

The Commonwealth of Massachusetts

Office of
Campaign & Political Finance

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Dennis J. Duffin
Director

November 3, 1982

AO-1982-22

Mrs. Miriam R. Nelen
Springfield School Committee
19 Eton Street
Springfield, MA 01108

Dear Mrs. Nelen:

Thank you for your letter of October 14, 1982. M.G.L. c. 55, Section 3 authorizes the Director to respond to requests for advice with respect to that chapter.

You have requested my opinion as to the following questions.

1. Can taxpayers money be used for an advocacy position in a special election campaign?
2. Can city employees participate in a special election campaign on city time?

In 1978, the Supreme Judicial Court of Massachusetts decided the case of Anderson v. City of Boston, 380 N.E. 2nd 628 (1978), app. granted 99 S. Ct. 50, stay denied, 99 S. Ct. 346, appeal dismissed, 99 S. Ct. 822 (1978).

This case concerned the legality of certain actions contemplated by the City of Boston in support of a referendum proposal placed on the November, 1978 general election ballot. The court held that the city did not have the authority to appropriate funds to be expended to influence the result on a question submitted to the voters. In so holding, the court stated, "We reach this result because comprehensive legislation, enacted after the adoption of the Home Rule Amendment, regulating election financing manifests an intention to bar municipalities from engaging in the expenditure of funds to influence election results. G.L. c. 55, as appearing in St. 1975, c. 151, section 1. 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."

The court further stated that "We interpret G.L. c. 55 as intended to reach all political fundraising 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


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intended to be exempt from regulation, but rather as an indication, that the legislation did not even contemplate such municipal action could occur." In addition, Section 22A of c. 55 specifically provides that "Nothing contained herein shall be construed as authorizing the expenditures of public monies for political purposes." Therefore, in answer to your first question, a municipality may not appropriate funds to expend taxpayers money to be used for an advocacy position in a special election campaign.

G.L. c. 55, section 13 states in part, "No person employed for compensation, other than an elected officer, by the commonwealth or any county, city or town shall directly or indirectly solicit or receive any gift, payment, contribution, assessment, subscription or promise of money or other thing of value for the political campaign purposes of any candidate for public office or of any political committee, or for any political purpose whatever, but this section shall not prevent such persons from being members of political organizations or committees." Section 14 states, in part "No person shall in any building or part thereof occupied for state county or municipal purposes demand, solicit or receive any payment or gift or money or other thing of value for the purposes set forth in section thirteen." And Section 16 states, in part "No person in the public service shall, for that reason, be under obligation to contribute to any political fund, or to render any political service, and shall not be removed or otherwise prejudiced for refusing to do so." In Anderson v. City of Boston, as cited above, the court also dealt with the extent to which non-elective public employees could participate in campaign finance activities. It noted that sections 13 and 14 of c. 55 "demonstrated a general legislative intent to keep political fundraising and disbursing out of the hands of non-elective public employees and city and town halls."

In light of the above, it is clear that c. 55 does limit the extent to which city employees may, participate, and be compelled to participate in political campaign activity. However, I would also advise you that the State Ethics Commission be consulted on this question.

If I can be of any further assistance, please do not hesitate to contact me.

Very truly yours,

Dennis J. Duffin
Director

DJD/rep