

Friends of S-O --

Please help us get the word out for everyone to **VOTE next TUESDAY, September 13 -- SCHOOL BOARD ELECTION.**

Kyle Grimes is running unopposed & Cindy Onken is running unopposed. Paul Feldkamp decided not to run and Cindy Roth is running in his spot. These 3 names will be the only names on the ballot.

Rochelle Buchman is distributing flyers, endorsing Dan Berkland as a "write-in" vs. Kyle and Jodi Nasers as a "write-in" vs. Cindy Onken.

Since everyone thinks there is no opposition, there is good chance of a poor voter turn-out.

~~PLEASE PASS THIS ALONG TO EVERYONE YOU SEE!!~~

Please pass this along to everyone you see along the way!!

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Much appreciated,
LaDonn

LaDonn K Hartzell
Business Manager
Sibley-Ocheyedan Schools

Code No. 401.9

EMPLOYEE POLITICAL ACTIVITY

Employees shall not engage in political activity upon property under the jurisdiction of the board. Activities including, but not limited to, posting of political circulars or petitions, the distribution of political circulars or petitions, the collection of or solicitation for campaign funds, solicitation for campaign workers, and the use of students for writing or addressing political materials, or the distribution of such materials to or by students are specifically prohibited.

Violation of this policy may be grounds for disciplinary action.

NOTE: This policy is required by federal law.

Legal Reference: Iowa Code §§ 55; 279.8 (1995).

Cross Reference: 409.5 Licensed Employee Political Leave
414.5 Classified Employee Political Leave

Approved Sept 14, 1992 Reviewed Dec 10, 2001 Revised Jan 10, 2000

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October 12, 2011

Board of Directors
Sibley-Ocheyedan Community
School District
120 11th Avenue N.E.
Sibley, Iowa 51249

Re: Opinion Letter

Dear Directors:

At the meeting on October 10th, I gave my oral opinion concerning whether or not the email sent by LaDonn Hartzell, as Board Secretary, violated the Employee Political Activity Policy, which is Board Policy 401.9. My opinion was no violation of the board policy occurred. I was then requested to put my opinion into writing and this letter is my written opinion.

The critical portion of the board policy is the terminology "political activity". Clearly, the policy directs that if there is political activity, it shall not occur on the property of the school and further has some additional restrictions set forth. That policy has as its derivation The Hatch Act. The general concept is that public employees will not use the facilities of their office to support political candidates or issues during employment hours.

Employees of the school district should not openly advocate the election or defeat of a particular political candidate or an issue that is on the ballot. Employees of the district can advocate and support getting out to vote.

The specific email that is the subject of my opinion was sent from LaDonn Hartzell's computer, which I understand is a school district computer. In the opening sentence, the email urges everyone to vote in the school board election. In the last four lines of the email, it closes with concerns of poor voter turnout and that the supporters of the school district need to exercise their rights to vote on September 13th. There are two paragraphs in the middle referencing who has put their name on the ballot and two persons who were write in candidates. No where in the email is there an indication of who a person should vote for or against.

Based on my review of the case law around the country and the specific policy of

the Sibley Ocheyedan Community School District, I do not find the email by LaDonn Hartzell to be political activity in contravention of the Board Policy 401.9.

In addition, I have been furnished the opinion of Kristie Hirschman, Senior Citizen's Aide/Ombudsman, which also quotes Megan Tooker, Executive Director and Legal Counsel for the Iowa Ethics and Campaign Disclosure Board. I agree with the opinions in that email that Iowa law was not violated as the email does not expressly advocate for or against a candidate.

The Iowa Supreme Court discussed the issue of political activity when an Associate District Court Judge allowed a campaign sign to be placed in his yard. The sign supported the election of a certain candidate for sheriff. Placing the sign in the yard was political activity. The judicial canons prohibit a judge from publicly endorsing a candidate for public office and further prohibit judges from engaging in political activities. In Re Inquiry Concerning McCormick, 639 N.W.2d 12 (Iowa 2002). That is clear support of a specific candidate.

Employees have a right to engage in political activity when the activity is not done during work hours or without the use of district facilities. AFSCME v. Michigan Civil Service Comm. 274 N.W.2d 804 (Michigan App. 1978).

The actions of an employee, while at work, requesting donations to pay for a lobbyist, which funds were going to be used for partisan political races, were not protected free speech and were wrong. Bauers v. Cornett, 865 Fed. 2d 1517 (8th Circ. 1989).

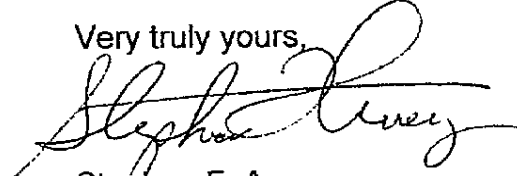
The question of free speech weaves its way through these cases. In Ruff v. City of Leavenworth, 858 Fed. Sup. 1546 (D. Kansas 1994), there were two police officers who were actively endorsing a candidate for public office. Their support was suggested to relate back to a Public Employment Relations Act issue. In Ruff, the City's personnel policy had a blanket prohibition against municipal employees participating in political activities. The Federal District Court did a two step analysis on whether the act was unconstitutional as applied or whether it was unconstitutional on its face. The Court determined it was not unconstitutional as applied to the two police officers who had endorsed the candidate in a newspaper but, the broad prohibition on political activity which prohibited City employees from engaging in those activities with respect to City elections was unconstitutional. The difference with your Policy 401.9 is that your policy provides that the political activity will not occur upon property under the jurisdiction of the board, which is a somewhat narrower prohibition than that in Ruff v. Leavenworth.

You can search these issues on the internet and you will find that you have the right to restrict political activity during work hours and on the premises and the facilities of the school district. You will also find a concern in the courts for the freedom of speech and the opportunity for public employees to engage in the political process.

No cases criticize an effort to increase voter turnout.

I hope this is a sufficient explanation of my oral opinion given on October 10, 2011.

Very truly yours,



Stephen F. Avery

SFA:da

cc: Superintendent Tom Becker
Board Secretary LaDonn Hartzell

Mailed to Directors at their home addresses