

714.

ELECTION—EMPLOYES IN CLASSIFIED SERVICE—NOT VIOLATING G. C. 486-23 WHEN CARRYING TIRE COVERS ON AUTOMOBILES WITH NAME, PARTY AND OFFICE SOUGHT INSCRIBED THEREON—DISCUSSION OF CIVIL SERVICE LAW.

*SYLLABUS:*

*Employees in the classified service are not taking part in politics within the meaning of that phrase as used in section 486-23 when carrying tire covers on their automobiles which have printed thereon the name of a candidate for public office, the party ticket on which the name of the candidate appears and the date of the election.*

COLUMBUS, OHIO, April 25, 1933.

*The State Civil Service Commission, Columbus, Ohio.*

GENTLEMEN:—This will acknowledge your letter requesting my opinion as to whether classified employes violate the provisions of section 486-23, General Code, as to political activity by carrying tire covers on their automobiles which have printed thereon the name of a candidate for public office, the party ticket on which the name of the candidate appears and the date of election.

Prior to the enactment of the civil service law (sections 486-1 to 486-31, inclusive) in Ohio, an appointment to an office or position in the public service was regarded as a fit and proper reward for purely political and partisan service. This was true in respect to both important and minor offices. Employment in public service was generally given and conferred because the appointee belonged to a certain political party. Such an appointment was generally a reward for the appointee's services rendered for and on behalf of his political party. The long continued practice of rewarding political service on behalf of political parties by appointment to the public service caused the public to realize that such a reward required the appointee not only to perform the duties of his office or employment but also certain active service for his political party. The continued and widespread adherence of political parties to the spoils system and its detrimental effect on the public service crystallized public opinion against the spoils system. The result of this crystallization of public opinion was the enactment of the civil service law, the scope and purpose of which was and is to obtain a more efficient, permanent and disinterested service on the part of the employes in the classified service of the state, counties, cities and city school districts. In short, it was the evident purpose of the civil service law to promote efficiency in the public service, to protect faithful and efficient employes against removal for political or religious affiliations or insufficient cause and to eliminate the spoils system in the employment of the personnel for certain government units.

The legislature, in order to emancipate the employes in the service of the public from political control or influence which public opinion considered as generally interfering with the full and faithful performance of their duties toward the public and the employing governmental units, enacted section 486-23, which reads as follows:

"No officer, employe, or subordinate 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, employe, or subordinate in the classified service of the state, the several counties, cities or city school districts thereof; nor shall any officer or employe 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."

Section 486-23 prohibits a classified service employe from soliciting or being solicited for contributions for any political party or for any candidate for public office. It also prohibits such employes from being officers in any political organization or taking part in politics. However, it must be observed that the legislature reserved to employes in the classified service the right to freely express their opinions in reference to political matters.

The question presented by your inquiry is whether the carrying of a tire cover on an automobile belonging to a classified service employe and which tire cover reads as follows:

"John Doe for County .....,  
 ..... Ticket,  
 Election, November 8, 1932."

transcends or abuses the right reserved to such employes to express their political opinions and whether the communication or expression of that opinion is restricted solely to the spoken word.

There can be no question but that section 486-23 was and is intended to prevent employes in the classified service from taking an active managing part in the affairs of a political party or in political campaigns. Moreover, the provisions of section 486-23 relate to personal activity for a political party or candidate, such as promoting the candidacy of a candidate or candidates for public office either on an independent or party ticket by asking, enticing or requesting another to vote for such candidate or candidates or by taking an active part in the management of campaigns.

That the political activity prohibited in section 486-23 is limited to the engaging in political or party work or active participation in party management or the solicitation of votes is apparent on a reading of section 486-17, General Code, which reads in part as follows:

"No person shall be reduced in pay or position, laid off, suspended, discharged or otherwise discriminated against by an appointing officer for religious or political reasons or affiliations."

By virtue of the provision of section 486-17, it is quite evident that the legislature did not intend that employes in the classified service should give up their interests in political parties because of their employment but rather encourages their continued affiliation therein by expressly providing that no such employes shall be removed because of their political affiliations. Sections 486-17 and 486-23 being enacted at the same time and in the same bill, effect

should be given, if possible, to both statutes since they are in *pari materia*. Section 486-23, in view of the provision of section 486-17, certainly cannot be construed so as to destroy the right of employes to be interested in politics as that term is understood either in its higher sense or in its commonplace meaning. To hold otherwise would be to strike a blow at that independence in political action upon which good government depends. By section 486-23, an employe is merely prohibited while in the classified service from doing certain specified things or acts which have been designated by the legislature as being opposed to the best interest of the public service, but there is no provision in that statute that prevents such employes from expressing their opinions of candidates for public offices. It is to be noted that the means to be used in expressing or communicating such opinions is not set forth in section 486-23 and in view of that fact it would seem that the legislature did not intend to limit or restrict the expression of their opinions on political matters solely to the spoken word but that every employe could express his thoughts and opinions in such matters in any of the diverse ways available. In other words, an employe in the classified service is not prohibited by section 486-23 from communicating or expressing to others his personal views concerning candidates for public office or his choice of a candidate or candidates for public office. It seems to me that the right of an employe to express his political opinions, reserved by section 486-23, may take form in many of several ways, such as placards, lapel buttons and even automobile tire covers. The fact that the carrying of a tire cover, advertising a candidate for public office, on an automobile belonging to an employe in the classified service may have a political effect and in that sense effect a political object does not, in my opinion, constitute such action as taking part in politics within the meaning of that phrase as contained in section 486-23.

I am therefore of the opinion that employes in the classified service are not taking part in politics within the meaning of that phrase as used in section 486-23 when carrying tire covers on their automobiles which have printed thereon the name of a candidate for public office, the party ticket on which the name of the candidate appears and the date of the election.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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715.

BANKS—CONSERVATOR—AUTHORIZED TO BORROW FROM RE-  
CONSTRUCTION FINANCE CORPORATION TO SECURE PAR-  
TICULAR DEPOSIT WHEN—MAY BORROW TO SATISFY WITH-  
DRAWALS OF PUBLIC FUNDS—MAY BORROW TO PURCHASE  
SECURITY PLEDGED BY BANK FOR REPAYMENT OF FUNDS  
DEPOSITED WITH DEPOSITORY—MAY PERMIT PARTIAL  
WITHDRAWAL OF PUBLIC DEPOSIT WHEN.

**SYLLABUS:**

1. *A conservator appointed by virtue of section 710-88a, G. C. (H. B. 661, 90th General Assembly), is authorized to borrow from the Reconstruction Finance*