



CITY OF CAMBRIDGE

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June 26, 1978

To the Honorable City Council
Cambridge
Massachusetts

Dear Councillors:

You have requested my opinion as to the legality of municipal employees making political campaign contributions to a candidate or his campaign committee in a municipal election.

As you are aware, General Laws, Chapter 43, Section 108 provides the following:

No employee of any department, board or commission of the city shall, directly or indirectly, give, solicit or receive, or in any manner be concerned in giving, soliciting or receiving any assessment, subscription or contribution for any political party or for any candidate for city office. Whoever violates any provision of this section shall be punished by a fine of not more than five hundred dollars or by imprisonment for not more than six months, or both, and upon final conviction thereof his office or position in the service of the city shall thereby be vacated and he shall never again be eligible for any office or position, elective or otherwise, in the service of the city.

This provision is part of the Charter of the City of Cambridge and was enacted into law in 1938.

As you are further aware, Chapter 151 of the Acts of 1975 was enacted into law on April 14, 1975. There is an apparent conflict between section 108 of the Charter and the 1975 General Law. My opinion turns upon the resolution of this conflict.

The leading authority in the field of municipal corporations is The Law of Municipal Corporations, by Eugene McQuillin, on page 728, he states:

General statutes ordinarily do not repeal the provisions of charters granted to municipal corporations or special statutes enacted for their benefit, even though conflicting with the general statutes, unless such repeal is in express language or by necessary implication.

The controlling factor is the intention of the legislature and though section 108 of Chapter 43 was not specifically repealed by Chapter 151 of the Acts of 1975 it should be noted that Chapter 151 was enacted as an emergency measure "...to provide for public disclosure of political contributions and expenditures, and the regulation of said contributions and expenditures..."

Section one of the Act provides that an "...Election..." is "any convention or caucus of a political party held to nominate a candidate, and any city, town or state preliminary, primary or election, and any special preliminary, primary or election." (emphasis supplied).

Section four of the Act provides:

Candidates for nomination or election to the senate or house of representatives of the United States shall not be subject to the provisions of this chapter insofar as they may conflict with federal law.

Clearly this exception evidences the legislative cognizance of the possibility of potential conflicts of law. The fact that a similar exception was not carved out for Plan E cities must be given consideration.

Section seven of the Act provides, in pertinent part, the following:

Any individual may in addition make campaign contributions for the benefit of elected political committees or non-elected political committees organized on behalf of a political party. (emphasis supplied).

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Finally, Section 16 of the Act provides, in pertinent part, the following:

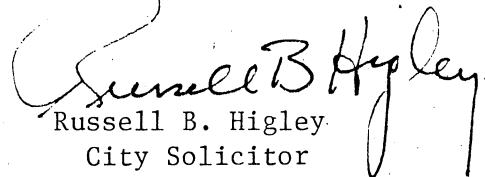
No person in the public service shall, for that reason, be under obligation to contribute to any political fund, or to render any political service, and shall not be removed or otherwise prejudiced for refusing to do so.

This last quoted section certainly implies that a person in the public service may make a contribution to a political campaign committee. This is also implied in other sections of the Act.

There appears to be a thread of language throughout the Act which manifests the intention of the legislature relative to campaign contributions to political campaign committees.

Therefore, it is my opinion that it was the intention of the legislature to provide for public disclosure of contributions and expenditures and the regulation of said contributions and expenditures in a comprehensive manner. Thus, Chapter 151 of the Acts of 1975 governs these activities and pre-empts General Laws, Chapter 43, Section 108.

Very truly yours,


Russell B. Higley
City Solicitor

RBH:cag

Comm. from Russell B. Higley, City Solicitor,
re: legality of municipal employees making
political campaign contributions to a candi-
date or his campaign committee.

In City Council,

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