



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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June 30, 2015
AO-15-03

Steven C. Sharek, Esq.
Director of Outreach and Development
Minuteman High School
758 Marrett Road
Lexington, MA 02421

Re: Public Opinion Survey

Dear Mr. Sharek:

This letter is in response to your recent request for guidance regarding the use of School District funds to pay for a public opinion survey.

You have stated that the Minuteman Regional Vocational Technical School District (the District) is considering a possible building project. No decision has yet been made about whether to incur debt in accordance with M.G.L. c. 71, Section 16(d) or 16(n). However, the District is interested in pursuing the idea of having a professional research survey done to gauge public sentiment within the District. To do that, you state that the District will need to seek three (3) written quotes if the cost might be \$10,000 or more. In preparation for such a solicitation, you have drafted a Request for Quotations (RFQ). You have asked if the District may proceed with issuing the following Scope of Services, which is part of the RFQ, to ensure that the resulting poll complies with the campaign finance law:

SCOPE OF SERVICES

SURVEY RESEARCH AND LEGAL SERVICES
REQUEST FOR QUOTATIONS NO. 16-01

The firm selected shall perform the following services:

1. Meet with the Superintendent-Director and/or designee to discuss the Minuteman Regional Vocational Technical School District, review the history of the Minuteman High School building project, and draft questions that would accurately gauge public knowledge of and sentiment about the District and the project.



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2. Design a professional research survey to determine the opinions of likely voters in the District regarding Minuteman High School and its proposed building project, with a minimum 95% confidence level and maximum error rate of +/- 4.9%. Identify factors/variables that may account for variations in responses.
3. Secure approval of the survey instrument from the District's Superintendent-Director and from the Massachusetts Office of Campaign and Political Finance, with written approval required from the latter.
4. Create or purchase a telephone sample list of voters likely to participate in a municipal election in the 16 communities in the Minuteman district.
5. Conduct a telephone poll of these likely voters using its own personnel.
6. Successfully complete 400 calls or as many calls as are necessary to ensure the validity and reliability of the results.
7. Monitor field work to ensure its accuracy, reliability, and objectivity.
8. Tabulate the results of the survey, using age, economic, ethnic/racial, gender and geographical factors, at a minimum.
9. Prepare a draft written report of the survey results for the Superintendent-Director.
10. Prepare a final written report of the survey results.
11. Present a PowerPoint presentation on the research survey findings to the Minuteman School Committee at a date and time designated by the Superintendent-Director but not later than September 17, 2015.
12. Be available to the District to answer follow-up questions.

Question

May the District issue the Request for Quotations?

Answer

Yes, if the RFQ is revised to add the following two sentences in paragraph #3: **"The polling questions must be neutral and designed to obtain information or opinions, and may not support or oppose an anticipated ballot question. In addition, any descriptive statements made by the polling firm to introduce the poll to those being surveyed must be fact-based and neutral and not for the purpose of advocacy."** These revisions would help ensure that the poll is neutral.

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Discussion

In *Anderson v. City of Boston*, 376 Mass. 178 (1978), the Supreme Judicial Court analyzed the provisions of M.G.L. c. 55 in considering whether a municipality had authority to appropriate and expend funds to influence a ballot question. The court stated that M.G.L. c. 55 is a comprehensive campaign finance statute which bars such expenditures since it "demonstrate[s] a general legislative intent to keep political fundraising and disbursing out of the hands of nonelective public employees and out of city and town halls." *Id.*, at 186-187.

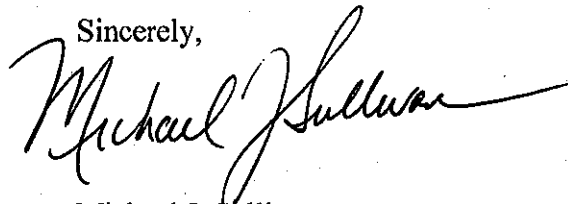
In accordance with *Anderson*, this office has consistently advised that governmental entities may not use public resources to support or oppose ballot questions. See IB-91-01. The prohibition applies even to *anticipated* ballot questions. See IB-90-02.

Anderson would not prohibit an expenditure of public funds for a bona fide public opinion poll. In contrast, however, the expenditure would be prohibited if it contains questions that are not neutral, but instead are designed to influence an anticipated ballot question, i.e., it is a "push poll." A push poll could not be paid for using public funds. See AO-97-22 (stating that a candidate may conduct an opinion poll without triggering the filing and disclosure requirements of the campaign finance law, if the questions "would be designed to obtain information or opinions rather than to promote or oppose a possible candidacy"). By adding the language referred to above in bold, potential bidders will be on notice that the poll must be designed to comply with these requirements.

This opinion is issued solely on the basis of the representations set forth in your email, and your conversations with OCPF staff, and is provided solely within the context of M.G.L. c. 55. Your question also relates to the state conflict-of-interest law, M.G.L. c. 268A, and I understand that you have contacted the State Ethics Commission to ensure compliance with that statute.

Please do not hesitate to contact this office should you have additional questions about this or any other campaign finance matter.

Sincerely,



Michael J. Sullivan
Director

MJS/gb