



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

ONE ASHBURTON PLACE, ROOM 411
BOSTON, MASSACHUSETTS 02108

TEL : (617) 979 - 8300
(800) 462 - OCPF
EMAIL : OCPF@CPF.STATE.MA.US

April 10, 2020

Mayor Ruthanne Fuller
Newton City Hall
1000 Commonwealth Avenue
Newton Centre, MA 02459

Re: CPF-20-01

Dear Mayor Fuller:

This office has completed its review of multiple complaints we received which alleged that City of Newton resources were used to influence voters with respect to a ballot question appearing on the City ballot in the March 3, 2020 election.

In Anderson v. City of Boston, 376 Mass. 178 (1978) appeal dismissed, 439 U.S. 1069 (1979), the Supreme Judicial Court concluded that the City of Boston could not appropriate funds, or use funds previously appropriated for other purposes, to influence a ballot question submitted to the voters at a state election. The court stated that the campaign finance law, M.G.L. c. 55, demonstrates an intent “to assure fairness of elections and the appearance of fairness in the electoral process” and that the law should be interpreted as prohibiting the use of public funds “to advocate a position which certain taxpayers oppose.” 376 Mass. at 193-95. Accordingly, this office has stated that public resources may not be used to influence an election. Public resources include, but are not limited to, staff time, publicly-owned computers, and municipal websites. See IB-91-01 and IB-04-01.

The complaints raised a variety of issues, primarily relating to the use of public resources for political purposes.¹ Those issues are discussed below.

I. The December 16, 2019 “Mayor’s Update” Email

On December 16, 2019, you used your public email account to send an email to individuals who had opted in to the City of Newton’s email list. In the December 16 email, you stated that the City Council had approved a special permit and zoning to allow for the construction of the proposed Northland Development (“Northland”), a mixed-use development in Newton. You also indicated that a group of residents was collecting signatures to require the City Council to either repeal its vote or to hold a special election to decide whether to appeal the approved zoning. Your email went on to discuss the

¹ One complaint alleged that a City Councilor interfered with efforts to collect signatures for the referendum outside of a local grocery store. This is not a campaign finance issue and, accordingly, will not be addressed in this letter.

referendum process, and closed with the following statement: “If this gets to a ballot, I hope you will join me in voting ‘yes’ to allow this project to be built.”

The City Clerk received the referendum petition, with the requisite signatures, on December 20, 2019. On January 8, 2020, the City Council voted against rescinding its approval of the special permit and zoning for the Northland Development. The special election was subsequently set for March 3, 2020.

Although the election date had not yet been set at the time the December 16, 2019 email was distributed, City officials were aware that signatures were being collected at the time and it could have been reasonably anticipated at that time that a ballot question on the issue would soon follow. As a result, the content of the email urging voters to support the special permit and zoning at a possible future election was not consistent with the prohibition against the use of public resources to influence an election, as set forth in Anderson. However, because we believe the guidance provided as a result of this review will ensure future compliance with the campaign finance law, and because the City took remedial measures before being contacted by OCPF, including removing the problematic sentence from the email before posting the email to the City’s website, no further action is required at this time.

II. Posting of Materials on the City of Newton Website

One complaint alleged that the City of Newton’s Northland website, created as a repository for all materials relating to the proposed Northland Development, constituted an impermissible use of public resources for political purposes in violation of Anderson.² Specifically, the complaint alleged that the City did not provide equal access because the Northland applicant’s materials were all posted separately on the website, while some third party submissions were posted but consolidated, thereby resulting in “distribution” of advocacy materials relating to the ballot question.

The website, which was maintained by City employees, was first published after the City Council had declined to rescind the special permit/zoning approval for the Northland Development and had instead opted to call for a special election. It was initially comprised of materials submitted by and to various City departments in preparation for the special permit and zoning application process – e.g., applications, studies conducted by City boards and/or commissions, planning memos and meeting minutes for public bodies. A week after the website was published, it was updated to include all third-party submissions relating to the proposed Northland Development and the permitting process. Although some third-party submissions were consolidated from multiple documents into single postings, the City of Newton indicated that all third-party submissions were posted on the City’s website, including submissions from ballot question committees.

Pursuant to Anderson, there are limited circumstances in which groups supporting or opposing a ballot question may use public resources, as long as equal access is provided to both sides. For example, a registered ballot question committee may be permitted to use space in a public building or to post materials on a publicly-funded website, as long as the opposing ballot question committee is allowed the same opportunity under the same terms and conditions, and subject to other restrictions of the campaign finance law (i.e., no political fundraising in public buildings pursuant to M.G.L. c. 55, § 14). IB-91-01.

² The complaint further alleged that the website was “unfair” within the meaning of M.G.L. c. 53, § 18B. OCPF does not have jurisdiction over that statute and, as a result, will not offer an opinion on that issue.

Equal access does not mean that a private group is entitled to distribute information using public resources after a public body has made ballot question information available to the public after preparing those materials within the scope of the entity's official responsibilities. IB-91-01.

Accordingly, because the City of Newton posted the materials submitted by all third parties to the City's website, in the same location, the equal access requirement was satisfied. There was no obligation on the part of the City to post third party submissions in the same manner as it posted official public documents, including permit applications or studies conducted and published by public boards or commissions. Similarly, the posting of such official documents on a website, where visitors must click a link to the materials, does not constitute impermissible distribution within the meaning of Anderson. See IB-91-01 and IB-92-02.

III. Communications with Massachusetts State Officials

Additional complaints alleged that your December 2019 meeting with officials from the Massachusetts Executive Office of Housing and Economic Development ("EOHED"), in conjunction with follow-up emails you exchanged with EOHED officials and subsequent unrelated appearances you made at public events with Governor Baker, Lt. Governor Polito, and EOHED officials, constituted an inappropriate use of public resources to influence a ballot question.³

Although the campaign finance law prohibits you from using public resources to influence a ballot question put to the voters by distributing materials to those voters, it does not prohibit you from forming an opinion as to whether a proposal is in the best interests of your community. Neither does the campaign finance law prohibit you from working with other state agencies on issues relating to the ballot question or from sharing your opinion, provided public resources are not used to ask voters to vote in a particular way. See IB-92-02. Permissible activities include discussing the matter with another governmental agency, taking a position on a ballot question, or informing residents how they may obtain information on a pending ballot question. IB-92-02.

Accordingly, OCPF has determined that your actions in meeting with EOHED officials regarding the Northland Development, your follow-up email to EOHED officials asking for their support of the project, and the appearances with state officials at multiple events in the City were consistent with the provisions of the campaign finance law.

In accordance with the opinion of the Supervisor of Public Records, this letter is a matter of public record. A copy is being provided to the person(s) who brought this matter to our attention.

Sincerely,



Maura D. Cronin
Legal Counsel

³ The complaints also alleged that such activity was an improper use of your official position as Mayor. As that issue is a question for the State Ethics Commission, that will not be addressed in this letter.