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State Employees Dues Deductions

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February 22, 1978

To: Lanning S. Mosher, Director, Office of State Employee Relations

From: Kay R. H. Evans, Assistant Attorney General

Re: Permissible State Employee Payroll Deductions.

This responds to your request for an opinion as to whether the State may deduct from the paychecks of its employees, at their request or that of their authorized representatives, amounts of money earmarked for contribution to candidates for political office. The question has arisen because of a request by an employee organization that the State deduct from the paychecks of its members who have authorized the deduction a specified amount for dues, a portion of which is segregated by the organization as a contribution to candidates for political office. If the deduction is made, the total deduction amount would then be forwarded by the State to the organization. The political contribution portion would be credited by the organization to its political action arm, by which it is distributed among candidates supported by the organization.1/

You have raised no issue with respect to the dues deduction itself, but only as to that portion of the total deduction which goes to political candidates. Thus, the question to be considered is the nature and propriety of the State's action if it deducts the amounts specified as a contribution for political candidates.

1/ Members authorizing the dues deduction but objecting to the political contribution may, on request to the organization, receive a refund of the contribution amount.

The State's action in making such a deduction may be seen as wholly neutral in character: the making of the deduction is a ministerial act by which the State facilitates an arrangement worked out between two other parties.

The State's action may also be seen as non-neutral but nonetheless proper: the State, in its capacity as an employer, may decide to benefit its employees by utilizing its payroll system to make such deductions and remittances as its employees request. Thus, the State deducts and remits for purposes such as retirement, life and health insurance, charitable donations, deferred income and direct deposit; dues to an employee organization are just another such deduction. The State need not concern itself with the ultimate destination or purpose of the deductions; its own purpose is to benefit its employees by making the payroll deduction mechanism available to them.

The State's action may also be seen as non-nautral but proper from another prospective: The State, as employer, derives certain benefits from dealing with its employees as an organized entity. It may decide to support and encourage such organization by granting certain benefits to those employees who function in an organization. Use of the dues deduction mechanism is one such benefit. Deduction of the political contribution component may be seen as another such benefit or, again, the State may simply have no concern with the end use of the dues deduction or any part of it.

Finally, the State's action may be seen as non-neutral and improper: From this perspective the State is seen not as "an employer" but as "the State," in the theoretical sense of its character as a particular entity in a particular political system. Within our political system, in order that the government in power not be self-perpetuating nor able to pass power at will, the State, as State, may not participate in or seek to influence the electoral process. In this view, the State's action in deducting amounts to be contributed to political candidates is fundamentally improper, because in so doing the State becomes involved in the political/electoral process and gives an advantage to some candidates which is not available to all candidates.

The proper role of the State in this matter is a question

with which the Legislature may properly deal.[2/] In my opinion, the relevant statutes do not directly resolve the question but on balance such guidance as they offer, by explicit language, by omitting to state what could have been stated and by implicit indications as to policy, indicate that the State is not prohibited from granting the deduction request or any portion thereof.

The statutes in question are 5 M.R.S.A. § 14[3/] and 5 M.R.S.A. § 679-A which read:

2/ In my opinion, the constitutional issues implicit in this matter have been dealt with, at least in the area of equal protection. Under the ruling in City of Charlotte v. Firefighters, Local 660, 426 U.S. 283 (1976), the State may decide whether to make the payroll deduction mechanism available at all and, having decided in favor of availability, can condition actual use on whatever terms are reasonable and consistently applied. In Charlotte, the Court decided it was not a denial of equal protection to union members for the city to refuse to make a union dues deduction when it has a reasonable basis for its refusal. Implicitly, the converse is also true: making a deduction for a given group of employees is not a denial of equal protection to those employees who do not or cannot participate. Either of the "non-neutral but proper" views of the State's action, discussed above, is an adequately reasonable basis for the State's agreement to make a deduction.

3/ Your opinion request referenced 21 M.R.S.A. § 1579(29). That section, which contained in relevant part the same language as 5 M.R.S.A. § 14, ¶ 4, was repealed and replaced by P.L. 1977, Chapter 496. The replacement does not contain the relevant language.

§ 14. Participation in nonpartisan affairs

No officer or employee of this State shall directly or indirectly interfere with the participation of any employee of this State in the nonpartisan affairs of any municipality or other political subdivision of this State provided that no conflict of interest results.

For the purpose of this section, a "conflict of interest" shall mean a situation in which an employee's participation in the affairs of a municipality results in financial gain to him or members of his family other than any regular compensation paid to him as an officer of that municipality.

