

**INFORMAL OPINION IO-1999-006
ISSUED SEPTEMBER 1, 1999**

The staff of the Ethics Commission [the "Commission"] considered your request for an ethics interpretation on the following questions. Because the issues were susceptible to a single analysis, it converted your request to a petition for informal opinion.¹ We note you have requested an interpretation of both statutes and rules. Please be advised that the Commission lacks jurisdiction to construe the former. On questions involving those matters, we refer you to your local District Attorney or Attorney General. You have asked:

1. *Do the Constitutional Ethics Rules ["the Rules"], Section 257:1-1-1 et seq. of the Rules of the Ethics Commission, 74 O.S. Supp. 1999, Ch. 62, App., permit a classified employee to join and belong to an organization, whose primary function is to form a political action committee, which will solicit contributions primarily from the members of the organization and which will make contributions to partisan candidates?*
2. *May the members and/or officers of such organization solicit other classified employees who work for the same agency to become members of the organization?*
3. *May the members and/or officers of such organization solicit funds from other members of the organization and thereafter use those funds to make contributions to political candidates?*

FACTS

You have advised that a group of classified employees working for a single state agency are planning to form an unincorporated organization and solicit voluntary membership in same exclusively from their fellow classified employees who work for the same agency. The organization will select from among its members a committee to solicit funds from the membership and make contributions to those candidates for partisan state and local office who, regardless of political affiliation, are sympathetic to, and supportive of, issues important to these employees.

ANALYSIS

The Rules regulate political activity of classified employees, as follows:

Classified employees' political activity

- (a) **Classified employees.** No classified employee shall:

¹Section 257:1-1-6(g) specifies that informal opinions lie where questions are "susceptible to a single analysis by the clear language of the rule..."

- (1) use his official authority or influence for the purpose of interfering with an election to or a nomination for office, or affecting the result thereof;
- (2) become a candidate for an elective office in a partisan election;
- (3) *directly or indirectly solicit contributions or other funds for a partisan political candidate or party committee;*
- (4) *directly or indirectly solicit, accept, collect, handle, disburse or account for assessments, contributions or other funds for a partisan political purpose; or*
- (5) organize, sell tickets to, promote or actively participate in a fundraising activity of a candidate in a partisan election or of a party committee.

* * *

(c) **Retained rights.** Except as otherwise prohibited in Subsection (b), a classified employee shall retain the right to:

- (1) register and vote in any election;
- (2) express his opinion as an individual privately and publicly on political subjects and candidates;
- (3) display a political picture, sticker, badge or button;
- (4) serve as an officer of a party committee at the national, state or local level;
- (5) participate in the activities of a civic, community, social, labor or professional organization or of a similar organization;
- (6) *be a member of a party committee or other political action committee and participate in its activities consistent with Subsections (a) and (b) of this section;*
- (7) attend a political convention, rally, fundraising function or other political gathering;
- (8) sign a political petition as an individual;
- (9) *make a voluntary financial contribution to a committee;*
- (10) be politically active in connection with a question, such as an amendment to the State Constitution, referendum, approval of a municipal ordinance or any other question or issue of a similar character;
- (11) serve as an election judge or clerk, or in a similar position to perform duties as prescribed by state or local law; and
- (12) otherwise participate fully in public affairs, except as prohibited by law, in a manner which does not materially compromise the neutrality, efficiency or integrity of his administration of state functions.

(d) **During work status.** Subsection (c) of this section shall not authorize a classified employee to engage in political activity, *while on duty*, or while in a uniform that

identifies him as a state employee. Nor shall a classified state employee be permitted to engage in political activities *in the assigned work areas* of a state agency.

257:10-1-4(a)(c) and (d)

Special provisions govern the solicitation of, and contributions by, state employees, whether or not they are in classified service.

Solicitation of and contributions by state employees

(a) An elective officer *or the officer's agent* shall not knowingly solicit, directly or indirectly, a campaign contribution from an employee in the officer's governmental entity.

(b) A state officer or state employee shall not provide an advantage or disadvantage to an employee or applicant for employment under the Merit System of Personnel Administration concerning the applicant's or employee's:

- (1) employment;
- (2) conditions of employment; or
- (3) application for employment;

based on the employee's or applicant's contribution or promise to contribute, or failure to make a contribution to a political party or committee.

257:10-1-5

There is no prohibition on classified -- or unclassified employees -- forming and being members of a political action committees [PAC]. However, no solicitations may occur while a classified employee is on duty or in his or her assigned work area for the state agency. Members can contribute to, and solicit funds for, the PAC so long as such funds are not solicited for any particular candidate or candidates.

Funds solicited as described should be deposited directly into the PAC account and used for PAC contributions. Recipients of such contributions should be chosen based on the purpose of the PAC. Staff notes that while the Rules restrict political activity of classified employees, they permit active membership in PACs consistent with the above.

CONCLUSION

It is therefore the informal opinion of the staff of the Ethics Commission that the Constitutional Ethics Rules [“the Rules”], Section 257:1-1-1 et seq. of the Rules of the Ethics Commission, 74 O.S.Supp. 1999, Ch. 62, App., permit classified employees of a state agency: to form and be members of a PAC; to solicit funds for the PAC while not on duty or in his or her assigned work area for the state agency; and to contribute to, and solicit funds for, the PAC so long as such funds are not solicited for any particular candidate or candidates. A PAC comprised of such classified employees may

contribute to partisan state and local candidates consistent with the purpose for which it was formed.

The rules permit the Commission staff to issue informal opinions, upon the approval of the Chair or Vice Chair, provided the matter is reasonably susceptible to a single analysis and is not the subject of litigation, investigation or legislation. We hope these informal letters shed light on the issues and provide guidance. They are not, however, official pronouncements.

This letter has been approved by the Commission Chair. Please note that, like ethics interpretations, informal opinions like this one are published in such a way as to protect the identity of those involved.