



Commonwealth
of Massachusetts

OCPF Online

www.state.ma.us/ocpf

Office of Campaign and Political Finance

One Ashburton Place, Room 411

Boston, MA 02108

Advisory Opinion

December 16, 1999

AO-99-19

Denise L. MacAloney, Town Clerk
Town of Westminster
3 Bacon Street
P.O. Box 456
Westminster, MA 01473

Re: Distribution of information to voters

Dear Ms. MacAloney:

This letter is in response to your request for an opinion regarding the use of public funds to pay for the distribution of information to voters regarding a local ballot question.

You have stated that the Town of Westminster held a Special Town Election on November 23, 1999. On the ballot was a question to allow taxpayers to be assessed an additional \$12,000 in real estate and personal property taxes for the creation of a new adult services librarian position at the Forbush Memorial Library. Prior to the election, a newsletter entitled *Forbush Library* was mailed to all residents of Westminster. The front page of the newsletter contained an article, which was continued on page 2, about the upcoming election and ballot question. The article discusses the impact of the ballot question on the tax rate and why the library needs the additional position. The article concludes with a specific request that reads, "Please vote for this position today and at the polls because our library needs a cataloger."

It is my understanding that a resident of Westminster agreed to pay for the mailing believing the town would reimburse him. Although no campaign finance reports of expenditures made in connection with the newsletter have been filed, the town accountant has received a request for reimbursement from the resident who paid for the mailing.

You have asked for guidance on this matter before the reimbursement request is processed. In effect, you ask two questions.

Questions

- (1) May the Town reimburse an individual who paid for the production and distribution of the newsletter?
- (2) What campaign finance reports, if any, should be filed in connection with the newsletter?

Answers

- (1) No.
- (2) It depends. As discussed in this opinion:
 - (a) If an individual makes expenditures to influence a ballot question no campaign finance disclosure report is required;
 - (b) If a corporation, association, organization or group of persons make such expenditures that entity must file Form CPF M22;
 - (c) If a town makes such an expenditure or reimbursement, the treasurer of the town or the fiscal officer of the governmental unit that made the expenditure must file Form CPF 22A; and
 - (d) If a ballot question committee makes such expenditures, the committee would file Form CPF M 102BQ.

Discussion

In Anderson v. City of Boston, 376 Mass. 178 (1978), appeal dismissed, 439 U.S. 1069 (1979), 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. The court stated that “the Legislature may decide, as it has, that fairness in the election process is best achieved by a direction that political subdivisions of the State maintain a ‘hands off’ policy.” 376 Mass. at 195. The court also noted that the campaign finance law [M.G.L. c.55] 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.

In Anderson, the court stated that public resources could not be used to advocate “a position which certain taxpayers oppose.” Public resources¹ may not be used therefore to produce or distribute the newsletter or to reimburse others for such costs.

In addition, the Secretary of the Commonwealth’s Election Division has noted in a joint memorandum issued with OCPF in March 1996 that the Home Rule Amendment of the Massachusetts Constitution prohibits municipalities from producing “informational” material regarding a ballot question without legislative authority. Therefore, even if voter information commenting on the

¹ “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 computers, as well the use of a state, county or municipal seal. See IB-91-01 (a copy is enclosed for your information).

Denise L. MacAloney

Dec. 16, 1999

Page 3

substance of a ballot question is intended to be objective and factual (it is “informational” rather than “advocacy”), it may not be produced or distributed using public resources.

The newsletter expressly asks the reader to “[p]lease vote for this position . . . at the polls. . .” Therefore, the town should not reimburse an individual for the costs of producing or mailing the newsletter.

The campaign finance law requires disclosure of expenditures made by corporations, associations, organizations and other groups of persons to influence a ballot question. See M.G.L. c. 55, s. 22 and Form CPF M22. You have indicated, however, that an individual, not a group of persons, made the expenditure and now seeks reimbursement from the town. The law does not require a report from an individual.

The campaign finance law, specifically section 22A of M.G.L. c. 55, does state, however, that the treasurer or financial officer of any governmental unit “which has given, paid, expended or contributed . . . any money or any valuable thing in order to influence or affect the vote on any question submitted to the voters . . . shall file reports with the clerk of such city or town” disclosing the expenditure. If any expenditure of public funds or resources is made or, in fact, has been made, CPF Form 22A, which is enclosed, should be completed by the appropriate governmental treasurer or fiscal officer and filed with the town clerk in accordance with section 22A.² See M-95-06 (a copy is enclosed).

Where public funds or resources are spent to influence a ballot question, the office consistently recommends that restitution of public funds take place. Restitution may be made by an individual, association (e.g., a PTO) or ballot question committee. If a group of persons decides to *raise* funds for this purpose they must first organize a ballot question committee, which would have to register with the Town Clerk and file campaign finance reports reflecting all funds raised and spent.

This opinion is issued within the context of the Massachusetts campaign finance law and is provided solely on the basis of representations in your letter and your conversations with OCPF staff. Please contact us if you have further questions.

Sincerely,

A handwritten signature in cursive script that reads "Michael J. Sullivan". The signature is written in dark ink and is positioned to the left of a vertical line.

Michael J. Sullivan
Director

² If public resources are or were used, the costs reported on Form 22A should include the cost of using paid staff to produce and distribute the flyer, supplies and postage used, and the value of the Town’s bulk mail permit, if used. The use of a permit is something of value and therefore should be reported as an in-kind contribution. See AO-96-24. It is my understanding that the cost of a permit for one year is now \$200.