



THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF CAMPAIGN & POLITICAL FINANCE

ONE ASHBURTON PLACE ROOM 411

BOSTON MASSACHUSETTS 02108

(617) 727-8352

(800) 462-OCPF

MICHAEL J. SULLIVAN  
DIRECTOR

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**INTERPRETIVE BULLETIN**

The Application of the Campaign Finance Laws  
to Public Employees and Political Solicitation

The Office of Campaign and Political Finance (OCPF) periodically issues interpretive bulletins regarding various aspects of M.G.L. c. 55, the Massachusetts campaign finance law. This office is frequently asked to provide guidance regarding the scope of M.G.L. c. 55, s. 13, which prohibits direct and indirect solicitation and receipt of campaign contributions by public employees. This interpretive bulletin is issued to provide general guidance, and answer certain frequently asked questions regarding the scope of the prohibition.

**I. Discussion**

M.G.L. c. 55, s. 13 prohibits political fundraising by certain public employees. Specifically, section 13 provides:

No person employed for compensation<sup>1</sup>, 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 . . . (emphasis added).

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<sup>1</sup> "Persons employed for compensation" include both full-time and part-time employees who receive any amount of compensation. However, persons serving on boards or commissions who are **reimbursed** only for their expenses are not considered to be "employed for compensation." In addition, persons who are reimbursed for expenses on a "**per diem**" basis are not considered to be "employed for compensation" if the per diem rate reasonably reflects actual expenses. See OCPF-IB-91-01. In this interpretive bulletin, "public employee" refers to any "person employed for compensation" by any city, town, county or state government agency, commission, department, authority or state institution of higher learning. See also St. 1989, c. 653, s. 179.

Section 13, as well as other provisions of the campaign finance law, demonstrates a "general legislative intent to keep political fund raising and disbursing out of the hands of nonelective public employees . . . ." See Anderson v. City of Boston, 376 Mass. 178, 186-187 (1979). While the sweep of section 13's prohibition is broad, broader prohibitions on public employee political activities have been upheld by the U.S. Supreme Court. See Civil Service Commission v. Nat'l Ass'n of Letter Carriers, 413 U.S. 548 (1973) and Broderick v. Oklahoma, 413 U.S. 601 (1973). Prohibitions like section 13 "serve valid and important state interests, particularly with respect to attracting greater numbers of qualified people by insuring their job security, free from the vicissitudes of the elective process, and by protecting them from 'political extortion'." Broderick, 413 U.S. 601, 606.

Public employees are responsible for insuring that they do not engage in "indirect solicitation" of funds for "political purposes." To assist public employees, OCPF has issued "A Guide to Political Activity for State, County and Municipal Employees," and a number of advisory opinions on specific situations involving section 13<sup>2</sup>. The opinions, which implement the restrictions imposed by section 13 consistent with the considerations noted above, generally focus on two issues: (1) whether "indirect solicitation" would take place in a given situation; and (2) whether the particular example of solicitation involves solicitation "for political purposes."

#### **A. Solicitation**

Section 13 specifies that public employees may not directly or indirectly solicit or receive monies for political purposes. Direct solicitation would include such activity as asking a friend, neighbor or fellow public employee to make a contribution to a candidate or political committee.

The prohibition applies at any time including after the employee's regular work hours, week-ends or vacations.

Section 13 does not, however, prevent employees from contributing to a candidate or political committee. In addition, section 13 does not mean that a public employee may not work for a political campaign, provided such involvement does not include the solicitation or receipt of contributions. Therefore, a public employee may hold signs or distribute literature urging a vote for a candidate so long as the signs or literature does not include a solicitation of contributions.

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<sup>2</sup> Copies of the Guide and opinions (and also copies of an index of all opinions relating to public employees and political solicitation) are available at OCPF.

In addition, a public employee may attend a political fundraising event and speak about non-fundraising matters. A public employee may also introduce a candidate if the employee does not "actively solicit contributions for such candidate as part of such introduction." See AO-90-28.

A public employees should not, however, allow himself or herself to be used as a "draw" for a political fundraising event. A public employee should not offer to appear at any event if such participation will be used by a political committee or organization for political fundraising purposes. See AO-91-25.

In addition, public employees should refrain from any activity which indicates support for the fundraising efforts of a candidate or political committee or for other political purposes. For example, a public employee may not (1) permit his or her name to be listed on political committee stationery as an officer or member if such stationery is to be used to solicit funds (AO-84-02); (2) serve as treasurer of a political committee or participate in fundraising strategy meetings (AO-93-10); (3) host or permit a political fundraising party at the employee's home (AO-84-06); (4) identify or recommend persons to participate in fundraising meetings (AO-93-10); or (5) endorse a candidate knowing that the public employee's endorsement will be used in a letter soliciting contributions (AO-90-04).

