

# Public Resources and Local Ballot Questions

In the 1978 case of *Anderson v. City of Boston*, the Supreme Judicial Court ruled that public resources may not be used for political campaign purposes. The court found that the city's appropriation of almost \$1 million for an organized effort to convince voters to support a state ballot question was prohibited by the campaign finance law, M.G.L. Chapter 55.

Though the *Anderson* decision came two years before the passage of Proposition 2½, it has its most common impact in recent years in local override and debt exclusion elections. Cities and towns may not, according to *Anderson*, use public resources to persuade voters to support or oppose a question put to voters in an election. In addition, the state Constitution prohibits the publicly funded distribution of any information to voters concerning a ballot question without express statutory authority.

"Public Resources" includes anything that is paid for through public funds (taxes or fees), such as paper, postage, staff time, equipment and property. For example, public resources may not be used for a town-wide mailing advocating a position on, or providing information concerning, a ballot question.

The campaign finance law does not, however, prohibit public officials and employees from taking positions on ballot questions, participating in the public discussion of issues, holding or attending forums and meetings, and supporting or joining ballot question committees. It also does not prohibit the use of public facilities by political groups such as ballot question committees, as long as a facility is available to all such groups under the same terms and conditions. In addition, it should be noted that the *Anderson* limitations apply to elections only: activities concerning town meeting only are not regulated. In the event of questions that are on both the town meeting warrant and the election ballot, however, the prohibition may apply.

To help officials and the public understand the public resources issue, attached are three publications from OCPF:

- Interpretive Bulletin 91-01: The Use of Governmental Resources for Political Purposes.
- Interpretive Bulletin 92-02: Activities of Public Officials in Support of or Opposition to Ballot Questions.
- Advisory Opinion 07-03: Use of automated phone system.
- Public Employees and Campaigns: A one-page fact sheet.

Officials and other parties with further questions are encouraged to contact OCPF.



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## PUBLIC EMPLOYEES AND CAMPAIGNS

M.G.L. Chapter 55, the Campaign Finance Law, regulates political activity by public employees and the use of public buildings and resources in campaigns. Public employees who take part in political campaigns and the candidates and committees they support should be aware of these sections of the law:

### Section 13: Public Employees

No person employed for compensation by agencies of the Commonwealth, its cities, towns and counties, other than an elected official, may directly or indirectly solicit or receive a contribution or anything of value for any political purpose (e.g., candidates, parties, PACs, ballot question committees).

A public employee may not:

- sell tickets to a political fundraiser or otherwise solicit or collect political contributions in any manner, including in person, by phone, by e-mail or by conventional mail.
- sponsor or host a political fundraising event.
- allow his or her name to be used in a fundraising letter, advertisement, phone call or e-mail.
- help identify people to be targeted for political fundraising.
- serve as treasurer of a political committee.

A public employee may:

- contribute to candidates and attend fundraisers.
- run for office (a employee must organize a campaign committee if he or she plans to raise any money).
- work for campaigns and committees in a non-fundraising capacity, such as holding signs, stuffing envelopes, hosting coffees or other meetings, or being a member of a committee.

### Section 14: Government Buildings

Soliciting or receiving campaign contributions in a government building is prohibited. Examples include city and town halls, public schools, libraries, police and fire stations and public works buildings.

No one (not just public employees) may:

- sell tickets to a fundraiser or otherwise solicit or collect political contributions in a public building.
- send a solicitation into a government building, such as by phone, mail or e-mail.
- use a public building as the site of a fundraiser, the return address for contributions or the contact phone number for buying tickets to a fundraiser.
- post in a public building any advertisement for a fundraiser.

### Use of Public Resources

Public resources (government vehicles, office equipment and supplies and the paid time of public employees) may not be used for political campaign purposes, such as the election of a candidate or the passage or defeat of a ballot question. For example, a public employee may not, during his work day, render campaign service to a candidate or ballot question committee or use office postage or equipment to distribute campaign material.

Visit the Guides section of OCPF's website, [www.mass.gov/ocpf](http://www.mass.gov/ocpf), to download our Campaign Finance Guide: Public Employees, Public Resources and Political Activity.





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### INTERPRETIVE BULLETIN

#### **Activities of Public Officials in Support of or Opposition to Ballot Questions**

This office frequently is asked about the extent to which public officials may act or speak in support of or in opposition to a question submitted to the voters.

In general, officials may undertake various official actions that concern ballot questions relating to matters that are within their areas of authority, such as voicing their opinions, holding or attending meetings and making information available to the public. Officials should not, however, use public resources to engage in a campaign to influence voters concerning a ballot question, for example by authorizing a publicly funded mass mailing to voters or using city or town resources to support or oppose a ballot question.

In Anderson v. City of Boston, 376 Mass. 178 (1978), appeal dismissed, 439 U.S. 1069 (1979), the Supreme Judicial Court ruled that public resources may not be used to influence voters concerning a ballot question.

