

VOLUME NO. 35

Opinion No. 88

ELECTIONS—Public employees' participation, corrupt practices; OFFICES AND OFFICERS—Public employees; participation in election campaigns. Article II, section 4, Constitution of Montana, 1972; sections 23-4739 and 94-1439, R.C.M. 1947.

HELD: Section 23-4739, R.C.M. 1947, of the Montana Corrupt Practices Act, prohibiting public employees from paying or contributing to aid or promote the nomination or election of any other person to public office, is not in violation of Article II, section 4, Constitution of Montana, 1972.

June 19, 1974

Rep. Barbara K. Bennetts
25 South Benton Avenue
Helena, Montana 59601

Dear Representative Bennetts:

You have requested my opinion on the following question:

Whether section 94-1439, Revised Codes of Montana, 1947, of the Montana Corrupt Practices Act is in violation of Article II, section 4, Constitution of Montana, 1972.

In 1973, the Montana Corrupt Practices Act was renumbered and transferred to Title 23, chapter 47, R.C.M. 1947. Former section 94-1439, R.C.M. 1947, which prohibited certain political conduct by public employees, has been recodified as section 23-4739, R.C.M. 1947, which provides:

No holder of a public position or office, other than an office filled by the voters, shall pay or contribute to aid or promote the nomination or election of any other person to public office. No person shall invite, demand, or accept payment or contribution from such holder of a public position or office for campaign purposes. (Emphasis supplied)

This particular provision is often referred to as the "Little Hatch Act" because it is similar to a statute enacted by Congress known as the "Hatch Act." 5 U.S.C.A. §7324. The federal Hatch Act prohibits federal public employees from taking "an active part in ... political campaign." The Montana "Little Hatch Act" is more definitive. It specifically prohibits public employees from paying or contributing "to aid or promote the nomination or election of any other person to public office."

The federal courts have upheld the constitutionality of the federal Hatch Act emphasizing that Congress may regulate the political conduct of government employees within reasonable limits. **United States Federal Workers of America v. Mitchell**, 56 F. Supp. 621 (1944), affirmed 330 U.S. 75; **U.S. Civil Service Commission v. National Association of Letter Carriers, AFL-CIO**, _____ U.S. _____, 37L.Ed.2d 796, 93 S.Ct. 2880 (1973). In construing the federal Hatch Act and the phrase which forbids federal employees to "take an active part in political ... campaigns," the United States Supreme Court stated in **Letter Carriers** that:

... neither the First Amendment nor any other provisions of the Constitution invalidates a law barring this kind of partisan political conduct by federal employees.

Further, the courts have recognized that under the United States Constitution there is no absolute right to participate in political activities. See: e.g., **Rosario v. Rockefeller**, ———U.S.———, 36 L.Ed.2d 1, 93 S.Ct. 1245 (1973); **Dunn v. Blumstein**, 405 U.S. 330, 336 (1972).

The Montana Constitution, 1972, Bill of Rights, Article II, section 4, provides:

The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws. Neither the state nor any person, firm, corporation, or institution shall discriminate against any person in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas.

This constitutional provision guarantees the equal protection of the law and prohibits both public and private discrimination in civil and political rights. As indicated by the **Transcript of Proceedings**, Montana Constitutional Convention, 1972, the word "political" was "incorporated to prohibit public and private concerns discriminating against persons because of their political . . . beliefs." (**Transcript**, vol. VII, p. 5060). Section 23-4739, *supra*, does not discriminate against public employees because of their political ideas or beliefs. A public employee retains the right to vote as he chooses and to express his opinion on political subjects and candidates. Furthermore, this section does not infringe upon employment opportunities of public employees based upon their political beliefs. Pursuant to section 23-4739, *supra*, employees are merely prohibited from paying or contributing to aid or promote the campaigns of political candidates.

The constitutional test with regard to equal protection is whether the statute bears a reasonable or rational relationship to a legitimate state purpose. **San Antonio Independent School District v. Rodriguez**, 411 U.S. 1 (1973). In upholding the constitutionality of the Federal Hatch Act in **Mitchell**, the court recognized a legitimate purpose, stating:

To say that Congress has not the power to pass this legislation in the public interest, and in the interest of the employees of the Government whose tenure it is seeking to protect, is to say that it is not rational for the Congress to conclude that it cannot take political activity out of the employment, promotion and dismissal of Government employees without at the same time taking Government employees out of political activity. This is a question for the Congress, and not the courts, to decide. 56 F. Supp. at 627.

Similarly, in **Letter Carriers**, the United States Supreme Court stated that in the judgment of Congress, the Executive, and the Country:

... partisan political activities by federal employees must be limited if the Government is to operate effectively and fairly, elections are to play

their proper part in representative government and employees themselves are to be sufficiently free from improper influences. 37 L.Ed.2d at 808.

The Montana statute, section 23-4739, *supra*, specifically proscribes public employees' political conduct in the area of campaign contributions and promotions. In determining legislative intent, statutes are construed according to the plain and ordinary meaning of the statutory language. **State ex rel. Woodahl v. District Court**, ———Mont.———, 511 P.2d 318 (1973). Clearly, the language in section 23-4739, *supra*, indicates a legislative intent to prevent the coercion of campaign contributions from public employees by political office seekers or incumbent political figures in power. Thus, in view of the constitutional construction and cases previously cited, it appears that section 23-4739, *supra*, does serve a reasonable and legitimate state purpose.

THEREFORE, IT IS MY OPINION:

Section 23-4739, R.C.M. 1947, of the Montana Corrupt Practices Act, prohibiting public employees from paying or contributing to aid or promote the nomination or election of any other person to public office, is not in violation of Article II, section 4, Constitution of Montana, 1972.

Very truly yours,

ROBERT L. WOODAHL
Attorney General