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INTERPRETIVE BULLETIN

**The Use of Governmental Resources
for Political Purposes**

This office frequently is asked about the extent to which public resources may be used for political purposes, most often whether public resources may be used to distribute information to voters concerning a municipal ballot question. In addition, questions have been asked regarding whether public facilities, especially buildings and other property, may be used by groups supporting or opposing a particular ballot question or candidate.

This Interpretive Bulletin addresses restrictions on the use of governmental resources for political purposes under the campaign finance law, M.G.L. c. 55. It is important to note, however, that a separate statute, the Massachusetts conflict of interest law, M.G.L. c. 268A, also restricts public employees' use of governmental resources. In some cases, the conflict of interest law prohibits activity not addressed by the campaign finance law. Public officials should ensure that their activities comply with both statutes. The conflict of interest law is enforced by the State Ethics Commission, and questions regarding the conflict of interest law should be directed to that office.¹

In general, the campaign finance law prohibits the use of public resources for political purposes, such as public employees engaging in campaign activity during work hours or using their office facilities for such a purpose. For example, a candidate who also works in a public office may not use the office phones or computer to conduct campaign work.

The law prohibits the use of public funds or other public resources to support or oppose a question put to voters, such as the use of public resources to distribute a mailing days before an election. The law does not, however, prohibit the expression of views by public officials concerning ballot questions to the extent such expression is within the scope of their official responsibilities and protected by the First Amendment.

¹ The Ethics Commission has issued Advisory 11-1 "Public Employee Political Activity," which is posted on the Commission's website at <http://www.mass.gov/ethics/education-and-training-resources/educational-materials/advisories/advisory-11-1.html>. The Ethics Commission can be reached at 888-485-4766 or 617-371-9500.



I. Scope of the restriction, in general

In Anderson v. City of Boston, 376 Mass. 178, 187, 380 N.E.2d 628 (1978), appeal dismissed, 439 U.S. 1069 (1979), the Supreme Judicial Court indicated that public resources may generally not be used for political purposes. In that case, the court concluded that the City of Boston could not use public funds to set up an office “for the purpose of collecting and disseminating information about the impact” of a ballot question. The court stated that the campaign finance law is “comprehensive legislation” which “preempt[s] any right which a municipality might otherwise have to appropriate funds for the purpose of influencing” the outcome of a ballot question. 376 Mass. at 185-186.

The court pointed to Section 22A of Chapter 55, which states that “[n]othing contained herein shall be construed as authorizing the expenditures of public monies for political purposes.” The court also stated that:

[T]he Legislature may decide, as it has, that fairness in the election process is best achieved by a direction that political subdivisions of the State maintain a “hands off” policy. It may further decide that the State government and its various subdivisions should not use public funds to instruct the people, the ultimate authority, how they should vote.

376 Mass. at 194-195.

The analysis in Anderson applies to the Commonwealth and its “political subdivisions,” which use taxpayer or rate payer funds. 376 Mass. at 193. Political subdivisions of the commonwealth include all agencies within the state government, and within county, regional, town and city governments. State authorities, e.g., the Massachusetts Port Authority and the Massachusetts Turnpike Authority, and state institutions of higher education are subject to the restrictions articulated in the case. See § 179 of ch. 655 of the Acts of 1989. In addition, the Anderson decision applies to municipal utilities that rely on fees paid by ratepayers. See AO-95-42. Finally, non-profit organizations that are supported by state tax revenues and other public funds may not use such revenues to support or oppose a candidate or a ballot question. See AO-95-41 and AO-96-25.

“Governmental resources” include anything that is paid for by taxpayers, e.g., personnel, paper, stationery and other supplies; offices, meeting rooms and other facilities; copiers, computers, telephones, fax machines; automobiles and other equipment purchased or maintained by the government. A bulk mail permit is also considered a governmental resource.

