

CAMPAIGN FINANCE GUIDE

*Public Employees, Public Resources
and Political Activity*



Office of Campaign and Political Finance
Commonwealth of Massachusetts

The Office of Campaign and Political Finance ("OCPF") is an independent state agency that administers Massachusetts General Laws Chapter 55, the campaign finance law. Included in Chapter 55 are sections governing the role of public employees, public buildings and other public resources in campaigns. This brochure is intended to provide guidance to public employees and officials, political candidates and committees and other parties on the application of these sections of Chapter 55 to campaigns.

This publication is only meant to be an introductory guide to the campaign finance laws governing public employees, buildings and resources, not a substitute for these laws. OCPF is available to help public employees, officials and campaigns comply with the provisions of this statute. It is the responsibility of all those participating in political activities in Massachusetts, especially all public employees, to become familiar with the provisions of these laws. In addition, other statutes, regulations or administrative policies of your agency or department as well as local charters may regulate the activities of a public employee. You should, therefore, review plans for political activity with your agency or town counsel.¹ Violations of the law carry serious penalties of fines, imprisonment or both. For additional information, please contact OCPF at the phone numbers or address listed on the back cover of this guide.

¹ The guide addresses issues concerning Massachusetts public employees only. Federal employees and employees of a state, county or municipal agency that receives federal funding may have additional restrictions under the federal Hatch Act. For more information on the Hatch Act consult the U.S. Office of the Special Counsel in Washington at (800) 85-HATCH (800-854-2824).

Office of Campaign and Political Finance

Chapter 1173 of the Acts of 1973 strengthened the state campaign finance laws and established the Office of Campaign and Political Finance. While the 1970s saw a push for reforms in campaign finance disclosure laws all across the country, portions of the campaign finance law were on the books in Massachusetts as early as 1884. Those laws provide for restrictions on and protections for public employees as well as the political use of public buildings.

OCPF administers sections 13 through 17 of M.G.L. Chapter 55. These laws concerning public employees' political activity were designed to:

- o Protect public employees from being coerced into providing political contributions or services in their employment;
- o Protect individuals doing business with the public sector from being coerced into contributing to any political fund or rendering any political service; and
- o Separate governmental activity from political campaign activities.

This guide provides a summary of M.G.L. Chapter 55, Sections 13 through 17 and is divided into three sections: *Public Employees*; *Public Buildings* and *Public Resources*. The complete text of these laws can be found at the end of this guide, following *Frequently Asked Questions*.

I. Public Employees

Section 13: Soliciting and Receiving Contributions

M.G.L. Chapter 55, Section 13 prohibits paid state, county, city or town employees, other than elected officials, from directly or indirectly soliciting or receiving any contributions or anything of value for **any** political purpose. “Political purpose” includes fundraising activity on behalf of any candidate or political committee, including parties, PACs, people’s committees (an offshoot of PACs) and ballot question committees on any level – local, state or federal.

This prohibition applies to:

- o public employees at any time – during both working and non-working hours. The prohibition also has no geographic restriction: a public employee may not solicit or receive funds in any location, not just his or her own community.
- o paid employees of any state, county or municipal office or agency, including public authorities, boards and commissions.
- o part-time as well as full-time public employees. The law establishes no threshold level of hours worked or pay earned.
- o appointed, paid members of public boards (including municipal committees). If a member of a public board or commission receives a stipend of any amount, he or she is considered a public employee. Reimbursement for expenses is not considered compensation and does not by itself define a person as public employee under Section 13.

Elected officials may receive compensation, but they are not subject to the prohibitions of Section 13. If an elected official is also an appointed public employee, however (such as a selectman who is also employed by the Commonwealth), the public employee status overrides the elected official's exemption and the individual may not solicit or receive contributions for political purposes.

