

Bond Case Briefs

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REFERENDA - MARYLAND

Fraternal Order of Police v. Montgomery County

Court of Appeals of Maryland - February 23, 2016 - A.3d - 2016 WL 699459

Fraternal order of police officers, individually and as class of officers below rank of lieutenant, brought declaratory judgment action against county and individual county employees, alleging that county improperly used county funds to campaign for passage of ballot question concerning mandatory collective bargaining in county referendum.

The Circuit Court entered judgment declaring that county had no authority to use funds to campaign but dismissed counts seeking monetary relief against county employees on basis of qualified immunity. County and employees appealed and order cross-appealed. The Court of Special Appeals reversed. Order filed petition for certiorari and county and employees filed cross-petition, which were both granted.

The Court of Appeals held that:

- Order had standing to bring action;
- Doctrine of laches did not bar order's action;
- Use of county funds to campaign was appropriate use of government speech;
- County executive and director of county's office of public information were not political committee; and
- Use of other county employees by executive and director was appropriate county function.

Fraternal order of police officers, individually and as class of officers below rank of lieutenant, had standing to bring declaratory judgment action against county and individual county employees, alleging that county improperly used county funds to campaign for passage of ballot question in county referendum. Although all citizens living in county had general interest in assuring that county government did not exceed its legitimate authority and did not expend funds or labor of its employees for unlawful purposes, order had more specialized interest in sustaining effect bargaining and assuring that county did not use unlawful means to repeal provision of county code providing for collective bargaining.

Doctrine of laches did not bar declaratory judgment action by fraternal order of police officers, individually and as class of officers below rank of lieutenant, against county and individual county employees, alleging that county improperly used county funds to campaign for passage of ballot question in county referendum. Order's action was solely to seek monetary redress for what it regarded as unlawful activity by county and employees that was prejudicial to it and to preclude county and employees from engaging in that conduct in future, there was no prejudice to county and employees from order's waiting until eve of election on question to file suit, delay was not inordinate, and order's claims could be adjudicated as easily after election as they could have been before.

Use of county funds to campaign for passage of ballot question in county referendum for modifying requirement of collective bargaining with fraternal order of police officers was appropriate use of

government speech. Proposed law was intended to correct what county council found to be behavior by fraternal order of police officers and its members that was disruptive to running of police department and was not conducive to public safety, order succeeded in petitioning law to referendum and was mounting substantial political campaign to persuade voters to nullify it, and county executive, in aid of preserving law and countering order's effort, directed expenditure of county funds to inform voters of impact of nullifying law and, for welfare of county, advocate for its confirmation.

County executive and director of county's office of public information were not political committee, and, thus, they were not required to comply with campaign finance provisions of election law. Since provisions did not apply to county, they could not apply to authorized county officials when acting solely in their official capacity, for it was only through those officials that county could exercise its powers.

Use of other county employees by county executive and director of county's office of public information to further county's advocacy efforts for passage of ballot question in county referendum for modifying requirement of collective bargaining with fraternal order of police officers was appropriate county function. Since activities by executive and director, on behalf of county, were authorized and appropriate manifestation of legitimate government speech, any assistance in those activities by subordinate county employees at direction of executive and director was also appropriate county function and fell within scope of their official duties.