

August 18, 2015

Re: Loyalty Oath

Dear Superintendent:

Greetings to you on the start of a new school year. We are writing today to thank you for your service and to provide helpful information regarding questions you may have encountered about whether teachers and other public school employees must sign a patriotism pledge or loyalty oath. We understand this question may have been prompted by recent media reports and/or recent inquiries from individuals or special interest groups who may or may not reside in your school district. As a result, our office has been flooded with contacts from teachers across the state who are concerned. Some teachers have deeply held religious beliefs that conflict with signing this sort of oath. Some have principled objections to any effort to mandate patriotism. All agree on one thing- they love their jobs. They love teaching and they do not wish to choose between their jobs or their First Amendment rights of free speech and/or religious freedom.

As such, we wish to direct your attention to some important information that we hope you find relevant and useful when considering this question. The bottom line is this: the fact an old law remains on the books, and is generally known as a 'dead letter statute', does not mean it should be enforced when in fact US Supreme Court case law is on point and is unambiguous. In fact enforcing this dead letter statute may pose the risk of litigation for your school district which would no doubt be a distraction to your educational mission and objectives. The cost for said litigation would be borne by the taxpayers diverting much needed resources away from educating Nebraska children. No lawsuit should be necessary, though: it is clear that Nebraska's pledge is an unenforceable relic of the past. We urge you to provide clear guidance to your employees and adopt best practices in line with other Nebraska school districts that have discontinued the use of this pledge altogether.

The Nebraska statute in question is Neb. Rev. Stat. 79-8,108 and was adopted in 1951. The law required all teachers and any other employees paid from public school funds to sign a loyalty pledge. Since 1951, the US Supreme Court has ruled on this issue of loyalty oaths several times. Each time, the Court has struck down laws that attempt to dictate the personal beliefs of public employees. See, for example, *Baggett v. Bullitt*, 377 U.S. 360 (1964), *Keyishian v. Board of Regents*, 385 U.S. 589 (1967), and *Whitehill v. Elkins*, 389 U.S. 54 (1967). The only Nebraska court to evaluate a similar loyalty oath required under Nebraska law struck down a similar pledge for university employees. See, *Spangler v. Board of Regents of University of Nebraska*, Lancaster County District Court Docket 241, Page 199 (1967).

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There is no question that the case law is clear from the highest court in the land and our own courts in Nebraska. Public employees may not be forced to sign an oath like this in order to keep their jobs. This principle was stated eloquently by the US Supreme Court in 1967:

"Our Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned. Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die."

We are available to answer any questions you or your legal counsel may have about this important issue. Thank you for your time and your consideration.

Sincerely,



Amy A. Miller
Attorney At Law