

Opinion No. 54

Elections—Candidates for Office—Political Parties—Unemployment Compensation Commission

- Held:
1. A candidate for public office is not an officer of the political party that he represents.
 2. A candidate for office is not a committee member of the political party that he represents even though he serves on the platform committee of that party.
 3. Since a candidate for office is not "an officer or committee member of any political party organization," a member of the Unemployment Commission is not prohibited by Section 87-117, RCM, 1947, from becoming a candidate for office during his term or membership on the commission.
 4. Section 87-123, RCM, 1947, applies to the personnel employed by the Unemployment Compensation Commission and not to the commissioners themselves.

April 22, 1958

Mr. Chadwick W. Smith, Chairman
Montana Unemployment Compensation Commission
Mitchell Building
Helena, Montana

Dear Mr. Smith:

You have requested my opinion whether a member of the Montana Unemployment Compensation Commission may become a candidate for public office during the term of his appointment. You inform me that an inquiry is being made of the Bureau of Employment Security of the United States Department of Labor for their opinion as to the applicability of the Hatch Act to this situation. (U.S.C.A.—Title 5, Sec. 118K.)

Our inquiry is naturally restricted to the laws of this state which regulate the conduct of members of the commission, and my opinion is subject to the application of any federal law to the subject.

Two Montana statutes are pertinent to this inquiry. The first is Section 87-117, RCM, 1947, which provides:

"Unemployment compensation commission — organization. There is hereby created a commission to be known as the unemployment compensation commission of Montana. The commission shall consist of three members who shall be appointed by the governor on a nonpartisan merit basis within sixty days after the passage of this act and after any vacancy occurs in its membership. Two of the members of the commission shall serve on a per diem basis and shall be paid at the rate of ten dollars (\$10.00) per day of service plus actual and necessary expenses, provided, however, that the total per diem compensation in any one year for each of the said two members shall not exceed the sum of five hundred dollars (\$500.00). Each per diem member shall hold office for a term of six years, except that (1) a member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term; and (2) the terms of office of the member first taking office after the date of enactment of this act shall expire, as designated by the governor at the time of appointment, one at the end of three years, the other at the end of six years. The third member of the commission, who shall be designated as chairman at the time of his appointment, shall be paid a full-time salary in an amount to be fixed by the governor and shall be the executive director. **During his term of membership on the commission no member shall serve as an officer or committee member of any political party organization.** The governor may at any time, after notice and

hearing, remove any commissioner for inefficiency, neglect of duty, malfeasance, misfeasance, or nonfeasance in office."

The restriction upon the commissioners political activity is that he shall not serve as an officer or committee member of any political party organization. Is a candidate for public office an officer or committee member of the political party which he represents?

The city, county and state officers of a political party are selected under the statutory authority of Sections 23-1002 and 23-929, RCM, 1947. The county officers are elected by the county committees (Sec. 23-929, supra) and the state officers are elected by the state central committee and certain others. (Sec. 23-932, RCM, 1947) Although these statutes do not specifically prohibit a candidate from holding one of these offices, he could not become an officer of the political party without a further act of the political organization electing him to a party office. Should a candidate be elected to an office in the political organization in the manner prescribed by law, then, at that time, Section 87-117, RCM, 1947, would prohibit him from further activity upon the commission.

The remaining question under Section 87-117, supra, is whether the candidate is a **committee member** of a political party. From the statutes quoted above it is clear that a candidate for public office could not be a city, county or state committeeman. Nor could he become a national committeeman without being elected to this position. (Section 23-930, RCM, 1947.)

Under the provisions of Section 23-932, RCM, 1947, a candidate for office shall meet with the state committee and others for the purpose of adopting the state platform of the party. Section 23-932, supra, provides:

"Candidates to formulate state platform. The candidates for the various state offices, and for the United States senate, representatives in Congress and the legislative assembly nominated by each political party at such primary, and senators of such political party, whose term of office extends beyond the first Monday in January of the year next ensuing, and the members of the state central committee of such political party, shall meet at the call of the chairman of the state central committee not later than September fifteenth next preceding any general election. They shall forthwith formulate the state platform of their party. They shall thereupon proceed to elect a chairman and vice chairman, provided that either the chairman or vice chairman shall be a woman, of the state central committee and perform such other business as may properly be brought before such meeting."

It might be argued that this statute establishes the candidate as a committeeman. In my opinion such is not the case, as the candidate is acting in the capacity of a candidate for office, and not as a member of any party committee.

The final question which you raise concerns the applicability of Section 87-123, RCM, 1947, to a member of the commission. Section 87-123, provides:

"Personnel. Subject to other provisions of this act, the commission is authorized to appoint, fix the compensation and prescribe the duties and powers of such officers, accountants, attorneys, experts, and other persons as may be necessary in the performance of its duties under this act. The commission may delegate to any such persons such power and authority as it deems reasonable and proper for the effective administration of this act, and may in its discretion bond any person handling money or signing checks hereunder. The commission shall classify positions under this act and shall establish salary schedules and minimum personnel standards for the positions so classified. The commission shall provide for the holding of examinations to determine the qualifications of applicants for the positions so classified, and except for temporary appointments of not to exceed six months in duration, such personnel shall be appointed on the basis of efficiency and fitness as determined in such examinations. **No person who is an officer or committee member of any political party organization or who holds or is a candidate for any public office shall be appointed or employed under this act.** The commission shall establish and enforce fair and reasonable regulations for appointments, promotions, and demotions based upon ratings of efficiency and fitness and for terminations for cause."

This statute prohibits the appointment or employment of one who is a candidate for public office. Whether or not this statute prohibits a person from becoming a candidate for public office *after* his appointment or employment, we need not decide. It is clear that the provisions of Section 87-123, supra, apply to the **personnel** or **employees** of the commission as opposed to the commission itself. The commissioners are not employees of the commission but are the commission itself. (Bonner v. District Ct. 122, Mont. 464, 478, 206 Pac. (2d) 166.) As the commission, and not employees, the commissioners are not subject to the restrictions set forth in Section 87-123, supra, which in my opinion applies to the personnel or employees of the commission only.

It is my opinion, therefore, that:

- (1) A candidate for office is not an officer of the political party that he represents.
- (2) A candidate for office is not a committee member of the political party that he represents.
- (3) Since a candidate for office is not "an officer or committee member of any political party organization," a member of the Unemployment Commission is not prohibited by Section 87-117, RCM, 1947, from becoming a candidate for office during his term of membership on the commission.

(4) Section 87-123, RCM, 1947, applies to the personnel employed by the Unemployment Compensation Commission and not to the commissioners themselves.

Very truly yours,
FORREST H. ANDERSON
Attorney General