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82-00422



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JUN 28 1982

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Honorable Don Siegelman
Secretary of State
State Capitol
Montgomery, Alabama 36130

State Employees - Employees,
Employers, Employment -
Political Activities

Discussion of state employee
political activities.

Dear Mr. Siegelman:

You have requested an opinion regarding various aspects of state employees' involvement in political activities which reads, in part, as follows:

"We have had numerous inquiries as to where in the law it states that employees of the state cannot participate in campaigns for state offices, and I would like to pose the following questions in order to give well-founded and precise information to state employees:

"What can state employees do as campaign workers in campaigns for people running for state office?

"Can employees of the state run for state office themselves?

"If state employees must resign to run for state office (or county employees must resign to run for county office), when must they resign?

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"Time is, of course, of the essence in getting this information to the people, therefore I would greatly appreciate your prompt attention."

In response to your inquiries, state employees are prohibited under the Alabama merit system law from participating in political campaigns. Section 36-26-38, Code of Alabama 1975, provides, in pertinent part:

"...No employee in the classified service shall be a member of any national, state or local committee of a political party or an officer of a partisan political club or a candidate for nomination or election to any public office or shall take any part in the management or affairs of any political party or in any political campaign, except to exercise his right as a citizen privately to express his opinion and to cast his vote;..."

This law has been modified by Section 17-1-7(3), Code of Alabama 1975, which states that "No person in the employment of the state of Alabama, whether classified or unclassified, shall be denied the right to participate in city or county political activities to the same extent as any other citizen of the state of Alabama, including endorsing candidates and contributing to campaigns of his choosing." (Emphasis added)

Because this section authorizes state employees to participate only in city and county political activities, the prohibition of Section 36-26-38 still applies with regard to state political activities.

Your first question is "What can state employees do as campaign workers in campaigns for people running for state office?" Section 36-26-38 provides that a state employee must not take any part in the "management or affairs of any political party or political campaign, except to exercise his right as a citizen privately to express his opinion and to cast his vote." While this language is not specific, it would

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seem to prohibit state employees from endorsing candidates and contributing to campaigns, inasmuch as Section 17-1-7(3) specifically authorizes these activities with regard to city and county campaigns.

It should be noted that the Supreme Court of the United States in Broadrick v. Oklahoma, 413 U.S. 601, 37 L. Ed. 2d 830, 92 S. Ct. 2908 (1973) upheld an Oklahoma state merit system act which is almost identical to Alabama's Section 36-26-38. However, the Court in Broaderick did not address the question of whether such activities as placing bumper stickers on cars or wearing campaign buttons were unlawful.

This office has long taken the position that Section 36-26-38 is not a strict prohibition against all political expression and that pursuant to an employee's right to express his opinion privately he may 1) wear political buttons while not at work, 2) place a bumper sticker on his car, or 3) attend political meetings purely as a spectator. Opinion to Hon. Tom Drake, Sept. 23, 1975, Quarterly Report of the Attorney General, Vol. 160, p. 28.

In response to your second question, this office has previously ruled that pursuant to Section 36-26-38 a state employee may not run for state office unless he resigns or takes a leave of absence. Opinion to Lewis W. Headley, Aug. 30, 1973, Quarterly Reports of the Attorney General, Vol. 152, p. 19. The determination of whether a leave of absence will be granted is within the discretion of the employer. If a leave of absence is not granted, the state employee must resign in order to run for state office.

In response to your third question, it is my opinion that a state employee must resign or take a leave of absence no later than the date that he qualifies for a particular office because it is at that time that he officially becomes a candidate for nomination or election to a public office in conflict with Section 36-26-38. However, if the employer begins to campaign prior to the time that he qualifies or to do anything that is otherwise prohibited by Section 36-26-38, he should resign at that time.

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These are questions that frequently arise in all areas of state and local government, and it is my hope that this opinion is of some help in answering them.

Sincerely,

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Attorney General
By-

Linda C. Breland

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