



THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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MICHAEL J. SULLIVAN  
DIRECTOR

December 5, 1995  
AO-95-39

Joseph V. Maruca, Esq.  
Sykes and Cole  
420 South Street  
P.O. Box 1358  
Hyannis, MA 02601

Re: Application of M.G.L. c. 55, s. 15 to persons participating  
in federal election

Dear Mr. Maruca:

This letter is in response to your November 7, 1995  
request for an advisory opinion.

Question:

May a "person in the service" of the commonwealth, or of  
any subdivision of the commonwealth, serve as treasurer of a  
political committee organized to support a candidate for  
federal office in Massachusetts?

Answer:

Technically, yes. As a practical matter, however, being a  
"person in the service" would appear to preclude acting in the  
capacity of treasurer of such a political committee.

Facts:

In advisory opinion AO-93-24 we advised that as a  
volunteer firefighter, you are a "person in the service" of a  
town or other subdivision of the commonwealth. Because of  
that status, we advised against your serving as treasurer of a  
political committee organized on behalf of a candidate for  
state or local office. You have now asked if the same concerns  
underlying your participation in political activity relating to  
state or local elections would also exist in connection with  
your involvement in a federal campaign in Massachusetts.

Discussion:

Section 15 of M.G.L. c. 55, the campaign finance law,  
states that "persons in the service of the commonwealth or of  
any county, city or town" may not "give or deliver to an  
officer, clerk or [other] person in said service, . . . any  
money or other valuable thing on account of, or to be applied  
to, the promotion of any political object whatever."

Regardless of whether a political committee is organized to support a federal, state, or local candidate, funds collected by the treasurer of the committee would be collected to promote a "political object." Section 15 does not make a distinction between federal and state elections. Therefore, absent preemption of section 15 by the Federal Elections Campaign Act ("the Act"), this office must give the same advice to persons who would be treasurers of political committees organized to support federal candidates that it would give to persons who would be treasurers of state candidate committees.

The Federal Election Commission ("the FEC") has analyzed the potential preemption of section 13 by the Act and has stated that the Congressional intent underlying the Act "was that the Act's regulatory scheme should not extend into the area of state laws regulating the political activities of state and local employees." See FEC Advisory Opinion 1989-27. In FEC Advisory Opinion 1989-27, the FEC concluded that the prohibition in the first part of section 13, against the solicitation or receipt of political contributions by public employees, was not preempted since that part of section 13 only restricts activities of such employees.

Similarly, section 15 would not be preempted by the Act. Like the first part of section 13, section 15 restricts the activities of state and local employees. It does not regulate the source of campaign funds for federal office or any other matter within the scope of the Act. Therefore, since you are a "person in the service," you should not serve as a treasurer of a political committee organized to support a federal candidate since if you were to serve as treasurer, any other person "in the service" would be prohibited from giving any contributions to the committee. In other words, an entire class of contributors (persons in the service) would not be able to financially support the candidate. See OCPF AO-94-23. Only if a committee adopts and applies a contribution policy which prohibits receipt of contributions by other "persons in the service" (a measure which would be very difficult to adopt and comply with) could the committee have a treasurer who is a "person in the service."

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 contact the office if you have any additional questions.

Sincerely,



Michael J. Sullivan  
Director