October 1, 1996
AO-96-28

Cheryl M. Cronin, Esq.
Hoopes & Cronin
99 Summer Street
Boston, MA   02110

Re: Political Fund-Raising by Public Employee
      on Leave of Absence

Dear Ms. Cronin:

This letter is in response to your August 26, 1996 request for an advisory opinion regarding restrictions on fund-raising activities by persons taking a leave of absence from public employment.

As noted in your request, this office has consistently advised that a public employee who takes an unpaid leave of absence for the four months prior to a primary election and the six months prior to a general election would not be, while on leave, subject to the restrictions contained in Section 13 of M.G.L. c. 55.

Question

May an individual take a four month unpaid leave at any other time (i.e., not during the six months preceding an election) and engage in fundraising activities during that time?

Answer

Yes.

Discussion

Section 13 of M.G.L. c. 55 states, in pertinent part:

No person employed for compensation, other than an
elected officer, by the commonwealth . . . 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 . . .

No provision of M.G.L. c. 55, including section 13, mandates that a public employee relinquish his or her

Cheryl M. Cronin, Esq.
October 1, 1996
Page 2

employment with the commonwealth or with a municipality in order to participate in a political campaign. OCPF has issued a number of advisory opinions which have concluded that a public employee who takes an unpaid leave of absence of at least four months before a primary election (or six months before a general election) would not be considered "employed for compensation" by this office. Such an employee would not, therefore, be subject to the prohibitions of section 13 of M.G.L. c. 55 during his or her leave of absence. See AO-91-24 and opinions cited therein. Such unpaid leave of absence may not include any vacation, compensatory or sick time to which a public employee may be entitled. See AO-90-12.

The four/six month rule is based upon two factors. First, a substantial unpaid leave of absence must be required to remove a "public employee" from the constraints of M.G.L. c. 55, s. 13 in order to prevent abuse that short-term leaves could engender. Second, the rule was articulated to coincide approximately with the statutory requirements for the filing of signatures for nominations during the regular election cycle. See M.G.L. c. 53, s. 10. See AO-91-24.

The office has not previously been asked if the rule is applicable to a period other than the period immediately prior to a primary or election. The six month period before the election was determined by reference to c. 53, s. 10 because that statute suggested a reasonable period of time during which public employees might be able to engage in fundraising activities while on a leave of absence. I agree that c. 55, s. 13 does not support a distinction between a four month leave taken before the primary and a four month leave taken at any time before the six month period immediately prior to an election. The rationale for the four month restriction prior to a primary (which is also the six months before a general election) applies just as well to fundraising during a four month period which does not fall within the six months prior to a general election.

This advisory opinion has been rendered solely in the context of M.G.L. c. 55. Other statutes, regulations or policies, including the conflict-of-interest law, M.G.L. c. 268A, and municipal regulations, may be applicable to a public employee taking an uncompensated leave for political fundraising purposes.

Please do not hesitate to contact this office should you have additional questions.

Sincerely,

Michael J. Sullivan
Director

MJS/cp