**OPINION NO. 91-065**

**Syllabus:**

1. The terms of a collective bargaining agreement may provide that a classified employee may engage in partisan politics and, pursuant to R.C. 4117.10(A), such terms will prevail over the provisions of R.C. 124.57.

2. Disputes as to the meaning of terms in a particular collective bargaining agreement, entered into pursuant to R.C. 4117.10(A), must be resolved as provided in R.C. Chapter 4117.

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**To: Frank Pierce, Belmont County Prosecuting Attorney, Chillicothe, Ohio**
**By: Lee Fisher, Attorney General, December 31, 1991**

I have before me your request concerning the effect a collective bargaining agreement may have on the provisions of R.C. 124.57, which prohibit participation in partisan politics.[1] You relate that two county classified employees, who would otherwise be subject to this prohibition, are members of a bargaining unit covered by a collective bargaining agreement that contains the following language:

> Section 11.1 No section of the Civil Service laws contained in Ohio Revised Code, Chapter 124 shall apply to employees in the bargaining unit, and it is expressly understood that the Ohio Department of Administrative Services and the State Personnel Board of Review shall have no authority or jurisdiction as it relates to employees in the bargaining unit.

Based on the above, you ask:

> Does the bargaining agreement language of exclusivity in Section 11.1, (as authorized by R.C. 4117.10) also remove the impediment to partisan service contained in Revised Code 124.57? Or does Section 11.1 apply to all aspects of employee relations except the issue of partisan service?

I note, as a preliminary matter, that disputes regarding the interpretation of the agreement must be settled as provided in R.C. Chapter 4117. *See, e.g.*, R.C. 4117.09(B)(1) (grievance procedure required in agreement). It is not, therefore, within my authority to render an opinion as to the meaning of language in a specific collective bargaining agreement. *See generally* 1986 Op. Att'y Gen. No. 86-039 at 2-198 ("I am unable to use the opinion-rendering function of this office to make determinations concerning the validity of particular documents, or the rights of individuals under such documents"); 1983 Op. Att'y Gen. No. 83-087 at 2-342 (Attorney General is "without authority to render an opinion interpreting a particular agreement or contract"). I cannot determine, therefore, whether the particular language you have cited demonstrates an intent by the parties to remove the prohibition of R.C. 124.57 against participation in partisan politics by classified

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[1] R.C. 124.57 states, in pertinent part: "No officer or employee in the classified service...of the several counties...shall...be an officer in any political organization or take part in politics other than to vote as he pleases and to express freely his political opinions." This prohibition is limited to partisan politics. *Heidtman v. City of Shaker Heights*, 163 Ohio St. 109, 126 N.E.2d 138 (1955).

employees. I can, however, address the threshold issue of whether or not the prohibition of R.C. 124.57 may be altered through the collective bargaining process.

Collective bargaining agreements are governed by the provisions of R.C. Chapter 4117. By the enactment of these statutes, "the General Assembly clearly intended that governmental entities and public employees be guaranteed the widest possible latitude in their ability to collectively bargain...." *State ex rel. Brown v. Milton-Union Exempted Village Bd. of Education*, 40 Ohio St. 3d 21, 26-27, 531 N.E.2d 1297, 1303 (1988). R.C. 4117.10(A) states, in pertinent part:

> An agreement between a public employer and an exclusive representative entered into pursuant to this Chapter governs the wages, hours, and terms and conditions of public employment covered by the agreement....Where no agreement exists or where an agreement makes no specification about a matter, the public employer and public employees are subject to all applicable state or local laws or ordinances pertaining to the wages, hours, and terms and conditions of employment for public employees....[T]his Chapter prevails over any and all other conflicting laws, resolutions, provisions, present or future, except as otherwise specified in this Chapter or as otherwise specified by the general assembly.[2] (Footnote added.)

The Ohio Supreme Court has consistently held that "[u]nder R.C. 4117.10(A), where a law conflicts with a wage, hour, or term and condition of employment provision (such as grievance procedures) found in a collective bargaining agreement, entered into pursuant to R.C. Chapter 4117, the collective bargaining agreement prevails over the conflicting provisions of the law." *Jurcisin v. Cuyahoga County Bd. of Elections*, 35 Ohio St. 3d 137, 143, 519 N.E.2d 347, 352-53 (1988); *see also Bashford v. City of Portsmouth*, 52 Ohio St. 3d 195, 196-97, 556 N.E.2d 477, 478 (1990); *State ex rel. Rollins v. Board of Education*, 40 Ohio St. 3d 123, 532 N.E.2d 1289 (1988) (syllabus, paragraph one). The exclusivity provision of R.C. 4117.10(A), thus, enables the parties to a collective bargaining agreement to "come to the table, each with a number of rights and obligations established by state and local law, which rights and obligations are placed on the table and either bartered away or retained to the satisfaction of both parties," unless those rights and obligations have been expressly excepted from the bargaining process. *Bashford* at 200, 556 N.E.2d at 482.

