state legislative agent for the Ohio State Automobile Association, is not taking part in partisan politics and does not constitute a violation of such section.