



Commonwealth
of Massachusetts

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Office of Campaign and Political Finance

One Ashburton Place, Room 411

Boston, MA 02108

Advisory Opinion

April 7, 2004

AO-04-05

Paul A. Lazour, Esq.
36 Park Avenue
Worcester, MA 01609

RE: Application of M.G.L. c. 55, § 13 to attorney providing services to commonwealth

Dear Mr. Lazour:

This letter is in response to your request for an opinion regarding the extent to which your providing services pursuant to a contract with the Secretary of the Commonwealth may restrict your political fundraising activity pursuant to M.G.L. c. 55, § 13.

You have stated that you are engaged in the private practice of law. As part of your practice, you contract with the Secretary of the Commonwealth to provide legal consultation regarding election matters. In that capacity, you provide legal advice and services on an as-needed basis and are compensated at an hourly rate upon the submission of payment vouchers. No taxes are withheld from the payments to you and you receive an IRS Form 1099 from the Commonwealth at year's end with your compensation being listed in Box #7 as nonemployee compensation. You receive no employment benefits (i.e., health, unemployment, retirement or the like) in connection with this contract. You do not maintain an office, desk or phone at the Secretary's Office. You continue to maintain an active private practice and the Secretary of the Commonwealth is one of your numerous clients. You set your own hours and overhead expenses are not provided by the Commonwealth.

QUESTION

To what extent would your contract with the Secretary of the Commonwealth preclude or restrict your political fundraising activities in connection with state, local or federal elections?

ANSWER

Your providing services pursuant to your contract would not restrict your political activity pursuant to Section 13. You may therefore solicit or receive contributions for state, local or federal candidates or political committees.

DISCUSSION

In relevant part, section 13 provides:

No person *employed for compensation*, other than an elected officer, by the commonwealth or any county, city or town 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 purpose whatever . . .[emphasis added].

M.G.L. c.55, § 13 only applies to persons “employed for compensation” by the Commonwealth or one of its subdivisions. See AO-88-19. Section 13 does not apply to persons who provide services to the Commonwealth as independent contractors. The analysis of whether a privately employed attorney providing services to a governmental entity is an independent contractor and therefore not “employed for compensation” depends on consideration of a number of factors. See AO-88-19, AO-91-03, AO-01-04 and AO-04-03 (each of which concluded that given the particular facts presented, attorneys providing services to public entities were independent contractors and not “employed for compensation”).

It is the opinion of this office that you are an independent contractor and not a person “employed for compensation” by the Commonwealth for the purposes of Section 13. This decision is based on the following factors: (1) you are paid on an hourly basis and do not receive a salary or any benefits from the Secretary of the Commonwealth; (2) you set your own hours; (3) you provide your own equipment, supplies and facilities; (4) you continue to maintain an active private practice and the Secretary of the Commonwealth is one of numerous clients; and (4) your IRS Form 1099 from the Commonwealth reflects your status as a “nonemployee.”

Since you are not “employed for compensation” by the commonwealth, you may, consistent with the campaign finance law, participate in the solicitation or receipt of contributions for a candidate for state, local or federal¹ office.

Additionally, you should be aware that M.G.L. c. 55, § 16A does not require those who do business with the Commonwealth to be under any obligation to render a political service. Therefore, although you may fundraise you would be under no obligation to do so.

This opinion is provided on the basis of representations in your letter and your phone conversation with OCPF staff, and the guidance provided is solely within the context of the campaign finance law.

¹ Federal law does not supersede or preempt M.G.L. c. 55, §§ 13-17, which govern the political activities of state and local employees rather than the source of campaign funds for federal office. See AO-95-39 and FEC Advisory Opinion 1989-27.

Thank you for your interest in the campaign finance law.

Sincerely,

A handwritten signature in black ink that reads "Michael J. Sullivan". The signature is written in a cursive style and is positioned to the left of a vertical line that extends downwards from the end of the signature.

Michael J. Sullivan
Director

MJS:gb