In accordance with the Anderson decision, OCPF has consistently advised that governmental entities may not contribute or expend anything of value in support of or opposition to a ballot question, whether it is on the statewide ballot or placed before voters in a single city or town.<sup>1</sup> See OCPF Interpretive Bulletin IB-91-01 and advisory opinions cited therein for more specific guidance on activities that fall under this prohibition. In addition, public resources may not be used to distribute even admittedly objective information regarding a ballot question unless expressly authorized by state law. See IB-91-01.

Anderson, however, does permit public officials to act and speak regarding ballot questions, subject to certain limitations. As the Anderson court noted with apparent approval:

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<sup>1</sup> Anderson generally does not address or restrict activities of officials concerning town meeting. There may be some limitations, however, in the case of a ballot question that is also the subject of a town meeting, such as a Proposition 2½ override. See IB-91-01.

At oral argument, the plaintiffs conceded that the mayor and persons in relevant policy-making positions in . . . government are free to act and speak out in support [of a ballot question]. *Id.* at 199 (emphasis added).

In short, the decision reflected a recognition that if officials were prohibited from stating their positions regarding a ballot question related to their official responsibility, such a prohibition would unnecessarily (and probably unconstitutionally) restrain such officials from carrying out the duties of their offices.

Nevertheless, OCPF always advises caution on the part of officials to avoid the appearance of improperly using public resources to support or oppose a ballot question. In Anderson, the court indicated that the campaign finance law reflects an interest “in assuring the fairness of elections and the appearance of fairness in the electoral process.” 376 Mass. at 193. In general, officials should be aware that some of their actions or comments may be viewed unfavorably by those who oppose their positions, even if those actions are not specifically prohibited by the campaign finance law. On the other hand, members of the public who may question an official’s conduct or comments concerning a ballot question should be aware that, as noted by the court in Anderson above, an official has the right to voice his or her opinion on a public policy issue, including a ballot question. Objections to the speech or actions of officials concerning a ballot question are sometimes based not on the law, but on other considerations that are beyond the scope of OCPF’s jurisdiction.

This bulletin provides more specific guidance regarding the scope of such permissible activities concerning a ballot question, but it cannot be seen as encompassing all situations that might arise. OCPF is aware that ballot questions, especially those concerning Proposition 2 ½ overrides and debt exclusions, are often contentious issues. Given the limited treatment of this issue in Anderson, and the absence of relevant statutory provisions, questions and issues not addressed or reflected in this bulletin will continue to be raised regarding the extent to which officials may speak or act regarding ballot questions in a manner consistent with Anderson. Those who have questions not addressed here may contact OCPF for advice.

## **I. Permissible Official Activity by Public Officials**

In general, a public official may comment regarding a ballot question. In addition, a public official may take certain actions regarding a ballot question, if the actions are consistent with his official responsibilities.<sup>2</sup> An official may therefore address an issue or advocate a position regarding a ballot question that may affect the official’s agency or which relates to a matter within the scope of his agency’s enabling legislation. See AO-02-03.

On the other hand, if an official could utilize governmental resources to promote or oppose a ballot question, the fundamental prohibition set forth in Anderson would be meaningless. While voters

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<sup>2</sup> It is worth noting, however, that *elected* officials have considerably more leeway than *appointed* officials. An *elected* official may speak about a ballot question at any time, even if the ballot question is not within the official’s area of responsibility. In contrast, an *appointed* official may speak regarding a ballot question during work hours only if the question relates to a matter within the scope of the official’s area of responsibilities. In addition, an appointed official may not appear at a political committee’s campaign function to promote or oppose a ballot question during working hours. The appointed official may attend the event during non-working hours. An elected official, however, may attend such an event at any time.

have the right to know an official's position, they also have the right to expect that their tax dollars will not be used for political purposes, whether to support the election of a candidate or to gain approval of a question put before voters.

Therefore, officials may not use public resources in an attempt to promote or oppose a ballot question, e.g., by placing an advertisement in a newspaper urging a "yes" or "no" vote on the question, or by conducting a mass mailing of flyers urging a yes or no vote on a question or by distributing such a flyer through students at a public school. In addition, the Secretary of the Commonwealth has ruled that a city or town may not distribute printed information to voters regarding the question, unless it has been authorized to do so by the Legislature. (As of this writing, only eight communities have received such authorization through home rule petitions: Burlington, Cambridge, Dedham, Lancaster, Newton, Sudbury, Shrewsbury, and Yarmouth.)

In general, officials are prohibited from using any publicly funded publications, including newsletters, to influence voters concerning a ballot question. Such materials may be prepared, but they may not be sent unsolicited to voters.

