



Attorney General

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Robert K. Corbin

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ARIZONA ATTORNEY GENERAL

February 14, 1986

The Honorable Dale K. Patton, Jr.
Navajo County Attorney
Governmental Center
Holbrook, Arizona 86025

Re: I86-020 (R85-174)

Dear Mr. Patton:

Pursuant to A.R.S. § 15-253(B), this office concurs with the opinion stated in your letter of December 10, 1985, to the Superintendent of the Blue Ridge School District No. 32, in which your office concluded that the school district may not continue to employ a teacher's aide if she is unwilling to sign the loyalty oath as required by A.R.S. §§ 15-504 and 38-231. See Ariz. Atty. Gen. Op. 76-126 and I79-156.

Sincerely,

BOB CORBIN
Attorney General

BC:DTF:lfc



DALE K. PATTON JR.
COUNTY ATTORNEY

Navajo County Attorney

EDUCATION OPINION
ISSUE NO LATER THAN
2-14-86

NAVAJO COUNTY ATTORNEY OPINION #CAS-012

TO: DR. L. DOW RHOTON, SUPERINTENDENT
BLUE RIDGE SCHOOL DISTRICT NO. 32

FROM: DALE K. PATTON, JR., NAVAJO COUNTY ATTORNEY

DATE: DECEMBER 10, 1985

OK

QUESTION PRESENTED:

The School District has inadvertently hired a canadian citizen. She has refused to sign the loyalty oath set out in A.R.S. §38-231 which she is required to sign pursuant to A.R.S. §15-504. She is employed as an aide in the Special Education Program and her performance has been satisfactory in all details. Can the School District continue to employ her if she is not willing to sign the oath of office?

CONCLUSION:

The teacher aide in question, as an employee of the School District is subject to A.R.S. §15-504 and is therefore required pursuant to A.R.S. §38-231 to subscribe to the oath of office set out therein. The School District may not continue to employ her if she is unwilling to sign the loyalty oath.

DISCUSSION:

This office has reviewed Attorney General Opinion R-75-519 and correspondence from the firm of DeConcini, McDonald & Brammer dated August 19, 1975. We have reviewed the U.S. Supreme Court Case of Elfbrandt v. Russell, 384 U.S.11, 86 S.Ct. 1238 (1966). This office has also reviewed the U.S. Supreme Court Case of Cole v. Richardson, 405 U.S. 676, 92 S.Ct. 1332 (1972).

Elfbrandt v. Russell, holds that a State may not impede the first amendment right of freedom of association by making the membership in an association a felony when the individual member may not espouse any illegal goals of the association. The case was dealing with A.R.S. §38-231 and

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appears to hold the entire Statute unconstitutional. However, the holding in the case is clearly limited to that portion of the Statute found in Subsection E. As indicated in the Attorney General Opinion referred to above, this office concurs that Elfbrandt v. Russell does not hold A.R.S. §38-231 unconstitutional but only severs Subsection E from that Statute. Thus, A.R.S. §38-231(G), which contains the loyalty oath in question, is still binding in Arizona and is constitutional.

Furthermore, Cole v. Richardson even more clearly compels the conclusion that A.R.S. §38-231(G) is constitutional and that an employee may in fact be required to subscribe to that oath or be terminated.

However, as indicated in the later part of the Attorney General Opinion referred to above, the loyalty oath in Arizona where it indicates that the affiant will "defend them against all enemies, foreign and domestic", does not require any specific affirmative or positive conduct to defend the United States or the State of Arizona. It requires only a "commitment not to use illegal and constitutionally unprotected force to change the constitutional system". Thus, this office recommends that the employee be informed that she will be required to sign the oath to continue employment. However, that her agreeing to the oath does not require her to take up arms or any other affirmative action in defense of the United States or the State of Arizona. She will however be indicating that she does support the Constitution of the United States and the Laws of the State of Arizona and will abide by them and that she will faithfully and impartially discharge the duties of her office.

This opinion is being forwarded to the Attorney General for review pursuant to A.R.S. §15-253.

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