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INTERPRETIVE BULLETIN

**The Application of the Campaign Finance Law
to Political Fundraising by Public Employees**

The Office of Campaign and Political Finance (OCPF) periodically issues interpretive bulletins regarding various aspects of M.G.L. c. 55, the Massachusetts campaign finance law. This office is frequently asked to provide guidance regarding the scope of M.G.L. c. 55, § 13, which prohibits Massachusetts state, county or municipal public employees¹ from serving as treasurers of political committees and from soliciting or receiving, either directly or indirectly, campaign contributions. Questions are frequently asked regarding the application of the statute. This interpretive bulletin is issued to provide general guidance only. Please contact OCPF for assistance with specific situations not addressed in this bulletin.

It is important to note that a separate statute, the Massachusetts conflict of interest law, M.G.L. c. 268A, may also restrict certain activity discussed in this bulletin. In some cases, the conflict of interest law may prohibit activity that would not be prohibited by the campaign finance law. Public employees should therefore ensure that their activities comply with both statutes. The conflict of interest law is enforced by the State Ethics Commission, and questions regarding the conflict of interest law should be directed to that office.²

M.G.L. c. 55, § 13 prohibits political fundraising by certain public employees.³ Section 13, as well as other provisions of the campaign finance law, demonstrates a "general legislative intent to keep political fund raising and disbursing out of the hands of nonelective public employees...". See Anderson v. City of Boston, 376 Mass. 178, 186-87 (1979). Specifically, 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

¹ Federal employees should contact the U.S. Office of Special Counsel to ensure compliance with the Hatch Act.

² The Ethics Commission has issued Advisory 11-1 "Public Employee Political Activity," which is posted on the Commission's website at <http://www.mass.gov/ethics/education-and-training-resources/educational-materials/advisories/advisory-11-1.html>. The Ethics Commission can be reached at 888-485-4766 or 617-371-9500.

³ For purposes of Section 13 and as used in this bulletin, "public employee" refers to any non-elected "person employed for compensation" by any city, town, county or state government agency, commission, department, authority, state institution of higher learning, or other public instrumentality. See St. 1989, c. 653, § 179, and AO-89-07.



receive any [contribution] for the political campaign purposes of any candidate for public office or of any political committee, or for any political purpose whatever...

Although Section 13 prohibits indirect solicitation or receipt of political contributions by nonelected public employees, it does allow a public employee to organize political committees to raise funds on the employee's behalf. The third sentence of Section 13, however, states that political committees organized on behalf of a public employee candidate may not solicit or receive contributions from any person or entity who the public employee "knows or has reason to know ... has an interest in any particular matter in which [the employee] participates... or which is the subject of his official responsibilities." See AO-16-02 and AO-17-01. Public employees also are responsible for ensuring that they do not engage in "indirect solicitation" of funds for "political purposes."

A. When is a person "employed for compensation" within the scope of Section 13?

"Persons employed for compensation" by the commonwealth or one of its subdivisions, and therefore subject to the restrictions of Section 13, include both full-time and part-time *non-elected* employees of a governmental entity who are entitled to *any amount* of compensation, including stipends, in exchange for their service to the entity.⁴ An elected state or local official is not subject to Section 13, unless the elected officer also holds an appointed paid governmental position.

Employees of authorities such as Massport and the MBTA, and also employees of state colleges and universities, are considered public employees subject to Section 13. See c. 653, s. 179, of the Acts of 1989. A person who is employed by an entity created by statute and funded by state and local funds, i.e., a "public instrumentality," is also covered and may not be a treasurer of a political committee or solicit or receive money for a political committee. In addition, substitute teachers, adjunct professors (AO-05-13), and athletic coaches employed by public schools (AO-09-08) are generally subject to Section 13 for as long as they are contracted to provide services to the public entity. An individual who declines compensation to which he or she is entitled is still considered to be a compensated public employee within the meaning of the campaign finance law. AO-05-13 and AO-92-07. A person who receives a stipend, or other benefits paid for by a governmental entity, for serving on a governmental board or commission, is also considered "employed for compensation."

