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Office of Campaign and Political Finance
One Ashburton Place, Room 411
Boston, MA 02108

Advisory Opinion

May 19, 1998
AO-98-11

Jeanne Drula, Chairman
Westford Finance Committee
Town Hall
55 Main Street
Westford, MA 01886

Everett V. Olsen, Jr., Business Manager
Westford Public Schools
35 Town Farm Road
Westford, MA 01886

Re: Use of public resources to distribute information to voters

Dear Ms. Drula and Mr. Olsen:

This letter is in response to Ms. Drula's and Mr. Olsen's April 23 and April 24 requests for an advisory opinion relating to the School Committee's recent distribution of information regarding the budget.¹

Question

May the Town of Westford's School Committee use municipal funds to mail a booklet to residents regarding the FY 1999 annual school budget similar to the booklet distributed on April 17, 1998?

Answer

Yes.

Facts

On April 17, 1998 the School Committee mailed to residents a 24-page booklet regarding the FY 1999 school budget. The booklet contained three parts: (1) a one-page "Budget Message" from the

¹ This office does not generally issue advisory opinions on matters which have already taken place. In this instance, however, the School Committee issues a budget booklet each year and the question addressed in this opinion will recur in the future. In addition, the issues raised are relevant and of interest to other towns.

School Committee; (2) a thirteen-page section describing each line item of the budget which includes several tables including tables comparing the FY 1998 adjusted budget and the FY 1999 projections, per pupil costs compared to state averages, actual and projected enrollments, and class size analysis; and (3) a nine-page description of the goals for the Westford Public Schools.

The booklet does not refer to the override question on the ballot in the town election which is scheduled for May 5. Instead, the booklet provides the date, time and location of the school budget hearing and the annual town meeting and urges recipients to bring the booklet to the town meeting. The budget message on the first page of the booklet, although it does not refer to Proposition 2 ½, the need for an override, or the town election, states, in part, that “even with additional funding through the Massachusetts Education Reform Act of 1993 and the strong financial support and commitment given by the Town Manager, Board of Selectmen, Finance Committee and Townspeople, we are not able to fully accommodate [the growing school population] without additional resources.”

Discussion

A. The Anderson Opinion

In Anderson v. City of Boston, 376 Mass. 178 (1978), the Supreme Judicial Court concluded that the City of Boston could not appropriate funds, or use funds previously appropriated for other purposes, to influence a ballot question submitted to the voters at a State election. The court stated that the campaign finance law demonstrates an intent "to assure fairness of elections and the appearance of fairness in the electoral process" and that the law should be interpreted as prohibiting the use of public funds "to advocate a position which certain taxpayers oppose." 376 Mass. at 193-195.

Accordingly, this office has concluded that "governmental entities" may not expend public resources² or contribute anything of value in support of or opposition to a ballot question. In addition, public resources may not be used to distribute commentary regarding a ballot question unless expressly authorized by state law. See Guide to Campaign Practices, issued by the Secretary of State's Elections Division and this office and revised in 1995.

Subsequent to Anderson, the Legislature has enacted special laws allowing certain municipalities to distribute ballot question information to voters. Only four municipalities (Cambridge, Newton, Sudbury, and Burlington) have obtained such legislation. In each instance, the legislation contains safeguards to ensure that information contains arguments provided by both sides of an issue. See ch. 630 of the Acts of 1989 (Cambridge), ch. 274 of the Acts of 1987 (Newton), ch. 180 of the Acts of 1996 (Sudbury), and ch. 89 of the Acts of 1998 (Burlington). In addition, the Legislature has enacted statutory provisions which allow municipalities to distribute information to voters in certain specific instances. See, e.g., M.G.L. c. 43B, s. 11 (providing for a charter review commission's distribution of a report to voters).

B. Application to The School Committee's Budget Booklet.

In Anderson the court emphasized that the campaign finance law is “comprehensive legislation [which] manifests an intention to bar municipalities from engaging in the expenditure of funds to

² Public resources include, but are not limited to: staff time, office space, stationery and office supplies, office equipment such as telephones, copier and fax machines and word processors, as well the use of a state, county or municipal seal. Even the occasional, minor use of public resources for a political purpose is inconsistent with state law and should be avoided.

influence **election** results . . ." 376 Mass. at 185 (emphasis added, citation omitted). The court did not consider the use of public resources to influence town meetings. See AO-94-37.

The office, construing the Anderson opinion, has consistently stated that the prohibition against the use of public resources for political purposes does not apply in connection to issues which are debated in an open forum such as town meeting. In AO-96-30, the office stated that:

The campaign finance law regulates matters which are submitted to voters on an election ballot. The law does not prohibit expenditures designed **solely** to lobby or influence a school committee, town meeting or city council. However, any expenditures made to influence a governmental body **and an election** are subject to the campaign finance law. On occasion, a governmental expenditure may be made to lobby or influence a town meeting warrant article which will likely be the subject of a subsequent ballot question. Whether such an expenditure is made for the purpose of influencing not only the town meeting, but also the expected ballot question, requires consideration of "such factors as the style, tenor and timing of the expenditures." See IB-91-01. A governmental expenditure made to influence both the town meeting and the subsequent ballot question would be prohibited. [Emphasis added].

Based on our recent experience, we have concluded that the standard described in AO-96-30 (that expenditures designed to lobby town meeting are appropriate only if **solely** designed for that purpose) is impossible to strictly apply in practice and further, is not mandated by Anderson: As a result of Proposition 2 ½ (which did not exist when the Supreme Judicial Court issued the opinion) towns frequently have a town meeting and, shortly before or after the town meeting, an election on the same issue. The campaign finance law and Anderson do not prohibit distribution of information relating to both the town meeting warrant article and a related ballot question -- if the information **primarily** relates to the warrant article and distribution is consistent with the responsibilities of the distributing agency or official (e.g., a school committee could distribute information relating to schools but not relating to public works).³

However, a report summarizing a warrant article pending before town meeting which also advocates a "yes" or "no" vote in a subsequent town election -- or which contains commentary regarding the pros and cons of a ballot question -- would be inconsistent with Anderson and therefore must be paid for with private rather than public funds. Expenditures made to distribute such a report must be disclosed by a duly organized ballot question committee or by an existing association, corporation or other organization in accordance with M.G.L. c. 55.

Finally, as noted above, public resources may not be used to distribute commentary specifically relating to ballot questions. Even if a report distributed to voters stops short of taking a position on a ballot question, any mention of the override or the election leads to the inference that distribution of the report is primarily to influence an election, especially if the question is on the ballot when the distribution takes place.

³ The Finance Committee provided a copy of the Committee's Report and Recommendations on the 1998 Annual Town Warrant. The Report contains the text of two questions which will be on the ballot in the election, and provides the date and time of the election. It does not, however, make any recommendations or contain any commentary regarding the questions. Therefore, the Report, like the School Committee booklet, relates primarily to town meeting and its distribution using public resources did not violate the campaign finance law.

In this instance, the School Committee's budget report relates to a matter within the School Committee's official responsibilities, does not mention the election, and appears to be primarily designed to be used at the school budget hearing and at town meeting. It may therefore be distributed using public resources.

This opinion is provided on the basis of representations in your letter, and is solely within the context of the campaign finance law.

I encourage you to contact us in the future if you have further questions regarding the campaign finance law.

Sincerely,

A handwritten signature in black ink that reads "Michael J. Sullivan". The signature is written in a cursive style with a long, sweeping underline.

Michael J. Sullivan
Director

MJS/cp