Even with these restrictions, however, public officials may act or speak regarding ballot questions in a number of ways without violating the campaign finance law. Notwithstanding the Anderson restrictions, a public official may:

**A. Discuss a ballot question, including at meetings of a governmental entity or at informational meetings of private groups.** Officials may discuss a ballot question at any time, including at an official meeting of a governmental body, such as a board of selectmen or school committee, or at informational meetings sponsored by a private group. Although sometimes a person may complain that the statements made by officials at such meetings are inaccurate or inappropriate, the accuracy or appropriateness of officials' statements is not an issue under the campaign finance law.

**B. Take a position on a ballot question.** Officials may endorse, or vote as a body to endorse, a ballot question, and may issue statements supporting or opposing a ballot question. However, the distribution of such statements should be restricted to such usual methods as posting on a bulletin board or a press release, not in a manner restricted by Anderson as noted below. The fact that a ballot question is discussed or a vote is taken does not make an official meeting a "political event" and therefore does not trigger an equal access requirement for the use of the meeting room or inclusion on the agenda of the meeting. See AO-95-33 (selectmen may discuss ballot question at meetings, respond to inaccurate or misleading statements and post a statement on town hall bulletin board) and AO-00-19 (selectmen may endorse candidate or ballot question).

**C. Analyze the impact of a ballot question.** An official may conduct an analysis of a ballot question's impact on agency operations or assign staff to conduct such an analysis, provided the question would affect the official's area of responsibility or agency. For example, a police chief may prepare an analysis of the effect of a Proposition 2 ½ override that would fund his department; if the question concerned the school budget only, however, such a use of police department resources would run counter to Anderson. The results of such analysis would be considered a public document and could be made available to the public upon request, but should not be prepared or distributed in a manner inconsistent with the next section. The

official may not conduct a study primarily to aid the proponents or opponents of a ballot question.

**D. Provide copies of the agency's analysis of and/or position on a ballot question, or other public documents, to persons requesting copies or to persons attending public meetings of a governmental entity.**

An official may distribute information containing the official's position on a ballot question or the agency's analysis to persons requesting such information, and may make a reasonable number of copies available to persons attending an official meeting (such as a public forum) of a governmental entity. However, even if the study is a public record, it may not be mailed or distributed, beyond those who attend such a meeting or request such information, to voters or a class of voters at public expense without express statutory authorization. See IB-91-01. A copy may be made available to an individual or group and may be reproduced with private funds and distributed by individuals or political committees, if such distribution is disclosed in accordance with the campaign finance law. Officials should not provide an excessive number of copies to a private group, political committee, or individual, for mailing or any other type of distribution.

**E. Hold an informational forum, participate in a forum held by a private group, and distribute a notice of the forum.**

An official or agency may hold an informational forum concerning a ballot question, or participate in a forum sponsored by a private group. As noted above, the campaign finance law generally does not cover the content of public meetings. If the governmental agency distributes a notice of a forum, however, such a notice may not discuss the substance of the ballot question or contain an argument for or against the question. For example, it may announce the date, time and location of the forum, but it may not contain a discussion of the reasons for supporting or opposing the ballot question.

**F. Speak to the press.** An official may speak to the press regarding a ballot question that concerns a matter within the official's area of responsibilities. An official may also respond to or direct staff to respond to questions from the press or the public about the official's position on such a ballot question. See AO-92-32. Officials should contact OCPF before a press release is prepared or distributed using public resources.

**G. Post information on a government bulletin board or Web site.** Information or endorsements by governmental entities or other information regarding a ballot question that are public records may be posted on a town's Web site or bulletin board. See AO-00-12. Further use of the governmental web site or the Internet for a more political purpose, such as unsolicited e-mails to voters asking for their support, should be avoided.

**H. Allow private groups to use a public building for a meeting concerning a ballot question.** In Anderson the court stated that the political use of certain government resources, such as facilities paid for by public funds "would be improper, unless each side were given equal representation and access." Accordingly, ballot question committees, or other groups that support or oppose a ballot question, may use areas within public buildings that are accessible to the public (i.e., not private offices) for meetings if each side is given equal access. See AO-90-02. "Equal access" does not mean that the other side must be invited to attend a meeting. It means that both sides may, upon request, use the same space for separate meetings on the same terms and conditions. It is important to remember, however, that fundraising relating to the ballot question may not take place at such a meeting. See M.G.L. c. 55, § 14

(prohibiting any demand, solicitation or receipt of money or other things of value for any political campaign purpose in any building or part thereof “occupied for state, county or municipal purposes”).

**I. Appear on cable television:** The fact that an official may, as described above, discuss or take a position on a ballot question is not altered if such an action is broadcast on local access cable television. In addition to speaking at public meetings that may be broadcast, an official may appear on a local cable or broadcast television or radio show, during work hours if applicable, to discuss a ballot question that relates to a matter within the scope of the official’s area of responsibilities. During the course of the official’s appearance on the show, the official may state that he or she supports or opposes the ballot question. See AO-02-03. Questions concerning content of cable television programming and the use of cable television by municipalities should be directed to Cable Television Division of the state Department of Telecommunications and Energy at (617) 305-3580 or (888) MA CBL TV (888-622-2588).

