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Opinion No. 05-141

Department of Children's Services Employee Running for County Commission

QUESTION

May an employee in the Tennessee Department of Children's Services in Chattanooga run for the office of county commissioner?

OPINION

State law would not prohibit a state employee from running for local office. But state law restricts political activities that may interfere with the conduct of state business. Federal law also restricts the political activities of state and local employees whose principal employment is in connection with an activity that is financed in whole or in part by federal loans or grants. Among other restrictions, such employees may not run for partisan political office. The statute does not prohibit these employees from being a candidate in any election if none of the candidates is to be nominated or elected at such election as representing a party, any of whose candidates for presidential elector received votes in the last preceding election at which presidential electors were selected. If the election for county commissioner falls within this description, then federal law would not prevent any state or local employee from running for the office.

If the election is partisan, then federal law would prevent a state employee from running for the office if his or her principal employment is in connection with an activity that is financed in whole or in part by federal loans or grants. The law is enforced by federal agencies. The employee should consult with personnel at the Department of Children's Services to determine, first, whether the employee's employment is in connection with an activity financed by federal loans or grants, and, second, whether the employee's candidacy would violate federal law, including the terms of any grant or loan agreements with a federal agency. The Department may wish to consult with the federal agencies administering loans or grants that finance the activities in the employee's area of employment.

ANALYSIS

This opinion concerns legal restrictions on the right of an employee in the Tennessee Department of Children's Services in Chattanooga to run for the office of county commissioner. No state statute would prohibit this candidacy. But state law does restrict political activities by a

state executive employee that may interfere with state business. Tenn. Code Ann. §§ 2-19-201, *et seq.* Under that statute, the term “public officers and employees”:

means all employees of the executive branch of the state government, or any department, division, or agency thereof, and all appointed officers and employees of any educational institution, establishment, corporation or agency supported principally by state funds. Popularly elected officials, officials elected by the general assembly, qualified candidates for public office, teachers, . . . members of the governor’s cabinet, and members of the governor’s staff are expressly excluded from the provisions of this part, except for the provisions of § 2-19-202.

Tenn. Code Ann. § 2-19-201(3).

Under Tenn. Code Ann. § 2-19-202, a state executive employee may not use his or her position to interfere with an election or attempt to coerce any other officer or employee to vote for or against a measure, party, or person. The employee may not knowingly receive or pay assessments of any kind or character for political purposes or for election expenses from any other officer or employee. The employee may not knowingly solicit a campaign contribution from “any person who has received contracts, compensation, employment, loans, grants, or benefits, or any person whose organization, agency or firm has received such benefits financed by public funds, state, federal or local.” Tenn. Code Ann. § 2-19-203. The employee may not solicit campaign contributions from officers or employees he or she supervises or can terminate. Tenn. Code Ann. § 2-19-204(b)(2). The employee may not promise public benefits as a reward for political support. Tenn. Code Ann. § 2-19-204. The employee may not threaten to withhold public benefits because of political activity, support, or opposition. Tenn. Code Ann. § 2-19-205. The employee may not display campaign materials on state property or use public buildings for campaign activity unless access is provided all sides. Tenn. Code Ann. § 2-19-206. A state employee must campaign for office either while on leave or during those hours not required by law or administrative regulation to be conducting state business. Tenn. Code Ann. § 2-19-207. *See* Op. Tenn. Att’y Gen. 98-030 (January 29, 1998) (prohibitions on state employee running for local county office).

Federal law also restricts political activity by state employees whose employment is in connection with an activity funded in whole or part by federal funds. The restrictions apply to a “state or local officer or employee,” defined as follows:

“State or local officer or employee” means an individual employed by a State or local agency whose principal employment is in connection with an activity which is financed in whole or in part by loans or grants made by the United States or a Federal agency, but does not include—

(A) An individual who exercises no functions in connection with that activity; or

(B) an individual employed by an educational or research institution, establishment, agency, or system which is supported in whole or in part by a State or political subdivision thereof, or by a recognized religious, philanthropic, or cultural organization.

5 U.S.C. § 1501(4). Among other political activities, a state or local employee who is employed in connection with an activity financed with federal funds may not be a candidate for elective office. 5 U.S.C. § 1502(a)(3). The federal agency that administers the loan or grant must report possible violations of the statute to the Special Counsel. 5 U.S.C. § 1504. Hearings on possible violations are held before the Merit Systems Protection Board. 5 U.S.C. § 1505. The Board may determine that the violation warrants the removal of the employee from his or her office or employment and notify the employing agency of this determination. *Id.* Failure to remove the employee may result in withholding grant funds. 5 U.S.C. § 1506.

The statute, however, does not prohibit an employee whose employment is federally funded from being a candidate in a nonpartisan election. The statute provides:

Section 1502(a)(3) of this title does not prohibit any State or local officer or employee from being a candidate in any election if none of the candidates is to be nominated or elected at such election as representing a party any of whose candidates for Presidential elector received votes in the last preceding election at which Presidential electors were selected.

5 U.S.C. § 1503.

If the election for county commission falls within this description, then federal law would not prohibit a state employee from being a candidate for that office, even if his or her employment is in connection with an activity that is funded by federal funds. If, however, the election is partisan — that is, if the candidates are nominated or elected as representing major political parties — then such an employee of the Tennessee Department of Children’s Services may not run for that office. The employee should consult with personnel at the Department of Children’s Services to determine whether the candidacy would violate the federal statute or the terms of any federal grant or loan agreement. The Department may wish to consult with the federal agencies administering loans or grants that finance the activities in the employee’s area of employment.

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