This prohibition does **not** apply to:

- o a person who is not compensated for his or her work for a public entity. (Employees or board members who voluntarily decline their pay or stipend, however, are still bound by the restriction).
- o a public employee who is raising money for humanitarian, charitable or educational causes. Only political fundraising falls under Section 13. Nonpolitical fundraising should be approved by an employee's supervisor and, if appropriate, the State Ethics Commission.
- o A former public employee who is retired. Though they may draw a pension check, workers retired from public employment are not considered public employees under Section 13.

Examples of **PROHIBITED** fundraising activities by public employees include:

- o Selling or distributing tickets for a fundraising event to benefit any political candidate or political committee and soliciting attendance at such an event by telephone or otherwise;

- o Otherwise asking for contributions to support any candidate or political committee (federal, state, county or local) or a ballot question;
- o Hosting a political fundraising event;
- o Accepting donations or payment for admission at a political fundraising event or accepting money at the door of a political fundraising event;
- o Signing a fundraising letter or advertisement on behalf of a candidate or political committee;
- o Permitting your name to be listed on campaign stationery as an officer, member or supporter, if the stationery is used to solicit funds for a political purpose;
- o Providing persons raising money for a candidate or committee with the names of individuals who would then be solicited;
- o Providing general or specific advice to a political campaign with regard to fundraising strategies.

Despite the restriction on political fundraising, public employees may engage in a variety of other campaign activities without violating the provisions of section 13.

Examples of **ALLOWABLE** activity include:

- o Making a contribution to a candidate or political committee or attending a political fundraiser;
- o Serving as a member of a political committee or holding any committee position, aside from treasurer or any other position that involves fundraising;

- o Performing any service for a campaign that does not involve fundraising, such as holding signs, stuffing envelopes, signing endorsement letters (as long as those letters do not also ask for money) or working at political fundraisers in a non-fundraising capacity, such as setting up tables or preparing food, not collecting money at the door.
- o Meeting with anyone, including other public employees, for political purposes, as long as no fundraising activity takes place;
- o Raising money for humanitarian, charitable or educational causes or other issues not related to elections.

Public employees may also run for public office. If, however, you are a public employee and you plan to raise money as part of your campaign for public office, you **must** organize a political committee and have the political committee handle all fundraising activities for you.

A public employee who is a candidate may not even solicit or receive contributions for the committee organized on his or her behalf. Rather, the employee must refer all questions about fundraising, including offers of contributions, to the committee. In addition, a committee organized on behalf of a public employee may **not** solicit or receive any contribution from any individual who has an interest in any matter in which the public employee candidate participates, is an employee of the candidate or is otherwise the subject of such employee's official responsibility. For example, the appointed head of a state agency who runs for public office may not solicit or receive contributions from any employee at that same agency, since its employees are the subject of the public employee candidate's official responsibility.

Section 15 Contributions by Public Officials

Section 15 prohibits bribes or any “quid pro quo” payments to public officials, but allows all elected and appointed public officials of the Commonwealth, a county or a city or town to make political contributions to any candidate or political committee.

Sections 16-17: Coercion or politically related job actions

Various sections of the campaign finance law protect public employees and those in the private sector from being forced to contribute to or otherwise support a political candidate or committee. Likewise, the law also protects employees from being subject to retribution from their employers for not supporting a candidate or political committee.

Section 16 protects public employees from being required to make contributions or render political services in exchange for their employment, and protects them from retribution for failing to do so.

Section 16A protects individuals doing business with the Commonwealth from having to render a political service or make a political donation in exchange for doing business with the state.

Section 16B protects any employee, public or private, from being forced to contribute or render service to a political candidate or committee. (Employees of a political campaign are, understandably, not covered by this section.)

Section 17 provides additional protection against retribution to a public employee or officer who fails to give or withholds a contribution or who contributes to an opposition candidate or cause.

II. Public Buildings

M.G.L. Chapter 55, Section 14 prohibits **anyone** from soliciting political contributions in a building occupied for state, county or municipal purposes. The prohibition applies to all public employees, elected and appointed officials, members of the general public and anyone else who enters a public building. Fundraising activity for any candidate or political committee – federal, state, county or local – is not allowed.