## **II. Private activity by officials**

The examples listed above concern an official’s actions while using some type of public resource, i.e., staff time or material, to promote or oppose or otherwise influence a ballot question. The Anderson opinion applies to the use of such public resources, but does not extend to the use of privately-funded resources. A person’s status as a public official does not preclude him or her from engaging in political activity when not at work, including activity supporting or opposing a ballot question. The campaign finance law does not prohibit officials from acting or speaking in favor of or in opposition to a ballot question on an individual basis on their own time. It is important to keep in mind, however, that appointed, paid public employees may not, be involved *at any time* in fundraising to support or oppose a ballot question. See M.G.L. c. 55, § 13, which state that public employees may not “directly or indirectly solicit or receive” any contributions of anything of value for any political purpose. For more information regarding restrictions on fundraising, see OCPF’s *Campaign Finance Guide: Public Employees, Public Resources and Political Activity*.

Specifically, public officials may, on their own time:

**A. Serve on a ballot question committee or perform services for such a committee.** An official may, on his or her own behalf, perform services or serve as a member of a political committee, or hold any committee position, aside from treasurer or any other position that involves fundraising (if the official is appointed as opposed to elected, as noted above). In addition, as discussed below, some activities of public officials acting or speaking in favor of or opposition to ballot questions may raise issues relating to the conflict of interest law, M.G.L. c. 268A, which is enforced by the State Ethics Commission.

**B. Contribute to a ballot question committee or make expenditures to support or oppose a ballot question.** An official may use his or her own personal funds to contribute to a ballot question committee or otherwise to support or oppose a ballot question. There is no monetary limit to such contributions or expenditures.

### III. Conflict of Interest Issues

Some activities of public officials acting or speaking in favor of or opposition to ballot questions may raise issues relating to the conflict of interest law, M.G.L. c. 268A, which is enforced by the State Ethics Commission. The Ethics Commission has stated that a municipal official may be a member of a ballot question committee and may speak in favor of or in opposition to a ballot question. The Commission has advised, however, that such an official may not speak "on behalf of and/or as the representative of" a ballot question committee before a municipal board or in a forum sponsored by a municipality. In addition, an official should publicly disclose any relationship "that gives the reasonable basis for the impression that any person or entity can improperly influence" the official in the performance of his duties. See Commission Advisory No. 4 and Conflict of Interest Opinion EC-COI-92-5. If you have questions regarding c. 268A, contact the State Ethics Commission at (617) 727-0060.

**This bulletin provides general guidance. To ensure compliance with the campaign finance law, OCPF strongly encourages officials to contact this office if they are in doubt regarding the scope of permissible involvement in ballot question campaigns.**

If you have any questions or need further information regarding this interpretive bulletin or any other campaign finance matter, please call OCPF at (800) 462-OCPF or (617) 727-8352. The office's web site, [www.mass.gov/ocpf](http://www.mass.gov/ocpf), provides additional guidance on this and other campaign finance topics.

Michael J. Sullivan  
Director





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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,



Michael J. Sullivan  
Director

MJS/gb



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### INTERPRETIVE BULLETIN

#### **The Use of Governmental Resources for Political Purposes**

This office frequently is asked about the extent to which public resources may be used for political purposes, most often whether public resources may be used to distribute information to voters concerning a municipal ballot question. In addition, questions have been asked regarding whether public facilities, especially buildings and other property, may be used by groups supporting or opposing a particular ballot question or candidate.

In general, the campaign finance law prohibits the use of public resources for political purposes, such as public employees engaging in campaign activity during work hours or using their office facilities for such a purpose. For example, a candidate who also works in a public office may not use the office phones or computer to conduct campaign work.

The law prohibits the use of public funds or other public resources to support or oppose a question put to voters, such as the use of public resources to distribute a mailing days before an election. The law does not, however, prohibit the expression of views by public officials concerning ballot questions to the extent such expression is within the scope of their official responsibilities and protected by the First Amendment.

#### **I. Scope of the restriction, in general**

In Anderson v. City of Boston, 376 Mass. 178, 187, 380 N.E.2d 628 (1978), appeal dismissed, 439 U.S. 1069 (1979), the Supreme Judicial Court indicated that public resources may generally not be used for political purposes. In that case, the court concluded that the City of Boston could not use public funds to set up an office "for the purpose of collecting and disseminating information about the impact" of a ballot question. The court stated that the campaign finance law is "comprehensive legislation" which "preempt[s] any right which a municipality might otherwise have to appropriate funds for the purpose of influencing" the outcome of a ballot question. 376 Mass. at 185-186.

