

Leg. Balderston.



STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

BOISE 83720

JIM JONES
ATTORNEY GENERAL

TELEPHONE
(208) 334-2400

February 3, 1986

Mr. Bruce Balderston
Legislative Auditor

STATEHOUSE MAIL

RE: State Liquor Dispensary/Political Activities

THIS IS NOT AN OFFICIAL ATTORNEY GENERAL OPINION
AND IS SUBMITTED SOLELY TO PROVIDE LEGAL GUIDANCE

Dear Mr. Balderston:

The Attorney General has asked me to respond to your letter of January 27, 1986 wherein you inquire whether our laws prohibit classified employees of the state Liquor Dispensary from devoting work time to the opposition of legislation which would privatize the Dispensary's functions. You also question whether the superintendent of the Liquor Dispensary is unlawfully using his influence to induce his employees to adopt his political views. We will address the latter issue first.

In your letter, you cite the potential applicability of Idaho Code § 23-213 which states:

No officer or employee of the dispensary shall, while holding such office or position, serve on or be a member of any committee of any political party, nor shall he, directly or indirectly, use his influence to induce any other officer or employee to adopt his partisan political

Mr. Bruce Balderston
Legislative Auditor
Page 2
February 3, 1986

views, nor shall he actively engage in or contribute to partisan primary or election campaigns.

We have been able to locate no court decisions or prior opinions of this office interpreting § 23-213. Accordingly, we have no preexisting authority upon which to base a construction of this provision. Further, there is no meaningful legislative history which could aid in the interpretation of this 1939 law. Idaho Sess.L. 1939, ch. 222, § 503, p. 472.

Section 23-213 appears to be aimed at immunizing employees of the Liquor Dispensary from partisan political pressures which may be exerted by fellow employees. This provision follows other sections that prohibit Dispensary personnel from having a personal interest in the liquor industry (§ 23-211) and from holding any other position which may be inconsistent or interfere with duties related to the Dispensary (§ 23-212). These provisions, collectively, suggest a legislative concern that employees of the Dispensary be in a position to fulfill the obligations of their office in a manner consistent with the public interest while avoiding even the appearance of impropriety or outside influence.

As you note in your letter, § 23-213 proscribes the use of personal influence by a Dispensary employee to induce a co-worker to adopt "partisan political views." This term is not defined in this section nor in any other provision of our law. However, reference to authorities construing similar language in other, topically related statutes suggests that the phrase may be directed solely at matters relating to political parties or candidates. For example, the United States Supreme Court, in interpreting the federal Hatch Act (5 U.S.C. § 7324), recognized the distinction between partisan and nonpartisan political activity by federal employees:

It is only partisan political activity that is interdicted. It is active participation in political management and political campaigns. Expressions, public or private, on public affairs, personalities, and matters of public interest, not an objective of party action, are unrestricted by law so long as the government employee does not

Mr. Bruce Balderston
Legislative Auditor
Page 3
February 3, 1986

direct his activities toward the party's
success.

United Pub. Workers of Am. v. Mitchell, 330 U.S. 75, 100, 67
S.Ct. 556, 570, 91 L.Ed. 754 (1947).

In the present context, it is doubtful whether the superintendent of the Dispensary needs to exert any of his "influence" in order to induce his employees to oppose privatization. This is a matter in which personnel of the Dispensary may understandably have an acute interest since it goes to the very survival of that entity. In any event, the privatization question is not a clearly partisan issue. It has implications for Idaho's economy which extend across party lines. Even if the Dispensary's administrator is exerting his "influence" in an attempt to mobilize opposition to privatization within the ranks of his employees, we believe that such activity, while not necessarily laudable, is not prohibited by § 23-215; the statute is only pertinent to partisan activities.

* * * * *

You also cite us to Idaho Code § 67-5311 and inquire whether the referenced activities within the Liquor Dispensary are violative of any of the provisions of that enactment. Again, we can find no violation.

Subsection (2)(1) of § 67-5311 authorizes a state employee to participate fully in public affairs "in a manner which does not materially compromise the neutrality, efficiency, or integrity of his administration of state functions." This provision has not been interpreted by our courts, and it includes terms which are difficult in both definition and application. The administrator of the Dispensary could certainly argue that his efforts and those of his employees in opposition to privatization are directly aimed at preserving the efficiency and integrity of his administration by combatting efforts to abolish the Dispensary. The present facts are not sufficient to lead us to conclude that § 67-5311(2)(1) has been contravened.

We see no meaningful distinction between the scenario you reference and those which frequently arise in other state agencies. For example, it would not seem uncommon for a

Mr. Bruce Balderston
Legislative Auditor
Page 4
February 3, 1986

classified employee of the Department of Education to be asked to devote a substantial portion of his on-the-job time to opposing legislative proposals aimed at reducing school funding. Similarly, the Department of Corrections may well choose to channel the efforts of its employees into activities opposing proposals to cut prison funding. Decisions regarding the necessity and propriety of delegating such tasks to classified employees are management functions and this office is in no position to comment upon the merits of such decisions.

* * * * *

In the present context, the Liquor Dispensary unquestionably has an interest in legislation which would result in its abolition. The efficacy of privatization is a matter of public interest which cuts across party lines, and it is one in which administrators and employees of the Dispensary have a clear interest. We see no violation of existing state law in the efforts of the Dispensary outlined in your letter.

We hope the preceding has been responsive to your inquiry. If you have any further questions or concerns on this matter, please contact the undersigned directly.

Yours truly,



P. Mark Thompson
Deputy Attorney General
Chief, Administrative Law and
Litigation Division

PMT/jas