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Office of Campaign and Political Finance

One Ashburton Place, Room 411

Boston, MA 02108

Advisory Opinion

February 12, 2002

AO-02-07

William P. Murray
P.O. Box 219
Boston, MA 02133

Re: Political fundraising by public employee on leave of absence

Dear Mr. Murray:

This letter is in response to your January 11, 2002 request for an advisory opinion.

As an administrative employee of the University of Massachusetts, you recently received a list of voluntary “cost saving options” available to members of the professional staff bargaining unit (referred to in this opinion as “employees”) from the University of Massachusetts Division of Human Resources. The options, described in more detail in your letter and summarized below, are offered to save payroll costs. They include voluntary (1) reduction in force, (2) change from a 52-hour week contract to a 43-hour week contract, (3) reduced workweek, (4) unpaid leave of absence, and (5) intermittent time off without pay.

QUESTION

To what extent does the campaign finance law restrict the range of permissible political activity of an employee selecting one of the cost savings options?

ANSWER

It depends on which option is selected. A person who leaves employment pursuant to a reduction in force would not remain subject to the prohibition after leaving employment, even if the Commonwealth pays for part of the cost of continued health and dental benefits for a period of time after the person leaves work.

An employee who agrees to a change from a 52-hour week contract to a 43-hour week contract, a reduced workweek, or intermittent time off without pay, would continue to be prohibited from soliciting or receiving political contributions after making the change.

Finally, if an employee who takes an unpaid leave of absence receives benefits paid in part by the Commonwealth during the leave, the employee would be prohibited from political fundraising during the leave.

DISCUSSION

Section 13 of M.G.L. c. 55, the campaign finance law, prohibits direct or indirect solicitation or receipt of political contributions by any “person employed for compensation, other than an elected officer” by the commonwealth or any of its subdivisions. The prohibition against “indirect” solicitation means that public employees should “refrain from any activity which indicates support for the fundraising efforts of a candidate or political committee.” See IB-92-01. For example, it means that an appointed public employee may not serve as a treasurer of a political committee or identify persons to be solicited.

Section 13, as well as other provisions of the campaign finance law, including Sections 14-17¹, demonstrates a “general legislative intent to keep political fund raising and disbursing out of the hands of nonelective public employees . . .” See Anderson v. City of Boston, 376 Mass. 178, 186-187 (1979), appeal dismissed, 439 U.S. 1069 (1979). These provisions were designed to prevent corruption or the appearance of corruption of public employees within the context of political fundraising. See AO-92-07 (Chairman of Massachusetts Board of Registration in Medicine could not avoid the applicability of Section 13 by foregoing all compensation authorized under for the position, since appearance of possible corruption would still exist).

OPTION 1: VOLUNTARY REDUCTION IN FORCE

An employee may volunteer for reduction in force and file for unemployment compensation. In addition, in exchange for having volunteered, the employee may choose to either receive health insurance and dental benefits for six months following the date of reduction in force, or payment of additional vacation days.

Response: If an employee chooses this option and leaves work pursuant to a reduction in force, he or she may solicit and receive contributions after leaving his position, even if he is receiving additional health insurance or vacation days received in exchange for volunteering. Such a person is no longer “employed,” and therefore is not subject to Section 13.

OPTION 2: FORTY-THREE WEEK WORK YEAR

An employee may propose a change from a 52 week contract to a 43 week contract. If the proposal is approved, the employee will receive a 15% reduction in salary. The new salary will be payable over the 52 week year. The employee and the employer together determine the period(s) of “non-responsibility.”

¹ In particular, Section 14 of the campaign finance law provides that no person, whether public employee or otherwise, shall “in any building occupied for state, county or municipal purposes demand, solicit or receive any payment or gift of money or other thing of value” for political campaign purposes. See M.G.L. c. 55, § 14. The enclosed Campaign Finance Guide: Public Employees, Public Resources and Political Activity discusses Section 14 and other restrictions on political activity by public employees.

Response: A person's status as a public employee is not affected by the fact that the person's employment is part-time. See AO-91-09.² Because under this option an employee's responsibilities to the governmental entity are ongoing, the employee is subject to Section 13 throughout the year, including all periods of "non-responsibility."

OPTION 3: VOLUNTARY REDUCED WORKWEEK

Under this option, an employee may propose a reduced workweek schedule. For purposes of this option, an employee may choose to work a schedule of less than 40 hours but at least 20 hours of work per week. An employee who chooses this option continues to receive his or her current health insurance and dental benefits and tuition waiver eligibility. All other benefits are proportionate to the level of employment after the reduction, for the duration of the reduction.

