

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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MICHAEL J. SULLIVAN
DIRECTOR

October 10, 1996

GL-96-36

By Fax (756-0505) and first-class mail

W. Chadwick Maurer, Town Manager
Town of Winchester
Winchester Town Hall
71 Mt. Vernon St.
Winchester, MA 01890

Re: Public hearing on Question 2

Dear Mr. Maurer:

I am writing in response to your October 9 fax to Denis Kennedy requesting guidance regarding a public hearing you plan to hold on October 21. Since an expedited response is required, the director has asked me to reply to your letter.

You have stated that you would like to hold a hearing on October 21 regarding Question 2 on the November 5 ballot. The hearing will take place at the Town Hall Auditorium. You have provided a proposed hearing format as well as the proposed advertisement for the hearing. You have stated that all registered groups supporting or opposing the question have been invited to make a presentation.

The order of presentation was determined by a flip of the coin. You have provided an outline for the hearing, which includes brief opening remarks regarding the hearing format by the Chairman of the Board of Selectmen, followed by presentations by each of the three organized groups, questions from the public, and closing statements by each group.

The proposed notice of public hearing states that the purpose of the hearing is "to hear information regarding Question 2 on the ballot for the election to be held on November 5, 1996. The question relates to a referendum vote on Proposition 2 1/2 for funding of various school construction projects." The notice also contains the text of the question.

You have asked three questions: (1) whether you may have the hearing as proposed; (2) whether public funds may be used to publish the notice; and (3) whether copies of the Order of Presentation and notice may be distributed at the hearing.

The answer to each of your questions is "yes."

In Anderson v. City of Boston, 376 Mass. 178 (1978), the Supreme Judicial Court stated that "governmental entities" may

not expend public resources or contribute anything of value in support of or opposition to a ballot question. In addition, public resources may not be used to distribute even admittedly objective information regarding a ballot question unless expressly authorized by state law.

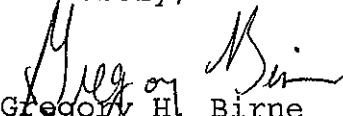
In the Anderson decision, the court stated that the use of government resources, such as telephones and printed materials provided by public funds, and use of facilities paid for by public funds, to support or oppose a ballot question, would be improper, unless each side were given equal representation and access. 376 Mass. at 200. In addition, government resources may not be used to distribute even truly objective, informational material to voters regarding the substance of a ballot question, absent express statutory authorization. See IB-91-01 and Joint Memorandum of this office and the Office of the Secretary of the Commonwealth dated March 1996.

I understand from the materials which you have provided to this office that the purpose of the hearing is to provide all interested parties with an opportunity to discuss the pros and cons of the ballot question. Since the procedure which you have articulated would provide all groups interested in the ballot question with equal representation and access, the proposed hearing would comply with the campaign finance law. Publishing the notice and distributing an outline of the proceedings will enhance the hearing and neither the notice nor the outline appear designed to support or oppose the question. The notice and outline do not discuss the substance of the ballot question. Merely stating the text of the question in the notice does not raise concerns regarding the distribution of information using government resources. Therefore, publishing the notice and distributing copies of the outline would not violate the campaign finance law.

Please note that the solicitation or receipt of contributions to be used for political purposes is prohibited in buildings occupied for municipal purposes. See M.G.L. c. 55, s. 14. Therefore, such fundraising activity may not take place in the auditorium.

This office appreciates your interest in complying with the campaign finance law and encourages you to contact us in the future if you have further questions or would like a formal advisory opinion.

Sincerely,


Gregory H. Birne
Deputy General Counsel

cc: Denis Kennedy