

A city ordinance makes the city building inspector responsible for ensuring that all buildings in that city are kept up to building code standards and requires the inspector to refer for prosecution all known building code violations. Another ordinance provides that the city building inspector may be discharged for "good cause." The building inspector took a newspaper reporter through a number of run-down buildings in a slum neighborhood. After using various epithets and slurs to describe the occupants of these buildings, the building inspector stated to the reporter: "I do not even try to get these buildings up to code or to have their owners prosecuted for code violations because if these buildings are repaired, the people who live in them will just wreck them again." The reporter published these statements in a story in the local newspaper. The building inspector admitted he made the statements.

On the basis of these statements, the city council discharged the building inspector.

Is the action of the city council constitutional?

- A. No, because the statements were lawful comments on a matter of public concern.
- B. No, because the statements were published in a newspaper that is protected by the First and Fourteenth Amendments.
- C. Yes, because the building inspector is a government employee and a person holding such a position may not make public comments inconsistent with current governmental policy.
- D. Yes, because the statements demonstrate that the building inspector has an attitude toward a certain class of persons that interferes with the proper performance of the obligations of his job.

Explanation:

Acceptance of **public employment** does not eliminate an individual's **right to free speech**—but this right is not absolute. When a public employee is **speaking as a private citizen**, the **government can limit** that speech if its **interest in efficient government function outweighs** the employee's right to free speech. And when the employee is speaking pursuant to official duties (ie, within the scope of employment), the government has even greater latitude to regulate that speech and First Amendment protections rarely apply.

Here, the city building inspector was likely speaking as a private citizen since talking to a reporter presumably fell outside his official duties. But since the inspector's statements showed his lack of effort to get some buildings up to code, the city council's interest in ensuring that he properly perform his job outweighed his right to free speech. And if talking to reporters *was* an official duty, the city council's right to regulate that speech was even greater. Therefore, the city's decision to discharge him was constitutional.

(Choice A) Comments on a matter of *public* concern (as seen here) are afforded greater First Amendment protection than those involving a *private* concern. But the city council still had "good cause" to fire the inspector since his statements demonstrated that he could not properly perform his job.

(Choice B) The First Amendment (applied to the states through the Fourteenth Amendment) gives the media the right to publish information on matters of public concern. But the fact that the inspector's statements were published in a newspaper is irrelevant to determining whether the city council can fire him for those statements.

(Choice C) A government employee *can* make public comments that are inconsistent with current government policy if those comments do not interfere with his/her ability to adequately perform official duties.

Educational objective:

When a public employee is speaking as a private citizen, the government can only restrict that speech if its interest in efficient government function outweighs the employee's right to free speech. But when the employee is speaking pursuant to official duties, the government has greater latitude to regulate that speech.

References

- Pickering v. Bd. of Educ., 391 U.S. 563, 568 (1968) (explaining that a public employee's right to free speech as a private citizen must be balanced against the government's interest in efficient government function).

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Regulating private speech by public employee