I find no statutory provision that excludes the matters addressed in R.C. 124.57 from the bargaining process. R.C. 4117.10(A) does exclude "[l]aws pertaining to civil rights, affirmative action, unemployment compensation, workers' compensation, the retirement of public employees, residency requirements," and certain requirements pertaining to public education, public transit, and the minimum benefits accorded public officers and employees on military leaves of absence under R.C. 5923.05, all of which are clearly unrelated to R.C. 124.57. Additionally, pursuant to R.C. 4117.08(B), certain matters pertaining to civil service examinations and eligibility lists are excluded from bargaining. Civil service examinations are governed by R.C. 124.22-.32. Thus, a collective bargaining agreement cannot exclude any provisions of those statutes which deal with the matters listed in R.C. 4117.08(B). *See DeVennish v. City of Columbus*, 57 Ohio St. 3d 163, 566 N.E.2d 668 (1991) (interpreting the scope of R.C. 4117.08(B)). Nothing in R.C. 4117.08(B), however, excludes the subject matter of R.C. 124.57 from collective bargaining. In the absence of any statutory exception covering participation in partisan politics, R.C. 4117.10(A) thus requires that the terms of the collective bargaining agreement will prevail over R.C. 124.57.

This analysis is consistent with that of the Supreme Court in *City of Cincinnati v. Ohio Council 8, American Federation of State, County and Municipal*

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[2] R.C. 4117.10 was amended by Sub. S.B. 3, 119th Gen. A. (1991) (eff. Apr. 17, 1991). The above text of R.C. 4117.10(A) reflects that amendment. The only substantive change enacted by Sub. S.B. 3 prohibits collective bargaining agreements from reducing certain statutory benefits accorded persons on military leaves of absence. This amendment does not affect the analysis of the general terms of R.C. 4117.10 governing the relationship between a collective bargaining agreement and conflicting law.

*Employees*, 61 Ohio St. 3d 658, 576 N.E.2d 745 (1991). *Ohio Council 8* concerned the relationship between the terms of a collective bargaining agreement and a city charter provision, known as the "Little Hatch Act," that prohibited partisan political activity by certain municipal employees.[3] The city had agreed in the collective bargaining agreement to collect employee contributions to the union political action committee [PAC] by means of check-off payroll deductions. The city subsequently stopped collecting these deductions, asserting that employee contributions to the PAC violated the portion of the charter "Little Hatch Act" that prohibited contributions to partisan political parties or candidates. *Id.* at 660, 576 N.E.2d at 749. On the issue of whether the charter or the bargaining agreement should prevail, the Court ultimately held that another provision in the collective bargaining agreement, known as the "legality" clause, gave the city charter supremacy over the conflicting payroll deduction provision in the agreement. *Id.* at 666, 576 N.E.2d at 753. This holding, however, raised an additional question of whether the charter could constitutionally prohibit the types of political contribution involved. *Id.* at 669-70, 576 N.E.2d at 755-56. Because the factual record was incomplete with respect to the actual use of the PAC contributions, the Court remanded the case and did not determine whether, as a matter of constitutional law, the city charter could prohibit the deductions agreed to in the collective bargaining agreement. *Id.* at 670-72, 576 N.E.2d at 756-57. Thus, the Court did not determine whether the city must comply with the collective bargaining agreement provision.

