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TO: City, Town and District Clerks and Treasurers,
Boards of Election Commissioners, and
Interested Persons

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SUBJECT: Expenditure of public resources by cities, towns or
other local or regional governmental units: M.G.L. c. 55, § 22A

M.G.L. c. 55, § 22A requires the treasurer of any city, town or other governmental unit which has made expenditures or used public resources "to influence or affect the vote on any question submitted to the voters" to file a report, Form CPF M22A, disclosing such activity. This memorandum outlines the procedure that city and town clerks or election officials, and treasurers or financial officers of local or regional governmental units should follow in order to comply with the law.

1. The Anderson decision.

The campaign finance law prohibits the use of any public resources for any political purpose. The law demonstrates "a general legislative intent to keep political fundraising and disbursing out of the hands of nonelective public employees..." Anderson v. City of Boston 376 Mass. 178, 186-187 (1978). Therefore, cities, towns and other governmental units must be careful to ensure that expenditures of public resources are not made to promote, oppose or otherwise influence a ballot question or candidate's election.

2. "Public resources" defined.

Public resources include, but are not limited to: staff time, office space, stationery and office supplies, office equipment such as telephones, copiers, fax machines, computers and word processors. Even the occasional, minor use of public resources for political purposes is inconsistent with state law and should be avoided. See IB-91-01 (summarizing this office's interpretation of Anderson) and IB-92-02 (discussing the extent to which policy-making officials may act or speak in support of or opposition to ballot questions).



3. Distribution of "informational" newsletters regarding ballot questions.

Cities, towns and other governmental units have a legitimate interest in keeping residents informed. They may not, however, distribute even "informational" newsletters regarding ballot questions unless consistent with specific statutes authorizing distribution of information. Public officials often wish to distribute, or assist others in distributing information relating to ballot questions at public expense. Such distribution is generally not appropriate. It is appropriate only if it is consistent with specific statutes authorizing distribution of information. Most significantly, section 18B of chapter 53 establishes a mechanism for local governmental officials to provide information to voters regarding ballot questions in a manner similar to the "red book" that is distributed prior to state elections by the Secretary of the Commonwealth to provide voters with information regarding state ballot questions.¹ See M.G.L. c. 54, §§ 53 and 54 (relating to the distribution of the "red book"). Section 18B establishes the timeline for actions that must be taken by local officials if a city or town decides to provide information to voters relating to ballot questions. It specifies that after a governing body of a city or town has decided to distribute voter information in accordance with section 18B, the city or town, if it complies with the timeline and other provisions of the statute, must prepare and distribute informational material, including a brief summary of the ballot question and arguments for and against the question, to voters.²

4. Filing of the public disclosure statement.

M.G.L. c. 55, § 22A requires the treasurer or financial officer of any city or town or other governmental unit which has made expenditures or used public resources "to influence or affect the vote on any question submitted to the voters" to file a Form CPF M22A. The requirement to file the form does not, however, reflect an authorization allowing such expenditures.

For example, if a superintendent of schools prepares and distributes a flyer to influence a Proposition 2 1/2 ballot question, the campaign finance law would be violated. Since the distribution of any material presenting only one viewpoint on a ballot question would influence the election, a statement reflecting all expenditures or the cost or value of public resources used (on Form CPF M22A) must be filed with the clerk. The form must be completed by the treasurer or financial officer of the governmental unit which made the expenditures, *i.e.*, it would have to be filed by the treasurer of the city or town unless the expenditure was authorized by another governmental unit such as a regional school district.

¹ Questions relating to the interpretation of section 18B should be directed to the Secretary of the Commonwealth's Elections Division, which may be reached at (617) 727-2828.

² In addition, several municipalities have obtained special legislative authority, allowing them to distribute informational material, including Newton (Chapter 274 of the Acts of 1987), Cambridge (Chapter 630 of the Acts of 1989), Sudbury (Chapter 180 of the Acts of 1996), Burlington (Chapter 89 of the Acts of 1998), Dedham (Chapter 238 of the Acts of 2002), Lancaster (Sections 285-288 of Chapter 149 of the Acts of 2004), Yarmouth (Chapter 404 of the Acts of 2006), Shrewsbury (Chapter 427 of the Acts of 2006), Plymouth (Chapter 50 of the Acts of 2008), and Hubbardston (Chapter 370 of the Acts of 2010). Also, at least one other state law allows governmental entities to distribute information to voters regarding ballot questions: M.G.L. c. 43B, § 11, which directs the city council or board of selectmen to distribute the final report of a charter commission to voters.

The superintendent could avoid the problem by encouraging persons supporting the superintendent's position to organize a political committee to privately raise and spend funds to provide information and advocate a particular vote.

5. Failure to file a public disclosure statement.

If a clerk believes expenditures have been made to influence the vote on a ballot question, but the treasurer or financial official has not filed an accurate and complete report, the clerk should notify the treasurer or officer of the responsibility to file, in accordance with section 28 of the campaign finance law. Section 28 also provides that five registered voters may file a written complaint with a city or town clerk requesting the clerk to notify the treasurer or officer of the obligation to file. In addition, any person who believes that a treasurer or financial official has authorized expenditures to influence or affect the vote on a question submitted to the voters, but has failed to file an accurate and complete report, has the options specified in paragraph 7 of this memorandum.

6. Examination of the disclosure statement.

M.G.L. c. 55, § 22A specifies that in the case of a city or town, the city or town clerk, "shall examine the accounts submitted by cities and towns for political expenditures, and may order restitution of public funds which have been adjudicated to have been spent contrary to law by public officials." Therefore, when a clerk receives a completed form M22A, the clerk must examine the form and may request more information from the treasurer or financial officer if the form appears incomplete. After reviewing the form, the clerk may recommend, but is without authority to compel, restitution, unless a court has adjudicated that the expenditure was illegal. If such adjudication by a court has occurred, the clerk may order restitution.

7. Obtaining an order compelling restitution.

A clerk or any other person who wants to obtain an order compelling restitution has a number of options:

(1) Refer the matter to OCPF. This office has authority to investigate alleged violations of the campaign finance law, and may refer evidence of an alleged violation to the attorney general after a hearing, in accordance with M.G.L. c. 55, § 3.

(2) Ask the attorney general, the local district attorney, or city or town solicitor, to review the matter and take appropriate action.

(3) File a legal action pursuant to M.G.L. c. 56, § 59 or any other statutory provision which may be applicable.

8. Persons who may be required to provide restitution.

Restitution, either voluntary or pursuant to a court order, should be made by the person or persons responsible for the improper expenditure of public resources. Payment would be from

that person(s) to the governmental unit which was the immediate source of funds for the expenditure. For example, if an expenditure was made from the funds of a regional school district, restitution would be provided by the superintendent or other person(s) authorizing the expenditure, to the treasury of the school district. Restitution would not be made to the treasuries of the towns which comprise the district.

Rather than payment being made by the person responsible for the expenditure, a political committee may be established to raise funds to provide restitution. The committee would have to register with the city or town clerk as a ballot question committee and file campaign finance reports with the clerk, reflecting all funds raised or spent. Public employees may not solicit funds to help pay for restitution since such solicitation would violate M.G.L. c. 55, §13. Once restitution has taken place, the ballot question committee must dissolve.

If you have any questions regarding this memorandum please do not hesitate to contact this office.