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A CLASSIFIED CIVIL SERVICE EMPLOYEE MAY SERVE AS AN ELECTION OFFICIAL, JUDGE OR CLERK AT THE POLLS—§1431.41 R.C., OPIN. 2545, OAG, 1928, OPIN. 544, OAG, 1929.

SYLLABUS:

Section 143.41, Revised Code, does not prohibit a person holding a position in the classified civil service of the state from serving as an election official, judge, or clerk at the polls or as a member of a board of zoning appeals.

Columbus, Ohio, November 3, 1962

Hon. James T. Welsh, Director of State Personnel  
Ohio Departments Building, Columbus 15, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Your opinion is respectfully requested on the following question: Does the meaning of ‘political activity,’ as used in Section 143.41, of the Ohio Revised Code include: (a) Employment as an election official, judge, or clerk at the polls; (b) Employment in a part-time appointive position in an office for which political affiliation is not a legal prerequisite, such as a member of a Board of Zoning Appeals.

“Our question might also be stated as: Is it permissible under Ohio law for a classified Civil Service employee to be employed as an election official, judge or clerk at the polls or to take a part-time appointive position of the type mentioned.

“It is our understanding that employment at the polls is made on the basis of political affiliation and we have therefore taken the position that such employment is prohibited to employees in the classified Civil Service. In taking this position, we were aware of the opinion of the Attorney General issued in 1928 as number 2545. However, differences of opinion exist on this subject and we should appreciate an opinion from your office at your very earliest convenience.”

In enacting Section 143.41, Revised Code, the legislature has attempted to protect the civil service system from the evils of undue political influence by prohibiting civil service employees from participating in politics. Section 143.41, *supra*, 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)

Since the enactment of the above section there have been many opinions from this office construing its legal effect. There is no need to go into these opinions in any great detail, for it requires no extensive investigation to see that such section has often been strictly construed. In general, Section 143.41, *supra*, has been interpreted as meaning that classified employees can not, without subjecting themselves to removal proceedings under Section 143.27, Revised Code, enter into any activity even remotely connected with what might be labeled “politics,” apart from voting or expressing their political opinions freely. See Opinion No. 862, Opinions of the Attorney General for 1951, page 656, at page 658.

In order to point out more clearly the strict interpretation that has been made of Section 143.41, *supra*, I direct your attention in particular to two opinions rendered by my predecessors in office, one to which you make reference in your request, that are similar on their facts to the questions you pose.

You ask whether it constitutes “political activity” within the meaning of Section 143.41, *supra*, for a classified employee to hold the appointive position of election judge or clerk. I assume you are referring to the election judges and clerks appointed pursuant to Section 3501.22, Revised Code. In the opinion of one of my predecessors in office such an appointment would constitute political activity within Section 143.41, *supra*. In this regard, the syllabus of Opinion No. 2545, Opinions of the Attorney General for 1928, page 2054, reads as follows:

“A person holding an office or position in the classified civil service of the state, or of a county, city or city school district,

may not at the same time hold the office of a member or clerk of the board of deputy state supervisors and inspectors of elections, or board of deputy state supervisors of elections, as the case may be, without thereby violating the provisions of Section 486-23, of the General Code.”

(now Section 143.41, Revised Code)

At page 2055 of the 1928 opinion, it is stated:

“In its broad sense, the term ‘politics’ may be defined as ‘the science and art of government; the science dealing with the organization, regulation and administration of a State in both its internal and external affairs.’ *Scown vs. Czarniecki*, 264 Ill. 305, 313. For the purposes of the question submitted in your communication the term may perhaps be adequately defined as including the activities relating to the election or appointment of persons to public office or position, *and to the activities by which the duties of such public office or position are performed.*

(Emphasis added)

And at page 2057, it is said:

“\* \* \* It is quite manifest that a person holding the office of member of a board of deputy state supervisors of elections or holding the office of clerk of such board, and performing the duties of said respective offices, *is doing something more in the way of political activity than voting and expressing his political opinions.*

“\* \* \*

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(Emphasis added)

From this quotation it is apparent how broadly the word “politics” was defined. In a very real sense it was interpreted to mean all governmental activity. Thus it was no surprise that acting as an election supervisor was held to be illegal political activity.

Another opinion worthy of review at this time is Opinion No. 544, Opinions of the Attorney General for 1929, page 837, in which the syllabus reads:

“A member of the city police department who is in the classified civil service may not legally hold the office of a member of the city board of health at the same time, without violating the provisions of Section 486-23, General Code, (now Section 143.41, Revised Code) which prohibit any officer or employe in the classified civil service from taking part in politics other than voting as he pleases and expressing freely his political opinions.”

