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Office of Campaign and Political Finance

One Ashburton Place, Room 411

Boston, MA 02108

Advisory Opinion

July 20, 2004

AO-04-10

Joseph Leblanc, Vice President
Massachusetts Community College Council
27 Mechanic Street, Suite 104
Worcester, MA 01608-2402

Re: Political Activity Pursuant to a Collective Bargaining Agreement

Dear Mr. Leblanc:

This letter is in response to your request for guidance regarding the use of public resources, specifically computers and e-mail, by union members for membership communications on political matters.

Your group, the Massachusetts Community College Council (“MCCC”), represents various employees of the commonwealth’s community college system. You are currently seeking advice as to what extent, if any, MCCC may, consistent with the campaign finance law, communicate with members regarding political topics using e-mail accounts and computers provided by various community colleges. For example, you regularly send the union’s “Strategic Committee” news to local union chapter presidents to be forwarded to members. You have stated that you do not use a government owned computer to do this, but that the union presidents often forward the e-mail to members on college computers.

You have stated that your union contract has general language allowing you to communicate with members, but it does not mention e-mail specifically. In contrast, several community colleges have written e-mail policies that, among other things, prohibit using its e-mail for a political purpose. For example, Appendix A to the Quinsigamond Community College Information Systems Acceptable Use Policy states, in part

Pursuant to Massachusetts Campaign Finance Laws, no governmental resources (including computers, fax machines, modems, printers and/or copy machines) may be used by any person (including a public employee, whether during work hours or otherwise) in order to promote

or oppose a political candidate or ballot question or for the purpose of disseminating materials that advocate a particular vote on a ballot question or a political candidate.

QUESTION

May union officials, consistent with the campaign finance law, use computers and e-mail provided by a public entity to disseminate or forward membership communications regarding political matters, such as its position regarding candidates for elective office?

ANSWER

Yes, provided that such activity is authorized pursuant to a negotiated collective bargaining agreement, and does not involve political fundraising by public employees or in public buildings. If these conditions are met, the campaign finance law would not preclude union officials from using government computers and e-mail to disseminate or forward membership communications to members as described in more detail below, even if the communications are political in nature.

Of course, there is nothing in the campaign finance law to require a government employer to provide unions with access to its resources for any purpose. Therefore, absent a collective bargaining agreement permitting electronic membership communications, union officials, like everyone else, must avoid using government computers and e-mail for a political purpose.

For your purposes, the extent to which the MCCC or its local chapters are able to use community college resources to disseminate membership communications appears to be primarily a matter for collective bargaining, not the campaign finance law. According to the facts you presented, there appears to be a genuine question as to whether the current collective bargaining agreement(s) provide for membership communications using the schools' e-mail and computers, and, if so, how to reconcile the contract(s) with existing e-mail policies. Specifically, you have stated that the MCCC has language in its contract allowing members to communicate with each other, but it does not mention e-mail specifically. On the other hand, some written e-mail policies specifically prohibit political communications. The colleges and MCCC and/or the local union representatives need to determine whether authorization for private union related e-mail communications are included in the present contract, and, if necessary, whether changes need to be made to any e-mail usage policies.

DISCUSSION

In Anderson v. City of Boston, the Supreme Judicial Court held that there was no authority in the campaign finance law for a municipality to finance a ballot question campaign with tax revenues. See 376 Mass. at 185-186. As the court explained, the Commonwealth "has a substantial, compelling interest in assuring the fairness of elections and the appearance of fairness in the electoral process." Id. at 193. It found the legislature properly sought to accomplish this goal by strictly excluding government entities from involvement in the political process. Id. at 194-195.

Pursuant to this opinion, OCPF consistently advises that government entities should not use public resources for political purposes. See IB-91-01. This generally encompasses all activity

intended to influence the results of a state or local election, including expenditures to promote or oppose candidates, political parties, PACs, or ballot questions. There is an exception, however, where public employee unions are involved.

Labor unions and employers have a unique relationship, even in the public sector. It is not uncommon for governmental entities involved in the collective bargaining process to agree to provide union members with additional services or benefits that are not otherwise available to other employees or members of the public. This is allowed because the government entity's primary purpose providing the union with access to its resources is not to influence an election, but rather to comply with the previously negotiated collective bargaining agreement. See Weld for Governor v. Director of the Office of Campaign and Political Finance, 407 Mass. 761, 770-1 (1990) (the determination of whether something is an "expenditure" or "contribution" for the purposes of the campaign finance law depends on the primary purpose of the activity).

This rationale would apply here. A community college would not be defying the campaign finance law or the Anderson opinion by allowing union members to use their computers and e-mail for political speech *if such usage is consistent with existing collective bargaining agreement(s)*. Under those circumstances, the colleges' purpose in allowing their resources to be used by union members for e-mail membership communications, even if political in nature, would be to fulfill the terms of a contract, not to influence elections. See also M.G.L. c. 55, § 1, which states that communications from a membership organization to its members and their families are not deemed to be a "contribution" or "expenditure" for the purposes of the campaign finance law.

It is important to note that "membership communications" for the purposes of this opinion are limited to official communications from the union down the organization structure to local officers and/or individual members. This would include the e-mails you described regarding Strategic Committee news that are forwarded by you to local union chapter presidents who, in turn, forward the message to members. "Membership communications" do not include communications of a political nature sent generally among members or from individual members to union officials. Nothing in this opinion should be construed as authorizing individual union members, including officers, to use government computers or e-mail to create political messages during the workday, reply to political membership communications, or otherwise engage in political dialogues.

In addition, all union membership communications must abide by the sections of the campaign finance law that restrict political fundraising. In particular, M.G.L. c. 55, § 13 prohibits the solicitation or receipt of political contributions by appointed public employees, and M.G.L. c. 55, § 14 states that no person, whether public 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. To ensure compliance with these sections, e-mails from union members who are current public employees and e-mails directed to public employees at their place of work should not, under any circumstance, involve political fundraising activity. See OCPF's IB-04-01, "*Use of Internet and E-mail for Political Campaign Purposes*," which has been enclosed for your review.

This opinion is issued solely within the context of the Massachusetts campaign finance law and is based on the representations made in your letter and to OCPF's 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.

Michael J. Sullivan
Director

MJS:bp
Enclosure