



Commonwealth  
of Massachusetts

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Advisory Opinion

March 7, 2007  
AO-07-03

Jonathan Landman, Assistant Superintendent  
Randolph Public Schools  
Office of the Superintendent  
40 Highland Avenue  
Randolph, MA 02368-4513

Re: Proposed use of automated calling system

Dear Mr. Landman:

This letter is in response to your request for an opinion regarding the use of the school district's taxpayer-funded automated calling system.

Randolph will hold a town election on March 27, 2007, and an operational override will be on the ballot. You understand that the campaign finance law allows the school district to use student backpacks to distribute a flyer for students to take to their parents that notifies them of an upcoming election date, and that asks them to vote. You have asked if the school district may also use its taxpayer-funded automated calling system to phone district families with a similar message – i.e., a message that does not advocate that parents vote one way or another at the polls, but does urge them to vote.

QUESTION

May the automated calling system be used to notify parents of an upcoming election date and to encourage them to vote?

ANSWER

Yes, but only if extreme care is taken to avoid any comment regarding the merits of a ballot question or any appearance of advocacy.

DISCUSSION

In *Anderson v. City of Boston*, 376 Mass. 178 (1978), the Supreme Judicial Court analyzed the provisions of M.G.L. c. 55 in considering whether a municipality had authority to appropriate and expend funds to influence a ballot question. The court held that M.G.L. c. 55 was a comprehensive

campaign finance statute which bars such expenditures since it “demonstrate[s] 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.

In accordance with *Anderson*, this office has consistently advised that governmental entities may not use public resources to support or oppose ballot questions. Specifically, this office has advised that governmental entities may not distribute flyers, brochures or other material to voters or a class of voters **advocating** the support or opposition of a ballot question absent express statutory authorization. In addition, even a truly objective flyer including a fair and impartial summary of a ballot question and arguments by proponents and opponents may not be distributed to voters or a class of voters absent statutory authorization. *See* IB-91-01.

In IB-91-01, the office stated, however, that the campaign finance law does not restrict the use of public resources to distribute certain basic information, such as a notice of the time, date and place of a municipal election. Using the same analysis, an automated phone message may provide the same information.

Although the use of an automated phone system as described above may not, strictly speaking, violate the campaign finance law, such use seems likely to create an appearance of public resource use that you might want to avoid. The primary purpose of the taxpayer-funded system is not to disseminate information relating to elections. In addition, using an automated phone system is similar to providing a phone bank, and phone banks are often used by political campaigns. Also, using an automated phone bank, normally used for routine school-related announcements, to communicate with parents about an election involves a more intrusive step than sending flyers home in backpacks. Accordingly, if the school district decides to use the phone system to notify parents of the time, date and place of a municipal election, extreme care should be taken to avoid any comment regarding the merits of a ballot question or any appearance of advocacy.

This opinion is limited in scope to providing guidance under that statute and is based on your letter and conversations with OCPF staff. You may also wish to contact the Ethics Commission to ensure that this activity would not raise any issues under the state ethics law.

Thank you for your interest in the campaign finance law. Please contact us if you have further questions.

Sincerely,

A handwritten signature in black ink that reads "Michael J. Sullivan". The signature is written in a cursive, flowing style.

Michael J. Sullivan  
Director