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CAMPAIGN FUND — EMPLOYEES IN CLASSIFIED CIVIL SERVICE — MAY VOLUNTARILY CONTRIBUTE EITHER TO POLITICAL ORGANIZATIONS OR A CAMPAIGN FUND OF CANDIDATE RUNNING FOR POLITICAL OFFICE WITHOUT VIOLATING ANY PROVISIONS OF CIVIL SERVICE LAWS — SECTIONS 486-1 TO 486-31 G. C.

SYLLABUS:

An employe in the classified civil service, who voluntarily contributes either to political organizations or to a campaign fund of a candidate running for political office, may do so without violating any of the provisions of the Civil Service Laws, viz., Sections 486-1 to 486-31, both inclusive, General Code.

Columbus, Ohio, November 24, 1944

Miss Gertrude Jones, Chairman, The State Civil Service Commission of Ohio

Columbus, Ohio

Dear Miss Jones:

Your request for my opinion reads:

“While it is obvious that under the provisions of Section 486-23 of the General Code solicitation of funds for political purposes on the part of a classified employee is in violation of that statute, this Commission, wishing to clarify the matter fur-

ther, requests your opinion on the following questions:

Can an employee in the classified service voluntarily contribute either to political organizations or to a campaign fund of candidates running for political office?"

It might be observed preliminarily that the Civil Service Laws of this state came into existence as the result of the adoption of Section 10, Article XV of the Constitution of this state.

In *State, ex rel. Neffner v. Hummel*, 142 O. S. 324, the court recently had occasion to make the following noted observation with respect to this mandate of the people. At page 329 of the opinion appears the following, to-wit:

"The underlying purposes which lead to the passage of this provision were to secure the maximum of efficiency and integrity in the public service; *to restrain persons occupying positions in the classified service from political activity*; to prevent discrimination for political, religious or racial reasons; and to guarantee permanent tenure to persons in the classified service."

(Emphasis added.)

With the foregoing in mind, I turn now to the provisions of Section 486-23, General Code, to which you have directed particular attention in your aforesaid request. That section 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.*"

(Emphasis added.)

It is manifest from the language employed therein that the General Assembly must have been of the opinion that when a person who holds a

position in the classified civil service exercises the privilege of voting, he is taking part in politics. Were that not the situation, it would be difficult to give meaning to the words "other than" appearing in said section. The conclusion, therefore, is irresistible that the privilege of voting, as well as the right to express freely a political opinion constitutes in some measure a taking part in politics. And while it is unnecessary to pass upon the matter herein, I believe it might be said that the constitutionality of any legislation attempting to deny the exercise of the aforementioned privileges might be questioned.

It is recognized, of course, that with the acceptance of a position in the classified civil service goes a certain amount of political neutrality. There can be no question but that it was the aim and intent of the Civil Service Laws of this state that such be the situation. Standing alone, it would appear from the language of aforementioned Section 486-23, that such political activity is limited to the exercise of two rights—to vote and to express freely political opinions. But I do not believe that in the enactment of the Civil Service Laws, when considered as a whole, it was the legislative intent that such activity be thus limited and restricted. I, therefore, invite your attention to Section 486-26, General Code, which I regard as of particular significance with respect to the matter under consideration. That section reads as follows:

"No officer or employe of the state, the several counties, cities, and city school districts thereof shall appoint, promote, reduce, suspend, lay-off, discharge, or in any manner change the official rank or compensation of any officer, employe or subordinate in the classified service, or promise or threaten to do so, for *giving* or withholding, or neglecting to make any contribution of money or other valuable thing for any party or political purpose, or for refusal or neglect to render any party or political service."

(Emphasis added.)

It is significant that in the above quoted section appears the words "giving or withholding". It would appear, therefore, that there is legislative recognition of the fact that a person may make a contribution and that if he does so he may not be penalized for such action. Likewise, he may not be penalized for withholding a contribution. Being part of the same act (103 O. L. 698 and 106 O. L. 400), the sections are clearly in *pari materia*. Therefore, when said Section 486-26 is read in conjunction with Section 486-23, it would seem obvious the right to make a voluntary

contribution, which is in express terms granted by the former section, can not be a violation of the last mentioned section.

While I regard your inquiry as one wherein the answer depends upon the statutes of this state because there is legislation with regard to the question, nevertheless I have made an examination of the laws of other states for the purpose of ascertaining whether legislative recognition has been given to the right to make a contribution to a political party without violating the Civil Service Laws.

I find that in New York the courts have had occasion to construe a statute which prohibits political activity by one in the classified civil service in that state. The statute in question does not specifically authorize such an employe to make or give a political contribution. But the right to do so seems to have been recognized in view of the language of the court in its decision in the case of *People v. Connolly*, 152 N.Y.S. 495. I quote the following excerpt from the opinion therein, to-wit:

“* * * The Legislature of New York, following various federal statutes, aimed to check a political abuse in taking party tribute from officers within their office surroundings. In such official relations, the call and pressure to pay for political purposes are felt without express demand or any open threats. Our statutes, therefore, *would keep such contributions purely voluntary*, as from citizens in private life, which character they cannot have, if paid over the official desks in city bureaus.”

(Emphasis added.)

In specific answer to your inquiry, it is, therefore, my opinion that an employe in the classified civil service, who voluntarily contributes either to political organizations or to a campaign fund of a candidate running for political office, may do so without violating any of the provisions of the Civil Service Laws, viz., Sections 486-1 to 486-31, both inclusive, General Code.

Respectfully,

THOMAS J. HERBERT

Attorney General