



Commonwealth
of Massachusetts

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Office of Campaign and Political Finance

One Ashburton Place, Room 411

Boston, MA 02108

Advisory Opinion

January 7, 2002

AO-02-01

Daniel F. Graves
Callahan, Curtiss, Carey & Gates
P.O. Box 509
Greenfield, MA 01302

Re: Campaign activities by candidate who is public employee

Dear Mr. Graves:

This letter is in response to your December 12, 2001 request for an advisory opinion.

You have asked a number of questions concerning a public employee who is also a candidate for the state legislature. The candidate is a probation officer employed by the state who works in a community corrections center. He has no involvement in pending cases and is not a supervising probation officer. Instead, he is responsible for setting up treatment plans, e.g., substance abuse or anger management, after defendants have been ordered to receive treatment and be monitored by the community corrections center as a condition of probation. He reports to the supervising probation officer and, unlike most probation officers, does not interact with defense attorneys.

Your questions can be answered by reference to section 13 of M.G.L. c. 55, the campaign finance law, which prohibits appointed public employees from directly or indirectly soliciting or receiving campaign funds on behalf of a candidate, political committee or for any other political purpose. See IB-92-01 (a copy is enclosed, for information).

QUESTIONS

(1) May the candidate attend an event held by the candidate's committee if funds are not solicited or received at the event?

Answer: Yes. A public employee-candidate may attend functions on behalf of his candidacy if he does not do so during working hours. See AO-92-03.

(2) May the candidate attend a fundraising event held by the committee if the candidate does not personally solicit or receive funds?

Answer: Yes. Section 13 does not prevent a public employee from attending or speaking at a fundraising event, but the public employee may not solicit funds at the event. See AO-90-28, in which the office stated that although a public employee may not *host* a fundraising event, he can attend such an event, speak at the event, or introduce the candidate at the event.

(3) Does the answer to question (2) change if the candidate speaks at the event on issues that do not relate to fundraising?

Answer: No. A public employee may speak at a fundraiser about matters other than political fundraising, even if someone else thereafter discusses fundraising. The candidate must be careful to ensure that he does not directly or indirectly solicit contributions. See AO-86-10.

(4) May the committee hold a “meet the candidate event” and in advertising the event encourage voluntary donations?

Answer: Yes. If funds are received, even if not required for admittance, the event would be a fundraiser and funds received would be “contributions” subject to the campaign finance law. The candidate, like any other public employee, may not solicit or receive contributions in connection with such events.

(5) May the committee solicit or receive contributions from a defense attorney who was involved in a case before the defendant was placed on probation?

Answer: No. The second sentence of section 13 states that a political committee organized on behalf of an appointed public employee such as a probation officer may not solicit or receive contributions from:

any person or combination of persons if [the probation officer] knows or has reason to know that the person or combination of persons has an interest in any particular matter in which [the probation officer] participates or has participated in the course of such employment or which is the subject of his official responsibility.

The campaign finance law does not define the terms “participate,” “official responsibility,” or “interest.” The second sentence of section 13 is, however, a conflict-of-interest provision and identical terms are used in M.G.L. c. 268A. In that statute, “official responsibility” is defined, in part, as “the direct administrative or operating authority . . . to approve, disapprove or otherwise direct agency action.” Similarly, “participate” means to “participate in agency action or in a particular matter personally and substantially as a[n]. . . employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise.” Chapter 268A (and also chapter 268B) generally narrow the term “interest” by referring to a candidate’s “financial interest” or a governmental agency’s “direct and substantial interest.”

Consistent with the definitions of “participate” and “official responsibility” in chapter 268A, this office has advised that an assistant district attorney and his political committee may not solicit or receive contributions from attorneys and clients who have had matters in which the assistant district attorney

participated. See AO-82-01. See also AO-94-14, which states that a candidate who served as assistant counsel to a state regulatory board may not solicit or receive contributions from persons (or controlling persons of corporate entities) that had matters before the board.

In the absence of words defining or qualifying the term “interest” in the chapter 55 the term should be read according to its plain meaning. The sentencing phase of a proceeding is integrally related to the probation required by the sentence. An attorney who represented a defendant at sentencing when the defendant was placed on probation has “an interest” in the implementation of the sentence. Solicitation or receipt of a contribution from the attorney would therefore not be consistent with section 13.¹

This office appreciates your interest in M.G.L. c. 55, the campaign finance law. The guidance in this letter is limited in scope to that statute and is based on your email and your conversation with OCPF’s General Counsel. I encourage you to contact us in the future if you have further questions regarding any aspect of the campaign finance law.

Please contact us if you have further questions regarding this matter.

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 that extends downwards from the end of the signature.

Michael J. Sullivan
Director

Enclosure
MJS/gb

¹ In addition, an interpretation that would allow the solicitation or receipt of contributions in this context might lead to an appearance of impropriety that would appear to be inconsistent with the intent of the statute.