Response: As previously discussed, a person's status as a public employee is not affected by the fact that the person's employment is part-time. Therefore, a person who chooses this option is subject to the restrictions of Section 13 throughout each week of such employment, even if not working on a particular day or at a particular time.

OPTION 4: VOLUNTARY UNPAID LEAVE OF ABSENCE

An employee may propose taking an unpaid leave of absence for a period of not less than six months. If this option is chosen, the employee has 85% of his or her current health insurance and 100% of his dental premiums paid by the University during the period of leave³, and also retains his or her current University tuition waiver eligibility.

Response: Section 13 does not mean that a public employee must relinquish his or her employment to participate in a political campaign. The office has determined that a public employee who takes an unpaid leave of absence *of at least four months* before a primary election or at any other time other than during the six months before a general or special election, *or a leave of six months before a general or special election*, is not considered "employed for compensation" during the leave of absence. During the leave of absence the employee is not subject to the prohibitions of Section 13. See AO-96-28 and AO-91-24. Such unpaid leave of absence may not include any paid vacation, compensatory or sick time to which a public employee may be entitled. See AO-90-12.

This office has not previously considered whether a public employee must forego employment benefits during an unpaid leave of absence to be exempt from Section 13.⁴

² A person who works only a few specific days during the year, however, is a public employee subject to section 13 only on those days the employee actually works. See AO-95-37 (poll worker who works at most three days a year subject to section 13 only on days she works at the polls).

³ The leave of absence offered as part of the cost reduction options, unlike other leaves of absence taken for personal reasons, allows an employee to receive benefits paid in part by the Commonwealth. These percentages of payment by the University are, according to the University's Labor Relations Administrator, identical to the portions that the University would pay for a person who is employed full time who has not selected a cost reduction option. Generally, however, where a state or local employee takes a leave of absence for personal reasons, the employee must pay 100% of the premiums associated with continued health, dental or other benefits. See M.G.L. c. 32A, § 8 and c. 32B, § 7(b). Therefore, in most instances, a public employee who takes a leave of absence to become involved in political fundraising will pay the premiums for health, dental and other benefits received during the period of leave.

⁴ The office has stated, however, that if the Commonwealth or one of its subdivisions pays a person any amount for services provided in an employment context, even if the amount paid is minimal, the person paid is "employed for compensation,"

A person is still “employed” while on a leave of absence. In our previous opinions we stated that if an employee is not paid during the leave of absence the employee would not be considered employed “*for compensation*” if the period of leave was sufficient in duration. Clearly, however, benefits paid in substantial part by the Commonwealth are a form of compensation. Therefore, under this option, an employee would remain employed for compensation even if salary is not received, and could not be involved in political fundraising while on such leave.

OPTION 5: INTERMITTENT TIME OFF WITHOUT PAY

An employee may propose taking intermittent days off without pay. In making such proposal, the employee will be required to specify the number of days to be taken over a specific period of time. Except where operational needs may dictate otherwise, the employee is entitled to take the days off without pay at times of his or her choice, provided reasonable advance notice is given to his or her department head.

Following approval of the proposal, days may be added by mutual agreement between the employee and the University administration. The total number of days off under this option may not exceed 45 within the twelve-month period following approval or any subsequent twelve-month period. The employee continues to receive all benefits.

Response: As previously discussed, a person’s status as a public employee is not affected by the fact that the person’s employment is part-time. Therefore, a person who chooses this option remains subject to the restrictions of Section 13, even if not working on a particular day.

This opinion is issued within the context of the Massachusetts campaign finance law and is based on the facts contained in your letter and the attached summary of cost reduction options, and your conversations with OCPF staff. Statutes other than the campaign finance law, including the conflict of interest law, M.G.L. c. 268A, may be applicable to your question and may differently define the obligations of persons who exercise one of the cost reduction options. You may wish to contact the State Ethics Commission at 617-727-0060 for further guidance.

Please contact us if you have further questions regarding the campaign finance law.

Sincerely,

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

Michael J. Sullivan
Director

Enclosure
MJS:gb

i.e., there is no “de minimus” exception. See AO-90-05. Persons are not considered employed for compensation, however, if they are merely reimbursed for actual expenses incurred or on a “per diem” basis if the per diem rate reasonably reflects actual expenses and can be substantiated. See AO-91-09.