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Office of Campaign and Political Finance

One Ashburton Place, Room 411

Boston, MA 02108

Advisory Opinion

March 28, 2005

AO-05-05

Laura A. Cecere
505 Lowell Street
Lexington, MA 02420

Re: Activities of Parent/Teachers Organization (“PTO”)

Dear Ms. Cecere:

This letter is in response to your request for an opinion regarding potential activities by a PTO in connection with the organization’s support of anticipated Proposition 2½ overrides.

You have stated that you are a co-president of the Fiske School PTO. While an override has not yet been scheduled, you have asked for guidance regarding the extent to which the PTO and its members may be involved in “education, advocacy and lobbying” activities relating to proposed budget increases. To some extent, these activities may include raising funds or making expenditures to support an anticipated ballot question.

You have asked the office to consider two alternative premises when framing our response: first, “as if there is no election pending” and, second, as if there is an election scheduled.

1. GENERAL DISCUSSION

Because you have indicated that the PTO or its members might become involved in either raising funds or making expenditures to support an anticipated ballot question, the following general discussion regarding disclosure requirements may be helpful.

A “ballot question committee” is an association, organization, or other group of persons that raises money or anything else of value for the purpose of favoring or opposing a charter change, referendum question, constitutional amendment, or other question submitted to the voters . . .” See M.G.L. c. 55, §§ 1 and 6B. Such a committee seeking to influence a question on a town ballot must organize and register by filing a statement of organization with the town clerk. In addition, the committee must file campaign finance reports and will be subject to certain limitations specified in the campaign finance law.

A group is not required to organize and register as a ballot question committee or file campaign finance reports, however, if there is no question on the ballot and the group is not raising funds to influence voters for an anticipated ballot question election.

If funds are raised for the purpose of influencing an anticipated ballot question, such activity, even though it occurs prior to the decision to place a question on the ballot, would be subject to the campaign finance law and the group would have to organize and register as described above. Therefore, if a PTO or other group anticipates a ballot question on a particular issue, and plans to raise funds to support or oppose the question, the group should organize and register a ballot question committee. If the PTO, or a group of PTO members, plans to raise funds to urge voters to support a potential ballot question, such as a Proposition 2 ½ override question, such activity would be subject to the campaign finance law, and a separate ballot question committee would need to be created for that purpose. All funds raised to influence the anticipated ballot question would need to be placed in a separate, segregated account and be kept distinct from other funds in the PTO's treasury.

In addition, the committee would be required to disclose all fundraising activity. Ballot question committees organized to influence a question on a town ballot must file campaign finance reports with the town clerk on or before the eighth day before the election, complete as of the eighteenth day before the election, and an additional report must be filed on or before the thirtieth day after the election, complete as of the twentieth day after the election. A ballot question committee must dissolve after a final determination of the voters to adopt or reject the question and must donate remaining funds to a charitable or other entity specified in the statute. See M.G.L. c. 55, § 18, OCPF Interpretive Bulletin IB-90-02 and enclosed *Campaign Finance Guide: Municipal Ballot Question Committees*.

Even if the PTO wants to do a number of things, including generally educating people regarding budget issues and influencing town meeting and lobbying elected officials, if it also plans to raise funds to urge voters to support a related ballot question, it must first organize and register a ballot question committee, and segregate funds that are raised for ballot question purposes.

Assuming the PTO does not raise or anticipate raising funds to influence a ballot question, and therefore does not organize a ballot question committee, it must still disclose any expenditures made, or in-kind contributions provided, for that purpose. The campaign finance law requires disclosure of all expenditures made, in-kind contributions provided, or liabilities incurred by any "corporation, association, organization, or other group of persons" other than ballot question committees, to promote or oppose a ballot question. If a PTO makes an expenditure from its general treasury or provides something of value, e.g., postage or paper, to promote or oppose a ballot question, a Form CPF M22 ("Report of Ballot Question Expenditures by Corporation or Organization") must be filed with the town clerk, on the same dates that campaign finance reports are due. See M.G.L. c. 55, § 22. In accordance with this provision, a ballot question committee does not have to be formed because the expenditures or in-kind contributions are being provided by using funds that were not raised for the purpose of favoring or opposing a ballot question.

The questions and answers below assume a scenario in which a ballot question is anticipated or scheduled.

