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Bill Analysis
Legislative Service Commission

H.B. 92

124th General Assembly
(As Introduced)

Reps. Driehaus, Flannery, Coates, Krupinski, Hartnett, Redfern, Rhine, Boccieri, DePiero, Strahorn, Ogg, Ford, Seaver, Cirelli, Barrett, Allen

BILL SUMMARY

- Prohibits the Secretary of State from being a member of or a deputy campaign treasurer of a campaign committee, other than the Secretary of State's own campaign committee.
- Prohibits the Secretary of State from soliciting or accepting a contribution, making a contribution or expenditure, making a public speech or endorsement, or appearing in joint campaign advertisements or conducting joint fundraising activities on behalf of a candidate.
- Specifies that a Secretary of State who engages in any prohibited political activities on behalf of a candidate is guilty of a misdemeanor of the first degree.

CONTENT AND OPERATION

General duties of the Secretary of State

The Secretary of State is the "chief election officer" of the state. The duties of the Secretary of State include appointing members of boards of elections, certifying the forms of ballots and ballot language, receiving and examining campaign finance statements, and investigating the administration of the Elections Law, including alleged fraud and irregularities. (Secs. 3501.04 and 3501.05--not in the bill.)

Prohibiting political activities by the Secretary of State

Existing law

Under existing law, a candidate must designate the candidate, or a member of the candidate's campaign committee, as the candidate's campaign treasurer.

Existing law does not specify, however, whether a deputy campaign treasurer is required to be a member of the candidate's campaign committee. (Sec. 3517.081.)

Changes proposed by the bill

The bill prohibits the Secretary of State from engaging in specified political activities. First, the Secretary of State cannot be a *member of*, or a *deputy campaign treasurer of*, any campaign committee other than the Secretary of State's own campaign committee. Because the bill prohibits the Secretary of State from serving on another candidate's campaign committee, the bill has the effect of also prohibiting the Secretary of State from being another candidate's campaign treasurer. (Sec. 3517.081(E).)

In addition to prohibiting the Secretary of State from serving in a formal role with respect to another candidate's campaign committee, the bill also prohibits more informal political activities by the Secretary of State on behalf of another candidate as follows (sec. 3517.093):

- Soliciting or accepting a contribution;
- Making a contribution or expenditure, including an independent expenditure;
- Making a speech at a political meeting or publicly endorsing a candidate;
- Appearing in joint campaign advertisements or conducting joint fundraising activities in conjunction with the Secretary of State's own campaign.

Penalties

A Secretary of State who violates any of the political activity prohibitions in the bill is guilty of a misdemeanor of the first degree (sec. 3517.992(F)). A misdemeanor of the first degree is punishable by a definite term of imprisonment of not more than six months, a fine of not more than \$1,000, or both (sec. 2929.21, not in the bill).

COMMENT

It is unclear whether the bill, if enacted and then challenged on First Amendment grounds, would be found by the courts to be constitutional. Any statute restricting the freedom of speech, and particularly political speech, is subject to strict scrutiny; a court will invalidate such a statute as an

unconstitutional violation of the First Amendment unless the court finds that it is narrowly tailored to achieve a compelling state interest. The United States Supreme Court, in *U.S. Civ. Serv. Comm. v. National Assn. of Letter Carriers*, 413 U.S. 548 (1973), determined that the First Amendment right of public employees to engage in partisan politics may be limited in order to protect the efficiency and integrity of the public service. In that case, however, the employees whose political activities were restricted were not elected officials, and those employees retained the right to speak publicly regarding their political views. It is unclear then whether a court would uphold the broad restrictions on political activity included in the bill, especially in light of their application to an elected official.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-14-01	p. 156

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