However, persons serving on boards or commissions who are solely reimbursed for their expenses but who do not receive any employment benefits are not considered "employed for

⁴ Note, however, that there are limited exceptions to this general rule. Temporary public employees (such as poll workers) differ from part-time employees, as they are considered public employees only on the days on which they provide services to the public entity. See AO-11-07 and AO-95-37 (stating that poll workers are considered public employees only on election days). Also, work study students in public university or college, and senior citizens who provide services as part of a property tax work-off abatement program, are not subject to Section 13 except while actually working for the governmental entity.

compensation.” In addition, persons who are only reimbursed for expenses on a “per diem” basis are not considered employed for compensation if the per diem rate reasonably reflects actual expenses. See AO-10-06 and AO-91-09. Finally, in limited circumstances, an individual who works with a public entity may be an independent contractor and, accordingly, not subject to Section 13. If a person sets his or her own hours, does not receive employment benefits, is not supervised or controlled by the public entity, and has other clients who provide most of the person’s income, the person would likely be considered not “employed for compensation” for purposes of Section 13. The determination of whether a person is subject to Section 13 is based on a consideration of a number of factors, and persons who provide services on a contract basis for which they receive compensation should contact OCPF for guidance before becoming involved in political fundraising.

A public employee who would otherwise be subject to Section 13, who takes an unpaid leave of absence of six (6) months or longer before an election or at any other time, may engage in political fundraising activity without violating Section 13 during the time that the employee is on leave provided the employee does not receive payment from the governmental entity or any benefits (e.g., paid sick, vacation, or compensatory time, or subsidized health, dental, or life insurance premiums) during the leave. See AO-13-05. The employee should contact his or her employer to ensure that the employer does not prohibit political fundraising activity. An employer may have a more stringent policy regarding political activity than what is required by the campaign finance law.

B. What is direct and indirect solicitation?

Section 13 specifies that compensated, non-elected public employees may not directly *or indirectly* solicit or receive monies for political purposes.⁵ Direct solicitation would include such activity as asking a friend, neighbor, or fellow public employee to make a contribution to a candidate or political committee, or sending, via text message or email or posting on social media, an invitation to a political fundraising event. See IB-04-01. Some activities that would be considered indirect solicitation and therefore prohibited include, but are not limited to, identifying people to be targeted for fundraising or allowing the use of the public employee’s name in letters or flyers that ask for political contributions, or allowing a public employee’s name or anticipated appearance at a fundraiser to be used as a draw to collect contributions or sell tickets to that fundraiser (AO-02-29). In addition, a public employee may not participate in fundraising strategy meetings (AO-93-10), host a fundraising event in the employee’s home (AO-94-26), or (5) endorse a candidate knowing that the public employee’s endorsement will be used to solicit contributions (AO-09-01).

The prohibition applies at all times, including after the employee’s regular work hours and on weekends and vacations. In addition, a Massachusetts public employee may not solicit or receive contributions for a federal candidate or political committee, or for a candidate for office or political committee organized in another state.

⁵ Public employees may not solicit or receive funds for an event, even if the event only raises enough to cover expenses. In such a circumstance, the event is still considered a political fundraising event. See AO-04-01.

A public employee may work for a political campaign, if such involvement does not include the solicitation or receipt of contributions. Therefore, a public employee, on his or her own time, may hold signs or distribute literature urging a vote for a candidate as long as the signs or literature do not solicit contributions, and may perform “clerical” work such as data entry for the campaign. See AO-04-18. Similarly, a public employee may, on his or her own time, design and/or maintain those portions of a candidate’s or committee’s website that are not related to fundraising. The public employee may not, however, maintain any portion of a candidate’s or committee’s website that contains a link to the contribution or fundraising portions of the website, even if the page does not otherwise relate to fundraising. See AO-12-02.

A public employee candidate may attend his or her own fundraising event if he or she is careful to not solicit or receive contributions at the event. A public employee may also attend a fundraising event held by another candidate and speak about non-fundraising matters at the event, or introduce the candidate, but only if the employee does not solicit contributions for the candidate as part of the introduction. See AO-02-01.

Public employees should use caution when utilizing the Internet or social media to avoid soliciting political contributions. For example, creating a fundraising event on Facebook or forwarding an Evite to a fundraising event would not be consistent with Section 13. Similarly, public employees, even on their own time, should not retweet, share, “like” or “follow” a post or content that solicits political contributions. Political committees organized on behalf of public employees may, however, use the committee website or social media site to solicit contributions.⁶

A public employee should not use the employee’s home address as the address of a committee. Because the committee would receive contributions at its address, using the employee’s residential address (or the residential address of any public employee) would involve the receipt of contributions by a public employee.

Endorsing a candidacy by itself is not an indirect solicitation, but public employees must understand in advance how the endorsement will be used. A public employee may not provide his or her name to a candidate or committee if the employee knows or has reason to know that the endorsement will be included in a campaign advertisement or other communication that solicits contributions.

C. What are “political purposes” within the scope of Section 13?

Political fundraising within the context of Section 13 is prohibited only if the solicitation is for monies or other things of value “for the political campaign purposes of any candidate for public office or of any political committee, or for any political purpose whatever...”⁷ Organizations which are not political committees can still have a “political purpose.”

