

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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MICHAEL J. SULLIVAN
DIRECTOR

August 25, 1995
AO-95-31

Thomas F. Gibson, Esq.
2400 Massachusetts Avenue
Cambridge, MA 02140

Re: Application of Campaign Finance Law to Elected Members of
Public Employee Retirement Boards

Dear Mr. Gibson:

This letter is in response to your August 8, 1995 request for an advisory opinion regarding the application of the campaign finance law to the persons seeking election to the Middlesex County Retirement Board, as well as other public employee retirement boards.

You have stated that you are counsel to the Middlesex County Retirement Board and other retirement boards in the commonwealth. You have also stated that M.G.L. c. 32, s. 20 provides for the administration of the 106 retirement systems in the commonwealth. The board of every system has one member who is elected periodically by the active and retired members of that particular system. Up until this year, service as a board member was uncompensated.

Section 53 of the Fiscal 1996 State Budget added subdivision (6) to M.G.L. c. 32, s. 20, and provides that Board members may be compensated up to \$3,000 annually, subject to acceptance of that section. As a result, you expect that retirement systems will see spirited contests for the elected member's seat, involving mailings, advertisements, receptions, and other campaign activity. Some candidates for the position are contemplating "fund raisers" to defer the costs of such activities.

You have asked if the campaign finance law, M.G.L. c. 55, would apply to these elections.

In an advisory opinion recently issued by this office, we stated that a person seeking election to the retirement board is not a "candidate" within the context of the campaign finance law, and a political action committee's financial support of an individual seeking membership on a retirement board is not within the scope of the campaign finance law. Therefore, we concluded that a PAC could not make expenditures or contributions to benefit such a person. See AO-95-10 (a copy is enclosed, for information).

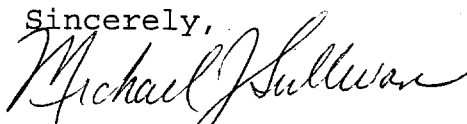
A "candidate" is defined as "any individual who seeks nomination or election to public office." See M.G.L. c. 55, s. 1 (emphasis added). As we noted in AO-95-10, although a retirement board election may involve "politics," it is not a part of the "political system" regulated by this office.

Moreover, any solicitation involved in seeking election to a retirement board would not be considered "political" within the context of the campaign finance law. Although section 13 of chapter 55 prohibits solicitation by public employees of contributions "for any political purpose whatever," the phrase was not intended to prohibit public employees from fundraising in connection with elections to public retirement system boards, or in connection with elections other than federal, state, city, town, county or district elections.¹ See interpretive bulletin IB-92-01 (solicitation by a public employee for a civic organization is not "political" solicitation prohibited by section 13). See also AO-87-06 (public employee may solicit funds for a Massachusetts Commission Against Discrimination advisory council created to help individuals file complaints and provide education and outreach services).

In conclusion, the campaign finance law does not regulate any aspect of an election for public retirement system boards.

This opinion is solely in the context of M.G.L. c. 55 and is based solely on the representations made in your letter. Should you have additional questions, please do not hesitate to contact this office.

Sincerely,



Michael J. Sullivan
Director

MJS/cp
Enclosure

¹ It should be noted, however, that solicitation by public employees for non-political (as well as political) purposes may raise concerns under the conflict-of-interest law. See M.G.L. c. 268A, s. 23(b)(2). Questions regarding non-political solicitation should be directed to the State Ethics Commission at 727-0060.