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Office of Campaign and Political Finance
One Ashburton Place, Room 411
Boston, MA 02108

Advisory Opinion

August 30, 2001
AO-01-20

Jonathan Leavitt, Campaign Director
Jill Stein for Governor Campaign
P.O. Box 1382
Lawrence, MA 01842

Re: Solicitation of contributions on campaign Web site and via email

Dear Mr. Leavitt:

This letter is in response to your August 6, 2001 letter requesting an advisory opinion.

The Jill Stein for Governor Campaign maintains a Web site. Visitors to the Web site can go from the Web site's home page to a separate page that lists those who have endorsed the campaign. The endorsements page contains no language requesting a contribution or support and does not direct the user to any other page on the Web site. A separate page, which may also be reached from the home page, solicits campaign contributions. The endorsement page is not linked to or from the solicitation page.

Your questions relate to the use on the Web site to post endorsements made by public employees and the receipt of contributions from public employees following their receipt of email solicitations at their work email address.

QUESTIONS

(1) May the campaign include public employees in its list of endorsements?¹

Answer: Yes.

¹ You have also asked (1) if the listing of the public employee as an endorser is unacceptable, under what conditions could a public employee be listed as an endorser on a campaign Web site, and (2) if a disclaimer should be added to the Web site. Since the listing of a public employee on a separate endorsement page not referring to and not directly linked to or from a solicitation page is acceptable, no answer is required to these questions.

(2) If a third party forwards a solicitation to a public employee at the employee's place of work in a governmental building via email, without the knowledge or consent of the Jill Stein for Governor campaign, is the campaign prohibited from accepting the contribution if it learns that the contribution was made after an email soliciting the contribution was addressed to the employee at the employee's workplace?

Answer: Yes.

(3) How should the campaign handle a contribution from a public employee who was solicited by others using email sent to the public employee at the employee's place of work in a governmental building?

Answer: The committee should immediately return or refund such contributions to the contributor.

DISCUSSION

1. Using the names of public employees in a separate, segregated endorsement page on Web site

Section 13 of the campaign finance law provides that "no person employed for compensation, other than an elected official, 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 or of any political committee, or for any political purposes whatever . . ." See also OCPF interpretive bulletin, IB-92-01.

The underlying purpose of the campaign finance law is the assurance of "fairness of elections and the appearance of fairness in the electoral process." Anderson v. City of Boston, 376 Mass. 178, 193 (1978), appeal dismissed, 439 U.S. 1069 (1979). The statute seeks to accomplish this goal by strictly excluding the commonwealth and its political subdivisions from involvement in the political process. Section 13 is part of a series of restrictions in chapter 55, which "demonstrate a general legislative intent to keep political fund raising and disbursing out of the hands of nonelective public employees and out of city and town halls." Id., at 186-187. More particularly, section 13 was designed to protect persons from being subjected to the pressures of political solicitation by public employees.

As noted in IB-92-01, the prohibition against "indirect" solicitation means that public employees should "refrain from any activity which indicates support *for the fundraising efforts* of a candidate or political committee" (emphasis added). A public employee's name may therefore not be used to endorse a candidate if the endorsement appears in a fundraising letter mailed by a candidate's political committee or on a page on the Web site that solicits contributions *or contains a reference or link to or from a page that solicits contributions*.

Although public employees may not be involved in the fundraising activities of candidates, they may contribute to a candidate or work for a campaign, if such involvement does not include solicitation or receipt of contributions. See IB-92-01. Similarly, a public employee may endorse a candidate's nomination or election in a letter or on a separate, segregated Web page that does not directly or indirectly solicit contributions.

2. Receipt of contributions solicited by email sent to a public employee at work

In addition to the prohibition on solicitation or receipt of political contributions by public employees, the campaign finance law also provides that no person, whether state employee or otherwise, shall “in any building occupied for state, county or municipal purposes demand, *solicit* or receive any payment or gift of money or other thing of value” for political campaign purposes. See M.G.L. c. 55, § 14.

To “solicit,” according to Webster’s New Collegiate Dictionary, means to “*to approach* with a request or plea” (emphasis added). Consistent with that definition, a person must both make a request, whether in writing or verbally, and also present the request to another person to be subject to section 14.

Sections 13 and 14 of chapter 55 were enacted in the late 19th century as part of a civil service reform movement which saw similar statutes passed in other jurisdictions, including the federal government. See 18 U.S.C. §607, which states, in relevant part, that “[i]t shall be unlawful for any person to solicit or receive any contribution . . . in any room or building occupied in the discharge of official duties” by any federal employee. Although no Massachusetts court decisions specify whether a “solicitation” within the scope of section 14 takes place when a solicitation letter or email is drafted outside a building occupied for governmental purposes but received by a public employee in the employee’s place of work, the United State Supreme Court has examined a similar question in the context of 18 U.S.C. §607. See United States v. Thayer, 209 U.S. 39 (1908).

In Thayer, the Court decided that a written solicitation of political contributions is not complete until the letter is delivered to the person from whom the contribution is solicited. Thayer, 209 U.S. 39 at 44. In Thayer the person who wrote the letter argued unsuccessfully that he was not subject to the statute because he did not personally deliver the letter to the recipient. Justice Holmes, in delivering the opinion of the Court, stated that:

The solicitation was made at some time, somewhere. The time determines the place. It was not complete when the letter was dropped into the post. If the letter had miscarried or had been burned, the defendant would not have accomplished a solicitation . . . the defendant . . . did not solicit until his letter actually was received in the building, . . . and the solicitation was in the place where the letter was received.

209 U.S. at 43-44 (emphasis added).

Thayer, although relating to an analogous federal statute and not relating to email, is persuasive. The time and place of receipt of a written solicitation determines where the solicitation takes place. Therefore, the campaign finance law should be read as prohibiting solicitation of campaign contributions by email addressed to and received by a public employee working in a building or part thereof occupied for state, county or municipal purposes.

Therefore, if a person forwards a solicitation to a public employee at the employee’s place of work in a governmental building via email, such action is not consistent with section 14 and the campaign is prohibited from accepting the contribution if it learns that the contribution was made following receipt at the employee’s workplace of an email soliciting the contribution. The solicitation could, however, be forwarded to a public employee’s home.

3. Refund or return of contributions

A political committee may not accept contributions received in violation of section 14. This office has issued regulations concerning refunds at 970 CMR 1.04. These regulations provide that treasurers of political committees

shall exercise their best efforts to determine whether contributions are legal at the time of receipt. Any contribution which is determined to be illegal under M.G.L. c. 55 or any other law prior to its deposit into the account of a political committee or candidate shall be returned to the contributor in its original form. Any contribution which is determined to be illegal, subsequent to its deposit, shall be refunded to the contributor immediately upon this determination. This refund shall be in the form of a check written to the contributor on the account of the candidate or political committee into which the original contribution was deposited.

In addition, use of contributions solicited in violation of section 14 would not be consistent with section 7 of the campaign finance law, which provides that funds may be raised and spent only as authorized by chapter 55.

This opinion is issued within the context of the Massachusetts campaign finance law and is provided on the basis of representations in your letter. 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.

Michael J. Sullivan
Director