Referring to the then existing Section 486-23, General Code, now Section 143.41, Revised Code, it is stated in Opinion No. 544, *supra*, at pages 838 and 839:

“The word ‘politics’ as used in this section of the General Code, wherein one in the classified civil service is prohibited from taking ‘part in politics other than voting as he pleases and expressing freely his political opinions,’ requires consideration. There appears in the General Code no definition of the word ‘politics.’ It may be defined in three different ways, depending upon the angle of approach: First, it is the interplay in public affairs, of diverse purposes and diverse opinions upon men and measures; second, it is the arena through which all must travel who would participate in government in a democracy; third, it is the science and art of government and as such is the super-profession.

“I am of the opinion that members of a city board of health are engaged in politics, for the reason that the city board of health is an executive body and exercises administrative and discretionary functions for the hygienic welfare of the inhabitants of the city.

“\* \* \* \* \* \* \* \* \*

“It is my view that any man is in politics who is appointed by an official administering government, and surely one who is elected by the people. It would therefore appear that a member of the city board of health appointed by the mayor, in performing the duties of his office is doing a great deal more in the way of political activity than merely voting as he pleases and expressing his political opinions.

“\* \* \* \* \* \* \* \* \*”

Thus, again, the term “politics” was interpreted as covering practically everything associated with the election of officials *and* the administration of government.

Since the rendering of the opinions above referred to, the Supreme Court has had occasion to consider the scope of the provisions of law here in question, and it is now clear that the broad interpretation of the word “politics” as found in the 1928 and 1929 opinions should no longer be accepted.

The case of *Heidtman v. Shaker Heights*, 163 Ohio St., 109 (1955), involved a situation where members of a city fire department circulated an initiative petition in an attempt to get a municipal ordinance enacted to establish a three platoon system in the department. The question raised was whether such activity was in violation of Section 143.41, *supra*. The

court held that there was no violation, the opinion by Stewart, J. stating at pages 118, 119 and 120:

“It will be observed that in the foregoing statute 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?

“The word, ‘politics,’ has two different definitions. In Funk & Wagnalls New Standard Dictionary (1952), the word, ‘politics,’ is defined as ‘1—the branch of civics that treats of the principles of civil government and the conduct of state affairs; the administration of public affairs in the interest of peace, prosperity and safety of the state; statecraft; political science; in a wide sense embracing the science of government and civil polity; (2) political affairs in a party sense; the administration of public affairs or the conduct of political matters so as to carry elections and secure public office; party intrigues; political wirepulling; trickery.’

“The first definition above covers the activities of plaintiffs, but the second does not.

“The statute does not define what it means by ‘politics’ except that, since it refers to solicitations for political parties or for candidates for public office, and also to political organizations, it seems that the expression, ‘take part in politics,’ was intended to cover only the activities embraced in the second definition. Then, too, when we consider the purpose of the legislation, it seems to be concerned only with partisan politics.

“It is a matter of common knowledge that before civil service legislation was enacted, police and fire departments were exclusively under ‘political’ control. The party in power could hire or fire at will in those departments, without any particular regard to fitness or any other characteristic except the partisan political activity and services of those who were to make up the personnel of the departments. Because such a system was deemed to be a great evil and prevented the building up of police and fire departments based upon fitness, security of tenure of position, and freedom from political control, civil service legislation was passed not only to insure such latter objectives but also to prevent those in classified civil service employment from being in any way obligated to political parties or civic officers for civil service positions, or from having the power to ingratiate themselves with the parties or elected officials by political activity.

“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 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.

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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 constitutes “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 wirepulling or trickery.”

Applying this interpretation to the situation you present, leads me to an opposite conclusion from that reached in the two former opinions of this office discussed above. The positions of election judge or clerk and of a member of a board of zoning appeals are certainly functions of government, and in this sense “political.” But it can not reasonably be said in light of the *Heidtman* case that such activity constitutes partisan politics within the meaning of Section 143.41, *supra*. After the appointment to such a position, circumstances might arise where it could be said that the activities of a particular employee fall within the prohibition of Section 143.41, *supra*; but previous to any activity of a partisan nature, such an employee would not be in violation of Section 143.41, *supra*, by mere appointment to or fulfilling the duties of a governmental position.

The duties of the positions here in question do not involve participation in partisan politics, and actually, any such participation in the particular

positions concerned would be improper, and probably illegal. Partisan politics could not, therefore, be deemed to be incidental to the positions concerned.

Accordingly, it is my opinion and you are advised that Section 143.41, Revised Code, does not prohibit a person holding a position in the classified civil service of the state from serving as an election official, judge, or clerk at the polls or as a member of a board of zoning appeals.

Respectfully,

MARK McELROY

Attorney General