⁶ For further guidance regarding campaign finance issues relating to the use of the Internet, see IB-04-01.

⁷ Solicitation by public employees for non-political purposes, as well as political purposes, is prohibited in certain situations by the conflict of interest law. Questions regarding the conflict of interest law should be directed to the State Ethics Commission at 617-371-9500.

See AO-09-04, which states that an organization whose purpose is to help get women elected is subject to Section 13, and AO-91-12, which states that a redistricting task force organized by members of a political party seeking to support a partisan redistricting effort may not accept corporate contributions. Similarly, fundraising for a "party building" organization, e.g., a club that holds a speaker series for supporters of a political party, is subject to Section 13. See AO-96-12. In addition, raising money to enable delegates to attend a state or national party convention, or for a legal defense fund, inaugural fund, or recount fund, is subject to Section 13. See M-10-02. Finally, although candidates for town meeting are not subject to the disclosure requirements or limitations of the campaign finance law, fundraising by candidates for town meeting is subject to Section 13. See AO-95-03.

The phrase "for any political purpose whatever" is not, however, without limits. OCPF has advised that the word "political" within the context of Section 13 does not include the activities of various organizations whose activities are humanitarian or civic, rather than political, in nature. For example, public employees may solicit funds for organizations such as Oxfam America (AO-85-09), Amnesty International (AO-85-17), International Physicians for the Prevention of Nuclear War (AO-86-03), the Berkshire Advisory Council of the Massachusetts Commission Against Discrimination (AO-87-06), and Women's Statewide Legislative Network of Massachusetts (AO-90-11). On the other hand, the Log Cabin Republicans is a political organization for the purposes of Section 13 (AO-94-40).⁸

A public employee may solicit funds for a lobbying organization that works to obtain policy change through legislation. The fact that there may be a ballot question if legislation is not enacted does not limit the public employee's fundraising activity if the money is not raised to influence the ballot question. Raising money to influence legislation is not within the scope of Section 13's prohibition. If the solicitation only references the lobbying activity, and there are no other facts, such as timing, that would indicate that the solicitation was actually to raise money for purposes of influencing an anticipated ballot question, the solicitation would comply with Section 13.

D. When does a contributor have "an interest in any particular matter," and when is a contributor "subject to the candidate's official responsibility?"

Public employees may run for public office, but may not solicit or receive contributions for their own campaign or for any other political purpose. For this reason, a public employee who intends to raise campaign funds must organize a political committee. The committee will raise funds on the candidate's behalf.

⁸ If the activities of such civic, humanitarian, or lobbying organizations extend to direct or active support of one or more candidates or support of or opposition to questions appearing on the state or local ballot, such activities may become "political" rather than "civic" or "humanitarian." See AO-09-04. In addition, such organizations may, by virtue of such activity, become political committees required to register with OCPF or the appropriate city or town clerk or board of election commissioners.

The third sentence of Section 13 states, however, that a committee organized on behalf of an appointed⁹ public employee candidate may not solicit or receive contributions from:

any person or combination of persons if [the public employee] knows or has reason to know that the person or combination of persons has an interest in any *particular matter* in which [the public employee] *participates* or has participated in the course of such employment or which is the subject of his *official responsibility*.

The campaign finance law does not define the terms “participates,” “official responsibility,” or “particular matter.” Section 13's third sentence, however, is a conflict-of-interest provision and the identical terms are defined by M.G.L. c. 268A. “Official responsibility” is defined in that statute, in part, as “the direct administrative or operating authority . . . to approve, disapprove or otherwise direct agency action.” Similarly, “participate” means to “participate in agency action or in a particular matter personally and substantially as a[n]. . . employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise.” See M.G.L. c. 268A, § 1. These definitions should also apply within the context of the campaign finance law. See AO-16-02 and AO-17-01.

For purposes of M.G.L. c. 55, § 13, however, the term “particular matter” should be interpreted somewhat differently than it is for purposes of M.G.L. c. 268A. As with c. 268A, the term excludes the enactment of general legislation. For purposes of Section 13, however, special legislation or a Home Rule petition is included in the definition of “particular matter” *only if the legislation would benefit an identified individual or group of individuals*. If the individual or group of individuals who would benefit is named in a Home Rule petition or special legislation, contributions may not be solicited or accepted from the individual(s). In addition, contributions may not be solicited or accepted from individuals who the employee knows would benefit, based on the limited and defined durational, geographical or other terms of the legislation. See AO-17-01.

