

First Supplement to Memorandum 96-64

Ethical Standards for Administrative Law Judges: Effect of *Ralph C. Dills Act*

The Ralph C. Dills Act governs state employer-employee relations. See Gov't Code §§ 3512-3524. The Act provides for organizational rights and bargaining units of state employees concerning wages, hours, and other terms and conditions of employment, for resolving unfair labor practice disputes between the state and its employees, for meet and confer processes and mediation, and for other labor matters. The Association of California State Attorneys and Administrative Law Judges is concerned that the Code of Ethics limitations on political activities of administrative law judges could interfere with Ralph C. Dills Act rights. Exhibit pp. 1-2.

Clearly, we should not, and do not intend to, impair the basic state employee collective bargaining laws. The staff draft in Memorandum 96-64 would recognize the right of administrative law judges to be politically active in connection with their salaries, benefits, and working conditions, just as judicial branch judges are. We therefore have no problem adding language to the draft along the lines suggested by ACSA recognizing their rights under the collective bargaining laws:

§ 11475.70. Collective bargaining rights not affected

11475.70. Nothing in this article shall be construed or is intended to limit or affect the rights of an administrative law judge or other presiding officer under the Ralph C. Dills Act, Chapter 10.3 (commencing with Section 3512) of Division 4 of Title 1 of the Government Code.

Comment. This section makes clear that the administrative adjudication Code of Ethics is not intended to interfere with collective bargaining rights guaranteed state employees under the Ralph C. Dills Act. These include the right to form, join, and participate in activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations, to refuse to join or participate in the activities of employee organizations, or to represent themselves

individually in their employment relations with the state. See
Section 3515.

Respectfully submitted,

Nathaniel Sterling
Executive Secretary



ASSOCIATION OF CALIFORNIA STATE ATTORNEYS AND ADMINISTRATIVE LAW JUDGES

August 23, 1996

Law Revision Commission
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AUG 26 1996

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Executive Secretary
California Law Revision Commission
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File: _____

RE: Ethical Standards for ALJs

Dear Nat:

We have reviewed the draft memorandum for the next commission meeting regarding ethical standards for ALJs. The comments ACSA wishes to express regarding political activities of ALJs include a reminder that the Ralph C. Dills Act, formerly known as the State Employer-Employee Relations Act, found in Government Code §§3512 et seq., provides for administrative law judges to not only be represented by their exclusive representative, but also to be able to participate in all union activities which are not otherwise precluded by law. Interference with administrative law judges who are employees of the executive branch and their ability to participate in union activities, including union political activities, would be an infringement upon their statutory rights as state employees. Working men and women have long been provided protections in the workplace. The few protections provided by the Dills Act should certainly not be disregarded by the commission's attempt to formalize ethical standards.

State employee administrative law judges provide a service to the public which assists in relieving an existing crowded judicial process. The adjudicatory services that they perform are quite similar to those functions provided by the constitutional judges. These ALJs apply the law to given factual situations and render decisions accordingly. The employment relationship between administrative law judges, who many times render decisions adverse to a changing administration's attitudes, and their superiors, may create antagonism in the workplace. State employed administrative law judges can be disciplined, cajoled, entreated and threatened relative to their work product in a manner in which constitutional judges cannot be subjected.

Unions can provide a certain amount of insulation from such interference by these employers. As such, public discussions may very well include comments of a political nature based upon the ALJs' working relationships with the current administration. In order to be able to exercise their freedoms of speech and association as well as their rights to be protected from overzealous administrators and employers, administrative law judges should be afforded no less protection than

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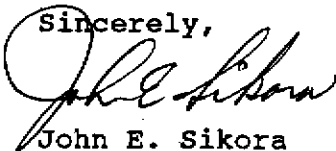
other civil service employees. Many of these expressions come in the form of union activities and political or quasi-political statements.

The consumers who use the services of the administrative law judges rely on the decisions of the ALJs to conform with the law. Certainly the citizens of California expect continuity in such decisions as noted by the precedential decisions rendered by a variety of agencies. Every time the administration changes political parties, the ALJs' decisions should not be interpreted differently or applied differently to meet the changing political attitudes of the newly elected.

Conversely, there would be no loss to the public or to the administration of justice by allowing state employee administrative law judges to exercise their freedoms of speech and association with respect to political activities couched in union activities. To date, there are no examples of any such problems because of ALJs' public expressions at union meetings. The recommended language by ACSA would limit the ALJs' expressions as provided in the Dills Act and not inconsistent with other statutes.

The comments recommended by Mr. Sterling to the commissioners are supported by ACSA in their entirety with the exception of the comments regarding political activities. We recommend the following additional language be included in the Code of Judicial Ethics for administrative law judges: **"All provisions of the Code of Judicial Ethics for administrative law judges should not be applied or construed inconsistent with the rights guaranteed civil service employees through the Dills Act, contained in §§3512 et seq., of the Government Code."** To do otherwise would create a class of state employee citizens who have fewer rights than their colleagues under the guise of "status." If the recommended language is included in the proposed ethical standards for administrative law judges, the specific concerns of the commission members will be addressed up to the point of not interfering with valid, authorized, long established union activities. Any language which limits the administrative law judges' ability to participate in union activities up to the extent authorized by law will be unacceptable to ACSA and will work against the interests of the public for whom the ALJs' services are provided.

Sincerely,



John E. Sikora
Labor Relations Consultant