The following activities may not take place in a public building:

- o asking for or receiving contributions to *any* political committee or candidate;
- o using a public building as a return address for contributions or using a phone number in the building as a contact for buying tickets to a fundraiser;
- o posting an advertisement or a circular selling tickets to a fundraiser or otherwise seeking contributions.

The Section 14 prohibition applies to such buildings as the State House, city and town halls, public schools, police and fire stations, municipal and county offices, offices of public agencies, commissions and authorities, public works facilities and senior centers. Clubhouses and other buildings at a publicly owned golf course would also be subject to the prohibition if the facility were staffed by public employees. If the facility is run for the state, city or town by a private contractor using private employees, the Section 14 prohibition likely would not apply. Contact OCPF for further guidance on fundraisers at publicly owned golf courses.

A building does not have to be publicly owned in order to be “occupied for state, county or municipal purposes” under

Section 14. Even a building that is privately owned but occupied by government offices is considered a public building for the purposes of the campaign finance law. If only a portion of a private building is made up of government offices or facilities, those sections are subject to the fundraising restriction, but not any sections occupied by private employers or common areas such as the lobby.

Please note that Section 14 applies only to public **buildings**, not public property such as parks, streets and other common areas. Property owned by a public entity such as the state, a city or a town may be used for fundraising to the extent allowed by the owner. Such access, however, must be consistently available to all political candidates and committees; if one candidate may have a fundraiser at a certain public park, all other candidates must be granted use of the park under the same terms and conditions if they request it (they do not all have to be notified of its availability). On the other hand, the campaign finance law does not prevent a public entity from adopting a policy denying use of its property for any political fundraising, as long as that policy is consistently applied.

The Section 14 restriction applies to political fundraising only. For guidance on use of public buildings for other political activities, see the following section, *Public Resources and Campaigns*.

If you are unsure whether Section 14 applies to a particular building, contact OCPF for guidance.

III. Public Resources and Campaigns

In *Anderson v. City of Boston* (1978), the state's Supreme Judicial Court prohibited a municipality from spending public money to try to convince voters to support a statewide ballot question. The court ruled that public resources may not be used to support or oppose a ballot question. The office has applied this principle to prohibit the use of public resources for any political campaign purpose whatsoever. Public employees, as well as other persons, are prohibited from using any public resources for political campaign purposes, including the promotion of a candidate or any political committee or party.

“Public resources” are defined as anything that is paid for with public money, whether raised through taxes or fees. This definition includes:

- o Staff time: When public employees are on the job, they are prohibited from engaging in political campaign activity. This includes activities such as holding campaign signs, stuffing or addressing envelopes with campaign literature, or in any way soliciting votes or funds for political purposes. **In addition, paid appointed public employees are prohibited from political fundraising at any time, whether at work or not.**
- o Office and other equipment: Copy machines, fax machines, typewriters, telephones, computers, cars and trucks are some examples of taxpayer funded equipment that fall under this category.
- o Public buildings: Using a public building or any part thereof for political campaign purposes is prohibited, **unless** equal access to the building is provided to any group wishing to use it, under the same terms and conditions as all other groups. **Under no circumstances** may any political fundraising go on in a public building or

any part of any building occupied for a state, county or municipal purpose.

- o State, county or municipal seals: Public seals are considered public resources and may not be used for political campaign purposes. This means using public seals on items such as letterhead or envelopes for political campaign purposes is prohibited.

What are "political campaign purposes"?

In the context of M.G.L. Chapter 55, "political campaign purposes" are broadly defined and include promoting or opposing a candidate's nomination or election to public office or a political party office such as a state, ward, town or city party committee; promoting or opposing a vote on a ballot question; or aiding, promoting or antagonizing the interests of a political party.

"Political campaign purposes" does not include issues that are not on the ballot, and does not include lobbying boards or other political bodies. An expenditure made primarily to influence a legislative body or town meeting, not a ballot question, is not prohibited by the *Anderson* decision. For example, a municipal department could use public resources to ask voters to support an article on the town meeting warrant; the department could not use such resources to support a question on the election ballot.

