

AO-87-03



The Commonwealth of Massachusetts

Office of Campaign & Political Finance

One Ashburton Place, Boston 02108

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Dennis J. Duffin
Director

AO-87-03
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Mr. Gerry D'Amico
673 Franklin Street
Worcester, MA 01604

Dear Mr. D'Amico:

This is in response to your recent request for an advisory opinion concerning the application of M.G.L. c. 55, the campaign finance law, to political activities of public employees. I believe your specific questions can be best answered with an initial overview and explanation of relevant provisions of the campaign finance law.

M.G.L.c. 55, s. 13 provides that,

"No person employed for compensation, other than an elected officer, by the commonwealth or any county, city, or town shall directly or indirectly solicit or receive any gift, payment, contribution, assessment, subscription or promise of money or other thing of value for the political campaign purposes of any candidate for public office or of any political committee, or for any political purpose whatever, but this section shall not prevent such persons from being members of political organizations or committees."

Therefore, any person who is an appointed public employee is prohibited from engaging in any activity in a direct or indirect manner, which involves the solicitation or receipt of any contributions for any political purpose. This prohibition is very clear and very broad.

The campaign finance law does not, however, prohibit public employees from being candidates for public office. In stating that,

"The soliciting or receiving of any gift, payment contribution, assessment, subscription or promise of money or other thing of value by a non-elected political committee organized to promote the candidacy for public office of a person so employed for compensation by the commonwealth or any county, city or town, shall not be deemed to be a direct or indirect solicitation or receipt of such contribution by such person; provided, however, that no such gift, payment, contribution, assessment, subscription or promise of money or other thing of value may be solicited or received on behalf of such a person from any person or combination of persons if such person so employed knows or has reason to know that the person or combination of persons has an interest in any particular matter in which the person so employed participates

or has participated in the course of such employment or which is the subject of his official responsibility,"

the law permits and, in fact requires, that a public employee candidate have a political committee organized on his behalf. While that political committee, as well as individuals acting on behalf of that political committee, may solicit and receive contributions for the public employee candidate, it may not do so from any individual, any group of individuals or any organization or association which has any interest in any particular matter in which the public employee candidate has participated or is participating, or which is part of his official responsibility.

I will now respond to your specific questions. While an appointed public employee, you may continue to have a political committee organized on your behalf. Your political committee may solicit and receive contributions, subject to the limitations set forth above. The same fundraising restrictions which apply to you as an appointed public employee apply equally to any other appointed public employee who may be involved with your political committee. No such individual may engage in fundraising activities on behalf of your political committee or for any other political purpose. This means that a public employee may not serve as treasurer of your committee. Your committee may raise funds through a direct mailing. However, the committee may not solicit contributions in this manner, nor in any other manner, from any persons or associations which have any interest in any particular matter before you or which is part of your official responsibility, by virtue of your public employment. In the course of any direct mailing, your political committee must make it clear that the solicitation comes from the committee itself, and not from you.

You have also inquired as to the application of these provisions to expenditures by political committees. While M.G.L.c.55, s.13 prohibits appointed public employees from directly or indirectly soliciting anything of value for any political purpose, it does not prohibit such public employees from expending funds on behalf of a political committee. Such expenditures, however, must be made in accordance with M.G.L.c.55, and all regulations promulgated thereunder. (see 970 C.M.R. 2.00) However, this must not be construed to permit an appointed public employee to be the treasurer of a political committee. While these individuals, including the public employee candidate, may make expenditures on behalf of a political committee, the provisions of section 13 clearly prohibit a public employee from holding the office of treasurer of a political committee.

In addition to the above, there are other provisions of the campaign finance law of which you and your political committee should be aware. While the above described fundraising prohibitions do not apply to elected officials, the campaign finance law prohibits anyone in the public service from actually receiving a contribution from another individual in the public service. Furthermore, no public employee is under obligation to contribute to any political fund or to render any political service. Any public employee including those who may be subject to your direct or indirect supervision, may make political contributions, subject to the law, which are absolutely and purely voluntary.


This opinion can only cover the application of M.G.L.c. 55 to your contemplated activities. You should also be aware of other issues which may be applicable. M.G.L.c. 268, s. 9A states,

"No person shall sell, offer for sale, or accept payment for, tickets or admissions to, nor solicit or accept contributions for, a testimonial dinner or function, or any affair, by whatever name it may be called, having a purpose similar to that of a testimonial dinner or function, for any person, other than a person holding elective public office, whose office or employment is in any law enforcement, regulatory or investigatory body or agency of the commonwealth or any political subdivision thereof."

Furthermore, if the agency with which you will be employed receives any federal funding, you may be subject to certain provisions of the Hatch Political Activity Act. You may contact the U.S. Merit Systems Protection Board for questions on that law. I also suggest that you carefully review Administrative Bulletin 85-6, Political Activity Among State Employees, issued October 18, 1985 by Frank Keefe, Secretary, Executive Office for Administration and Finance.

Please feel free to contact us if you have any further questions.

Very truly yours,


Dennis J. Duffin
Director

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