Chapter 55 was enacted to regulate “**election** financing.” Anderson, 376 Mass. at 185 (emphasis added). The prohibition on the use of governmental resources for political purposes therefore applies to all expenditures made to promote or oppose a matter placed before voters at the polls, such as a ballot question. In municipal elections, the Anderson restriction and other provisions of the campaign finance law are generally triggered once the appropriate municipal authority, i.e., the board of selectmen, city or town council or mayor, decides to place the question on the ballot. See IB-90-02. However, there are cases where the law would apply to activity undertaken before a question is officially placed on the ballot. Funds spent prior to a question being “on the ballot” may also be subject to campaign finance law if the funds are spent to influence the outcome of an anticipated ballot question. Id.

Although it applies to anticipated ballot questions, the prohibition does not extend to expenditures made to discuss policy issues (e.g., the need to renovate aging school buildings), which currently are not the subject of a scheduled or anticipated ballot question, but may at some **undetermined** future point become the subject of a ballot question. In addition, the prohibition does not apply to expenditures concerning public policy issues that are not, and are not expected to be, the subject of an election. An example would be an issue that is on the warrant for a town meeting only, as noted later in this bulletin.

This bulletin deals largely with the publicly funded distribution of information, especially printed matter, as it relates to the Anderson restriction. Such distribution is the most common source of questions and complaints to OCPF. This bulletin does not, however, concern the speech of public officials regarding a ballot question, such as comments supporting or opposing a question or statements made during public meeting. Such comments are generally unrestricted by the campaign finance law. See Interpretive Bulletin IB-92-02, "Activities of Public Officials in Support of or Opposition to Ballot Questions."

II. Distribution of information relating to ballot questions

Public officials often wish to distribute, or assist others in distributing, information relating to ballot questions at public expense. Such distribution is generally not appropriate. It is appropriate only if it is consistent with specific statutes authorizing distribution of information. Most significantly, section 18B of chapter 53 establishes a mechanism for local governmental officials to provide information to voters regarding ballot questions in a manner similar to the "red book" that is distributed prior to state elections by the Secretary of the Commonwealth to provide voters with information regarding state ballot questions.² See M.G.L. c. 54, §§ 53 and 54 (relating to the distribution of the "red book"). Section 18B establishes the timeline for actions that must be taken by local officials if a city or town decides to provide information to voters relating to ballot questions. It specifies that after a governing body of a city or town has decided to distribute voter information in accordance with section 18B, the city or town, if it complies with the timeline and other provisions of the statute, must prepare and distribute informational material, including a brief summary of the ballot question and arguments for and against the question, to voters.³

The general rule, if distribution of information is not undertaken consistent with section 18B, is that governmental resources may *not* be used to distribute voter information commenting on the substance of a ballot question. The prohibition applies whether the material that is distributed advocates for or against a question (it is "advocacy") or simply purports to be objective and factual (it is "informational"). As noted above, Anderson prohibits the distribution of advocacy material. As for informational material, distribution is prohibited unless consistent with section 18B or other statutory authority. If a municipality does not accept section 18B and comply with its provisions, or is not authorized to distribute information in accordance with another statute, the use of public resources to make an unsolicited distribution of information relating to the

² Questions relating to the interpretation of section 18B should be directed to the Secretary of the Commonwealth's Elections Division, which may be reached at (617) 727-2828.

³ In addition, several municipalities have obtained special legislative authority, allowing them to distribute informational material, including Newton (Chapter 274 of the Acts of 1987), Cambridge (Chapter 630 of the Acts of 1989), Sudbury (Chapter 180 of the Acts of 1996), Burlington (Chapter 89 of the Acts of 1998), Dedham (Chapter 238 of the Acts of 2002), Lancaster (Sections 285-288 of Chapter 149 of the Acts of 2004), Yarmouth (Chapter 404 of the Acts of 2006), Shrewsbury (Chapter 427 of the Acts of 2006), Plymouth (Chapter 50 of the Acts of 2008), and Hubbardston (Chapter 370 of the Acts of 2010). Also, at least one other state law allows governmental entities to distribute information to voters regarding ballot questions: M.G.L. c. 43B, § 11, which directs the city council or board of selectmen to distribute the final report of a charter commission to voters.

substance of a ballot question, such as a blanket mailing or other publicly funded dissemination of material, outside of an official meeting, would not comply with Anderson.