#### **B. Political Purposes**

Indirect solicitation within the context of section 13 is prohibited only if the solicitation is for monies or other things of value "for the political campaign purposes of any candidate for public office or of any political committee, or for any political purpose whatever . . ." <sup>3</sup> As noted above, the phrase "for any political purpose whatever" broadens the scope of section 13. Therefore, organizations which are not political committees can still have a political purpose. See AO-91-12, which states that a redistricting task force organized by members of a political party seeking to support a partisan redistricting effort may not accept corporate contributions.

The phrase "for any political purpose whatever," is not, however, without limits. OCPF has advised that the word "political" within the context of section 13 does not include the activities of various organizations whose activities are

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<sup>3</sup> Solicitation by public employees for non-political purposes, as well as political purposes, is prohibited in certain situations by the conflict-of-interest law. See, in particular, M.G.L. c. 268A, s. 23(b)(2). Questions regarding the conflict-of-interest law should be directed to the State Ethics Commission at 727-0060.

humanitarian or civic, rather than political, in nature. For example, public employees may solicit funds for organizations such as Oxfam America (AO-85-09), Amnesty International (AO-85-17), International Physicians for the Prevention of Nuclear War (AO-86-03), the Berkshire Advisory Council of the Massachusetts Commission Against Discrimination (AO-87-06) and Women's Statewide Legislative Network of Massachusetts (AO-90-11). On the other hand, the Log Cabin Republicans is a political organization (AO-94-40).<sup>4</sup>

## **II. Frequently Asked Questions**

Public employees often ask the following questions:

### **(A) Speaking or serving on panel at an event**

#### **(1) May I speak at an event sponsored by a political committee at which political contributions are not solicited?**

Yes. If a political committee does not solicit funds at an event, a public employee may attend and speak at the event.

For example: A mayoral candidate's political committee holds a dinner reception at a local restaurant featuring a public employee as speaker. An invitation announcing the reception and identifying the speaker is mailed to 100 political supporters. If no funds are solicited for the political committee in the invitation or at the reception, the employee may participate.

#### **(2) May I participate in such an event if my participation is used to encourage the making of political contributions?**

No. A public employee may not agree to serve on a panel knowing that the employee's participation will be used to encourage supporters to make political contributions.

For example: A candidate's political committee wishes to organize a club. To join, supporters must make annual contributions to the candidate. Membership is solicited by a letter noting that members will be invited to regular gatherings to meet with public employees who have agreed to serve on panels at each meeting. Even though no funds are

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<sup>4</sup> If the activities of such civic, humanitarian or lobbying organization extend to direct or active support of one or more candidates or for support of or opposition to questions appearing on the state or local ballot, such activities may become "political" rather than "civic" or "humanitarian." See AO-90-11. In addition, such organizations may, by virtue of such activity, become political committees required to register with OCPF or the appropriate city or town clerk or board of election commissioners.

solicited at the meetings, a public employee may not participate knowing that such participation will be used to obtain political contributions.

**(3) May I participate in fund raising activities sponsored by a partisan organization which is not a political committee?**

No. A public employee may not knowingly participate in the solicitation of political contributions by an organization, even if the organization is not a political committee.

For example: A task force is set up by a state party to raise money for computer equipment and programming and potential legal costs relative to state legislative redistricting. The state party establishes the task force since members believe redistricting will be advantageous to the party. The task force chairman writes a letter inviting party members to a forum on redistricting. Contributions to the task force are requested and a public employee is noted as a featured speaker.

Although the task force is not a political committee, its purposes are primarily "political" rather than civic or humanitarian. See AO-91-12. Therefore, a public employee's knowing participation in the solicitation effort would violate section 13.

**(4) May I participate in an event sponsored by a civic organization which does not make political contributions or which makes only incidental political contributions?**

Yes. A public employee may speak at an event sponsored by a civic organization which does not make political contributions.

Even if the organization makes incidental political contributions<sup>5</sup> to candidates or committees, the public employee may still participate without violating section 13 unless there is a material connection between the public employee's participation, the indirect solicitation and the political purpose.

A material connection would exist, for example, if the employee participates knowing that the invitation to the event states that part of the relevant year's membership dues will be used to support certain candidates or classes of candidates.

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<sup>5</sup> In general terms, an organization makes incidental political expenditures if the total of such expenditures do not exceed \$15,000 during a calendar year or 10 percent of the organization's previous year's gross revenues, whichever is less. "Incidental" political contributions are discussed in more detail in OCPF IB-88-01.

On the other hand, a public employee may participate in an event, even if an incidental portion of funds raised are used for political purposes, if there is no material connection between the employee's participation, the solicitation, and the political use of funds.

**(B) Holding fundraiser in home of public employee**

**(1) May my spouse host a political fundraiser in our home, which we jointly own?**

Yes. Section 13 would not prohibit your spouse from holding the fundraiser if: (1) you are not the candidate who would be benefited by the fundraiser; (2) you are not an officer of a political committee that would receive contributions at the event; (3) you will not serve as a conduit of funds; and (4) you will not use the fundraiser to solicit funds for a candidate or political committee. (AO-94-26).

