

# The Use of Public Resources for Political Purposes



# What is OCPF?

- Independent, non-partisan agency
- Director serves six-year terms
- Administers the campaign finance law (audit and legal)
- Disclosure of campaign finance activity

# Public Employees, Public Buildings

- Public employees are prohibited from soliciting or receiving campaign contributions, directly or indirectly. Elected officials are exempt.
- The solicitation or receipt of campaign contributions is prohibited in buildings used for governmental purposes. Prohibited even during non-working hours.

# The *Anderson* Decision

## 1978

- City of Boston appropriated \$975,000 to support a statewide ballot question
- Court decided that public resources cannot be used for campaign purposes
- A matter of fairness in the electoral process
- Ch. 55, S. 22A: “[n]othing contained herein shall be construed as authorizing the expenditures of public monies for political purposes.”

# Examples of public resources

- Employee time
- Copier
- Government e-mail
- Paper
- Town vehicles
- Printing presses
- Phone banks / Robo-calls

# Town Meeting v. Election Financing

- *Anderson* applies to elections, not town meeting actions
- Use of public resources to influence town meeting are not prohibited

# “Distribution”

*What kind of distribution is improper under Anderson?*

- Unsolicited
- Publicly funded
- Deals with election issue

# Most common applications

- Mass mailings to voters at public expense
- Distribution via student backpacks
- Parent phone system used by schools
- School newsletter

# Real Example 1

Public school teachers are asked to distribute a notice to students regarding the formation of a ballot question committee, which provides a point of contact for the committee. That involves the use of public resources (on-the-clock teacher time) for a political purpose.

## Real Example 2

A private group used the bulk mail permit to distribute letters to the public advocating for an override. Even though the paper and printing was paid for privately, a bulk mail permit is a public resource.

## Real Example 3

A public employees may not use the school e-mail network to urge support of an override vote.

# What about “objective” or “informational” material?

- Even “objective” material that does not explicitly advocate is impermissible
- Voter information may be sent out only by a few municipalities that have been granted legislative approval. (10 communities have such approval: Newton, Cambridge, Sudbury, Burlington, Dedham, Lancaster, Yarmouth, Shrewsbury, Plymouth and Hubbardston).

# Permissible distributions

- Information that is requested by a member of the public
- Notification of an upcoming election (restricted to date, time, place and “brief neutral title”) Tip: Also call Ethics Commission
- Speech vs. actions: Discussion of ballot question is not limited (for example, if a parent asks a teacher about the ballot question, the teacher can talk about it, even on school time).

# Permissible actions of appointed officials

- Take a position on a ballot question
- Prepare material concerning a ballot question in the course of their duties
- Hold public meetings and forums concerning a ballot question
- Distribute material at those meetings as well as the public upon request
- Speak to the press concerning a question
- Work for or contribute to a ballot question committee (no fundraising)

# Prohibited actions by appointed officials

- Unauthorized distribution of material
- Improper support of a ballot question committee (e.g., materials, staff)
- Fundraising for a ballot question committee. Non-elected public employees are prohibited from soliciting money. School committee members are permitted to fundraise.

# Public meetings and hearings

- Speech of officials and attendees is unrestricted.
- Distribution of material at these meetings is not restricted by *Anderson*.
- Material may discuss, and advocate for or against, a ballot question.
- Such material may not, however, be distributed proactively outside of the meeting.

# Equal access

- SJC: Political use of “city facilities, equipment and supplies” was improper, “unless each side were given equal representation and access.”

Two most common occurrences:

- Use of facility for committee meetings
- Leafleting by BQ committee

# Municipal websites

- Public websites may be considered an electronic bulletin board. Posting of material is more passive than the distribution prohibited by *Anderson*.
- Ballot question information may be posted. Such material may also include advocacy.
- Website should not take on the appearance of a campaign site (e.g., flashing banner requesting a Yes or No vote)

# E-mail

- Officials may use a publicly-funded e-mail system to respond to questions concerning a ballot question and to send out information to individuals who request it.
- Blast e-mails or use of a public list-serve to send an e-mail concerning a ballot question should be avoided.

## Other electronic means

- Automated calls (“Connect-ed”): Such a calling system should not be used to distribute information or advocate concerning a ballot question.
- Use of automated calls to notify parents of an upcoming election is not improper. Please call the Ethics Commission.

# Newsletters

- Should not contain any material concerning a ballot question.
- Includes PTO minutes and “letter” from principal or superintendent.
- Public resources are used if newsletter is prepared by a PTO, then brought to schools for distribution.

# Ballot Question Committees

- Ballot Question Committees organize with the town clerk by filing a M101 form.
- No contribution limit.

# Disclosure – BQ and Independent

- The laws regarding ballot question committees are primarily disclosure laws and do not place limitations on contributions
- Ballot question committees file regular campaign finance reports, disclosing receipts and expenditures (pre-election, 30-day after for spring elections, year-end)
- Individuals (\$250), groups and corporations file M22 forms with the municipal clerk.

# Resolution of *Anderson* cases

- Most common resolution is a PRL
- Improper expenditures reported on Form 22A
- Restitution: *“The director of campaign and political finance, or in the case of a city or town, the clerk of such city or town, 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.”* (Section 22A)