



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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MARY F. MCTIGUE
DIRECTOR

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AO-90-24

Michael F. Natola, Esquire
85 Nahant Street
Lynn, Massachusetts 01902

Dear Mr. Natola:

This letter is in response to your request for an advisory opinion concerning the application of the provisions of M.G.L. c.55 to certain proposed activities of the Town of Carlisle Finance Committee (the "Finance Committee").

You have stated that you are a member of the Finance Committee and that this spring, at a public hearing concerning an override to Proposition 2 1/2, the Finance Committee voted to recommend to the voters of the Town a "yes" vote on a Proposition 2 1/2 ballot question. Additionally, in the Town Warrant book, paid for at public expense, the Finance Committee again recommended a "yes" vote on the override question. You have further stated that the budget process for fiscal year 1992 will soon commence, and it is the present intention of the Finance Committee to continue to make such recommendations in the future. You have asked for advice concerning this future activity.

We have addressed the concerns set forth in your letter by posing a series of questions followed by answers. Please note that our responses are directed only to future activity which may be undertaken by the Finance Committee and its members, and offer no counsel as to actions the Committee and its members may have taken prior to issuance of this opinion.

1. Would a vote taken at a public meeting of the Finance Committee to determine whether or not the Committee should recommend an override to Proposition 2 1/2 be considered to have been made in order to influence or affect the vote on a question submitted to the voters of the commonwealth and therefore subject to the provisions of M.G.L. c.55?

Section 1 of M.G.L. c.55 refers to the "purpose of

opposing or promoting a charter change, referendum question, constitutional amendment, or other question submitted to the voters" (see definitions of "expenditure," "contribution," and "political committee" of section 1 of M.G.L. c.55). Section 22A of M.G.L. c.55, which details the reporting requirements for governmental monies spent on ballot questions, speaks to the purpose of "influenc[ing] or affect[ing] the vote on any question submitted to the voters." In this context, it is the opinion of this office that a vote taken by a governmental body on whether such body should oppose or promote a "question submitted to voters" is not activity encompassed by the campaign finance law. It should be noted that activity subsequent to and as a result of such vote may well be subject to the provisions of M.G.L. c.55, however.

2. Would a recommendation by the Finance Committee for a "yes" vote on the override which is contained in the Town Warrant book, paid for at public expense, be subject to the provisions of M.G.L. c.55?

It is the opinion of this office that an expenditure to pay for the Town Warrant book which contains a recommendation for a "yes" vote on the ballot would be an expenditure for the purpose of influencing or affecting the vote on a question submitted to the voters and thus subject to the provisions of M.G.L. c.55.

3. What provisions of M.G.L. c.55 would be applicable to such a recommendation by the Finance Committee?

Section 22A of M.G.L. c.55 states:

The treasurer of any city, town, or other governmental unit which has given, paid, expended or contributed, or promised to give, pay, expend or contribute any money or any valuable thing in order to influence or affect the vote on any question submitted to the voters of the commonwealth shall file reports with the director setting forth the amount or value of every gift, payment, expenditure or contribution or promise to give, pay, expend or contribute, together with the date, purpose, and full name and address of the person to whom it was made.

The treasurer of any city, town, or other governmental unit which has given, paid, expended or contributed, or promised to give, pay, expend or contribute any money or any valuable thing in order to influence or affect the vote on any other question submitted to the voters of any city or town or any part of any city or town, shall file reports with the clerk of such city or town setting forth the amount of value of every gift, payment, expenditure or contribution or promise to give, pay, expend or

contribute, together with the date, purpose, and full name and address of the person to whom it was made.

It is the opinion of this office, therefore, that if the Finance Committee expends municipal funds or uses municipal resources in order to make a recommendation on a question submitted to the voters, the treasurer of the Committee or the Town, as the case may be, must file a campaign finance report (Form CPF M22A) with the Town Clerk.

4. How does the "Anderson" case pertain to the proposed activities of the Finance Committee?

In Anderson v. City of Boston, 376 Mass. 178, the Supreme Judicial Court addressed the question of whether municipalities have the authority to appropriate and expend funds for the purpose of engaging in any activity designed to influence the results of a referendum question without specific statutory authority to so act.

The Court concluded that "the appropriation of funds by a municipality for the purpose of influencing the vote on a . . . referendum question is 'inconsistent with . . . laws enacted by the general court.' . . . [C]omprehensive legislation regulating election financing manifests an intention to bar municipalities from engaging in the expenditure of funds to influence election results. . . This comprehensive legislation requires the reasonable inference that the Legislature 'intended to preclude the exercise of any local power or function on the same subject because otherwise the legislative purpose of that statute would be frustrated.'" Anderson at 185 (citations omitted).

The Court summarized its findings by stating

"[w]e interpret G.L. c.55 as intended to reach all political fund raising and expenditures within the Commonwealth. The absence of any reference to municipal corporations is significant, not as an indication that municipal action to influence election results was intended to be exempt from regulation, but rather as an indication that the Legislature did not even contemplate such municipal action could occur . . . If the Legislature had expected that municipalities would engage in such activities or intended that they could, G.L. c.55 would have regulated those activities as well. We thus construe G.L. c.55 as preempting any right which a municipality might otherwise have to appropriate funds for the purpose of influencing the result on a referendum question to be submitted to the people at a[n]. . . election. Our conclusion that municipalities are barred from political activities of the character involved here is strengthened by other provisions of G.L. c.55 . . . Even if these restrictions should not be construed as

affecting municipal appropriations, they demonstrate a general legislative intent to keep political fund raising and disbursing out the hands of nonelective public employees and out of city and town halls." Id at 186-7.

It is the opinion of this office, based on the Court's decision in Anderson, that the expenditure of any appropriated monies by a municipality for the purpose of influencing the result on a referendum question would be a violation of the provisions of M.G.L. c.55.

5. What are the obligations of town finance committees under section 16 of M.G.L. c.39?

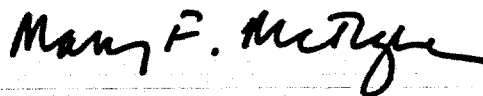
This office cannot offer you advice pertaining to the obligations of town finance committees under section 16 of M.G.L. c.39. We suggest that you contact the Division of Local Services, Department of Revenue for further information in this area.

With respect to your contention that M.G.L. c.39 predates and thus in some manner overrules the intent of M.G.L. c.55, we reference the Supreme Judicial Court's finding (cited above) that if the Legislature had expected municipalities, including any finance committee thereof, to become involved in influencing election results, M.G.L. c.55 would have regulated those activities as well.

This opinion is based solely on the representations contained in your letter and has been rendered solely in the context of the provisions of M.G.L. c.55 and offers no advice as to other statutes.

Should you have additional questions, please do not hesitate to contact this office.

Very truly yours,



Mary F. McTigue
Director