The court pointed to Section 22A of Chapter 55, which states that “[n]othing contained herein shall be construed as authorizing the expenditures of public monies for political purposes.” The court also stated that:

[T]he Legislature may decide, as it has, that fairness in the election process is best achieved by a direction that political subdivisions of the State maintain a “hands off” policy. It may further decide that the State government and its various subdivisions should not use public funds to instruct the people, the ultimate authority, how they should vote.

376 Mass. at 194-195.

The analysis in Anderson applies to the Commonwealth and its “political subdivisions,” which use taxpayer or rate payer funds. 376 Mass. at 193. Political subdivisions of the commonwealth include all agencies within the state government, and within county, regional, town and city governments. State authorities, e.g., the Massachusetts Port Authority and the Massachusetts Turnpike Authority, and state institutions of higher education are subject to the restrictions articulated in the case. See § 179 of ch. 655 of the Acts of 1989. In addition, the Anderson decision applies to municipal utilities that rely on fees paid by ratepayers. See AO-95-42. Finally, non-profit organizations that are supported by state tax revenues and other public funds may not use such revenues to support or oppose a candidate or a ballot question. See AO-95-41 and AO-96-25.

“Governmental resources” include anything that is paid for by taxpayers, e.g., personnel, paper, stationery and other supplies; offices, meeting rooms and other facilities; copiers, computers, telephones, fax machines; automobiles and other equipment purchased or maintained by the government. A bulk mail permit is also considered a governmental resource.

Chapter 55 was enacted to regulate “election financing.” Anderson, 376 Mass. at 185 (emphasis added). The prohibition on the use of governmental resources for political purposes therefore applies to all expenditures made to promote or oppose a matter placed before voters at the polls, such as a ballot question. In municipal elections, the Anderson restriction and other provisions of the campaign finance law are generally triggered once the appropriate municipal authority, i.e., the board of selectmen, city or town council or mayor, decides to place the question on the ballot. See IB-90-02. However, there are cases where the law would apply to activity undertaken before a question is officially placed on the ballot. Funds spent prior to a question being “on the ballot” may also be subject to campaign finance law if the funds are spent to influence the outcome of an anticipated ballot question. Id.

Although it applies to anticipated ballot questions, the prohibition does not extend to expenditures made to discuss policy issues (e.g., the need to renovate aging school buildings), which currently are not the subject of a scheduled or anticipated ballot question, but may at some **undetermined** future point become the subject of a ballot question. On the other hand, the prohibition does not apply to expenditures concerning public policy issues that are not, and are not expected to be, the subject of an election. An example would be an issue that is on the warrant for a town meeting only, as noted later in this bulletin.

This bulletin deals largely with the publicly funded distribution of information, especially

printed matter, as it relates to the Anderson restriction. Such distribution is the most common source of questions and complaints to OCPF. This bulletin does not, however, concern the speech of public officials concerning a ballot question, such as comments supporting or opposing a question or statements made during public meeting. Such comments are generally unrestricted by the campaign finance law. See Interpretive Bulletin IB-92-02, "Activities of Public Officials in Support of or Opposition to Ballot Questions."

## II. Distribution of information relating to ballot questions

Public officials often wish to distribute, or assist others in distributing, information relating to ballot questions at public expense. Such distribution is appropriate only if it is consistent with Anderson. As discussed below, public officials may prepare and make available certain information since such activity is consistent with their official responsibilities. Examples of such allowable actions would be preparing material and giving out copies at official meetings or sending it to voters who have requested more information. This type of activity is limited in scope and, in general, complies with Anderson.

In contrast, the use of public resources to make an unsolicited distribution of information relating to the substance of a ballot question, such as a blanket mailing or other publicly funded dissemination of material, outside of an official meeting, would not comply with Anderson. The general rule is that governmental resources may *not* be used for distribution of voter information commenting on the substance of a ballot question. The prohibition applies whether the material that is distributed advocates for or against a question (it is "advocacy") or simply purports to be objective and factual (it is "informational"). As noted above, Anderson prohibits the distribution of advocacy material. As for informational material, the Secretary of the Commonwealth has concluded that the Home Rule Amendment of the Massachusetts Constitution prohibits municipalities from distributing such material in the absence of legislation specifically providing such authority.

Only eight municipalities currently have such authority to distribute informational material: 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), and Shrewsbury (Chapter 427 of the Acts of 2006). In addition, there is at least one other exception that this office is aware of: 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.

Two examples illustrate the circumstances in which the office most often finds that information has been distributed in violation of Anderson. Both concern the preparation and distribution of information that deals with a ballot question, though the method of distribution varies in each example.

- 1) A board of selectmen uses public funds to prepare and distribute a mailing to all town residents concerning an upcoming Proposition 2 ½ override. The mailing either argues for a yes vote or provides arguably "objective" information about the question. If the mailing calls for a particular vote, it is an inappropriate use of public resources and violates Anderson. Even if the mailing simply provides "information" concerning the question, however, and may reflect an effort to be neutral, it is not consistent with the Home Rule Amendment.

