

Opinion No. 62-93

July 20, 1962

BY: OPINION OF EARL E. HARTLEY, Attorney General Thomas A Donnelly, Assistant Attorney General

TO: Mr. Greg Aragon, Sr., Santa Rosa Consolidated Schools, Board of Education, Santa Rosa, New Mexico

QUESTION

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May the Board of Education of a school district restrict the right of school personnel to participate in political activity either while on duty or off duty?

CONCLUSION

See analysis.

OPINION

ANALYSIS

It is well recognized as a basic tenet of the master-servant relationship that any employer may specify and require of his employees adherence to the rules and policies promulgated by the employer, except when such are contrary to law or public policy.

A board of education as a public employer, similarly, has the general power to create and enforce reasonable regulations or policies which it determines to be beneficial to the proper administration of the public schools under its control. **Ransom v. Los Angeles City High School Dist.**, 277 P. 2d 455, 129 CA 2d 500; **Casey County Bd. of Ed. v. Luster**, 282 SW 2d 333 (Ky. Ct. Apls.); **Burkitt v. School Dist. No. 1 Multnomah Co.**, 246 P 2d 566 (Oreg.); **Thorp v. Bd. of Trustees of Schools**, 6 N.J. 498 79 A2d 462.

As stated in 78 C.J.S., "Schools and School Districts," Section 121, at page 908:

"The Board of education, or of directors, trustees, or the like, of a school district or other local school organization, being the governing body of the district, . . . ordinarily has general power, which in some states is expressly recognized by statute, to make such reasonable rules for the convenient dispatch of its own business as it may deem proper, and to adopt and enforce reasonable rules and regulations for the administration of the schools and the conduct of the affairs of the district."

In New Mexico a local board of education may properly adopt and enforce any reasonable policy or regulation incident to the best interests of the schools and which is not contrary to law, public policy or to the rules or regulations specified by the State Board of Education. The right of the local board of education to adopt and enforce such rules and regulations includes the right by the board as an employer to restrict by reasonable regulations certain political activity on the part of school personnel either while on or off duty. However, the right to limit by board regulation the political activity of school employees must have some reasonable correlation to the best interests of the schools, and be definite and certain in nature. **School City of East Chicago v. Sigler**, 119 Ind. 9, 36 NE 2d 760.

As recognized in 35 Am. Jur. "**Master and Servant**," Sec. 44, page 478, every employee must adhere to the reasonable rules and policies of the employer. This authority states in part:

"Among the fundamental duties of the employee is the obligation to yield obedience to all reasonable rules, orders, and instructions of the employer, and wilful or intentional disobedience thereof, as a general rule, justifies a rescission of the contract of service. . ."

The rule is stated also in 51 A.L.R. 2d at page 742 that:

". . . The Courts have consistently ruled that no liability attaches to an employer who has discharged an employee because of the employee's political views or conduct where such a discharge is not expressly or impliedly proscribed by statute or by contract of employment.

"The proposition that an employer has a common law right to discharge an employee for his political views or conduct is, of course, especially applicable where such views or conduct have a direct harmful upon the business of his employer."

The State Legislature has prohibited under Sections 73-9-7 and 73-12-12, N.M.S.A., 1953 Compilation, certain types of school employees from engaging in any political activity or from becoming candidates for any elective office during their term of employment.

Both the Congress of the United States, by enactment of the Hatch Act, and the New Mexico State Legislature, by adoption of the Personnel Act, have passed legislation proscribing certain types of political activity on the part of specified public employees and such legislative bodies have determined the restrictions imposed to be in keeping with the best interests in furtherance of the state and federal government. In addition, the New Mexico Board of Education has adopted a Board resolution specifying that certain types of political activity on the part of School boards and supervisory personnel is in conflict with the best interests of public education.

It is apparent that a local Board of Education may lawfully promulgate and enforce reasonable rules and policies restricting certain aspects of political activity on the part of its employees, and the violation of such rules or policies would subject school employees to possible dismissal, in accordance with prescribed legal procedures.

Faxton v. School Committee of Boston, 120 N.E. 2d 772, 331 Mass. 531; **School City of East Chicago v. Sigler**, supra.

In **Haymaker v. State ex rel McCain**, 22 N.M. 400, 163 P. 2d. 248, the New Mexico Supreme Court noted that incompatibility between two public offices may exist, where one is subordinate to the other, or where an antagonism would result in one person attempting to discharge the duties of both positions. A distinction should be drawn between such cases, and the issue presented herein. A local school board may properly determine that the holding of two public positions by an employee of such school system, may be detrimental to the best interests of such school system, even though such positions are not in fact incompatible by law. **School City of East Chicago v. Sigler**, supra.

Without having a particular Board rule or regulation before us, we cannot render a definite opinion as to its validity. Whether the particular regulation or policy adopted by a local board is reasonable in nature, correlated to the interests of the schools, and sufficiently definite in wording so as to constitute a valid exercise of the board's authority would be contingent upon the facts and nature of each particular case.

Certain general regulations may, however, be properly adopted and enforced by the local board, such as restrictions against an employee holding any political office during his employment, becoming an officer of a political organization during his employment, engaging in partisan political activity while on duty, or in soliciting political contributions from others. Such regulations or policies however, may not unreasonably restrict off hours activity, or lawfully prohibit the employee from making voluntary contributions to political organizations, restrict the right of such employee to vote as they may choose, nor may they in most instances restrict the right of public employees to express their opinions on political subjects and candidates.

The test as to the reasonableness of a particular rule or regulation of the School Board in limiting the activities of a school employee is stated in **School City of East Chicago v. Sigler**, supra:

"Activities of the teacher which have a reasonable bearing on his ability, efficiency and influence in the class room seem to us to be within the field of such regulation by the school board.

". . . The Board, not the courts, is charged with the duty of managing the school system and so long as it acts with fairness its decisions on matters within its discretion are not subject to judicial review."

We therefore hold in answer to your question posed above, that a Board of Education may, as outlined herein, adopt reasonable rules or regulations relating to the schools, prohibiting certain types of political activity on the part of school personnel either on or off duty, and which activity is found by the board to be inimical to the best interests of the schools.