

STATUTES CITED IN 93-001

ARS 16-131(D)

ARS 16-531(A) and (C)

ARS 16-533

ARS 16-534(A)

ARS 41-771

ARS 41-772(B)



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

GRANT WOODS
ATTORNEY GENERAL

1275 WEST WASHINGTON, PHOENIX 85007-2926

MAIN PHONE : 542-5025
TELECOPIER : 542-4085

January 15, 1993

The Honorable Stan Furman
Arizona State Senate
1700 West Washington
Phoenix, Arizona 85007

Re: I93-001 (R92-001)

Dear Senator Furman:

You have asked several questions regarding the applicability of A.R.S. § 41-772, commonly referred to as the state Hatch Act, to state employees' political activities following the amendment of that section by Laws 1991 (1st Reg. Sess.) Chapter 216 - Senate Bill 1325. The 1991 amendments liberalized the state Hatch Act to permit covered employees to participate in some volunteer candidate campaign activities. In answering your questions, we assume that the state employees to whom you refer are covered employees who are subject to A.R.S. § 41-772.^{1/}

First, you inquired whether state employees may work on an election board. The answer depends on the nature of the position and the manner of appointment to the election board.

An election board for each precinct consists of two judges and one inspector of elections. A.R.S. § 16-531(A). Also serving at each election precinct are a marshal and two clerks. Although you specifically asked about service on an election board, we understand your question to also encompass

^{1/} A.R.S. § 41-771 lists the exempt personnel who are not subject to any of the A.R.S. § 41-772 restrictions on political activity.

the service of state employees in the positions of marshal and clerk, because they are commonly referred to as election board positions. The manner of appointment to any of these positions for a primary or general election is found in A.R.S. § 16-531(A):

When an election is ordered, and not less than twenty days prior to a general or primary election, the board of supervisors shall appoint for each election precinct one inspector, one marshal, two judges and not less than two clerks of election. The inspector, marshal, judges and clerks shall be qualified voters of the precinct for which appointed, unless there are not sufficient members of either of the two largest political parties available to provide the number of appointments required. The judges and clerks shall also be members of the two political parties which cast the highest number of votes in the state at the last preceding general election and shall be divided equally between these two parties. One-half or one more than one-half of the inspectors in the various precincts in the county shall be members of one of the two largest political parties and the remaining inspectors shall be members of the other of the two largest political parties. In each precinct where the inspector is a member of one of the two largest political parties, the marshal in that precinct shall be a member of the other of the two largest political parties. Whenever possible, any person appointed as an inspector shall have had previous experience as an inspector, judge, marshal or clerk of elections. If there is no qualified person in a given precinct, the appointment of an inspector may be made from names provided by the county party chairman. If not less than thirty days prior to the election the chairman of the county committee of either of the parties designates qualified voters of the precinct, or of another precinct if there are not sufficient members of his party available in the precinct to provide the necessary representation on the election board, as judge and as clerk, such designated qualified voters shall be appointed. The judges, together with the inspector, shall constitute the board of elections.

The Honorable Stan Furman
January 15, 1993
Page 3

Although the board of supervisors actually appoints the judges and clerks, its action is completely driven by the political parties' selections, if the county party chairmen make proper and timely designations to the board. In contrast, this section permits the board to appoint inspectors from names provided by the county party chairmen only if there is no qualified person in the precinct with previous experience.

State employees "shall not take any part in the management or affairs of any political party." A.R.S. § 41-772(B). This long-standing prohibition was unchanged by the 1991 amendment of this section. If state employees are appointed to the positions of judge, clerk, or inspector upon the recommendation of their political party chairmen, they then represent that party on the board. As stated in Arizona Attorney General Opinion I69-1, persons appointed by their party's recommendation are participating in the affairs of a political party by serving on behalf of the party as its representative on the board. Thus, an employee appointed in this manner would be in violation of A.R.S. § 41-772(B). See United Public Workers v. Mitchell, 390 U.S. 75 (1947) (holding that the activities of a federal employee involved as a worker for the party at the polls on election day fell within the Hatch Act prohibition against taking an active part in political management).

Employees appointed by the boards of supervisors to any of these positions without recommendation of the county chairman of any political party may serve without violating A.R.S. § 41-772(B), even if they are selected based on having the party registration needed to achieve the required partisan balance. Absence of the party recommendations makes their service independent of any political party. See Ariz. Att'y Gen. Op. 69-1. State employees may also serve in any of these positions for nonpartisan elections since those appointments are made without considering political party. A.R.S. § 16-531(C).

As a subsection of your first question, you asked whether a state employee can be appointed by an elections official to fill a vacancy on the election board the political parties were unable to fill. This part of your question appears to be premised on an assumption that the political parties play no role in filling these vacancies. A.R.S. § 16-533 provides that vacancies in any election board

The Honorable Stan Furman
January 15, 1993
Page 4

position existing due to the failure of the board of supervisors to appoint or as a result of any member's failure to appear are filled from the list of alternate election board members supplied by the appropriate county party chairman. As stated above, a state employee is not eligible for appointment in this manner. However, if such a list is not available the inspector, as chairman of the election board, may appoint the necessary judges, clerks, or marshals pursuant to A.R.S. § 16-534(A). If so appointed by the inspector, a state employee could serve without violating A.R.S. § 41-772(B).

Your second question concerning whether state employees are prohibited from serving as deputy registrars was considered in Arizona Attorney General Opinions 179-174 and 69-1. Those opinions concluded that state employees may not be deputy registrars because deputy registrars are appointed through their nomination by a political party and serve as representatives of their party. We must note, however, that the legislature repealed A.R.S. § 16-132, which provided for the appointment of deputy registrars from lists of nominees supplied by the county chairman of each political party. See Laws 1991 (1st Reg. Sess.) Chapter 310 § 5. Although this chapter contained an effective date of January 1, 1992, the repeal of this section could not be implemented until the change was precleared by the United States Department of Justice pursuant to Section 5 of the Voting Rights Act of 1965. Since the May 1, 1992 preclearance of Chapter 310, deputy registrars have been eligible for appointment by county recorders without any requirement that they be nominated by a political party pursuant to the new A.R.S. § 16-131(D). That section provides no criteria for appointment except that a deputy registrar must be a qualified elector; however, county recorders are not prohibited from making some of these appointments based on the nomination of political parties. Accordingly, state employees are no longer automatically prohibited from serving as deputy registrars, although they continue to be ineligible for appointment through political parties. A state employee could properly request the county recorder for an appointment and, if appointed, would be eligible to serve.

Finally, you asked whether an employee may run and serve as a delegate to a Presidential Convention. The answer is no. An employee who serves as a delegate to a national party convention would certainly be involved in the management or affairs of a political party in violation of A.R.S. § 41-772(B) by participating in selecting the party's

The Honorable Stan Furman
January 15, 1993
Page 5

presidential and vice-presidential nominees and by voting on the party's platform and rules.^{2/} Similarly, state employees are not eligible to run as delegates to a state party convention where delegates to the national party convention are selected.

Sincerely,



Grant Woods
Attorney General

GW:LTH:bjw

^{2/}The federal Hatch Act prohibition against taking "active part in political management" was found to properly encompass regulations against serving as a delegate, alternate or proxy to a political convention. United States Civil Service Commission v. National Association of Letter Carriers, 413 U.S. 548 (1973).