2) A public school system prepares and distributes to teachers a flyer similar to the one noted in the first example. While there is no town-wide mailing, public resources are still used: school resources to prepare or copy the flyer, and the time of teachers in distributing it to students. Therefore, school officials should not ask children to take literature (including literature prepared by a parent/teacher organization) regarding the substance of a ballot question home from school to give to parents.<sup>1</sup> See AO-94-11.

Although the scope of the general rule prohibiting distribution of public resources is broad, there are several exceptions. They are discussed in greater detail below.

#### **A. Distribution of information relating to Town Meeting**

In addition to consideration by voters at the polls, some ballot questions, such as Proposition 2½ overrides and debt exclusions, also involve review by town meeting or a city or town board in the weeks and months prior to, or shortly after, an election.

The campaign finance law does not regulate expenditures of public funds made for the purpose of lobbying town meeting or city or town boards or for other purposes not designed to influence voters at an election. See AO-93-36 and AO-94-37 (stating that the campaign finance law does not regulate expenditures made primarily to affect the deliberations on a warrant article at town meeting). Municipal officials may therefore use public resources to distribute information regarding a warrant article to residents prior to a town meeting, as long as the material is distributed primarily to influence the town meeting.

Material distributed using public funds prior to a town meeting may not advocate a position on a ballot question. For example, a report summarizing or supporting a warrant article pending before town meeting may not also urge a vote in a subsequent town election.

In addition, because it is not always easy to determine the primary purpose of material distributed before a town meeting and related election, municipal officials *should be careful to avoid any discussion regarding an election* in such material. Even if it does not expressly urge a vote in an election, any discussion regarding an election in a flyer or other document distributed using public resources may raise an inference that the document is being distributed to influence the election.

There are, however, limited circumstances where the mere mention of an election in a document that is distributed using public resources prior to a town meeting would not violate the campaign finance law. For example, the town meeting warrant may include a reference to a subsequent election, especially in the context of a town meeting vote that is contingent on an override vote. In addition, a town's finance committee may use governmental resources to distribute a booklet containing its report and recommendations on warrant articles, if the recommendations are limited in scope to the warrant articles and the content of the booklet would reasonably be seen as primarily providing information in connection with town meeting, not the election which may take place after

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<sup>1</sup> This office is sometimes asked about teachers' discussion of a ballot question, such as an override, in the classroom. Such activity often engenders controversy and is seen as an indirect attempt to influence parents, even if it is undertaken for educational or information purposes. Since there is no explicit prohibition of this activity under the campaign finance law, questions or concerns about such activity should be directed to local school officials or the Massachusetts Department of Education.

the town meeting. In such circumstances, the mention of the election is clearly secondary to the material's primary purpose of providing information relating to town meeting.

The above examples deal with situations where town meeting precedes the election. In contrast, where an election, instead of following town meeting, precedes the relevant town meeting, OCPF advises that public resources should generally not be used to distribute information to voters until *after* the election. Distribution after the election eliminates any inference that taxpayer funds are being inappropriately used to influence or affect the outcome of the election. See AO-04-02 (relating to the distribution of the report and recommendations of a finance committee with the town meeting warrant).

Material that raises legal concerns under Anderson should be distributed with private funds by entities such as a duly organized ballot question committee or an existing association, corporation or other organization, in accordance with M.G.L. c. 55. Officials unsure about the appropriateness of any material planned for distribution should contact OCPF, which will review it and make a recommendation.

#### **B. Preparation of material by officials; restrictions on distribution**

Policy-making officials may act or speak out concerning ballot questions in their official capacity and during work hours if in doing so they are acting within the scope of their official responsibilities. See IB-92-02.

Such responsibilities may include preparing a document for use in responding to public inquiries or taking steps to understand the implications of a ballot question that is within their area of responsibility. An official may therefore produce a document that deals with a ballot question, such as a summary of the effects of the question or an agency's position on the question, as long as such preparation is in accordance with his or her official responsibilities and does not expressly advocate a vote on an upcoming election.

An example of a document that concerns a ballot question but does not pose an immediate problem under Anderson is a report prepared by a school building committee supporting the need for a new facility that will be the subject of a Proposition 2½ debt exclusion. The document would be a public record. It may be provided to those who ask for it, such as a citizen who calls the official seeking more information on the ballot question. Any person or group, at that person or group's expense, in turn may distribute the information to voters without violating the campaign finance law if the person or group complies with the campaign finance law's reporting and disclosure requirements. In addition, information prepared by a governmental entity regarding a ballot question may be posted on a bulletin board at town hall, and it may be made available at a counter or other convenient location for the public. It may also be posted on a governmental website. See AO-01-27, and IB-04-01.

While the preparation of the document is allowable, its distribution by a public entity on a larger scale, beyond those who seek out the document or receive it at official meetings as noted below, would raise concerns under Anderson. Because the document is a public record, however, it may be copied and mailed to residents by a private entity using private funds, such as a parent-teacher organization (PTO), a ballot question committee or a corporation. See IB-92-02. The entity would, however, have to report the expenditures in accordance with the campaign finance law's requirements.