As noted above, public buildings may be used for political purposes in some limited circumstances. Political committees may hold meetings in a town hall or school as long as equal access is provided: all such committees have the same opportunity to use the building, or no such groups may do so. The principle of equal access also applies to candidates and political committees campaigning or seeking signatures on a petition in a public building: as long as equal access is provided,

there is no violation of the campaign finance law. The public entity owning the building may, consistent with the campaign finance law, set a policy regarding access, as long as it is applied evenly. Remember, despite any equal access that is provided, the prohibition against soliciting or receiving political contributions still applies; any use that is allowed may not involve fundraising.

May public officials take positions on ballot questions?

Public resources may not be used to prepare or distribute materials which promote, oppose or otherwise seek to influence a ballot question.

However, if policy-making public officials were not allowed to discuss officially or to take positions on ballot questions that affect the public they serve, they would be hampered in that service. Therefore, policy-making officials may discuss officially ballot questions that affect their agencies or a segment of the population which their agencies serve. Policy-making officials include elected officials, commissioners, cabinet secretaries, and department and agency heads at the state, county and municipal levels.

In addition, policy-making public officials may use resources of their offices -- within limits and under certain circumstances -- to **prepare** analyses of ballot questions, answer questions regarding ballot questions, and direct staff to help prepare such materials. They are not, however, allowed to **distribute** such materials to voters or a class of voters at public expense.

It is also important to note that the Secretary of the Commonwealth's Elections Division has advised that public officials may not publish and distribute so-called "voter information" materials, even if they are truly impartial, at public expense unless state statute expressly authorizes it.

OCPF has prepared several pieces of informational material concerning the use of public resources and the *Anderson* decision. For more information on the rights of or limitations on public policy making officials and the distribution of voter information, see:

- o Interpretive Bulletin **IB-91-01**, “The Application of the Campaign Finance Law to the Use of Governmental Resources for Political Purposes.”
- o Interpretive Bulletin **IB-92-02**, “Extent to which Appointed and Elected Officials May Act or Speak in Support of or Opposition to Ballot Questions.”

Elected incumbents are also allowed, in certain circumstances, to use public resources to respond to criticism from election opponents concerning their job performance or the state of their offices. For example, an incumbent whose opponent charges he is mismanaging public money could commission a budget review within his office to respond to the charge. The incumbent could also comment on the charges through his official (i.e., publicly funded) spokesman. The use of public resources in this situation is limited, however: the incumbent cannot use public resources to attack his or her opponent or comment beyond the scope of the original charge. For further guidance, see Interpretive Bulletin IB-95-03, “Use of Public Resources by Elected Officials to Communicate with Constituents or Respond to Criticism.”

Seeking Guidance from OCPF

Anyone wishing to receive guidance on his or her own campaign finance activities should contact the office prior to undertaking a particular activity. This office issues written advisory opinions based on written requests describing specific facts and circumstances. The office will issue opinions only on prospective activities.

If you have any questions concerning advisory opinions, please contact OCPF. You may also obtain informal, oral advice by calling the office.

In addition to specific advisory opinions, from time to time the Director of OCPF issues Interpretive Bulletins setting policy guidelines on a variety of subjects. These documents are publicly available from OCPF and provide helpful guidance to public employees.

Filing a Complaint

If you have reason to believe that a violation of the campaign finance laws has occurred, you may file a complaint with this office. OCPF reviews all matters brought to its attention, regardless of the source of the complaint. The office keeps the identities of all complainants confidential.

OCPF will not comment on any matter that is under review or investigation. Consequently, an individual making a complaint will not receive periodic information on the status of the complaint. However, the complainant will receive notice of any public disposition of a case.

This office welcomes individuals with information concerning possible violations of the campaign finance law to call or write OCPF.

Frequently Asked Questions

I am a public employee. May I...