Any officer or employee of the classified service of this State may make contributions to a political party, organization or candidate but shall not solicit any assessment, subscription or contribution from any person for any political purpose in connection with any election for federal, state or county office.

Nothing in this section shall be construed to prohibit any employee of this State, whether or not in the classified service, from donating his or her own funds, or time, or services to a political cause provided such donation of time or services is not made during such employee's state working hours or upon the property or premises of the State or by using the facilities or services of the State.

§ 679-A. Political activity

1. Use of official authority. No officer or employee in the classified service of this State shall use his official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office.

2. Coercion of contributions. No officer or employee in the classified service of this State shall directly or indirectly coerce, attempt to coerce, command or advise a state officer or employee to pay, lend or contribute anything of value to a party, committee, organization, agency or person for political purposes.

3. Candidacy for elective office. No officer or employee in the classified service of this State shall be a candidate for elective office in a partisan public election. This subsection shall not be construed as to prohibit any such officer

or employee of the State from being a candidate in any election if none of the candidates is to be nominated or elected at that 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.

4. Right of voting and free expression. An officer or employee in the classified service of this State shall retain the right to vote as he chooses and to express his opinions on political subjects and candidates.[4/]

These statutes deal with the activities of State employees in political affairs and attempt to define limits on such activities consistent with individual rights and with the nature of governmental employment.[5/] While it is possible to see these statutes as limiting the rights of State employees to participate in political activities in order to limit the influence of the State itself on the political/elecotral process, it must be noted that the statutes do not in terms deal with the role, function or activity of the State itself. Moreover, both statutes contain significant omissions which make even more doubtful their extension to cover the present situation. In § 14, ¶ 4, the term "funds" is omitted from the proviso which limits the time, place and means by which a State employee may contribute to political causes. While the omission of "funds" may be intended to forestall questions of interference with First Amendment rights associated with political contributions of money, Buckley v. Valeo, 424 U.S. 1 (1976), and even though its inclusion is simply not necessary to achieve the statutory purpose, the absence of the term makes more tenuous the argument that the proviso was meant to apply to donations of money. Unquestionably, if the term "funds" appeared in the proviso, it would be very much more difficult to interpret the statute to permit the payroll deduction in question. Its omission is only slightly less significant for the opposite interpretation.

4/ The legislative history on these statutes is not useful in resolving the question at hand.

5/ Similar limitations have been found constitutional in a series of Supreme Court cases, see, e.g., Ex Parte Curtis, 106 U.S. 371 (1882); United Public Workers v. Mitchell, 330 U.S. 75 (1947); Civil Service Commission v. Letter Carriers, 413 U.S. 548 (1973); Broadrick v. Oklahoma, 413 U.S. 601 (1973). See also the list of lower federal court cases cited in Civil Service Commission v. Letter Carriers, supra, page 567, n. 14.

Section 679-A appears intended to prevent State employees from deriving from their employment any advantage in the political/electoral process and from giving, from the vantage point of their employment position, any such advantage to any political candidate or cause. However, the fact that the statute applies in terms only to classified employees rules out the interpretation that its application to all State employees indicates an underlying concern for the role of the State itself. It is true that the adjectives "classified" and "unclassified," used to identify State employees, are not used with notable accuracy or consistency in the statutes. Nonetheless, the reiteration of "classified" in each and every subsection of § 679-A is a strong argument for legislative intent to so limit the application of the statute.

Thus, §§ 14 and 679-A cannot readily be interpreted to apply to prohibit the State from making the deduction in question. Further, because they deal explicitly with the State's employees, these statutes indicate a legislative perception that the State has a particular function as an employer. The existence of the State Employees Labor Relations Act[6/] of course makes explicit that perception[7/] and suggests that the Legislature has adopted the view that the State as employer is in some degree separable from the State in its other functions[8/]. While recent Supreme Court decisions[9/] make it clear that there is a point at which the State as State and the State as employer come together, with constitutional ramifications in the area of the State's relations with its employees, there remains a sizeable area in which the State's relations to its employees become less complex, more realistic and more workable if the State is viewed as, simply, an employer.

For the above reasons, it is my opinion that the requested deductions may properly be made by the State.

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6/ 26 M.R.S.A. § 979, et seq.

7/ It is worth noting that under the State Employees Labor Relations Act dues deductions are a negotiable item.

8/ Some commentators suggest that it is appropriate and convenient to see the State in its "employer" role as a private entity, in contrast to the public character of other of its functions.

9/ See Abood v. Detroit Board of Education, ___U.S.___, 97 S.Ct. 1782 (1977).