### C. Distribution of information at public meetings or hearings

Governmental resources may be used to produce and distribute, or make available, a reasonable quantity of a summary or other document, e.g., an architect's report on a proposed new school building, at a meeting or hearing of the governmental entity, even if the document advocates a particular vote in an anticipated election or otherwise refers to such an election. In meetings or hearings conducted by a public body, materials prepared by or for the body may be distributed to persons in attendance where such materials are designed to facilitate discussion or where the materials otherwise relate to the agenda of the meeting.<sup>2</sup>

The content of such material is generally not subject to Anderson, even if it references or makes a recommendation concerning an upcoming ballot question, because its primary purpose is to facilitate the meeting. Such unsolicited distribution of the material to a larger audience after a meeting should be avoided.

### D. Distribution of notices of public meetings or municipal elections

The campaign finance law does not restrict the distribution of some basic information, such as notice of a public meeting held by a governmental body or a notice regarding an upcoming election.

Public resources may be used to prepare and distribute a brief neutral notice to voters announcing the times and dates of meetings such as the type referred to in the previous section, as well as notices of meetings of governmental bodies. For example, a notice of a selectmen's meeting to discuss the municipal budget and an upcoming override may be distributed at public expense. Such notice should be confined to a simple notice of the meeting and avoid any discussion of the substance or merits of the override. A notice that encourages people to attend so they can "learn why an override is needed" would not comply with this standard.

In addition, public resources may be used to distribute information that simply advises voters of an upcoming vote, such as a notice of the time, date and place of a municipal election. In addition, such information may urge people to vote, and provide information about how to register to vote. Also, such information may include a brief neutral title describing the ballot question, and the text of the ballot question. **Extreme care should be taken to avoid any appearance of advocacy.** For example, the title "school expansion project" would be appropriate. On the other hand, titles which would not be appropriate include "ballot question relating to need for school expansion," or "ballot question addressing school overcrowding problem."

## III. Use of government buildings or other public facilities or resources

Notwithstanding the Anderson prohibition, there are limited circumstances in which groups supporting or opposing a ballot question may use public resources. In its decision, the court stated

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<sup>2</sup> Generally, such public documents may not be reproduced using public funds if they are to be distributed at a meeting sponsored or organized by a ballot question committee. The documents could, however, be distributed by an official who has been invited to speak at a meeting of other private groups regarding a ballot question within the scope of the official's area of responsibilities.



that the city's use of publicly funded facilities "would be improper, at least unless each side were given equal representation and access." 376 Mass. at 200.

"Equal access" means that a group supporting or opposing a ballot question, such as a registered ballot question committee, may be allowed to use a room or other space in a public building for a meeting, as long as a group on the opposing side is given the opportunity, on request, to have a similar meeting, on the same terms and conditions.<sup>3</sup>

"Equal access," if provided, does not mean that proponents or opponents must be invited to attend a particular event or be asked or permitted to speak at an event. See AO-90-02. For example, an opponent of a ballot question who demands an opportunity to speak at a meeting of the committee supporting the question is not entitled to such an opportunity under the equal access rule. The content and agenda of the meeting is set and controlled by the group using the space.

While a political meeting in a public building may be allowable under the campaign finance law, the meeting may not include any fundraising activity. Political fundraising is not allowed in buildings occupied for governmental purposes, such as city and town halls and schools. In addition, as previously noted, public employees who work in those buildings are also prohibited from raising funds for any political purpose. See M.G.L. c. 55, § 13-17 and IB-92-01.

"Equal access" does not mean that a private group may use a room or building which has been used for a meeting by a public body, such as a board of selectmen, within the scope of its official responsibilities, even if the public body endorsed or discussed a ballot question at its meeting and the private group opposes the ballot question. The "equal access" requirement also does not provide individuals or groups any right to speak or be placed on the agenda at a public meeting of a governmental body, such as a board of selectmen or school committee. Nor does it mean that an opponent of a ballot question is entitled to such access to distribute information, after the public body has made ballot question information, prepared within the scope of the entity's responsibilities, available to the public in the building or at the meeting. See AO-01-27.

The equal access requirement generally is not triggered by the use of public facilities by parent teacher organizations (PTOs) for regularly scheduled PTO meetings, even if a meeting is used in part to discuss the merits of a ballot question. The primary purpose of PTOs is not to promote or oppose ballot questions. In short, "equal access" is triggered by the use of governmental resources by private groups organized to influence a ballot question, or when private groups use public resources primarily for that purpose.

