

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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March 6, 2017
AO-17-01

Sean Tierney
Office of Chairman Kevin G. Honan
Joint Committee on Housing
State House, Room 38
Boston, MA 02133

Re: Fundraising by candidate who is staff member of legislative committee

Dear Mr. Tierney:

This letter is in response to your recent request for an advisory opinion.

You have stated that you are a candidate for Cambridge City Council. You are currently employed by the Massachusetts House of Representatives as Research Director & Legal Counsel for the Joint Committee on Housing, chaired by Representative Kevin G. Honan.

Questions and Answers

You have asked the following questions.

(1) I do not plan to take an unpaid leave of absence. What restrictions will apply to my activities on behalf of my campaign given my continued position as a compensated state employee?

You would be subject to the sections of the campaign finance law that prohibit direct or indirect solicitation or receipt of political contributions. See M.G.L. c. 55, § 13. In addition, you may not use public resources for your campaign.

(2) What restrictions will apply to my campaign committee with respect to fundraising from individuals or entities that may have matters before the Joint Committee on Housing?

The campaign committee would not be allowed to solicit or receive contributions from such individuals or entities.

(3) Assuming there are restrictions identified in response to question (2), what practical steps does the Office of Campaign and Political Finance recommend I take to avoid violating such restrictions?

You should provide your campaign committee with a list of individuals and entities that have matters before the Joint Committee on Housing. The list should be updated frequently.



(4) To what extent may my campaign committee or I reference my current role as committee Research Director & Legal Counsel in campaign literature and/or at campaign events?

You or your campaign committee may reference your employment in campaign literature and at campaign events.

Discussion

As a state employee, you are subject to the provisions of section 13 of the campaign finance law, M.G.L. c. 55.¹ Public employees may run for public office, but may not solicit or receive contributions for their own campaign or for any other political purpose. For this reason, a public employee who intends to raise campaign funds must first organize a political committee to solicit and receive contributions on the employee's behalf. OCPF has posted an instructional video on its website that provides more information on the restrictions that apply to you as a public employee. The prohibition does not mean that you or your committee are prohibited from referencing your employment. Referencing your position, by itself, does not constitute prohibited solicitation of contributions.

The third sentence of section 13, in addition to prohibiting direct or indirect solicitation or receipt of political contributions, also provides, in relevant part, that a committee organized on behalf of a public employee may not solicit or receive contributions from:

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

The campaign finance law does not define the terms "participates" or "official responsibility." Section 13's third sentence, however, is a conflict-of-interest provision and the identical terms are defined by M.G.L. c. 268A. "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." See M.G.L. c. 268A, § 1.

In your position as Research Director & Legal Counsel, it would appear that you participate generally in all matters before the Joint Committee. Therefore, your campaign committee should be provided with a list of individuals and entities that have matters before the Joint Committee, and the list should be updated frequently. The prohibition means that the campaign committee may not solicit contributions from individuals or entities that have matters before the Joint Committee as of the date of solicitation, and may not receive contributions from an individual or entity if there is a matter pending before the Joint Committee as of the date a contribution is received. An individual or entity that once

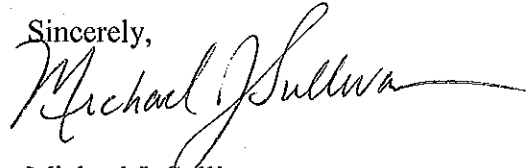
¹ You are also subject to M.G.L. c. 55, §§ 14-17. Note, in particular, that Section 14 prohibits political fundraising in a building occupied for state, county or municipal purposes. In addition, the campaign finance law prohibits the use of public resources for political purposes. See *Anderson v. City of Boston*, 376 Mass. 178 (1978).

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had a matter before the Committee, concluded prior to the date of the solicitation, or which may at some point in the future have a matter before the Joint Committee, may contribute.

This opinion is issued on the basis of your letter and solely within the context of the campaign finance law. I encourage you to contact us in the future if you have further questions regarding any aspect of the statute. You should also contact the State Ethics Commission if you have not already done so, to ensure compliance with the State Conflict of Interest Law.

Sincerely,

A handwritten signature in cursive script that reads "Michael J. Sullivan". The signature is written in black ink and has a long, sweeping horizontal line extending to the right.

Michael J. Sullivan
Director