

3074

CIVIL SERVICE, CLASSIFIED; EMPLOYEE—CANDIDACY FOR, ELECTION TO OR HOLDING OFFICE AS MEMBER ON BOARD OF EDUCATION PROHIBITED—§143.41 R.C.

SYLLABUS:

Under the provisions of Section 143.41, Revised Code, a person holding a position in the classified service could not at the same time become a candidate for, be elected to, or hold the office of member of a local board of education.

Columbus, Ohio, November 18, 1958

Hon. Joseph B. Yanity, Jr., Prosecuting Attorney
Athens County, Athens, Ohio

Dear Sir:

I have before me your communication requesting my opinion and reading as follows:

“We would appreciate knowing whether or not there has ever been an opinion rendered on the following question and if

not, we would like to request an informal opinion from you on the matter.

“Is the position of barber at the Athens State Hospital which is under classified civil service and the office of member of a local board of education compatible or incompatible?”

For a great many years the statutes of Ohio have sought to preserve the purity of the Civil Service System by prohibiting any person in the classified service from taking an active part in “politics.” Section 143.41, Revised Code, reads 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.” (Emphasis added)

I call particular attention to the phrase emphasized. It indicates clearly that the acts prohibited are not confined to active support of a “political party,” but also active support of “any candidate for political office.” The legislature in using this language, plainly had in mind “politics” in the broad sense, rather than the narrow sense of “partisan politics.” The same broad intention is manifest in the closing words of the section: “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.”

This section appeared in the General Code in substantially the same terms, as Section 486-23. The annotations to said Section 143.41, *supra*, reveal a large number of opinions of this office holding that any person in the classified service who engages in political activities shall be subject to dismissal, and it has repeatedly been held that no such person may hold an elective office for the reason that his candidacy for or election to such office necessarily involves political activity.

I do not deem it necessary to cite or discuss many of these opinions. However, I note Opinion No. 1313, Opinions of the Attorney General for 1916, p. 375, where it was held:

“The provisions of section 486-23, G. C., as amended 106 O. L., 416, prohibit a person who is holding a position in the classified civil service from being an active candidate for an elective political office.”

In the course of the opinion it was said:

“It does not require an argument to sustain the contention that an active candidate for an elective office is taking a part in politics because the things for which a candidate stands under such circumstances and upon which he seeks support are of the very essence of politics and this is so *whether such candidate represents a party in his campaign for such office or stands upon a platform of his own.*

“I am of the opinion therefore, that an active candidate for an elective office is taking a part in politics within the prohibition of the statute quoted and that if he is at the same time holding an office or employment in the classified civil service he should resign therefrom or he would be subject to prosecution as provided by section 486-28, G. C., as amended 106 O. L., 417.”

In Opinion No. 4058., Opinions of the Attorney General for 1954, p. 367, substantially the identical question which your letter presents was before my immediate predecessor, to-wit:

“2. May an employee in the classified service of the state at the same time act as a member of a local board of education, an elective office, or is this in violation of Section 143.41 of the Revised Code of Ohio?”

It was held:

“2. An employee in the classified service of the state, regardless of his position, title or classification, who simultaneously occupies a position as a member of a local board of education, an elective office, is amenable to the provisions of Section 143.41, Revised Code, notwithstanding that the elective office is non-partisan in character.”

In the course of the opinion it was said:

“In such a case it would appear to make no legal difference that the elective offices are non-partisan, since, whether the candidate for the elective office is a member of one of the political

parties, or neither of them, he is, in the words of the statute, taking part in politics in a manner other than by voting as he pleases, and other than by expressing freely his political opinions.”

The Attorney General then called attention to Opinion No. 1313, *supra*, to which I have referred, and quoted the language which I have quoted from that opinion, and expressed himself as in full accord with that expression.

These holdings would seem to me to be so persuasive as to be conclusive, except for the use of *Heidtman vs. Shaker Heights*, 99 Ohio App., 415, where the court had before it the question whether a member of the city fire department was guilty of violating said Section 143.41, Revised Code, in circulating an initiative petition for the enactment of an ordinance establishing the three-platoon system in the fire department.

The court held, as shown by a portion of the syllabus:

“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.

“4. The preparation, circulation and filing of an initiative petition by members of a municipal fire department, who were in the classified service, seeking enactment of an ordinance to establish the three-platoon system in the fire department was not in violation of Section 143.41, Revised Code, since such actions did not constitute taking “part in politics” within the meaning of that section.” (Emphasis added)

This case was affirmed in the Supreme Court in 163 Ohio St., 109, a portion of the syllabus reading as follows:

“The word, ‘politics,’ as used in Section 486-23, General Code (Section 143.41, Revised Code), must be defined as politics in its narrower partisan sense, and activities of municipal employees in the classified service in circulating an initiative petition seeking enactment of an ordinance relating to their employment do not constitute a taking part in politics as that term is used in such section.”

If we are to take the *generalization*, as pronounced by these courts as conclusive and binding under all circumstances, we would be compelled

to hold that a classified employee desiring to be elected to membership in a board of education or as an *independent candidate* for any municipal, township, county or state office, could raise campaign funds and conduct a vigorous campaign for election, without violating the statute in question, and he could perform the same service for any other similar candidate.

If however, we take the language of the court, as limited to the case that was before it, then we may thoroughly agree with the judgment of the court, but still question its applicability to the case here presented. It was not essential to a decision of that case for either court to indulge in a declaration of general principles. They could simply have decided that the circulation of an initiative petition was in no sense political activity but was merely the exercise of a right of citizenship, and it appears to us that the declaration of the court as to the purposes behind the statute was wholly irrelevant to the case before it.

If we are to be bound by that principle as applicable in every case, then we would be compelled to apply it to elections of mayors and councilmen in the many cities of the state which by their charters have provided that such elections shall be on a *non-partisan basis*. It is notorious that partisan politics, to a bitter degree, does enter into practically every such election, and if we are to give the principle announced by the court application in such case, then we would be sanctioning the most intense activity on the part of persons in the classified service, actuated and directed by party organizations, for or against the candidacy of men who are put up for these non-partisan offices on a strictly partisan basis; or for that matter, for their own candidacy.

I cannot think that the Supreme Court would sanction such a conclusion. I do not feel bound by what appears to me to be an *obiter dictum*; and I do not feel justified in overruling the opinions of my predecessors, to which I have called attention.

As I have already pointed out, the language of the statute itself can leave no doubt that the legislature used the words "politics" in a broader meaning than mere "partisan politics."

It does not appear that there would be any ground whatsoever for holding the position of a barber employed at the Athens State Hospital to be incompatible, under the general rules applied to compatibility of offices, with the position of a member of a local board of education, and I do not

deem it necessary to discuss your question from that standpoint. I consider that the real purpose of your question is to determine whether a person holding a position in the classified service would be taking part in politics by securing election to membership on a board of education.

It is my opinion, and you are advised that under the provisions of Section 143.41, Revised Code, a person holding a position in the classified service could not at the same time become a candidate for, be elected to, or hold the office of member of a local board of education.

Respectfully,

WILLIAM SAXBE

Attorney General