



Commonwealth
of Massachusetts

OCPF Online

www.mass.gov/ocpf

Office of Campaign and Political Finance

One Ashburton Place, Room 411

Boston, MA 02108

Advisory Opinion

October 7, 2003

AO-03-05

Katherine M. Clark, Esq.
64 Prospect Street
Melrose, MA 02176

Re: Political Fundraising

Dear Ms. Clark:

This letter is in response to your September 16, 2003, request for an advisory opinion as to whether you will continue to be subject to M.G.L. c. 55, § 13, which prohibits appointed public employees from soliciting or receiving political contributions, after you leave your full-time position as General Counsel for the Office of Child Care Services (“OCCS”) on October 1.

Although you are leaving your current position, you have stated that you intend to “contract with OCCS as a consultant.” You have stated that this continued involvement with OCCS is for the limited purpose of finishing up a couple of cases in which you currently represent the agency. After you cease working full-time, you will no longer have a set work schedule or an office at OCCS, and you will no longer supervise other employees. You will be paid on an hourly basis by OCCS with no bonuses or step increases, and you will not receive benefits or pay into your pension.

After you resign, you will not be working for a law firm and you do not intend to formally establish a business, such as a professional corporation or sole proprietorship, to provide legal services to others. OCCS will be your only client. It is not clear at this time whether OCCS will continue to withhold income tax from your paychecks, or whether you will be responsible for paying your own taxes.

You have indicated that you would like to be able to engage in political fundraising activity after your resignation.

QUESTION

Will the restrictions of M.G.L. c. 55, § 13 apply to you after you have resigned your full-time position with OCCS but continue to work for the agency as a consultant as described above?

ANSWER

Yes. As long as you continue to be “employed for compensation” by OCCS, you may not solicit or receive political contributions.

The campaign finance law prohibits persons, other than elected officials, who are “employed for compensation ... by the commonwealth” from directly or indirectly soliciting or receiving any contribution or other thing of value for the political campaign purposes of any candidate for state or local office in Massachusetts. See M.G.L. c. 55, § 13. The office has consistently interpreted the term “employed for compensation” to include part-time public employees. See OCPF’s Interpretive Bulletin IB-92-01, in which the office stated that “persons employed for compensation” include both full-time and part-time employees who receive any amount of compensation. The prohibition applies to such persons at all times, during working and non-working hours.

On the other hand, Section 13 does not apply to “independent contractors.” See AO-98-05. Whether an attorney representing a government agency is considered an independent contractor for the purposes of the campaign finance law depends on the nature of the relationship between the attorney and the governmental entity for which he or she provides services. When making this determination in the past, this office has looked at some of the following factors: (1) whether the attorney represents the government entity through a partnership or professional corporation; (2) whether fees are paid directly to the attorney or to a partnership or professional corporation; (3) whether the attorney maintains and/or provides his or her own office and supplies, including staff; (4) whether the attorney has other non-governmental clients; and (5) the percentage of the attorney’s practice or caseload devoted to the representation of the public entity. See AO-82-01 (assistant district attorney was subject to M.G.L. c. 55, § 13); AO-88-19 and AO-01-04 (sole practitioners with private law practices were independent contractors), and AO-91-03 (a partner of a law firm representing government clients was an independent contractor).

In this instance, after resigning your full-time position, you will continue to represent OCCS in a limited number of cases that arose while you were General Counsel. The agency will pay you personally for services. You will not be working as a member of a law firm and will not be establishing or joining a private legal practice. You anticipate that OCCS will be your only client during this time. Although the hours you intend to work will be flexible, you will have an ongoing relationship with OCCS until the relevant cases are resolved.

These facts, particularly given your employment history with OCCS, suggest that you will continue to be “employed for compensation” by OCCS after October 1, albeit in a reduced capacity, instead of providing services as an independent contractor. Consequently, you *may not* solicit or receive political contributions until your representation of OCCS has ended and you are not otherwise “employed for compensation” by another government entity.

This opinion is issued solely within the context of the Massachusetts campaign finance law and is based on the representations made in your letter and to OCPF's staff. Please contact us if you have further questions.

Sincerely,

A handwritten signature in black ink that reads "Michael J. Sullivan". The signature is written in a cursive style and is positioned to the left of a vertical line.

Michael J. Sullivan
Director

MJS:bp