In reaching the above result, the Supreme Court first considered the threshold issue of whether a provision in a collective bargaining agreement prevails over a conflicting provision in a home-rule charter. *Id.* at 661, 576 N.E.2d at 750. The Court reiterated the principle that R.C. 4117.10(A), by specifically listing laws that prevail over conflicting provisions in a collective bargaining agreement, mandates that, when a conflict exists, the agreement will prevail over state and local laws not listed. *Id.* at 662, 576 N.E.2d at 750-51. *See also Bashford; Rollins; Jurcisin.* This supremacy of the collective bargaining agreement over conflicting laws not specifically excepted in R.C. 4117.01(A) extends even to home-rule charter provisions. *Ohio Council 8* (syllabus, paragraph one). The Court further held that "[t]he language of R.C. 4117.10(A) which provides that collective bargaining agreements generally prevail over conflicting laws applies equally to contract provisions encompassing mandatory subjects of bargaining and those encompassing permissive subjects of bargaining." *Id.* (syllabus, paragraph three).[4] While a city can lawfully refuse any proposal in conflict with the charter, whether on a mandatory or permissive subject of bargaining, *id.* at 666, 576 N.E.2d at 753, once an agreement is reached, the provision becomes part of the agreement, enforceable over the charter under R.C. 4117.10(A), *id.* at 665, 576 N.E.2d at 752. Thus, the court found that, but for the additional language in the bargaining agreement itself that reinstated charter supremacy, the parties could have altered the application of the charter's "Little Hatch Act" through the collective bargaining process. *Id.* at 666, 576 N.E.2d at 753 ("[i]f the collective bargaining agreement contained only the [union PAC] checkoff provision, our inquiry would be at an end").

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3 The Federal Hatch Act limits the rights of federal employees, 5 U.S.C. §§7321-7327 (1988), and of certain state and local government employees involved in the use of federal funds, 5 U.S.C. §§1501-1508 (1988), to engage in partisan politics. Because such limitations implicate first amendment rights, courts have used the constitutional standards developed in Hatch Act litigation to analyze the validity of similar state and local laws. *See, e.g., Gray v. City of Toledo*, 323 F. Supp. 1281 (N.D. Ohio 1971) (analyzing R.C. 124.57 in accord with the principles set out in *United Public Workers v. Mitchell*, 330 U.S. 75 (1947), which upheld the Hatch Act). State and local legislative enactments that address the participation of public employees in partisan politics are thus commonly referred to as "Little Hatch Acts."

4 The court expressly declined to determine whether the checkoff deduction was a mandatory or permissive subject of bargaining, because the difference was irrelevant to the application of R.C. 4117.10(A). *City of Cincinnati v. Ohio Council 8, American Federation of State, County and Municipal Employees*, 61 Ohio St. 3d 658, 663 n.1, 576 N.E.2d 745, 751 n.1 (1991).

Like the city charter provision considered in *Ohio Council 8*, R.C. 124.57 is a type of Little Hatch Act. Your question involves the portion of R.C. 124.57 that prohibits the holding of partisan political offices rather than the portion that prohibits partisan political contributions. I see no reason, however, for this distinction to alter the application of the *Ohio Council 8* analysis. Under R.C. 4117.10(A), R.C. 124.57 stands in the same relationship to the collective bargaining agreement as did the charter provision in *Ohio Counci 8*. R.C. 4117.10(A) states that, "this Chapter prevails over *any and all other conflicting laws*, resolutions, provisions, present or future, *except as otherwise specified* in this Chapter or as otherwise specified by the general assembly." (Emphasis added.) It is inherent in the reasoning of *Ohio Council 8* that the Court found no exception in R.C. Chapter 4117 or other act of the General Assembly that would make participation in partisan politics an impermissible subject of collective bargaining. I conclude, accordingly, that the terms of a collective bargaining agreement may provide that a classified employee may engage in partisan politics and that, pursuant to R.C. 4117.10(A), the terms of the collective bargaining agreement will prevail over R.C. 124.57.

Although I find no statutory bar to permitting participation in partisan politics in a collective bargaining agreement, I reiterate that whether the parties have in fact done so requires interpretation of the terms of the particular agreement involved. Thus, whether the parties intended to include the issue of partisan politics in the scope of Section 11.1 must be determined from the context of the collective bargaining agreement itself by utilizing the dispute resolution mechanisms provided in R.C. Chapter 4117 and in the agreement. I, therefore, specifically refrain from expressing an opinion whether the language of Section 11.1 which you have cited has any effect on the application of R.C. 124.57 to the classified employees involved.

It is, therefore, my opinion, and you are hereby advised that:

1. The terms of a collective bargaining agreement may provide that a classified employee may engage in partisan politics and, pursuant to R.C. 4117.10(A), such terms will prevail over the provisions of R.C. 124.57.

2. Disputes as to the meaning of terms in a particular collective bargaining agreement, entered into pursuant to R.C. 4117.10(A), must be resolved as provided in R.C. Chapter 4117.