

The State of South Carolina



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May 23, 1985

The Honorable Thomas H. Pope, III
Member, South Carolina Senate
502 Gressette Building
Columbia, South Carolina 29202

Dear Senator Pope:

In a letter to this Office you requested an opinion regarding the constitutionality of proposed legislation authorizing a voluntary dues deduction for state employees for membership in the South Carolina State Employees' Association. You particularly questioned whether it is a violation of the equal protection guarantees to authorize a dues deduction for state employees for membership in the above-referenced organization but not for other governmental employees who belong to particular employee organizations.

In considering the constitutionality of an act of the General Assembly, the act is presumed to be constitutional in all respects. An act will not be considered void unless its unconstitutionality is clear beyond any reasonable doubt. Thomas v. Macklen, 186 S.C. 290, 195 S.E. 539 (1937); Townsend v. Richland County, 190 S.C. 270, 2 S.E.2d 777 (1939). All doubts of constitutionality are generally resolved in favor of constitutionality. Moreover, while this Office may comment upon constitutional problems, it is solely within the province of the courts of this State to declare an act unconstitutional.

Generally, public employees have no constitutional right to participate in any dues deduction procedures such as that permitted by the proposed legislation. See: City of Charlotte v. Local 660, International Association of Firefighters, 426 U.S. 283 (1976); Kentucky Educators Public Affairs Council v. Kentucky Registry of Election Finances, 677 F.2d 1125 (6th Cir. 1982). Such is instead ordinarily a matter within the discretion of the General Assembly to provide.

REQUEST LETTER

Continuation Sheet Number 2
To: The Honorable Thomas H. Pope, III
May 23, 1985

As to Equal Protection challenges, courts have consistently upheld procedures which only grant certain employees and organizations dues deduction privileges. See: Brown v. Alexander, 718 F.2d 1417 (6th Cir. 1983); Memphis American Federation of Teachers, Local 12032 v. Board of Education of Memphis City Schools, 534 F.2d 699 (6th Cir. 1976); Perry Ed. Assn. v. Perry Local Educators' Assn., 460 U.S. 37 (1983); cases generally at West's Digest, Constitutional Law 238(3); contra, Truck Drivers and Helpers Local Union No. 778 v. City of Atlanta, 468 F.Supp. 620 (D.Ga. 1979). See also, Anchorage Ed. Assn. v. Anchorage School Dist., 648 P.2d 993 (1982). It is clear that such statutes need meet "only a relatively relaxed standard of reasonableness in order to survive constitutional scrutiny." 16B C.J.S., Constitutional Law, § 842, p. 790. Unless such a statute is arbitrary, it is valid.

Based upon the foregoing authorities, we believe a court would uphold the proposed dues deduction procedure for state employees. Under the above cited case law, a court would likely find that the proposed provision is rationally related. See, Washington Ed. Assn. v. Smith, 638 P.2d 77 (1981); Shanker v. Helsby, 676 F.2d 31 (2d Cir. 1982) and thus does not violate the Equal Protection Clause. Of course, it would be a matter for the Legislature to determine as to what other governmental employees, if any, might be similarly classified.

Sincerely,



Charles H. Richardson
Assistant Attorney General

CHR:djg

REVIEWED AND APPROVED BY:



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