



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

November 12, 1997

Jim Ryan

ATTORNEY GENERAL

FILE NO. 97-023

COUNTIES:

Authority of Merit Commission to
Compel Unpaid Leave During
Campaign for Sheriff

The Honorable Lawrence R. Fichter
State's Attorney, Macon County
101 South Main Street
Decatur, Illinois 62523

Dear Mr. Fichter:

I have your letter wherein you inquire whether Article X, Section 3 of the Rules and Regulations of the Macon County Merit Commission, which requires tenured sheriff's personnel to take a leave of absence from employment in order to seek election to the office of sheriff, comports with the provisions of the Local Governmental Employees Political Rights Act (50 ILCS 135/1 et seq. (West 1996)). For the reasons hereinafter stated, it is my opinion that the Merit Commission's rule irreconcilably conflicts with the provisions of that Act, and, consequently, is unenforceable.

Section 10 of the Local Governmental Employees Political Rights Act (50 ILCS 135/10 (West 1996)) provides:

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"* * * (a) No unit of local government or school district may make or enforce any rule or ordinance that in any way inhibits or prohibits any of its employees from exercising the employee's political rights.

(b) No employee of a unit of local government or school district may (i) use his or her official position of employment to coerce or inhibit others in the free exercise of their political rights or (ii) engage in political activities while at work or on duty."

Section 5 of the Act (50 ILCS 135/5 (West 1996)) defines "political rights" to include:

"* * * the following political activities: to petition, to make public speeches, to campaign for or against political candidates, to speak out on questions of public policy, to distribute political literature, to make campaign contributions, and to seek public office." (Emphasis added.)

According to the materials you have furnished, the Rules and Regulations of the Macon County Merit Commission provide, in pertinent part:

" * * *
* * * If a tenured member elects to run for the office of Sheriff, he/she shall be placed on unpaid leave of absence (not to exceed one year) at the start of his/her campaign, and he/she may actively campaign for the office during the period of his leave of absence. * * *

* * *

"

Initially, I note that it is not the province of the Attorney General to construe ordinances or other legislation

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enacted by units of local government. (Ill. Att'y Gen. Op. No. 94-014, issued June 9, 1994.) It is appropriate, however, to determine whether a local enactment impermissibly conflicts with a State statute on the same topic. Further, I note that Attorney General Burris previously advised that any local ordinance limiting the exercise of political rights by public employees may violate the provisions of the Local Governmental Employees Political Rights Act. Ill. Att'y Gen. Op. No. 94-014, issued June 9, 1994.

As you are aware, the United States Court of Appeals for the Seventh Circuit recently construed a similar mandatory leave policy in Wilbur v. Mahan (7th Cir. 1993), 3 F.3d 214. In that case, the sheriff of Christian County, Illinois, enacted a regulation requiring any employee of the sheriff's office who ran for election to the office of sheriff to be placed on an unpaid leave of absence until the election. An employee of the office who was a candidate for sheriff was forced to take a leave of absence for the duration of his unsuccessful campaign, and then sought redress in the Federal courts. The court held that an elected official is entitled to the loyalty of his policy making subordinates, a category deemed to include deputy sheriffs in Illinois, and, therefore, a policy requiring a mandatory leave of absence during the pendency of the subordinate's campaign for sheriff did not result in a violation of the employee's first

amendment right of free speech. Wilbur v. Mahan (7th Cir. 1993), 3 F.3d 214, 216-219.

The Federal Court of Appeals did not, however, address the issue of whether the Christian County mandatory leave provision would conflict with the provisions of the Local Governmental Employees Political Rights Act, presumably because the litigation in Wilbur v. Mahan stemmed from an incident which occurred before the Act was enacted. (Wilbur v. Mahan (7th Cir. 1993), 3 F.3d 214, 215; 50 ILCS 135/1 (West 1996).) The mere fact that no Federal constitutional violation was found in that case does not resolve the issue of whether the Macon County Merit Commission rule can coexist with a conflicting State law.

It is a well settled rule that State law may recognize liberty interests more extensive than those independently protected by the Federal Constitution. (Mills v. Rogers (1982), 457 U.S. 291, 300; Sherman v. Four County Counseling Center (7th Cir. 1993), 987 F.2d 397, 407.) The General Assembly has done so in this Act. Sections 5 and 10 of the Act prohibit units of local government from making or enforcing any rule or ordinance that inhibits or prohibits an employee from exercising his or her political rights, which includes, without limitation, the right to seek public office. As Wilbur v. Mahan makes clear, a mandatory unpaid leave rule unquestionably has the effect of inhibiting an employee from seeking public office. (Wilbur v. Mahan (7th Cir. 1993), 3 F.3d 214, 215.) Therefore, although the

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Macon County Merit Commission rule in question may not abridge a candidate's first amendment right of free speech, it is in irreconcilable conflict with the Local Governmental Employees Political Rights Act, which can and does provide more expansive guarantees than those granted under the United States Constitution.

An ordinance or other enactment of a non-home rule unit of local government that conflicts with the provisions of a State statute cannot be given effect. (See 1976 Ill. Att'y Gen. Op. 344, 346; 1973 Ill. Att'y Gen. Op. 215, 216.) Accordingly, it is my opinion that because the Macon County Merit Commission rule impermissibly conflicts with the provisions of the Local Governmental Employees Political Rights Act, the rule is unenforceable.

Sincerely,

A handwritten signature in black ink, reading "James E. Ryan". The signature is written in a cursive style with a long, sweeping tail on the "y".

JAMES E. RYAN
ATTORNEY GENERAL