Two examples illustrate the circumstances in which the office most often finds that information has been distributed (by municipalities that have not accepted the provisions of section 18B) in violation of Anderson. Both concern the preparation and distribution of information that deals with a ballot question, though the method of distribution varies in each example.

- 1) A board of selectmen uses public funds to prepare and distribute a mailing (or an email) to all town residents concerning an upcoming Proposition 2 ½ override. The mailing either argues for a yes vote or provides arguably “objective” information about the question. If the mailing calls for a particular vote, it is an inappropriate use of public resources and violates Anderson. Even if the mailing simply provides “information” concerning the question, however, and may reflect an effort to be neutral, it violates Anderson, unless distribution takes place in accordance with either section 18B of chapter 53 or other law.
- 2) A public school system prepares and distributes to teachers a flyer similar to the one noted in the first example. While there is no town-wide mailing, public resources are still used: school resources to prepare or copy the flyer, and the time of teachers in distributing it to students. Therefore, school officials should not ask children to take literature (including literature prepared by a parent/teacher organization) regarding the substance of a ballot question home from school to give to parents.⁴ See AO-94-11.

Although the scope of the general rule prohibiting distribution of public resources absent legislative authority is broad, there are several exceptions. As discussed below, public officials may prepare and make available certain information since such activity is consistent with their official responsibilities. Examples of such allowable actions would be preparing material and giving out copies at official meetings or sending it to voters who have requested more information. This type of activity, discussed below and in IB-92-02, is limited in scope and, in general, complies with Anderson.

A. Distribution of information relating to Town Meeting

In addition to consideration by voters at the polls, some ballot questions, such as Proposition 2½ overrides and debt exclusions, also involve review by town meeting or a city or town board in the weeks and months prior to, or shortly after, an election.

The campaign finance law does not regulate expenditures of public funds made for the purpose of lobbying town meeting or city or town boards or for other purposes not designed to influence voters at an election. See AO-93-36 and AO-94-37 (stating that the campaign finance law does not regulate expenditures made primarily to affect the deliberations on a warrant article at town meeting). Municipal officials are not restrained from using public resources to distribute information regarding a warrant article to residents prior to a town meeting, as long as the material is distributed primarily to influence the town meeting.

⁴ This office is sometimes asked about teachers’ discussion of a ballot question, such as an override, in the classroom. Such activity often engenders controversy and is seen as an indirect attempt to influence parents, even if it is undertaken for educational or information purposes. Since there is no explicit prohibition of this activity under the campaign finance law, questions or concerns about such activity should be directed to local school officials or the Massachusetts Department of Education.

Material distributed using public funds prior to a town meeting may not advocate a position on a ballot question. For example, a report summarizing or supporting a warrant article pending before town meeting may not also urge a vote in a subsequent town election.

In addition, because it is not always easy to determine the primary purpose of material distributed before a town meeting and related election, municipal officials *should be careful to avoid any discussion regarding an election* in such material. Even if it does not expressly urge a vote in an election, any discussion regarding an election in a flyer or other document distributed using public resources may raise an inference that the document is being distributed to influence the election.

There are, however, limited circumstances where the mere mention of an election in a document that is distributed using public resources prior to a town meeting would not violate the campaign finance law. For example, the town meeting warrant may include a reference to a subsequent election, especially in the context of a town meeting vote that is contingent on an override vote. In addition, a town's finance committee may use governmental resources to distribute a booklet containing its report and recommendations on warrant articles, if the recommendations are limited in scope to the warrant articles and the content of the booklet would reasonably be seen as primarily providing information in connection with town meeting, not the election which may take place after the town meeting. In such circumstances, the mention of the election is clearly secondary to the material's primary purpose of providing information relating to town meeting.

The above examples deal with situations where town meeting precedes the election. In contrast, where an election, instead of following town meeting, precedes the relevant town meeting, OCPF advises that public resources should generally not be used to distribute information to voters until *after* the election. Distribution after the election eliminates any inference that taxpayer funds are being inappropriately used to influence or affect the outcome of the election. See AO-04-02 (relating to the distribution of the report and recommendations of a finance committee with the town meeting warrant).

