



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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January 25, 1996
AO-96-01

Judith R. Walpole, Chair
Board of Selectmen
Town of Concord
22 Monument Square - P.O. Box 535
Concord, MA 01742-0535

Re: Town Meeting Study Committee

Dear Ms. Walpole:

This letter is in response to your January 19, 1996 letter requesting an advisory opinion regarding the expenditure of public resources in connection with local non-binding ballot questions.

You have stated that the Town Meeting Study Committee (the Committee) has studied town meeting voting procedures and developed a set of recommendations which will be placed before the voters as non-binding advisory questions at the March 26 town election. Your letter contains several questions relating to the actions the Committee or other agencies of the Town may take relating to non-binding local ballot questions. I will answer each question separately.

1. **Would the Town Meeting Study Committee or any other agency of the Town be prohibited from using public resources to explain to the public the results of their study and the ballot questions they have formulated?**

Yes, if public funds would be used to copy or mail explanatory material. The Committee or other town agencies may hold hearings soliciting comment regarding the study, but may not copy or distribute materials explaining the study.¹

Hearings may take place in a public building, if equal access is provided to those opposing as well as supporting the anticipated ballot questions. A group opposing the Committee's position may ask for and obtain space for a hearing on the same terms and conditions afforded the Committee. A hearing may not take place, however, if the purpose of the hearing is to raise funds to be used to influence a ballot question. See M.G.L. c. 55, s. 14.

¹ Such materials may be made available at hearings or may be mailed to residents if public funds are not used, *i.e.*, a ballot question committee may be formed in accordance with the campaign finance law to raise funds to copy and distribute explanatory materials.

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 held that M.G.L. c. 55 was a comprehensive campaign finance statute which bars such expenditures since it "demonstrate[s] a general legislative intent to keep political fund raising and disbursing out of the hands of nonelective public employees and out of city and town halls." Id., at 186-187. In accordance with the Anderson decision, this office has consistently advised that governmental entities may not use public resources to support or oppose ballot questions.

Therefore, the Committee may not use the town's public resources to reproduce and distribute advocacy or even "informational" newsletters regarding ballot questions absent express statutory authorization.²

Anderson does not, however, prohibit policy-making officials from acting or speaking in regard to ballot questions during work hours if in doing so they are acting within the scope of their official responsibilities. See IB-92-02, a copy of which is enclosed for information.

Therefore, a member of the Committee, (or a selectman or other policy making official) may speak at hearings or otherwise regarding any matter of public policy which is also the subject of a local ballot question, provided the subject is within the scope of the official responsibilities of the speaker. To illustrate: although a member of a committee charged with the responsibility of assessing the financial needs of the schools may speak at a hearing regarding a school-related ballot question, a department of public works supervisor probably should not speak, during the supervisor's work hours, at a meeting on a ballot question relating to restricting books which may be purchased by the town's library.

A member of the Committee may state his or her own position on the matter and encourage others to adopt that position. The only restriction imposed by the campaign finance law on such speech is that public resources may not be used to influence the vote on a question, unless such use is consistent with a Committee member's official responsibilities, as discussed in response to your third question.

2. If so, at what point would this prohibition go into effect?

In municipal elections, particularly in towns, the provisions of the campaign finance law are generally triggered once a question is "on the ballot." See IB-90-02. The campaign finance law does not require disclosure of expenditures made solely to affect the deliberations on a

² "Even a truly objective flyer including a fair and impartial summary of a ballot question and arguments by proponents and opponents may not be distributed to voters or a class of voters absent statutory authorization." See Joint OCPF and Secretary of State Memorandum dated January 14, 1994, a copy of which is enclosed, for information.

warrant article at town meeting. Once a determination is made by the appropriate municipal authority to place a question on the town election ballot, however, any contributions or expenditures made thereafter for the purpose of promoting or opposing the question should be made to a duly organized ballot question committee in accordance with M.G.L. c. 55.

Although the question of whether the selectmen or other authority has decided to put a matter on the ballot is a helpful reference point, financial activity prior to the decision to place a question on the ballot may be subject to the campaign finance law. For example, if a group raises funds to urge voters to support or oppose a potential question on a ballot, such activity would be subject to the campaign finance law, even if the selectmen eventually decide not to place a matter on the ballot.

The campaign finance law does not draw a distinction between binding and advisory questions and expenditures to affect either type of question are subject to the law.

3. If so, what specifically would the Town Meeting Study Committee or any other town agency, or any members of such agency as individuals, be prohibited from doing? What actions by town agencies, or by their members individually, would be allowed in regard to these ballot questions?

Members of the Committee or other town officials, with or without the aid of their staff, may take any of the following actions, if within the scope of their official responsibilities: (1) write a letter to the press or prepare a press release containing the members' response to a press inquiry with a request that the letter or press release be published; (2) respond to individual press or public inquiries; (3) assign a staff member to analyze a question if the question relates to a matter of public policy within the range of the Board's responsibilities; or (4) vote, as a Committee, on a resolution regarding a ballot question which may, if consistent with town practice, be posted on the town hall's bulletin board. However, public funds could not be used to distribute the resolution to voters, since such distribution would not be within the scope of the Committee's official responsibilities. See IP-92-02 (a copy is enclosed, for information).

Members of the Committee may not do what ballot question committees are established by the campaign finance law to do. For example, they may not, while at a hearing or Committee meeting, attempt to raise funds to influence the outcome of a ballot question. Similarly, selectmen may not use a town's public resources to distribute advocacy or even "informational" newsletters regarding the ballot questions.

4. If all legal requirements were fulfilled to allow the Town of Concord to place all or some town meeting warrant articles on a ballot to be voted at each of the town's polling places subsequent to and as part of town meeting, would town officials, boards, committees and commissions be prohibited from using public resources to explain the content of such warrant articles to the public?

Yes. The office has consistently stated that questions debated and voted on only at town meeting are not subject to the campaign finance law, since they are not "questions submitted to voters," as that phrase is used in the campaign finance law. See AO-89-05.

The campaign finance law would, however, prohibit the expenditure of public resources to distribute information regarding a ballot question which also may be the subject of a town meeting warrant article.

5. If so, at what point in time would such a prohibition go into effect?

As noted in response to your second question, once a determination is made by the appropriate municipal authority to place a question on the ballot, any contributions or expenditures made thereafter for the purpose of promoting or opposing the question are subject to the provisions of M.G.L. c. 55. In addition, such expenditures could not be made, even before such determination is made, if the purpose of making the expenditures is to urge voters to support or oppose a potential question on a ballot.

This opinion has been rendered solely on the basis of representations made in your letter, and solely in the context of M.G.L. c. 55.

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/cp
Enclosures