

Opinion No. 61-53

June 28, 1961

BY: OPINION OF EARL E. HARTLEY, Attorney General Boston E. Witt, Assistant Attorney General

TO: Mr. Donald C. Davidson, Director of Personnel, State Capitol Building, Santa Fe, New Mexico

QUESTION

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What is the meaning of the words "hold political office or be an officer of a political organization" as found in Sections 5 and 15 of Chapter 240, Laws 1961, being the State Personnel Act.

CONCLUSION

See Analysis.

OPINION

ANALYSIS

The language is used in Section 5 in connection with membership on the State Personnel Board. That section reads in part as follows:

". . . No person shall be a member of the board or eligible for appointment to the board who is an employee in the service, **holds a political office or is an officer of a political organization.**" (Emphasis Supplied)

The same language is found in Section 15 as follows:

"B. No person in the personnel office, or employee in the service shall **hold political office or be an officer of a political organization during his employment.**" (Emphasis Supplied)

The words "be an officer of a political organization" are relatively clear. The prohibition is without restriction and as we view the legislative intent of these words, it applies with equal force to the highest and lowest office in a political party or organization. Since there is no restriction, we feel that all officers of the party or organization are included within the prohibition, from the State Chairman to membership in the Central Committee or Executive Committee on down the line to precinct officers and division officers.

A somewhat more difficult question is presented by the use of the words "political office." These words can have many meanings. The normal conversational connotation of the words is that of an elected public office. Our problem is to determine whether this meaning or some other meaning was intended by the Legislature. This we can do only by examining the context in which the words are used and the interpretation placed upon the words by the courts in construing them.

As far as we have been able to determine, case law dealing with the definition of these words in the context in which they are used here is scant. In the case of **Norton v. Letton**, 111 S.W. 2d 1053 (Ky.) at page 1057, the court in discussing the definition of the words "political election" stated as follows:

"It will be seen that in neither definitions, 1 nor 2, is there the slightest reference made to the views, or governmental policies, advocated by groups of voters forming what is commonly designated as 'political parties.' On the contrary the definitions so given are much broader, and in such broadened scope there is included, as well as emphasized, governmentally declared policies conforming to a settled system of administration of the government, or any of its subdivisional units. It embraces all participations (elections) whereby, whereat, and wherein legal voters may participate in the selection 'of those who manage the affairs of a state,' or whereby the voters may exercise the function of participating in the choice of officers or measures that they may wish to be installed or inaugurated in the conduct and administration of their government.

Following such definitions the Supreme Court of the state of Wisconsin in the case of *In re Kemp*, 16 Wis. 359, 382, defined the word 'political' as meaning that which pertains to the government of a nation and not to be narrowed so as to be exclusively applied to groups and parties advocating certain political views or policies."

Under this theory advanced by the Kentucky court, any person who is elected by the voters to a public office would be deemed holding a political office within the intent of Chapter 240. This would be so even if the election were conducted along what is commonly known as nonpartisan lines rather than political party lines. On this basis and the context in which the words are used, we are constrained to hold that the term "political office" applies to every elected public office within the state including, but not limited to state elected positions, county elected positions and municipal elected positions, even if conducted along nonpartisan lines.

We realize that this may severely restrict the pool of available capable persons who may be appointed to the board. However, we can attribute no other meaning to the words chosen by the Legislature and, since it is our duty merely to construe rather than legislate, we can arrive at no other conclusion.