Material that raises legal concerns under Anderson should be distributed with private funds by entities such as a duly organized ballot question committee or an existing association, corporation or other organization, in accordance with M.G.L. c. 55. Officials unsure about the appropriateness of any material planned for distribution should contact OCPF, which will review it and make a recommendation.

B. Preparation of material by officials; restrictions on distribution

Policy-making officials may act or speak out concerning ballot questions in their official capacity and during work hours if in doing so they are acting within the scope of their official responsibilities. See IB-92-02.

Such responsibilities may include preparing a document for use in responding to public inquiries or taking steps to understand the implications of a ballot question that is within their area of responsibility. An official may therefore produce a document that deals with a ballot question, such as a summary of the effects of the question or an agency's position on the question, as long as such preparation is in accordance with his or her official responsibilities and does not expressly advocate a vote on an upcoming election.

An example of a document that concerns a ballot question but does not pose an immediate problem under Anderson is a report prepared by a school building committee supporting the need for a new facility

that will be the subject of a Proposition 2½ debt exclusion. The document would be a public record. It may be provided to those who ask for it, such as a citizen who calls the official seeking more information on the ballot question. Any person or group, at that person or group's expense, in turn may distribute the information to voters without violating the campaign finance law if the person or group complies with the campaign finance law's reporting and disclosure requirements. In addition, information prepared by a governmental entity regarding a ballot question may be posted on a bulletin board at town hall, and it may be made available at a counter or other convenient location for the public. It may also be posted on a governmental website.⁵ See AO-01-27, and IB-04-01.

While the preparation of the document is allowable, its distribution by a public entity on a larger scale, beyond those who seek out the document or receive it at official meetings as noted below, would raise concerns under Anderson. Because the document is a public record, however, it may be copied and mailed to residents by a private entity using private funds, such as a parent-teacher organization (PTO), a ballot question committee or a corporation. See IB-92-02. The entity would, however, have to report the expenditures in accordance with the campaign finance law's requirements.

C. Distribution of information at public meetings or hearings

Governmental resources may be used to produce and distribute, or make available, a reasonable quantity of a summary or other document, e.g., an architect's report on a proposed new school building, at a meeting or hearing of the governmental entity, even if the document advocates a particular vote in an anticipated election or otherwise refers to such an election. In meetings or hearings conducted by a public body, materials prepared by or for the body may be distributed to persons in attendance where such materials are designed to facilitate discussion or where the materials otherwise relate to the agenda of the meeting.⁶

The content of such material is generally not subject to Anderson, even if it references or makes a recommendation concerning an upcoming ballot question, because its primary purpose is to facilitate the meeting. Such unsolicited distribution of the material to a larger audience after a meeting should be avoided.

D. Distribution of notices of public meetings or municipal elections

The campaign finance law does not restrict the distribution of some basic information, such as notice of a public meeting held by a governmental body or a notice regarding an upcoming election.

Public resources may be used to prepare and distribute a brief neutral notice to voters announcing the times and dates of meetings such as the type referred to in the previous section, as well as notices of meetings of governmental bodies. For example, a notice of a selectmen's meeting to discuss the municipal budget and an upcoming override may be distributed at public expense. Such notice should be confined to a simple notice of the meeting and avoid any discussion of the substance or merits of the override. A notice that encourages people to attend so they can "learn why an override is needed" would not comply with this standard.

⁵ It may not, however, be distributed to voters electronically using a government server, i.e., by email.

⁶ Generally, such public documents may not be reproduced using public funds if they are to be distributed at a meeting sponsored or organized by a ballot question committee. The documents could, however, be distributed by an official who has been invited to speak at a meeting of other private groups regarding a ballot question within the scope of the official's area of responsibilities.

In addition, public resources may be used to distribute information that simply advises voters of an upcoming vote, such as a notice of the time, date and place of a municipal election. Information distributed using public resources may urge people to vote, and provide information about how to register to vote. Also, such information may include a brief neutral title describing the ballot question, and the text of the ballot question. **Extreme care should be taken to avoid any appearance of advocacy.** For example, the title "school expansion project" would be appropriate. On the other hand, titles which would not be appropriate include "ballot question relating to need for school expansion," or "ballot question addressing school overcrowding problem."

