



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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MARY F. MCTIGUE
DIRECTOR

December 30, 1991
AO-91-30

Stephen Paul Rahavy, Esq.
9 Oliver Street - 8th Floor
Boston, MA 02109-4900

Re: Charter Revision Campaign

Dear Mr. Rahavy:

This letter is in response to your November 18, 1991, letter requesting an advisory opinion regarding a charter revision campaign in the Town of Dedham.

You have stated that you are a Selectman in the Town of Dedham and wish to undertake an active and visible position encouraging the residents of Dedham to support efforts to revise the town charter. The first step will be collecting approximately 2,500 registered voter signatures.

You have asked if you, as a town official, or other members of the Board of Selectmen may actively and openly seek the support and endorsement of residents in promoting the charter revision process.

You have further stated that you do not foresee the expenditure of any public funds for this purpose nor would regular town employees be engaged in the activity while on "town time," so-called. Finally, you have stated that you believe a public forum is probably the best and most appropriate place to initiate and promote the undertaking. You also recognize the need to provide "equal access" to those individuals or groups opposing the charter revision.

Underlying your question and comments are a number of issues which are generally addressed in a recent Interpretative Bulletin issued by this Office, OCPF-IB-91-01, a copy of which is enclosed for your information. I will highlight a few areas from that document in this opinion.

First, in Anderson v. City of Boston, 376 Mass. 178, 380 N.E. 2d 628 (1978), the Supreme Judicial Court concluded that a municipality has no authority to use any "appropriated funds,

including the services of any employees paid from funds appropriated for other purposes, for the purpose of influencing [a ballot question]." Anderson, at 198. This prohibition extended to the use of telephones, printed materials and facilities. In the opinion of this Office, the Anderson prohibition is a very broad one and would include personnel, paper, stationery and other supplies; offices, meeting rooms and other facilities; copiers, computers, telephones, fax machines; automobiles and other equipment purchased or maintained by the government. In short, no municipal resource may be utilized by any person (including a public employee, whether during work hours or otherwise) in order to promote or oppose a ballot question.¹

For example, as a Selectman or acting on behalf of the Board of Selectmen, you may not authorize the use of municipal funds to prepare, print and distribute materials to voters or a class of voters designed to encourage such voters to sign the charter revision petition or to otherwise promote the charter revision campaign. I note, in particular, AO-90-01 which prohibited the gathering of signatures in town offices by the collector of taxes relative to a town ballot question.

Second, as you have noted, providing equal representation and access to all individuals or groups working for or against a ballot question makes possible the use of some government resources. For example, this Office has advised that areas within public buildings which are accessible to the public may be used by the opponents and the proponents of a ballot question provided each side is given equal representation and access to such areas. Similarly, the Office has advised that proponents and opponents may be offered the use of certain public services if each side is provided the same opportunity. For example, in AO-88-27 it was concluded that a city may offer mailing labels to candidates if all candidates are given the same opportunity and the purchase price reflected the city's cost. See also AO-89-28 (candidates may use city council chamber to announce campaign if all candidates are given same opportunity and reimburse city for out-of-pocket costs) and AO-90-02 (public, but not private, areas within public buildings may be used by opponents and

1. It is my understanding that a charter revision campaign is being undertaken pursuant to Article LXXXIX of the Amendments to the Constitution and M.G.L. c.43B. These procedures include a signature drive (See M.G.L. c.43B, ss. 3 and 4) to place a question regarding the establishment of a charter commission on the local ballot. It is the opinion of this Office that the "act of origination" in this case would occur with the beginning of the signature drive effort and, therefore, that expenditures or contributions to promote, oppose or otherwise influence the success of the signature drive or the ballot question made by a governmental unit after the signature drive began would be a misuse of public funds or resources. See OCPF-IB-91-01 at page 6.

proponents of initiative petition provided equal access and opportunity is given). Therefore, provided the Town of Dedham makes the same space available for the proponents and opponents of various ballot questions, it would be permissible for you to hold a public forum in a public area of the town hall.

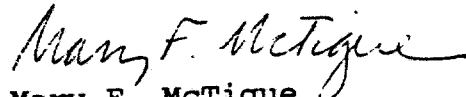
Third, the provisions of the campaign finance laws provide "that the Legislature have the authority to determine what, if any, material will be disseminated on a referendum proposal." Anderson, at 195. The statute and the Court's prohibition include the dissemination of "advocacy" material which expressly urges a particular vote on a ballot question to voters or any class of voters. The distribution of so-called "informational" material to such voters is also prohibited. See Elections Division Memorandum, July 26, 1991, and the analysis and material cited therein. To date, only two municipalities (Cambridge and Newton) have been authorized by the Legislature to distribute informational material to voters.

It is also important to be aware that certain aspects of the conduct of public employees relative to soliciting and receiving funds is strictly regulated. For general guidance on these matters as well as organizing a political committee, I refer you to Sections II and III of OCPF-IB-91-01 as well as two Office publications, "A Guide to Political Activity for State, County and Municipal Employees" and "Campaign Finance Guide for Ballot Question Committees."

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

Please do not hesitate to contact this Office if you should have any additional questions.

Very truly yours,



Mary F. McTigue
Director

Enclosures