



Jeff Landry
Attorney General

State of Louisiana

DEPARTMENT OF JUSTICE
CIVIL DIVISION
P.O. BOX 94005
BATON ROUGE
70804-9005

November 12, 2019
OPINION 19-0144

The Honorable Alan Seabaugh
State Representative-District 5
401 Market St.
Suite 1120
Shreveport, LA 71101

71-1-1

Municipal Fire & Police Civil Service

La. R.S. 33:2504
La. R.S. 33:2531
La. R.S. 33:2564

La. Const. art. X, § 20
La. R.S. 33:2471

Conduct by a civil service employee violates La. R.S. 33:2504 and/or La. R.S. 33:2564 only when there is a violation of one of the specifically designated prohibitions.

Dear Representative Seabaugh:

Our office has received your request for an opinion on whether the law prohibits Fire and Police Civil Service employees from attending a rally in Shreveport on November 14, 2019, where the President of the United States will be speaking in support of a gubernatorial candidate. Your request asks whether attendance at such a rally by Fire and Police Civil Service employees would constitute a prohibited political activity. You have relayed the following facts:

- There is no cost or donation required to attend the rally;
- The rally is open to the general public;
- Attendees are required to have tickets for security reasons, but the tickets are free and are not limited by political party; and
- Attendees are not paying any assessments, subscriptions, or otherwise making a contribution to a political organization or purpose.

Louisiana Revised Statute 33:2504 governs prohibited political activities for municipalities which operate a regularly paid fire and police department which has a population of not less than thirteen thousand nor more than two hundred fifty thousand according to the latest regular federal decennial census.¹ Louisiana Revised Statute 33:2564 governs prohibited political activities for municipalities having a population of not less than seven thousand and not more than thirteen thousand, according to the latest regular federal decennial census and in all parishes and fire protection districts.² The Louisiana Constitution of 1974 also governs Fire and Police Civil Service at La. Const. art. X, § 16-20. "Political activity" for Fire and Police Civil Service is defined by Article XIV, § 15.1, Paragraph 34 of the 1921 Constitution. See La. Const. art. X, § 20 (1974). A review of the text of the 1921 Constitution reveals that when enacting La. R.S. 33:2504 and 33:2564, the Legislature simply codified in statute the substance of La. Const. art. XIV, §

¹ La. R.S. 33:2471.

² La. R.S. 33:2531.

15.1 (1921). The Legislature and the Constitution set forth the following prohibited political activities for Fire and Police Civil Service employees:

- (1) No person shall seek or attempt to use any political endorsement, in connection with any appointment to a position in the classified service.
- (2) No person shall use or promise to use directly or indirectly, any official authority or influence, whether possessed or anticipated, to secure or attempt to secure for any person an appointment or advantage in appointment to a position in the classified service, or an increase in pay or other advantage in employment in any such position, for the purpose of influencing the vote or political action of any person, or for any consideration.
- (3) No employee in the classified service shall, directly or indirectly, pay or promise to pay any assessment, subscription, or contribution for any political organization or purpose, or solicit or take part in soliciting any such assessment, subscription, or contribution. No person shall solicit any such assessment, subscription or contribution of any employee in the classified service. The prohibitions of this paragraph (3) shall not be construed as applying to membership dues paid or contributions made to non-political employee organizations, pension funds, civic enterprises, the Louisiana Civil Service League or any similar non-political and non-partisan organization.
- (4) No employee in the classified service shall (a) be a member of any national, state, or local committee of a political party, (b) be an officer or member of a committee of any factional or political club or organization, (c) be a candidate for nomination or election to public office, (d) make any political speech or public political statement in behalf of any candidate seeking to be elected to public office, or (e) take any part in the management or affairs of any political party or in the political campaign of any candidate for public office, except to privately express his opinion and to cast his vote.
- (5) No person elected to public office shall, while serving in the elective office, be appointed to or hold any position in the classified service.
- (6) No appointing authority, or agent or deputy thereof, shall directly or indirectly, demote, suspend, discharge or otherwise discipline [or threaten to demote, suspend discharge or otherwise discipline]³ or discriminate against any person in the classified service for the purpose of influencing his vote, support, or other political activity in any election or primary election. No appointing authority, or agent or deputy thereof, shall use his official authority or influence, by threats, promises or other means, directly or

³ Louisiana Revised Statute 33:2504 contains the additional parenthetical language.

indirectly to coerce the political action of any employee in the classified service.

This office has consistently opined that conduct by a civil service employee violates La. R.S. 33:2504 and/or La. R.S. 33:2564 only when there is a violation of one of the specifically designated prohibitions.⁴ This narrow construction is supported by the United States Supreme Court's reasoning in *Citizens United v. Fed. Election Comm'n* wherein the Court found that any laws that suppress or burden political speech, whether by design or inadvertence, are subject to strict scrutiny. The Government must show that the restriction on political speech furthers a compelling interest and is narrowly tailored to achieve that interest. *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 339–40, (2010).

The potentially applicable prohibitions in this scenario would be Sections (3) and (4)(d) of La. R.S. 33:2504 and La. R.S. 33:2564. However, the facts presented in your opinion request indicate that no payment or promise of payment is being made by the civil service employee to attend the rally. Therefore, there is no payment or promise of payment to any political organization or purpose. "The right of citizens to inquire, to hear, to speak, and to use information to reach consensus is a precondition to enlightened self-government and a necessary means to protect it. The First Amendment 'has its fullest and most urgent application to speech uttered during a campaign for political office.'" *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 339–40, (2010) (Internal citations omitted). In your scenario, employees are attending the rally to hear political views and/or for information, and there is no violation of Section 3 of the applicable statutes.

The next potentially applicable provision would be Section (4)(d) which prohibits political speech or public political statements on behalf of any candidate seeking to be elected to public office. However, in your scenario, employees are only attending the rally and are not making political speeches or public political statements on behalf of a gubernatorial candidate. Accordingly, there is no violation of Section (4)(d) of the applicable statutes.

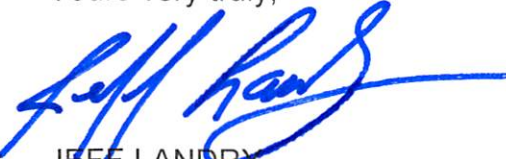
We note that if the rally or convention is scheduled during normal duty hours, an employee attending such an event must obtain leave from their supervisor to attend such a function. We also note that Section 6 of the applicable statutes specifically prohibit an appointing authority or someone acting as the agent of the appointing authority from, directly or indirectly, demoting, suspending, discharging or otherwise disciplining any person in the classified service for the purpose of influencing his vote, support, or other political activity in any election.

It is the opinion of this office that the mere attendance at a rally under the above described facts is not a prohibited political activity. A violation of La. R.S. 33:2504 and/or La. R.S. 33:2564 occurs only when there is a violation of one of the specifically designated prohibitions.

⁴ La. Atty. Gen. Op. Nos. 02-0429, 83-585, 74-189.

We trust this adequately responds to your request. However, if our office can be of further assistance, please do not hesitate to contact us.

Yours very truly,

A handwritten signature in blue ink, appearing to read "Jeff Landry", with a long horizontal flourish extending to the right.

BY: JEFF LANDRY
ATTORNEY GENERAL