Q. ...ask a friend or relative to purchase a ticket to a fundraiser for a political candidate?

A. No. Section 13 prohibits this activity.

Q. ...hold a fundraiser for a political candidate in my home?

A. No. Section 13 prohibits this activity.

Q. ...make a political contribution?

A. Yes. If the candidate is a public employee or an incumbent elected official, you must make the contribution to the political committee organized on the candidate's behalf, not directly to the candidate. You should also be aware that the law does not allow political committees organized on behalf of candidates who are also public employees to solicit or receive contributions from their employees or anyone else within those employees' "area of responsibility." You should also make sure political contributions are not prohibited by regulations at your own office.

Q. ...give permission for my name to appear on a fundraising letter either in the letterhead, text, or as the signatory of such letter soliciting for a candidate?

A. No. This activity is not allowed under Section 13.

Q. ...give permission for my name to appear in the body of a fundraising letter for my own candidacy?"

- A. Yes, as long as you do not appear to be soliciting in the letter and you do not sign such a letter.
- Q. ...have a committee use the State House or a city or town hall as an address to send a donation for a political committee?**
- A. No. This activity is prohibited under Section 14.
- Q. ...run for public office?"**
- A. M.G.L. Chapter 55 does not prevent a public employee from running for public office. If you run for office, however, you must organize a political committee to handle fundraising activities on your behalf. You should be aware that the campaign finance law does not allow you to solicit or receive contributions from your employees or anyone in your "area of responsibility." You should also check with your agency or city/town for further guidance or restrictions.
- Q. ...be the treasurer of my local party committee?**
- A. No. An appointed public employee is prohibited from being the treasurer of any political committee.
- Q. ...be a member of a political committee or work for a political committee or a candidate if I were not the treasurer of the committee?**
- A. Yes. As long as you are not involved in the committee's fundraising there are no prohibitions on being a member or working on a candidate's or a political committee's behalf.
- Q. ...be forced to make a political contribution or perform any sort of political service, or be subject to demotion or other job action if I refuse to do so?**
- A. No. The campaign finance law protects public employees against such coercion.

- Q. I am an appointed state employee, but also a selectman in my home town. Do the limitations on fundraising in Section 13 apply to me?**
- A.** Yes. While elected public officials are exempt from Section 13, its fundraising restrictions would still apply to you for your campaign or any other political campaign because of your appointed public employment.
- Q: I am an unpaid member of a city board. Are my political fundraising activities still limited by the campaign finance law?**
- A:** No. The campaign finance law allows you or any other appointed, uncompensated “person in the service” of the Commonwealth or any city or town to solicit, receive or make campaign contributions to candidates or political committees. You may also serve as an officer, including a treasurer, of a political committee. The campaign finance law does, however, prohibit you or any other person from soliciting contributions in a public building. In addition, the campaign finance law protects you and others from being removed from office for making or not making a political contribution or for rendering or not rendering a political service, such as actively supporting a candidate or committee.
- Q. May I use paper and photo copying equipment in my school office to print flyers asking people to vote for a referendum question?**
- A.** No. The use of public resources to promote or oppose a ballot question, or any matter that appears on an election ballot, is prohibited.
- Q. May I use the paper and copier in my school office to print a “fact sheet” that does not ask people to vote for or against a ballot question, but merely provides objective information?**

- A. No. Even if voter information commenting on the substance of a ballot question is intended to be objective and factual, it may not be produced or distributed using public funds. As a practical matter, even material billed as “objective” or “informational” contains advocacy, even implicit.
- Q. May governmental resources be used to distribute a flyer that simply informs people about the time, date and place of an election and contains a brief title describing the ballot question or its text?**
- A. Yes, but great care should be taken to avoid the appearance of advocacy. A brief, **neutral** title identifying the ballot question may be used. 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.”
- Q. I am an elected selectman. May I speak out in favor of or opposition to a ballot question and ask my aide to prepare an analysis of how that question might affect the town I represent?**
- A. Yes, provided that no public resources are used to distribute such analysis to voters. In other words, you may take a position on a ballot question at any meetings, forums and interviews and also authorize documents or studies concerning the question for your board’s use. Such documents, however, may not be distributed to voters using town resources.

