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~~R 75-288~~

(R 75-287)

75-138

May 30, 1975

Honorable Tony West and
Honorable Pete Corpstein
Arizona State Representatives
House Wing, State Capitol
Phoenix, Arizona 85007

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Gentlemen:

By this letter I am responding to your three related inquiries concerning possible conflict of interest of legislators. Mr. West has asked the following question:

Does a legislator who is a certified teacher have a conflict of interest when voting on legislation that will allow for compulsory arbitration of teachers?

and Mr. Corpstein has propounded the following two questions:

1. Does a legislator who is a teacher or an employee of the school district have a conflict of interest when voting in Appropriations Committee and subcommittee action dealing with setting the educational budget for the Department of Education?
2. Does a legislator have a conflict of interest when voting for Special Education funds when his or her child is a handicapped child that qualifies for Special Education?

The relevant statutory provisions are found within Article 8.1, Chapter 3 of Title 38. The controlling statutory section is A.R.S. § 38-520.B. which provides:

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No member of the legislature shall participate by voting, or in any other action on the floor or in committee or elsewhere, in the enactment or defeat of legislation in which he or his immediate family has a substantial personal interest unless he has complied with the rules of the legislative body of which he is a member. A member shall be deemed to have a personal interest in any legislation within the meaning of this subsection where his personal or private right, distinct from his public interest, is immediately concerned, and in each instance where he or his immediate family has a direct personal pecuniary interest in the question.

At the onset, we have reservations regarding the constitutionality of the foregoing statute. The Arizona Constitution, Article 4, Part 2, Section 8, provides:

Organization; officers; rules of procedure Section 8. Each House, when assembled, shall choose its own officers, judge of the election and qualification of its own members, and determine its own rules of procedure. [emphasis supplied]

The clear directive of this constitutional provision is that each house of the legislature as a separate branch of government, must retain control of its own procedures and exercise its own discretion within the limits of the Constitution. The question here is whether the enactment of the foregoing statute constitutes an unconstitutional delegation of supervision of legislative procedures to the executive and judicial branches (the statute provides sanctions for violations which can only be enforced by prosecutors through the court system). Additionally, it may be noted that this statutory delegation cannot be revoked or changed at the will of the House, any revocation (in the form of a statutory change) requiring consent of the Senate and perhaps concurrence of the Governor. There are no Arizona judicial decisions interpreting this provision of the Constitution. However, this provision and similar provisions in the constitution of other states appear to derive from Article 1, Section 5, Clause 2, of the United States Constitution. In United States v. Ballin, 144 U.S. 6, 12 S.Ct. 507 (1892), the Supreme Court interpreted the federal constitutional provision as follows:

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. . . The constitution empowers each house to determine its rules of proceedings. It may not by its rules ignore constitutional restraints or violate fundamental rights, and there should be a reasonable relation between the mode or method of proceeding established by the rule and the result which is sought to be attained. But within these limitations all matters of method are open to the determination of the house, and it is no impeachment of the rule to say that some other way would be better, more accurate, or even more just. It is no objection to the validity of a rule that a different one has been prescribed and in force for a length of time. The power to make rules is not one which once exercised is exhausted. It is a continuous power, always subject to be exercised by the house, and, within the limitations suggested, absolute and beyond the challenge of any other body or tribunal.
[emphasis supplied]

Arguably, the cited statute does not violate the constitution but simply defines conflict of interest (more precisely, "personal interest") and explicitly provides that any such conflict shall be handled by compliance with "the rules of the legislative body . . .". But, one way or the other, the statute does come close to the constitutional line by delegating the enforcement of internal procedural rules to the executive and judicial branches.

Section 38-520.B. provides in part:

A member shall be deemed to have a personal interest in any legislation within the meaning of this subsection where his personal or private right, distinct from his public interest, is immediately concerned, and in each instance where he or his immediate family has a direct personal pecuniary interest in the question.

However, the first sentence of subsection B. necessitates compliance only when the legislator or his immediate family has a "substantial personal interest". There is no

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case law interpreting this language.

The conflict of interest law governing public officers and employees (other than legislators), A.R.S. § 38-501 et seq., uses the phrase "substantial interest" to include "any interest, either direct or indirect" other than a "remote interest". The statute then defines "remote interest" with some particularity. In Yetman v. Naumann, 16 Ariz.App. 314, 492 P.2d 1252 (1972), the Court of Appeals characterized the meaning of that statute as follows:

It is clear that in order to guard against conduct of a public officer or employee potentially inimical to the public interest, the legislature deemed it necessary to give the term "substantial interest" a broad encompassing definition. Therefore, according to the legislative definition, any interest which does not fall within the seven classifications set out in A.R.S. §38-502, subsec. 5 constitutes a "substantial interest". We do not believe however, that the legislature intended that the word "interest" for purposes of disqualification was to include a mere abstract interest in the general subject or a mere possible contingent interest. Rather, the term refers to a pecuniary or proprietary interest, by which a person will gain or lose something as contrasted to general sympathy, feeling or bias.

The statute governing members of the legislature is more general, and less clearly delineated than the statute governing public officers and employees, perhaps because of the inherent difficulty in drawing clear lines for legislators, each of whom has responsibility for overseeing every facet of state government.

The financial disclosure statute, A.R.S. 38-541 et seq., provides specific guidelines for disclosure by elective officials, including legislators. The filing requirements set forth in §542 may provide some suggestion of legislative intent as to what constitutes a substantial personal interest within the meaning of § 520.B.

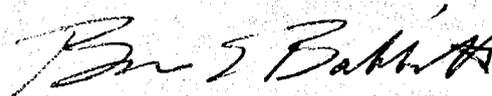
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With the foregoing guidelines, we believe that a certified teacher, who is presently actively engaged in teaching full time or part time, would have a substantial personal interest in legislation that directly results in the increase of teacher salaries. | *ju*

Absent special factual circumstances, we do not believe that a teacher or an employee of a school district should generally be deemed to have a "substantial personal interest" in bills dealing with the educational budget for the Department of Education. While overall school aid is determined by the Legislature, salaries of district employees are set by school boards. In our view, the connection is sufficiently attenuated that it does not constitute a "substantial personal interest" within the meaning of the statute.

Similarly, we do not believe that a legislator has a "substantial personal interest" within the meaning of the statute when voting for Special Education funds when his or her child qualifies for special education.

Sincerely,



Bruce E. Babbitt
Attorney General

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