

Opinion No. 64-144

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BY: OPINION OF EARL E. HARTLEY, Attorney General Oliver E Payne, Assistant Attorney General

TO: Mr. Abner Schreiber, Assistant District Attorney, Box 800 Los Alamos, New Mexico

QUESTION

FACTS

Los Alamos County has for some time been considering the adoption of a personnel ordinance to cover designated county employees. Article 9 of this proposed ordinance limits certain employee partisan political activities. In brief summary, Article 9 of the ordinance provides in pertinent part as follows:

Section 2 precludes any person from soliciting contributions for any political party or for any partisan political purpose from covered county employees if he knows that they are covered employees.

Section 3 prevents covered county employees from engaging in partisan political activity during hours of work for the county.

Section 4 prevents a covered county employee from:

- (a) becoming a candidate for partisan nomination or election to any public county, state or federal office without taking a leave of absence from county employment;
- (b) holding any partisan county, state or federal office;
- (c) holding office in a partisan political organization or being an officer or selected delegate at a convention or meeting of any partisan political organization;
- (d) soliciting or receiving any contribution to the campaign funds of any partisan political organization or any partisan candidate for public county, state, or federal office;
- (e) taking any policy making or fund raising part in the management or partisan political campaign of any partisan political organization or any candidate for public county, state, or federal office.

Section 5 provides that the article shall not be construed to restrict other off-hours political activities, to prohibit an employee from making voluntary contributions for political purposes, to re-restrict the right of employees to vote as they may choose, or to

restrict the right of employees to express their opinions on political subjects and candidates or to attend general political meetings.

QUESTION

Does Los Alamos County have authority to enact the personnel ordinance set out above limiting county employee partisan political activity?

CONCLUSION

Certain provisions of the ordinance are invalid.

See analysis.

OPINION

ANALYSIS

Los Alamos County is classified as an H Class County. Section 15-43-3.1, N.M.S.A., 1953 Compilation (P.S.). As an H Class county, it has the same power and authority to enact ordinances as does an incorporated municipality. Section 15-36-13, N.M.S.A., 1953 Compilation (P.S.). Since municipalities are authorized to establish by ordinance a "merit system for the hiring, promotion, discharge and general regulation of employees" (§ 14-19-12), so too is Los Alamos County.

The question then is whether any other statute limits Los Alamos County in restricting partisan political activity by its employees.

Section 3-8-16, N.M.S.A., 1953 Compilation, provides a penal sanction against

"Any employer who makes or enforces or attempts to enforce any order, rule or regulation, or who adopts any other device or method to prevent an employee from engaging in political activities, accepting candidacy for nomination or election to or the holding of political office, or from holding a position as a member of any political committee, or from soliciting or receiving funds for political purposes, or from acting as chairman of or participating in a political convention, or assuming the conduct of any political campaign . . ." (Emphasis added)

It is our view that had the legislature intended the above provision to apply only to "private" employers, it would have been a simple matter to insert that word in the statute. We believe that Section 3-8-16, set out above, applies to all employers, public and private, except as limited or modified by later enactments such as the Personnel Act governing the activities, political and otherwise, of covered State employees. Section 5-4-28, et seq., N.M.S.A., 1953 Compilation (P.S.).

In addition to the express language used in Section 3-8-16, i.e., "Any employer", we believe the "escape clause" in the section was purposely made broad because public employers as well as private employers were intended to be included. This clause reads as follows:

"but nothing herein contained shall prevent **any** employer from making and enforcing any rule regulating the conduct of employees while on duty on his or its own premises."
(Emphasis added)

In the light of this conclusion, let us examine the various provisions of Article 9 to determine whether they comply with Section 3-8-16, supra.

Section 2 in its present form would preclude a covered employee from soliciting political contributions from other covered employees. We believe that Section 2 would be valid only if limited to working hours.

Section 3 does not conflict with Section 3-8-16, supra, since it applies only to activities during working hours.

We believe that paragraphs (a) (b) (c) of Section 4, as presently written, conflict with Section 3-8-16, supra, in that they effectively prevent a covered employee from becoming a candidate, from holding a partisan office, and from being a delegate or an officer of any partisan political organization.

Of course, a personnel ordinance can contain prohibition against a covered employee holding a political position which is incompatible with his county employment. Further, the ordinance could provide that if the holding of a political office interfered with the full time performance of his county employment, it would be grounds for termination of his employment.

At present, paragraphs (d) and (e) of section 4 conflict with Section 3-8-16, supra. However, if the phrase "during working hours" was added to these two provisions, this would resolve the conflict.

Section 5 of Article 9, dealing with off-hours political activity, is in full conformity with Section 3-8-16, supra.