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ARIZONA ATTORNEY GENERAL

April 26, 1985

The Honorable Juanita Harelson
State Capitol - Senate Wing
1700 West Washington
Phoenix, Arizona 85007

RE: I85-060 (R85-022)

Dear Senator Harelson:

You have asked whether the Board of Regents (Regents) has the authority to promulgate a rule or regulation restricting or denying any of its non-teaching employees the opportunity to run for political office. In our opinion, the Regents may enact ordinances restricting such political activity.

The conduct and supervision of the public school system is the subject of Article 11 of the Arizona Constitution. Article 11, § 2 provides:

The general conduct and supervision of the public school system shall be vested in a State Board of Education, a State Superintendent of Public Instruction, county school superintendents, and such governing boards for the State institutions as may be provided by law.

This provision and Article 11, § 5 of the Arizona Constitution place governance of the state universities and colleges under the supervision of the Regents. Hernandez v. Frohmiller, 68 Ariz. 242, 204 P.2d 854 (1949); see also A.R.S. § 15-1625.

The Regents' constitutionally granted supervisory powers have been broadly construed by the Arizona Supreme Court. For example, in Hernandez, the court held that legislation establishing a civil service board was not applicable to the state universities.

To permit legislation to throw the employment and supervision of all personnel under the civil service law, except the teaching staff, would necessarily deprive the board of regents of a large portion of its constitutional supervisory power. We have no hesitation in holding that such legislation runs counter to said article 11, section 2, Arizona constitution.

Hernandez, supra, 68 Ariz. at 251, 204 P.2d at 860.

The Regents are empowered to enact ordinances for the government of institutions under its jurisdiction. A.R.S. § 15-1626.A.1. Other administrative powers of the Regents include the power to:

Appoint and employ . . . officers and employees it deems necessary.

Determine the salaries of . . . officers and employees appointed and employed.

Remove any officer or employee when in its judgment the interests of education in this state so require.

A.R.S. § 15-1626.A.2-4.

Neither the Arizona Constitution nor codified statutes expressly authorize the Regents to establish personnel policies. However, such power is implied by Laws 1976, Ch. 60, § 4 which directed the Regents to establish a system of equivalent wages and salaries for university employees other than faculty and administrators. And, Arizona case law recognizes and accepts the existence of personnel policies adopted by the Regents. Ernst v. Arizona Board of Regents, 119 Ariz. 135, 579 P.2d 1105 (App. 1977), vacated on other grounds, 119 Ariz. 129, 579 P.2d 1099 (1978). It is our opinion that the above referenced constitutional and statutory provisions permit the Regents to establish personnel policy.

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This power of the Regents to prescribe personnel policies is consistent with A.R.S. § 41-771.A.5, which provides that "[o]fficers or employees of state universities" are exempt from the coverage of the state personnel system. In Ariz. Atty. Gen. Op. 181-123, we said that the exemption applies only to those Regents officers and employees at the universities, with non-university personnel being otherwise covered by the State Personnel System.^{1/}

By its terms, however, the statute exempts non-teaching employees whose duties relate to the operation of the state universities from the requirements of the state personnel system. Thus, non-teaching university employees^{2/} are not subject to the requirements of A.R.S. § 41-772.B which places restrictions on political activity and prohibits state employees from running as candidates for nomination or election to any paid public office.^{3/}

It is our opinion that the legislature intended to leave personnel policy decisions including policies regarding restrictions on political activity with the Regents when it exempted university employees from the requirements of articles 5 and 6, ch. 4, Title 41.

We point out that the right to become a candidate for public office is a fundamental right which cannot be curtailed without good cause. Laos v. Arnold, 141 Ariz. 50, 685 P.2d 115 (App. 1984); Kautenburger v. Jackson, 85 Ariz. 128, 333 P.2d 293 (1958). However, courts have upheld provisions which restrict the political activities of state employees. See Ariz. Atty. Gen. Op. 183-134 and cases cited therein.

1. The issue whether Regents non-university personnel are covered by the exemption is presently on appeal to the Arizona Court of Appeals, Division One. Arizona Board of Regents v. State of Arizona Department of Administration, No. 1CA-CIV 8048.

2. This term includes administrators, professionals and classified employees.

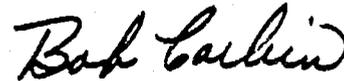
3. A.R.S. § 41-772.C permits state employees covered by the State Personnel System to run for school boards and community college boards.

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We also point out that this office concluded in Ariz. Atty. Gen. Op. 178-250 that a legislator may not be employed as a non-teaching employee of the Regents who is employed at the state universities. In that opinion, we concluded that "if a legislator is employed at an institution of higher learning in a position other than that of a teacher or instructor . . . the legislator is in violation of Art. 4, Pt. 2, § 5 of the Arizona Constitution."

In conclusion, a legislator is constitutionally prohibited from being employed as a non-teaching employee of the Regents at one of the state universities. It is our opinion that the Regents may enact ordinances restricting its non-teaching employees from running for political office. However, because such restrictions impinge upon a fundamental right, they would be subject to careful scrutiny if challenged.

Sincerely,



BOB CORBIN
Attorney General

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