



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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July 23, 2009
AO-09-08

Daniel B. Winslow, Esq.
Duane Morris LLP
470 Atlantic Avenue, Suite 500
Boston, MA 02210

Re: Political Fundraising

Dear Mr. Winslow:

This letter is in response to your recent request for guidance as to whether a person you represent would be subject to the political fundraising restrictions that apply to public employees as set forth in M.G.L. c. 55, § 13 under the circumstances described in your letter.

You have stated that you represent a potential candidate for public office ("the Potential Candidate") who is seasonally employed as a municipal employee in Massachusetts. The Potential Candidate works as the Head Coach of a school athletic team. The position pays a salary for a season that begins in mid-March and ends in May. The appointment of Head Coach is year to year, with no guarantee of reappointment, but the Potential Candidate expects to be reappointed for the upcoming season. The Head Coach is assisted by an Assistant Coach, which is an unpaid volunteer position. In the event that the Potential Candidate were to declare his candidacy, it would be necessary for him directly and indirectly to engage in fundraising activities on behalf of and in conjunction with a candidate committee that he would form in accordance with applicable law.

QUESTIONS

1. Can the Potential Candidate engage in political fundraising activities during the off-season when he does not hold the Head Coach position and is not being paid by the town, even if he expects to be reappointed for the upcoming season?
2. May the Potential Candidate suggest to the town that it make the Head Coach position unpaid and, assuming the town agrees to reclassify the position as an unpaid volunteer position, engage in political fundraising while serving as the unpaid Head Coach during the season? Alternatively, if the town reclassifies the position on its own initiative, may the Potential Candidate engage in political fundraising while serving as unpaid Head Coach?



RESPONSE

If he is compensated, the Potential Candidate may not engage in political fundraising during the period from mid-March to the season's end in May when he is serving as Head Coach. He may, however, engage in fundraising in the off-season, even if he expects to be reappointed for the upcoming season.

If the town makes the position a voluntary one, and he is not compensated for his work as Head Coach, he would not be subject to the restrictions of M.G.L. c. 55, § 13 and could solicit and receive contributions at any time.

In either case, his fundraising activity may be subject to the provisions of the state's conflict of interest law, M.G.L. c. 268A.

DISCUSSION

The campaign finance law prohibits persons, other than elected officials, who are "employed for compensation" by the commonwealth or a local government entity from directly or indirectly soliciting or receiving any contribution or other thing of value for any political purpose whatsoever. *See* M.G.L. c. 55, § 13.

Section 13 is designed primarily to prevent corruption or the appearance of corruption on the part of appointed public officials within the context of political fundraising efforts. If a person would reasonably be seen as a public employee at the time he or she solicits or receives contributions, the statute is implicated. If, on the other hand, the person is not compensated or is not employed, the person is not subject to the provision.

The campaign finance law does not prevent public employees from seeking public office. If a public employee plans to raise money as part of the employee's campaign for public office, the employee/candidate must organize a political committee and have the political committee handle all fundraising activities.

The office has consistently interpreted the term "employed for compensation" to include part-time public employees or persons who are intermittently employed during a period of time in which they have agreed to provide services to the commonwealth or one of its subdivisions. *See* OCPF's Interpretive Bulletin IB-92-01, in which the office stated that "persons employed for compensation" include both full-time and part-time employees who receive any amount of compensation. The prohibition applies to such persons at all times, during working and non-working hours.

The office has also stated, however, that a person who is employed only on a few specific days each year is not considered a public employee subject to Section 13 on other days during the year. *See* AO-95-37, in which the office concluded that a poll worker, who works only on election days, is not a public employee on other days of the year. We indicated that a "part-time employee" is different for purposes of Section 13 than a "temporary" employee who works only a few specific days a year.

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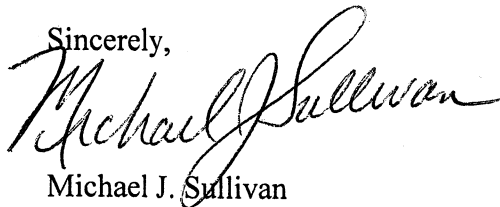
We have not previously addressed whether a person who only works for a municipality during the months March through May of each year should also be considered a temporary employee who may raise funds for political purposes during the other months of the year. For the reasons which follow, however, we believe that the Potential Candidate may be involved in political fundraising during the period of the year in which he is not employed for compensation as a Head Coach.

We believe that the seasonal employment described in your letter is such that the Potential Candidate should not be considered a public employee for purposes of Section 13 during the more than nine-month period when he is not employed as a Coach. Where a person is employed only for the period March through May, and there is no expectation that the person will be compensated for any work done at any other time of year, the person should not be considered a public employee during the period he is not providing services to the town.

Turning to your second question, where a person has decided to forgo salary, the office has advised that a public employee's forgoing compensation is not sufficient to remove the employee from the prohibitions of Section 13. *See* AO-92-07 (chairman of the Board of Registration in Medicine, who is entitled to payment of per diem by statute, is "employed for compensation" even if he chooses to not accept per diem to which he is entitled). In the situation you describe, however, the Potential Candidate would not be deciding to forgo payment to which he is entitled. Unlike AO-92-07, the appointing authority would be making a position uncompensated in the future, and any person filling the position would not be employed for compensation. As noted in AO-92-07, "the issue is not whether a person needs, wants or accepts compensation but whether the legislature has designated that position as a compensated (and important) one and, therefore, subject to section 13." In the scenario you have described, if the town does not classify the position as compensated, it would not be subject to section 13. The fundraising activity you have described may be regulated by the state conflict of interest law, M.G.L. c. 268A. You should contact the State Ethics Commission for guidance regarding that statute.

This opinion is issued solely within the context of the Massachusetts campaign finance law and is based on the representations made in your letter and to OCPF's staff. Please contact us if you have further questions.

Sincerely,



Michael J. Sullivan
Director

MJS:gb