In addition to access to buildings or space for meetings, groups may be given the opportunity, if equal access is provided, to distribute non-fundraising flyers regarding a ballot question in public buildings. If each side is provided the same opportunity, proponents and opponents may also be offered access to certain public services, such as mailing labels (AO-88-27), a city council chamber for campaign announcement (AO-89-28), faculty mailboxes in public school to distribute non-fundraising campaign material (AO-04-06), or a public park for a political rally (AO-92-28). In addition, a state or local governmental agency may, as part of a collective bargaining agreement, use public resources to

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<sup>3</sup> A municipality may choose, however, to not allow *any* access to meeting space by political committees; such a policy does not violate the campaign finance law as long as it is evenly applied to all groups. In other words, equal access may mean no access by political groups. See AO-04-06.

administer a payroll deduction plan for a public employee PAC, since the use of such resources would be for the purpose of fulfilling the governmental entity's contractual obligation, not primarily to provide a benefit to the PAC. See AO-03-04. A municipality or agency, which provides such a resource, must be reimbursed for any additional out-of-pocket expenses incurred in providing the resource. See AO-03-04.

The campaign finance law does not regulate the extent to which proponents and opponents of a ballot question may have access to cable television resources. Questions relating to such access should be addressed to the Cable Television Division of the Massachusetts Department of Telecommunications and Energy at (617) 305-3580.

#### **IV. Privately-funded political committees and other permissible activities**

Government officials, public employees or anyone else who wishes to oppose or promote a ballot question may undertake such activity using private funds, through a ballot question committee or other existing organization.

A separate ballot question committee should first be established with the local election official, in the case of a municipal ballot question, or with OCPF, in the case of a question put to voters on the state ballot. This committee may then be used to raise and expend funds to promote or oppose the ballot question. Public employees may not solicit or receive any contribution on behalf of the committee, although they may make contributions and participate in activities of the committee that do not involve fundraising. A school newsletter prepared using public resources, or a PTO newsletter, if distributed by teachers, should not be used to help support a ballot question committee. For example, it should not announce the formation of a ballot question committee or provide information on how to contact the committee. See AO-00-06.

A group may not solicit or receive contributions to support or oppose a ballot question until it organizes and registers as a ballot question committee. Where two or more persons "pool" their money to support or oppose a question, e.g., to pay for an advertisement, the persons should first register as a ballot question committee. Such groups are subject to all the reporting and disclosure provisions of M.G.L. c. 55.

Groups such as parent-teacher organizations and local teachers' unions, which do not raise funds specifically to influence the vote on a ballot question, may make expenditures from existing funds to support or oppose a ballot question, and may make contributions to a ballot question committee. See IB-88-01 "The Applicability of the Campaign Finance Law to Organizations Other Than Political Committees." Groups making such contributions or expenditures must, however, file a report (OCPF Form M22 or 22) with either the local election official or OCPF to disclose the contributions or expenditures. See IB-90-02.

#### **V. Expenditures of Governmental Resources - Remedies**

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, must file a report disclosing such activity. See M.G.L. c. 55, § 22A and M-95-06.

Because of the differing circumstances and severity of instances of the improper use of public resources to influence elections, the final disposition and remedies in such cases may vary. Where the use of public resources is minor or difficult to quantify, or where officials are not aware of the restrictions, OCPF focuses on providing guidance to ensure that the action is not repeated.

In other cases, however, restitution of funds adjudicated to have been spent contrary to law may be required. Such restitution may not be paid from public funds. It may, however, be paid by a ballot question committee, association or other private group or individual. Any officer of a governmental unit violating § 22A may be subject to criminal penalties.

Finally, any ten persons may file suit to restrain illegal use of public funds at the local level by filing a ten taxpayer suit. See M.G.L. c. 40, § 53. It was such a "ten taxpayer" suit that led to the Anderson decision. At the state level, any 24 taxpayers can file a similar suit. See M.G.L. c. 29, § 63.

## **VI. Other Bulletins and Memoranda**

This bulletin provides general guidance. If you are in doubt regarding the scope of the campaign finance law, you should contact OCPF at (800) 462-OCPF or (617) 727-8352. This office's web site, [www.mass.gov/ocpf](http://www.mass.gov/ocpf), provides additional guidance on this and other campaign finance topics. In addition, related interpretive bulletins and memoranda which may be of interest -- and which may be downloaded from OCPF's website -- include: IB-90-02 (Disclosure and Reporting of Contributions and Expenditures Related to Ballot Questions); IB-92-01 (The Application of the Campaign Finance Laws to Public Employees and Political Solicitation); IB-92-02 (Activities of Public Officials in Support of or Opposition to Ballot Questions); IB-95-02 (Political Activity of Ballot Question Committees and Civic Organizations' Involvement in Ballot Question Campaigns); IB-95-03 (Use of Public Resources by Elected Officials to Communicate with Constituents or Respond to Criticism); M-95-06 (Disclosure of expenditures of public resources required under M.G.L. c. 55, § 22A); and IB-04-01 (Use of the Internet and E-mail for Political Campaign Purposes).

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