2. QUESTIONS

QUESTION 1: May the PTO distribute bulletins regarding an override written by the "Yes" campaign by giving the bulletins to teachers so that teachers can send them home with every student in students'

backpacks? The bulletins would take the form of a PTO memo, would provide information “regarding how badly a defeat of the override would hurt our schools” and would provide advice to parents regarding how they can help get the ballot question passed.

ANSWER: No. The distribution of this material in the manner described would involve the improper use of a public resource, school administration staff, for a political purpose.

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 submitted to the voters at a state election. The court stated 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. Accordingly, this office has concluded that governmental entities may not use public resources to influence or affect a ballot question. See Interpretive Bulletin IB-91-01.

The time of teachers during the workday is a public resource. Therefore, to comply with Anderson, a PTO newsletter announcing the formation of a ballot question committee and providing information on how to contact the committee may not be distributed by having teachers provide the newsletters to students. See AO-00-06 and AO-03-03. In addition, teachers (like other public employees) may not be required to render a political service as part of their employment. See M.G.L. c. 55, § 16. Similarly, teachers may not, during their workday, distribute PTO materials that promote a ballot question.

QUESTION 2: May the PTO hold a meeting in the school cafeteria, and invite a selectman or other town official to speak at the meeting promoting a vote in favor of the override?

ANSWER: Yes. The campaign finance law generally does not contain any restrictions on what may be discussed at a meeting of a group such as a PTO. The campaign finance law does, however, stipulate that funds may not be solicited or received to support (or oppose) a ballot question at such meetings if the meetings take place in a public school building. See M.G.L. c. 55, § 14, which prohibits political fundraising in “any building or part thereof occupied for state, county or municipal purposes.”

QUESTION 3: May the PTO distribute “Yes” campaign literature at PTO meetings at your school, in the school cafeteria?

ANSWER: Yes, although this might result in “equal access” having to be provided to groups opposing the override.

In Anderson, the court stated that “the city’s use of telephones and printed materials provided by public funds, and its use of facilities paid for by public funds, would be improper, at least unless each side were given equal representation and access.” 376 Mass. at 200. Based on this part of Anderson, this office has advised that proponents and opponents of a ballot question may be offered space for a meeting in a public building or certain public services (e.g., mailing labels) only if each side is provided the same opportunity. See IB-91-01. School administrators may therefore not allow a ballot question committee to distribute literature in a public school unless an opposing committee is given the same opportunity, upon its request, to do so. Literature distributed in a public school building may not, however, solicit contributions to influence the override. See M.G.L. c. 55, § 14.

In contrast to a ballot question committee, a private group such as a PTO may generally conduct its meetings in a town building without regard to equal access. If the PTO in fact is holding a meeting primarily for the purpose of campaigning in support of a ballot question, however, a group opposing the override may be entitled to equal access. We therefore suggest that if a PTO meeting is held for such a campaign purpose, it should not be held at a school.

Regardless of whether campaign advocacy is being undertaken by a ballot question committee or a PTO, school administrators may choose a more restrictive approach than what is required under the campaign finance law. For example, administrators may prohibit the use of space in a school building so long as such prohibition is equally applied. A policy stating that political flyers may not be distributed in school buildings, if applied equally to proponents as well as opponents, would comply with the campaign finance law.

QUESTION 4: May the PTO distribute “Yes” campaign materials, including buttons, signs, and written literature, on school grounds adjacent to school buildings immediately after school each day?

ANSWER: Such access to the school grounds to distribute materials directly to students would be allowed only if school administrators would also, upon request, provide others, including those opposing the question, with the same access. See AO-04-06.

QUESTION 5: May school personnel distribute, at PTO meetings, campaign materials and bulletins prepared by the “Yes” committee but printed on PTO stationery?

ANSWER: Yes, if such meetings do not take place during the workday, or otherwise involve the use of public resources for political purposes. As noted in response to Question 3, distribution of such material at a PTO meeting held in a school building may raise an equal access issue. In addition, public school teachers (and other non-elected public employees) may not participate in either directly or indirectly soliciting or receiving political contributions for the “Yes” committee. See M.G.L. c. 55, § 13. Finally, no one may solicit or receive contributions in a building occupied for state, county or municipal purposes. See M.G.L. c. 55, § 14.

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 phone conversation with OCPF staff. Please contact us if you have further questions.

Sincerely,



Michael J. Sullivan
Director

Enclosure

cc: Donna Hooper, Lexington Town Clerk

MJS/gb