The statute is written to avoid a conflict of interest or appearance of such conflict by prohibiting political committees organized on behalf of public employees from soliciting or receiving certain contributions. It applies to a contributor who “has” an interest in a particular matter. The use of the present tense is significant and limits Section 13's application. Therefore, the statute should be construed as prohibiting the solicitation or receipt of contributions from persons who have a *current* interest in a particular matter the public employee has been responsible for, not a matter that the contributor once, at some point in the past, had an interest in.

The prohibition means that a public employee candidate's committee may not solicit contributions from individuals or entities that currently have matters within the scope of the public employee candidate's responsibilities as a public employee. An individual or entity that once had a matter before the candidate, concluded prior to the date of the solicitation, or who may at some indeterminate point in the future have a matter before the candidate, may be

⁹ The third sentence of Section 13, like the rest of Section 13, applies to persons employed for compensation by a state or local governmental entity, *other than elected officers*.

solicited for contributions and if such person contributes, the contribution may be kept. See AO-17-01. In addition, the committee may not solicit or receive contributions from public employees who are supervised by the public employee candidate. See AO-89-31 and AO-99-13.

E. Public Employee's Responsibility

Public employees must use reasonable care to ensure compliance with Section 13. For example, if a public employee is planning to participate in an organization's fundraising event, the employee should first ask the organization a few basic questions about the organization and the activity before becoming involved: Is the organization a political committee or does it make more than incidental contributions and expenditures which have a political purpose? If it is such an organization, will any fundraising be associated with the public employee's participation? Will the public employee's name be used for other fundraising purposes such as to draw people to an event for the purpose of subsequently targeting them for political fundraising? If the answer is "Yes" to any of these questions, OCPF would advise the public employee not to participate or to seek further guidance from OCPF.

In addition, to ensure compliance with the third sentence of Section 13, public employee candidates should review a list of persons or entities from whom their campaign committee wishes to solicit or receive funds and remove from the list any persons or entities that would have an interest in any particular matter that would be within the area of the employee's responsibilities at the time of the solicitation or receipt. See AO-17-01.

F. Political Committee/Organization's Responsibility

The public employee, not the committee or the organization, bears the responsibility for ensuring compliance with Section 13. Individuals, political parties, and political committees who use a public employee's name to solicit political contributions, however, may also be in violation of the campaign finance law.

In addition, M.G.L. c. 55, § 7 provides, in pertinent part, that:

No person or combination of persons, including a corporation formed under the provisions of chapter one hundred and eighty, shall in connection with any nomination or election receive money or its equivalent, expend or disburse or promise to expend or disburse the same, *except as authorized by this chapter* (emphasis added).

The use of a public employee's name to solicit funds for political purposes, or the receipt of funds raised or solicited by a public employee, would not be consistent with Section 7. See Commonwealth v. Michael E. McLaughlin, Suffolk Sup. Court Docket No. SUCR013-10814 (June 23, 2014)(public employee's unlawful solicitation of contributions for a candidate resulted in the imposition of criminal penalties on the public employee, and civil fines on the committee). Therefore, political committees and other organizations should exercise reasonable care to assure

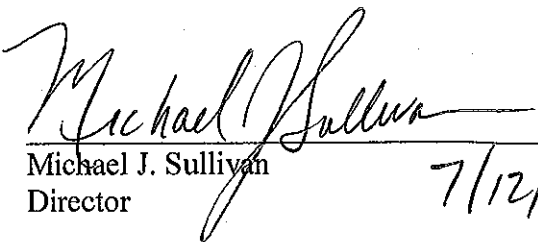
that a public employee's participation in an activity is not used directly or indirectly to solicit funds for political purposes.

In addition, OCPF's regulations require committees to proactively screen contributions at receipt. 970 CMR 1.04(8) states that:

Committees are required to exercise their best efforts to determine whether contributions are legal at the time of receipt. Any contribution which is believed by a candidate or committee 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 believed by a candidate or committee to be illegal, subsequent to its deposit, shall be purged immediately either by a refund to the contributor or payment [to a charitable or other entity] pursuant to the residual funds clause in M.G.L. c. 55, § 18.

The regulation also states that where OCPF, in an enforcement matter, determines that a contribution that was accepted by a committee was illegal, "the director may either require the contribution to be refunded to the contributor, or alternatively, he may require the contribution to be disgorged through a payment by the candidate or committee to the Commonwealth or through a payment to a charitable or other entity. . ."

For additional information or guidance with respect to specific questions involving public employees' campaign finance activities or other campaign finance matters, please visit our website at www.ocpf.us or contact OCPF at 617-979-8300.


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7/12/17