

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

October 3, 2008

Opinion No. 08-152

Application of Little Hatch Act to Campaign Memorabilia

QUESTION

Does the Little Hatch Act prohibit a college professor or staff member of a Tennessee Board of Regents institution from displaying a piece of campaign memorabilia from a national, state or local political campaign in that individual's office on campus.

OPINION

It is our opinion that the Little Hatch Act would not prohibit a college professor or staff member of a Tennessee Board of Regents institution from displaying a piece of campaign memorabilia from a national, state or local political campaign in that individual's office on campus. The Act would, however, prohibit the display of campaign materials which are intended to advertise on behalf of any current national, state or local political campaign.

ANALYSIS

You have asked whether the provisions of Tennessee's Little Hatch Act would prohibit a college professor or staff member at a Tennessee Board of Regents institution from displaying a piece of campaign memorabilia from a national, state or local political campaign in that individual's office on campus. Tennessee's Little Hatch Act was adopted by the General Assembly in 1972 to prohibit political intimidation or coercion of or by any public officer or employee. Tenn. Code Ann. § 2-19-202(b). Section 2-19-202(a) of the Act prohibits a public officer or employee from using his official position, authority or influence to intimidate, coerce or command another officer or employee to vote for or against any measure, party or person. Tenn. Code Ann. § 2-19-204 prohibits a public officer or employee from promising any benefits provided principally from public funds as a consideration, favor or reward for any political activity, support or opposition to any candidate, party or measure in an election. Similarly, Tenn. Code Ann. § 2-19-205 prohibits any public officer or employee from depriving or threatening to deprive any person of employment or other benefits provided principally from

public funds for any political activity, support or opposition to any candidate, party or measure in any election.

The Little Hatch Act also seeks to prohibit the inappropriate use of state employees and property for political purposes. Tenn. Code Ann. § 2-19-207 prohibits state employees from performing political duties or functions not directly a part of their employment during the hours when they are required to be conducting the business of the state. Tenn. Code Ann. § 2-19-206(a) prohibits state officials and employees from displaying campaign advertising on state property. Specifically, it provides:

It is unlawful for any elected or appointed official of the state, or any employee of the state or any department, division or agency thereof, to display campaign literature, banners, placards, streamers, stickers, signs or other items of campaign or political advertising on behalf of any party, committee or agency or candidate for political office, on the premises of any building or land owned by the state, or to use any of the facilities of the state, including equipment and vehicles for such purposes.

The Tennessee Board of Regents is created in Tenn. Code Ann. § 49-8-201. Pursuant to Tenn. Code Ann. § 49-8-101, governance, management and control of the state university and community college system is vested in the Board. Among other things, the Board of Regents has

the power to purchase land subject the terms and conditions of state regulations, to condemn land, to erect buildings and equip them for the institution subject to the terms and conditions of legislative appropriations. The board shall be vested with title to property so purchased or acquired. The title to property held on behalf of the institutions named in § 49-8-101 by the state board of education shall be transferred to the board on the effective date of transfer of responsibility for the government of the above named institutions.

Tenn. Code Ann. § 49-8-203(a)(3). Clearly, the land and any buildings located thereon of a Tennessee Board of Regents institution are owned by the state and would be subject to the provisions of Tenn. Code Ann. § 2-19-206(a).

The term “memorabilia” is defined as “things that are remarkable and worthy of remembrance; things that stir recollection.” Webster’s Ninth New Collegiate Dictionary, p. 740 (1988). Thus, campaign memorabilia would ordinarily constitute items such as stickers, buttons, *etc.*, from *past* national, state and local political campaigns that would “stir recollection” of those campaigns.

A literal reading of Tenn. Code Ann. § 2-19-206(a) would appear to prohibit the display of campaign memorabilia. We do not think, however, that the Legislature intended such a sweeping construction and that Tenn. Code Ann. § 2-19-206(a) must be read in light of the Little Hatch Act as a whole, because statutes similar in subject matter must be construed so as to

make the legislative scheme operate in a consistent manner. *Davis v. Beeler*, 185 Tenn. 638, 207 S.W.2d 343 (1948).

As discussed, the Legislature intended for the Little Hatch Act to prohibit the political intimidation or coercion of or by any public official or employee, as well as to prevent the misuse of state employees and property for political purposes. To achieve this purpose, we think that Tenn. Code Ann. § 2-19-206(a) must be construed as prohibiting the display of campaign materials which are intended to advertise on behalf of *current* political campaigns, but not campaign memorabilia which are merely intended to stir one's recollection of *past* political campaigns. If the statute were read literally to cover the display of *all* campaign materials including those from elections already concluded, it would prohibit even a display of campaign memorabilia for historical and educational purposes in the state museum or other state owned buildings.

Accordingly, it is our opinion that the Little Hatch Act would not prohibit a college professor or staff member of a Tennessee Board of Regents institution from displaying a piece of campaign memorabilia from a national, state or local political campaign in that individual's office on campus. The Act would, however, prohibit the display of campaign materials which are intended to advertise on behalf of any current national, state or local political campaign.

ROBERT E. COOPER, JR.
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

JANET M. KLEINFELTER
Senior Counsel

Requested by:

The Honorable Debra Young Maggart
State Representative
203 War Memorial Building
Nashville 37243-0183