III. Use of government buildings or other public facilities or resources

Notwithstanding the Anderson prohibition, there are limited circumstances in which groups supporting or opposing a ballot question may use public resources. In its decision, the court stated that the city's use of publicly funded facilities "would be improper, at least unless each side were given equal representation and access." 376 Mass. at 200.

"Equal access" means that a group supporting or opposing a ballot question, such as a registered ballot question committee, may be allowed to use a room or other space in a public building for a meeting, as long as a group on the opposing side is given the opportunity, on request, to have a similar meeting, on the same terms and conditions.⁷

"Equal access," if provided, does not mean that proponents or opponents must be invited to attend a particular event or be asked or permitted to speak at an event. See AO-90-02. For example, an opponent of a ballot question who demands an opportunity to speak at a meeting of the committee supporting the question is not entitled to such an opportunity under the equal access rule. The content and agenda of the meeting is set and controlled by the group using the space.

While a political meeting in a public building may be allowable under the campaign finance law, the meeting may not include any fundraising activity. Political fundraising is not allowed in buildings occupied for governmental purposes, such as city and town halls and schools. In addition, as previously noted, public employees who work in those buildings are also prohibited from raising funds for any political purpose. See M.G.L. c. 55, § 13-17 and IB-92-01.

"Equal access" does not mean that a private group may use a room or building which has been used for a meeting by a public body, such as a board of selectmen, within the scope of its official responsibilities, even if the public body endorsed or discussed a ballot question at its meeting and the private group opposes the ballot question. The "equal access" requirement also does not provide individuals or groups any right to speak or be placed on the agenda at a public meeting of a governmental body, such as a board of selectmen or school committee. Nor does it mean that an opponent of a ballot question is entitled to such access to distribute information, after the public body has made ballot question information, prepared within the scope of the entity's responsibilities, available to the public in the building or at the meeting. See AO-01-27.

⁷ A municipality may choose, however, to not allow *any* access to meeting space by political committees; such a policy does not violate the campaign finance law as long as it is evenly applied to all groups. In other words, equal access may mean no access by political groups. See AO-04-06.

The equal access requirement generally is not triggered by the use of public facilities by parent-teacher organizations (PTOs) for regularly scheduled PTO meetings, even if a meeting is used in part to discuss the merits of a ballot question. The primary purpose of PTOs is not to promote or oppose ballot questions. In short, "equal access" is triggered by the use of governmental resources by private groups organized to influence a ballot question, or when private groups use public resources primarily for that purpose.

In addition to access to buildings or space for meetings, groups may be given the opportunity, if equal access is provided, to distribute non-fundraising flyers regarding a ballot question in public buildings. If each side is provided the same opportunity, proponents and opponents may also be offered access to certain public services, such as mailing labels (AO-88-27), a city council chamber for campaign announcement (AO-89-28), faculty mailboxes in public school to distribute non-fundraising campaign material (AO-04-06), or a public park for a political rally (AO-92-28). In addition, a state or local governmental agency may, as part of a collective bargaining agreement, use public resources to administer a payroll deduction plan for a public employee PAC, since the use of such resources would be for the purpose of fulfilling the governmental entity's contractual obligation, not primarily to provide a benefit to the PAC. See AO-03-04. A municipality or agency, which provides such a resource, must be reimbursed for any additional out-of-pocket expenses incurred in providing the resource. See AO-03-04.

The campaign finance law does not regulate the extent to which proponents and opponents of a ballot question may have access to cable television resources. Questions relating to such access should be addressed to the Cable Television Division of the Massachusetts Department of Telecommunications and Cable at (617) 305-3580. See M-99-01.

IV. Privately-funded political committees and other permissible activities

Government officials, public employees or anyone else who wishes to oppose or promote a ballot question may undertake such activity using private funds, through a ballot question committee or other existing organization.

