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Phoenix, Arizona 85007

Robert K. Corbin

August 27, 1982

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

The Honorable John Mawhinney
Arizona State Senator
State Capitol, Senate Wing
Phoenix, Arizona 85007

Re: I82-083 (R82-089)

Dear Senator Mawhinney:

We are writing in response to your request for an opinion whether a tax-supported public facility, such as a state building, may serve as a distribution point for partisan political advertisements. Apparently, the Arizona Public Employees Association (APEA) has been distributing a leaflet on the premises of the Development Disabilities Division's Arizona Training Center located in Tucson, Arizona. The contents of the leaflet criticize the Republican leadership of both the House and the Senate and those Republican members who serve on the House and Senate Appropriation Committees, for approving a twenty-five-percent salary increase over three years for specified elected State officials and a forty-four-percent increase in the salaries of Supreme Court Justices, Appeals Court Judges and Superior Court Judges over a three-year period, while providing for a 4.5 percent cost of living increase for State employees.

No specific State law exists which prohibits the distribution of partisan political advertisements on the premises of a tax-supported public facility or building. The Department of Administration (DOA), however is vested by statute with broad powers over the allocation of space, operation, alteration, renovation and security of State buildings. See A.R.S. § 41-791.B. Furthermore, the Assistant Director for Public Building Maintenance has statutory authority to promulgate rules and regulations affecting public buildings. See A.R.S. § 41-793. The Assistant Director has exercised this

statutory authority by promulgating a rule which prohibits the distribution of advertising except in designated areas or on designated bulletin boards. See A.C.R.R. R2-6-208.^{1/} The rule does not draw any distinction between general advertising and partisan political advertising.

The building in question, however, is exempt from control by the Assistant Director for Public Buildings Maintenance. See A.R.S. § 41-791.B.3.c. The building is within the jurisdiction of the Department of Economic Security (DES). Having building maintenance authority over the building, DES can promulgate rules and regulations regulating the time, manner and place of distribution of advertisements on the premises.

A subsidiary question is whether the activity described above violates A.R.S. § 41-772.B., the State "Hatch Act".^{2/}

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1. A.C.R.R. R2-6-208 provides, in pertinent part:

The following acts are prohibited:

* * * *

2. The distributing of handbills or advertising in the buildings or on the grounds.

* * * *

4. Advertising of any type except in designated areas or on designated bulletin boards.

2. A.R.S. § 41-772.B provides:

No employee or member of the personnel board may be a member of any national, state or local committee of a political party, or an officer or chairman of a committee of a partisan political club, or a candidate for nomination or election to any paid public office, or shall take any part in the management or affairs of any political party or in any political campaign, except that any employee may express his opinion, attend meetings for the purpose of becoming informed concerning the candidates for public office and the political issues, and cast his vote.

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Whether a violation has occurred depends upon how actively individual employees have been participating in this and similar activities, and whether these activities may be considered "taking part in the management or affairs of any political party or any political campaign".^{3/} The determination of a violation necessarily depends upon application of this general standard to a specific fact situation, and it would be inappropriate to discuss individual cases in the context of a formal opinion. We note, however, that violators of the Act are subject to suspension of not less than thirty days or dismissal. A.R.S. § 41-0722.D.

Sincerely,



BOB CORBIN
Attorney General

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3. We have previously opined that Arizona's Hatch Act does not prohibit employees from belonging to an organization which is not solely partisan in nature as long as the nonexempt employee does not actively participate directly in the management or affairs of the political campaigns of that organization. See Ariz. Atty. Gen. Op. 71-1.