Mass. General Laws Chapter 55
Sections 13-17

Section 13. 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 receive any gift, payment, contribution, assessment, subscription or promise of money or other thing of value for the political campaign purposes of any candidate for public office or of any political committee, or for any political purpose whatever, but this section shall not prevent such persons from being members of political organizations or committees. The soliciting or receiving of any gift, payment, contribution, assessment, subscription or promise of money or other thing of value by a non-elected political committee organized to promote the candidacy for public office of a person so employed for compensation by the commonwealth or any county, city or town, shall not be deemed to be a direct or direct solicitation or receipt of such contribution by such person; provided, however, that no such gift, payment, contribution, assessment, subscription or promise of money or other thing of value may be solicited or received on behalf of such a person from any person or combination of persons if such person so employed knows or has reason to know that the person or combination of persons has an interest in any particular matter in which the person so employed participates or has participated in the course of such employment or which is the subject of his official responsibility.

Any appointed officer or employee convicted of violating any provision of this section may be removed by the appointing authority without a hearing.

Violation of any provision of this section shall be punished by imprisonment for not more than one year or by a fine of not more than \$1,000.

Section 14. No persons shall in any building or part thereof occupied for state, county or municipal purposes demand, solicit or receive any payment or gift of money or other thing of value for the purposes set forth in section thirteen.

Any appointed officer or employee convicted of violating any provision of this section may be removed by the appointing authority without a hearing.

Violation of any provision of this section shall be punished by imprisonment for not more than one year or by a fine of not more than \$1,000.

Section 15. No officer, clerk or other person in the service of the commonwealth or of any county, city or town shall, directly or indirectly, give or deliver to an officer, clerk or person in said service, or to any councillor, member of the general court, alderman, councilman or commissioner, any money or other valuable thing on account of, or to be applied to, the promotion of any political object whatever.

Nothing in this section shall be construed to prevent any officer, clerk or other person in the public service of the Commonwealth, or of any county, city or town from making a contribution to a candidate or to an elected or non-elected political committee.

Violation of any provision of this section shall be punished by a fine of not less than \$100 nor more than \$1,000.

Section 16. No person in the public service shall, for that reason, be under obligation to contribute to any political fund, or to render any political service, and shall not be removed or otherwise prejudiced for refusing to do so.

Violation of any provisions of this section shall be punished by a fine of not less than \$100 nor more than \$1,000.

Section 16A. No person doing business with the commonwealth shall for that reason, be under obligation to contribute to any political fund or to render any political service, and shall not be otherwise prejudiced for refusing to do so.

Violations of any provisions of this section shall be punished by a fine of not less than \$100 nor more than \$1,000.

Section 16B. No person employed for compensation shall be under any obligation to contribute to any candidate or political committee, or to render any political service on account of, or as a consequence of, his employment and such person shall not be removed or otherwise prejudiced for refusing to do so. This section shall not apply to a person employed by a candidate or political committee or other organization organized for the purpose of rendering political service. A violation of this section shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than six months or both such fine and imprisonment. Each such violation shall constitute a separate offense.

Section 17. No officer or employee of the commonwealth or of any county, city or town shall discharge, promote, or degrade an officer or employee, or change his official rank or compensation, or promise or threaten so to do, for giving, withholding or neglecting to make a contribution of money or other valuable thing for a political purpose.

Violation of any provision of this section shall be punished by a fine of not less than \$100 nor more than \$1,000.

Campaign Finance Guides available from OCPF:

Statewide, County and Other “Depository” Candidates
Candidates for The General Court
Candidates for Municipal Office
State Ballot Question Committees
Municipal Ballot Question Committees
Political Action Committees and People’s Committees
Local Political Party Committees
Public Employees, Public Resources and Political Activity

**Office of Campaign and Political Finance
One Ashburton Place, Room 411
Boston, MA 02108
(617) 727-8352
(800) 462-OCPF
E-mail: OCPF@cpf.state.ma.us
OCPF Online: www.mass.gov/ocpf**

Revised 1/03