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August 28, 2024

Town Counsel James Cipoletta
Winthrop Town Hall
One Metcalf Square
Winthrop, MA 02152

Re: CPF-23-81

Dear Mr. Cipoletta:

This office received a complaint alleging that Winthrop town resources were used to influence voters with respect to a ballot question regarding a proposed new fire station, which appeared on the town ballot in the November 7, 2023 election. If public funds have been expended to influence or affect the outcome of a local ballot question, the campaign finance law, M.G.L. Chapter 55, requires the town treasurer to file certain reports with the town clerk. The campaign finance law prohibits any governmental entity from expending public resources or contributing anything of value to influence or affect the outcome of a ballot question.

In Anderson v. City of Boston, 376 Mass. 178 (1978) appeal dismissed, 439 U.S. 1069 (1979), the Supreme Judicial Court concluded that the City of Boston could not appropriate funds, or use funds previously appropriated for other purposes, to influence the vote on a ballot question. The Court stated that the campaign finance law demonstrates an intent "to assure fairness of elections and the appearance of fairness in the electoral process" and that the law should be interpreted as prohibiting the use of public funds "to advocate a position which certain taxpayers oppose." 376 Mass. at 193, 195.

Section 22A of the campaign finance law requires the treasurer of a city or town which has expended money in order to influence or affect the vote on any local ballot question submitted to the voters of a city or town to file reports with the city or town clerk setting forth the amount of such expenditure, the date, and the full name and address of the person to whom it was made. Once the reports are filed, the city or town clerk is to examine the accounts for political expenditures and may order restitution to the municipality of any funds "which have been adjudicated to have been spent contrary to law by public officials." Such action enforcing restitution requires a judicial finding that funds were spent contrary to the law. Further, Section 22A states that "[n]othing contained herein shall be construed as authorizing the expenditures of public monies for political purposes."

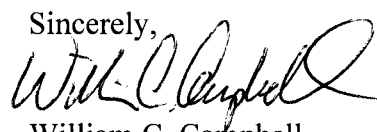


It is understood that public resources may be used to compile information and prepare materials relative to a ballot question and in a manner that is consistent with Anderson and M.G.L. c. 55. A policy-making official may research and analyze the impact of a potential ballot question and prepare factual studies and reports relative to the subject of a ballot question that is within their scope of responsibility. Any such communications should not advocate for or against passage of the ballot question. Such writings being public records can be made available to the public upon request, including at forums concerning the subject of the ballot question. The public official may also post the studies and reports to the municipality's website in accordance with their standard practice for posting materials to the website.

Public resources may not be used to distribute that information without it being requested, absent specific statutory authority to do so. See M.G.L. c. 53, § 18B (local acceptance statute establishing a mechanism for local government officials to provide information to voters relating to questions on city, town or district ballots); Mass. Const. Art. CVIII and M.G.L. c. 54, §§ 53-54 (requiring and establishing a process for the Secretary of the Commonwealth to provide information to voters via distribution of the "red book" for state ballot questions).

Based on the requirements in Section 22A, the Winthrop town treasurer should file CPF Form 22A (Report of Governmental Treasurer) with the town clerk forthwith to disclose any town funds expended relative to the ballot question.¹ Once filed, any person who believes the disclosed expenditures are inconsistent with Anderson may seek relief, including a court finding that public funds have been expended contrary to law, after which time restitution of those funds to the town may be ordered. An individual or the town may seek the assistance of the attorney general, the local district attorney, or the town counsel to review the matter and take appropriate action.

In accordance with the opinion of the Supervisor of Public Records, this letter is a matter of public record. A copy is being provided to the local clerk, and may be provided to the person(s) who brought this matter to our attention.

Sincerely,

William C. Campbell
Director

WCC/mc

cc: Denise Quist, Winthrop Town Clerk
Tony Marino, Winthrop Town Manager
Brendan Carritte, Winthrop Town Treasurer

¹ M.G.L. c. 55, § 22A provides, in pertinent part: "The treasurer of any city, town, or other governmental unit which has given, paid, expended or contributed, or promised to give, pay, expend or contribute any money or any valuable thing in order to influence or affect the vote on any other question submitted to the voters of any city or town or any part of any city or town, shall file reports with the clerk of such city or town setting forth the amount or value of every gift, payment, expenditure or contribution or promise to give, pay, expend or contribute, together with the date, purpose, and full name and address of the person to whom it was made."