**(2) May I be present during the fundraiser?**

Yes, if each of the conditions specified above is satisfied. You should not be involved in any activity that might be seen as indirect solicitation, e.g. you should not accept money at the door.

**(3) May literature prepared by my spouse, who is hosting the event, state that I am the host's spouse?**

No. Such activity would constitute indirect solicitation.

**(4) May I assist in preparing the guest list?**

No. Such activity would constitute indirect solicitation.

**(5) May I assist in advertising the event?**

No. You should not be involved in "passing the word" or otherwise publicizing the event.

**(C) Other questions**

In addition to the examples of permitted and prohibited activities listed on pages 2-3, the following questions and answers may be helpful to public employees and political committees and organizations.

**(1) If I am active in state party activities or other political activities, may I tell someone about an upcoming party event which will also serve as a fundraiser if I do not actually ask the individual to purchase a ticket?**

No. Such activity, to the extent it involves asking someone to attend an event which will necessarily require that a contribution to be made if the person attends, would constitute indirect solicitation.

**(2) May I allow my name to be used by a candidate as an endorser of the candidate's campaign, if the candidate uses my name on a list of endorsers as part of a campaign ad which also asks for contributions?**

No. Although you may endorse a candidate, you may not provide your name to the candidate if you know or have reason to know that your endorsement will be included in a campaign ad which solicits funds. If you endorse a candidate and then are asked if the candidate can list your name in an advertisement for contributions, you should not give your permission for such use.

**(3) May I perform clerical tasks for a candidate after work hours, such as the entry of fundraising data into the candidate's computer?**

Yes. You may not, however, supply your own information regarding potential contributors, to the database. (AO-88-25).

**(4) If I take a leave of absence, may I engage in political fundraising activity?**

Yes. If you take a 4-month unpaid leave of absence before a primary or preliminary election, a 6-month unpaid leave of absence before the general election, or a 4-month unpaid leave at any other time (i.e., not during the six months preceding a general election). (AO-92-07 and AO-96-28).

**(5) May I sell tickets to an event designed to have voters meet the candidate, even if the amount raised is only enough to pay expenses, and no additional funds are raised?**

No. Whether the primary purpose of the event is to raise funds or not, it is still an activity involving the solicitation and receipt of funds for a political purpose. Even if an event is financially unsuccessful and loses money, the event is a "fundraising" event. (AO-92-19).

### **III. Public Employee's Responsibility**

Public employees must use reasonable care regarding speaking engagements or other activities to insure that they are not knowingly participating in a fundraising event or permitting their participation to be used for political fundraising purposes. Public employees should therefore ask organizations a few basic questions about the organization and the activity before becoming involved.

**A. Is the organization a political committee or does it make more than incidental contributions and expenditures which have a political purpose?** If it is such an organization, will any fundraising be associated with the public employee's participation? Will the public employee's name be used for other fundraising purposes such as to draw people to an event for the purpose of subsequently targeting them for political fundraising? If the answer is "Yes" to any of these questions,

OCPF would advise the public employee not to participate or to seek further guidance from OCPF.

**B. Is the organization a civic or humanitarian organization?** If it is and it makes no political contributions or expenditures, then the public employee may accept a speaking engagement or otherwise assist in fundraising efforts without fear of violating section 13.

**C. Is the organization a civic organization which makes incidental or occasional political contributions or expenditures?** If so, is there a direct connection between the public employee's participation, any solicitation which has occurred or may occur and the political contributions or expenditures made or planned by the organization? If the answer to this question is "Yes," OCPF would advise the public employee not to participate.

#### **IV. Political Committee/Organization's Responsibility**

The public employee, not the committee or organization, bears the primary responsibility for ensuring compliance with section 13. Individuals, political parties and political committees who use a public employee's name to solicit political contributions, however, may also be in violation of the campaign finance law.

M.G.L. c. 55, s. 7 provides, in pertinent part, that:

No person or combination of persons including a corporation formed under the provisions of chapter one hundred and eighty, shall in connection with any nomination or election receive money or its equivalent, expend or disburse or promise to expend or disburse the same, except as authorized by this chapter (emphasis added).

The use of a public employee's name to solicit funds for political purposes would not be consistent with section 7.

Therefore, political committees and other organizations should exercise reasonable care to assure that a public employee's participation in an activity is not used directly or indirectly to solicit funds for political purposes.

For further information or guidance with respect to specific questions involving public employees' campaign finance activities or other campaign finance matters, please write OCPF at One Ashburton Place, Room 411, Boston, MA 02108 or call at 1-800-462-OCPF or 1-617-727-8352.

  
Michael J. Sullivan  
Director