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Office of Campaign and Political Finance

One Ashburton Place, Room 411

Boston, MA 02108

Advisory Opinion

April 3, 2001

AO-01-03

Sarah P. White
34 Douglas Avenue Extension
Hull, MA 02045

Re: Distribution of information to voters regarding Community Preservation Act

Dear Ms. White:

This letter is in response to your request for an opinion regarding the use of public funds to pay for the distribution of information to voters regarding the Community Preservation Act (CPA).

You have stated that the Hull Conservation Commission would like to distribute a citizen's guide to the CPA to Hull residents. You have provided a copy of the guide which has the title "The Community Preservation Act: What it is and how it works . . . A Guide for Hull residents." The guide contains the following sections: (1) "What is the Community Preservation Act (CPA)?" (2) "Should the CPA be adopted in Hull?" (3) "How is the CPA money raised?" (4) "What can the CPA money be used for?" (5) "Are there benefits? How might the CPA money be used in Hull?" (6) "Who decides how the money is spent?" (7) "The big picture, how the CPA fits into Hull's vision?" (8) "OK, so how much will it cost me?" (9) "Are there any exemptions to the surcharge?" (10) "What are the steps to get the CPA approved?" and (11) "What is the position of the Hull Conservation Commission on the CPA?"

The guide notes in several places that a local ballot question is needed to adopt the CPA in Hull. In the section describing the CPA, the guide notes that the CPA "allows towns and cities to approve a referendum allowing them to place a community-wide property tax surcharge from 1 to 3 percent for the purpose of creating a local Community Preservation Fund and qualifying for state matching funds." The section describing how the money is spent notes that local Community Preservation Committees will be created if "voters approve the CPA referendum at the next election." In discussing the steps to get the CPA approved, the guide notes that "a majority 'yes' vote at town meeting for the Community Preservation Act would get the CPA on the election ballot. A majority "no" vote on the CPA would prevent the CPA from getting on the town's election ballot. If the CPA

gets on the ballot, Hull residents then cast a vote either in favor or against adopting the CPA at the town election in May 2002.” The guide notes that the Hull Conservation Commission supports passage of the CPA in the town of Hull.

Questions

- (1) May the Conservation Commission use public funds to pay for, copy and mail the guide, as drafted, to voters?
- (2) If not, what changes could be made to the guide to allow such expenditure?

Answers

- (1) No. It may, however, be prepared using public funds and made available to those seeking further information, as long as it is not distributed unsolicited using town resources.
- (2) If the guide is revised to only describe how the CPA works it may be paid for, copied and mailed using public funds. To distribute it using public funds, all sections *except* the following would need to be deleted: “What is the Community Preservation Act”, “How is the CPA money raised?” “What can the CPA money be used for?” “Who decides how the money is spent?” “How much will it cost me?” “Are there any exemptions to the surcharge?” and “What are the steps to get the CPA approved?”

Discussion

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 a ballot question. The court stated that “the 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.” 376 Mass. at 195. The court also noted that the campaign finance law [M.G.L. c.55] 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.

In addition, the Secretary of the Commonwealth’s Election Division has noted in a joint memorandum issued with OCPF in March 1996 that the Home Rule Amendment of the Massachusetts Constitution prohibits municipalities from producing “informational” material regarding a ballot question without legislative authority.¹ Therefore, even if voter information commenting on the substance of a ballot question is intended to be objective and factual (it is “informational” rather than “advocacy”), it may not be produced or distributed using public resources.

“Public resources” include, but are not limited to: staff time, office space, stationery and office supplies, office equipment such as telephones, copier and fax machines and computers. See IB-91-01.

¹ Only four municipalities have authority to distribute informational material to voters regarding local ballot questions: Newton (ch. 274 of the Acts of 1987), Cambridge (ch. 630 of the Acts of 1989), Sudbury (ch. 180 of the Acts of 1996) and Burlington (ch. 89 of the Acts of 1998). In response to the legitimate concerns of many cities and towns, however, OCPF has sponsored legislation in the current legislative session that would authorize any municipality, at local option, to distribute similar informational materials.

Even the occasional, minor use of public resources for a political purpose is inconsistent with state law and should be avoided.

This office has stated that if public resources are used to distribute a flyer summarizing a warrant article pending before town meeting, the flyer should not refer to a subsequent town election in which there will be a question on the ballot regarding the same issue. See page 4 of IB-91-01. Expenditures to influence town meeting are not within the jurisdiction of this office. Referring to the anticipated ballot question, however, leads to the presumption that the flyer is intended to influence not only town meeting, but also the election.

Discussion of the benefits of the CPA, particularly when coupled with a reference to the requirement that for it to become effective in Hull it must be adopted by voters in a town election in 2002, suggests that the guide is intended in part to provide information regarding a ballot question and influence residents to vote in favor of the question. Therefore, the guide as drafted should not be distributed to voters using town resources.

This opinion is issued within the context of the Massachusetts campaign finance law and is provided solely on the basis of representations in your letter and your conversations with OCPF staff. Please contact us if you have further questions.

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