A separate ballot question committee should first be established with the local election official, in the case of a municipal ballot question, or with OCPF, in the case of a question put to voters on the state ballot. This committee may then be used to raise and expend funds to promote or oppose the ballot question. Public employees may not solicit or receive any contribution on behalf of the committee, although they may make contributions and participate in activities of the committee that do not involve fundraising. A school newsletter prepared using public resources, or a PTO newsletter, if distributed by teachers, should not be used to help support a ballot question committee. For example, it should not announce the formation of a ballot question committee or provide information on how to contact the committee. See AO-00-06.

A group may not solicit or receive contributions to support or oppose a ballot question until it organizes and registers as a ballot question committee. Where two or more persons "pool" their money to support or oppose a question, e.g., to pay for an advertisement, the persons should first register as a ballot question committee. Such groups are subject to all the reporting and disclosure provisions of M.G.L. c. 55.

Groups such as parent-teacher organizations and local teachers' unions, which do not raise funds specifically to influence the vote on a ballot question, may make expenditures from existing funds to support or oppose a ballot question, and may make contributions to a ballot question committee. See IB-88-01 ("The Applicability of the Campaign Finance Law to Organizations Other Than Political Committees"). Groups making expenditures must, however, file a report (OCPF Form M22 or 22) with either the local election

official or OCPF to disclose the expenditures. See IB-90-02. In addition, individuals spending \$250 or more to influence a ballot question (unless the individual's expenditure is made in the form of a contribution to a ballot question committee) must also file the report. See M.G.L. c. 55, § 22.

V. Expenditures of Governmental Resources - Remedies

The treasurer of any city, town or other governmental unit, which has made expenditures or used public resources to influence or affect the vote on any question submitted to the voters, must file a report with the clerk disclosing such activity. See M.G.L. c. 55, § 22A and M-95-06.⁸

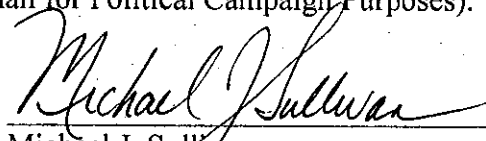
Because of the differing circumstances and severity of instances of the improper use of public resources to influence elections, the final disposition and remedies in such cases may vary. Where the use of public resources is minor or difficult to quantify, or where officials are not aware of the restrictions, OCPF focuses on providing guidance to ensure that the action is not repeated.

In other cases, however, restitution of funds adjudicated to have been spent contrary to law may be required. Such restitution may not be paid from public funds. It may, however, be paid by a ballot question committee, association or other private group or individual. Any officer of a governmental unit violating § 22A may be subject to criminal penalties.

Finally, any ten persons may file suit to restrain illegal use of public funds at the local level by filing a ten taxpayer suit. See M.G.L. c. 40, § 53. It was such a "ten taxpayer" suit that led to the Anderson decision. At the state level, any 24 taxpayers can file a similar suit. See M.G.L. c. 29, § 63.

VI. Other Bulletins and Memoranda

This bulletin provides general guidance. If you are in doubt regarding the scope of the campaign finance law, you should contact OCPF at (800) 462-OCPF or (617) 979-8300. This office's web site, www.ocpf.us, provides additional guidance on this and other campaign finance topics. In addition, related interpretive bulletins and memoranda which may be of interest -- and which may be downloaded from OCPF's website -- include: IB-90-02 (Disclosure and Reporting of Contributions and Expenditures Related to Ballot Questions); IB-92-01 (The Application of the Campaign Finance Laws to Public Employees and Political Solicitation); IB-92-02 (Activities of Public Officials in Support of or Opposition to Ballot Questions); IB-95-02 (Political Activity of Ballot Question Committees and Civic Organizations' Involvement in Ballot Question Campaigns); M-95-06 (Disclosure of expenditures of public resources required under M.G.L. c. 55, § 22A); and IB-04-01 (Use of the Internet and E-mail for Political Campaign Purposes).


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⁸ A report is not required where distribution occurs in accordance with section 18B of chapter 53 or other legislation authorizing the distribution of voter information.