

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD
OFFICE OF THE CLERK OF THE BOARD

SPECIAL COUNSEL,
[Hatch Act Unit]

DOCKET NUMBER
CB-1216-16-0017-T-1

Petitioner,

V.

KEITH L. ARNOLD,

Respondent.

RESPONDENT'S PETITION FOR REVIEW

I, Keith L. Arnold, respondent, file this petition for review per 5 C.F.R. §1201.115(b) [initial decision ATTACHMENT B, page 35, (b)] because the initial decision by Bruce Tucker Smith,ALJ, (“Smith”) was an erroneous interpretation of the law and, therefore, an erroneous application of the law to the facts of this case.

The Amended Complaint like the Complaint and Petitioner’s Motion for Summary Adjudication (“PSUM”) are Hatch Act Unit Overreach (“HAUO”) and deception.

Smith p.13 states:

The United States Court of Appeals for the Federal Circuit in McEntee, supra, expressly ruled:

The definition of a 'partisan political office' expressly encompasses offices for which candidates are either nominated as representing a party or elected as representing a party ... In order to give meaning to all words of the statute, as we must, we do not read the term 'elected as representing a party' to require formal endorsement or selection by a major political party.

This agrees with Respondent's statement that what matters is the activities of the election itself and not the endorsement activities of any political party. That statement is: 'This Nonpartisan election definition only refers to elections that are used as nominations not to political party endorsements that are called “nominations” for political party propaganda. ' [RESPONDENT'S SUPPLEMENTAL OBJECTION TO “PETITIONER'S MOTION FOR SUMMARY ADJUDICATION” (“RsupObj”), p.3]

HAUO's amended complaint states it's based is a “Section 7323(a)(3) of Title 5 of the United States

Code and 5 C.F.R. § 734.304” prohibition. However, Respondent's Reply clearly shows HAUO knowingly, willfully, and fraudulently left out the exception to this prohibition in 5 C.F.R. § 734.304 to create a false prohibition. That is why HAUO's PSUM doesn't mention 5 C.F.R. § 734.304 in its text nor even in its footnotes. Indeed, PSUM abandons HAUO's misrepresentation of 5 C.F.R. § 734.304 and thereby abandons the basis of its Amended Complaint and mentions Section 7323(a)(3) of Title 5 only. HAUO, apparently, thought no one would notice it's Amended Complaint deceitfully and fraudulently omitted the 5 C.F.R. § 734.304 prohibition exception. Since Respondent showed HAUO's omission in his Reply, HAUO has gone from citing only part of 5 C.F.R. § 734.304 to hide its truthful presentation to completely excluding 5 C.F.R. § 734.304 as a desperate attempt to get the 5 C.F.R. § 734.304 prohibition exception's truthful presentation forgotten and thereby hidden. This omission is shown again in RSUM.

HAUO's PETITIONER'S RESPONSE IN OPPOSITION TO RESPONDENT'S MOTION TO DISMISS (“PoppD”) states on pp 2-3:

“In any event, Arnold's motion is based on an incorrect interpretation the Hatch Act.[sic] Specifically, he claims that the election for U.S. Representative was nonpartisan because Washington State holds open primary elections, in which the top two vote getters progress to the general election regardless of political affiliation, and the primary election does not serve as a mechanism for political parties to nominate candidates. (Resp't Mot. at 4.) While this is true of Congressional elections in Washington, the state's chosen election procedures do not affect the partisan character of the office of U.S. Representative. “

HAUO's opposition to respondent's motion to dismiss admits Washington state U.S. Representative elections are nonpartisan. Having an amended complaint that fraudulently leaves out (and hopes no one points out this deceptive omission) the exception at the end of 5 C.F.R. § 734.304 makes it look safe to confess Washington state U.S. Representative elections are nonpartisan . By this HAUO admits this complaint should not have been filed in the first place. Also, this admission should have resulted in Smith dismissing the complaint then.

The truthful presentation of 5 C.F.R. § 734.304 is in RESPONDENT'S MOTION FOR SUMMARY JUDGMENT [with ADDENDUM] (“RSUM”) , Addendum (“Add”) II and is:

“§ 734.304

Candidacy for public office.

An employee may not run for the nomination

or as a candidate for election to partisan

political office, except as specified in § 734.207.

§ 734.207

Candidacy for public office.

An employee may:

(a) Run as an independent candidate

in a partisan election covered by 5 CFR part 733; and

(b) Run as a candidate in a non-partisan election.

§ 734.101 Definitions.

For the purposes of this part:

Election includes a primary, special, runoff, or general election.

Nonpartisan election means—

(1) An election in which none of the candidates is to be nominated or elected as representing a political party any of whose candidates for Presidential elector received votes in the last preceding election at which Presidential electors were selected; or”.

Running for Congress is not prohibited in Washington state due to the “except as specified in § 734.207” exception at the end of the sentence in 5 C.F.R. § 734.304. [RSUM p.4]

PSUM memo page one falsely states as its first sentence and the basis of its claim:

‘The only issue in dispute in this case is a legal one: whether the U.S. Representative from Washington state's 8th Congressional district is a "partisan political office" under the Hatch Act.’ and
“Thus, a finding that the U.S. Representative is a "partisan political office"-and thus that Arnold's candidacies were prohibited--resolves the only issue in this case.”

The true issue here is the truthful presentation of 5 C.F.R. § 734.304 which completely disproves HAUO's false claim and that is why PSUM tries to use abandonment of 5 C.F.R. § 734.304 to try to cover up 5 C.F.R. § 734.304's truthful presentation.

The answer to the true issue here as stated in RSUM page 4 is, “Since 5 C.F.R. § 734.304 ends with an exception, it is a limited prohibition not a total prohibition. Of course, an exception to a prohibition means where the exception condition exists, the prohibition does not exist. This clearly states that if an elected office is a “partisan political office” and at the same time has a “Nonpartisan election”, then the Nonpartisan election condition takes priority over, overrides, and supersedes the partisan political office condition thereby allowing the partisan political office condition itself to remain but nullifying the partisan political office prohibition. ”

Therefore, I, Keith L. Arnold, respondent, should prevail in this case.

Date: February 14, 2017

by: _____
Keith L. Arnold
Respondent