



August 14, 2015

Superintendent Craig Kautz
1924 West A St.
Hastings NE 68901

Re: Loyalty oath

Dear Superintendent Kautz:

My office has recently received several complaints from employees required to sign the loyalty oath derived from Nebraska state statute 79-8,108. I write to provide you with legal guidance about that statute.

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The Nebraska law was passed in 1951. Since that time, the US Supreme Court has held on several occasions that public employees may not be required to sign such a pledge. These oaths or pledges violate the Constitution. They are unduly vague and infringe on the First Amendment rights of the employees. See *Baggett v. Bullitt*, 377 U.S. 360 (1964) and *Yates v. United States*, 354 U.S. 298 (1957).

Those United States Supreme Court decisions were reflected in the reasoning of the Nebraska decision *Spangler v. Board of Regents of the University of Nebraska*, Lancaster County District Court, Doc. 241 Page 199 (1967) which similarly struck down a loyalty pledge for public employees.

I understand that it may be confusing for local school districts who see the state statute still in the law books—but you need to know that the statute is a dead letter law which has been clearly overruled by the highest court in the land. Attempting to enforce the state statute is unconstitutional and will expose the school district to liability to a civil rights lawsuit.

The employees we've spoken to love their jobs. But they have deeply held beliefs that do not permit them to sign an outdated McCarthy era pledge. I am sure that your office wants to support valuable employees and not force them to choose between their jobs and their principles.

Given the clear state of the law, there is no need for expensive litigation. If you inform all district employees that the pledge is no longer required, we will close our file. Please advise within seven (7) days your decision on this matter. I look forward to hearing from you.


Amy A. Miller
Attorney at Law