



City of Cambridge

Calendar Item #4

~~0-9~~

IN CITY COUNCIL

~~November 6, 2000~~

November 20, 2000

COUNCILLOR TOOMEY
COUNCILLOR BORN
COUNCILLOR BRAUDE
COUNCILLOR DAVIS
COUNCILLOR DECKER
MAYOR GALLUCCIO

WHEREAS: The City of Cambridge maintains a web site (www.ci.cambridge.ma.us); and

WHEREAS: Many residents of the City have access to the City's web site; and

WHEREAS: The web site is an effective and appropriate vehicle for voters to obtain information on or by candidates for public office; and

WHEREAS: The City of Cambridge will hold a municipal election on November 6, 2001; now therefore be it

ORDERED: That the City Manager be and hereby is requested to instruct the webmaster of the City's web site to develop a prominent area on the City's web site to provide (a) a link to any site prepared by and/or on behalf of a certified candidate for municipal office and that area be the only area where a site prepared by and/or on behalf of a certified candidate is linked and (b) an area where a candidate can submit material on disk to the City's webmaster for publication on the City's web site, or, for those candidates without access to a computer, material in printed format that can be scanned and published on the City's web site; and

ORDERED: That the candidates be notified of the availability of this site by the Cambridge Election Commission in the package it provides to potential candidates; and be it further

ORDERED: That the City take the appropriate steps to publicize the availability to the public of this information on its web site through newspapers, television and other media outlets and that the Cambridge Public Library prominently advertise the availability of this information at the computer terminals it makes available to the public for internet access; and be it further

ORDERED: That this procedure be utilized in every subsequent municipal election and that it be considered for all other elections in the City of Cambridge; and be it further

ORDERED: That the City Manager be requested to report on the status of these procedures by May 1, 2001.

PLACED ON THE TABLE ON THE MOTION OF COUNCILLOR TOOMEY.



City of Cambridge

O-9.

IN CITY COUNCIL

November 6, 2000

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ORDERED: That the area established for candidate site links or material be on line no less than 45 days prior to the municipal election; and be it further

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CHARTER RIGHT EXERCISED BY COUNCILLOR TOOMEY

Toomey

10/31 @ noon

0-9

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- WHEREAS: Many residents of the City have access to the City's web site; and
- WHEREAS: The web site is an effective and appropriate vehicle for voters to obtain information on or by candidates for public office; and
- WHEREAS: The Commonwealth's Office of Campaign and Municipal Finance has issued Advisory Opinions AO-99-14 and AO-99-15; and
- WHEREAS: The City of Cambridge will hold a municipal election on November 6, 2001;
- ORDERED: The City Manager is requested to instruct the webmaster of the City's website to develop a prominent area on the City's web site to provide (a) a link to any site prepared by and/or on behalf of a certified candidate for municipal office and that area be the only area where a site prepared by and/or on behalf of a certified candidate is linked and (b) an area where a candidate can submit material on disk to the City's webmaster for publication on the City's web site, or, for those candidates without access to a computer, material in printed format that can be scanned and published on the City's web site; and
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City of Cambridge

O-9.

IN CITY COUNCIL

November 6, 2000

COUNCILLOR TOOMEY

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Cal 7

Order #9

Report on providing a web site area where municipal office candidates can submit material for publication on the City's web site.

Councillor Toomey

In City Council
Referred to Communications
and Reports From City
Officers #1 and referred
to City Manager

In City Council November 6, 2000

CHARTER RIGHT.

BY Councillor Toomey

November 20, 2000

Placed on the Table
on the motion of

Councillor Toomey



CAMBRIDGE CITY COUNCIL

CITY HALL, CAMBRIDGE, MASSACHUSETTS 02139

(617) 349-4280

FAX (617) 349-4287

Timothy J. Toomey, Jr.
City Councillor

November 29, 2000

Margaret Drury, City Clerk
Cambridge City Hall
795 Massachusetts Avenue
Cambridge MA 02139

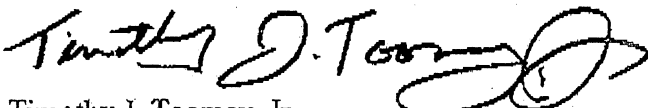
Re: Calendar Item # 7

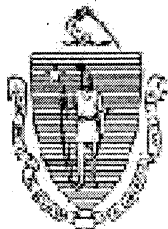
Dear Madam Clerk:

I am enclosing the following two advisory opinions issued by Michael J. Sullivan, director of the Office of Campaign and Political Finance. Would you kindly place these items on the December 4, 2000 City Council agenda for the edification of my colleagues.

Thank you for your attention to this matter.

Sincerely yours,


Timothy J. Toomey, Jr.



Commonwealth
of Massachusetts

OCPF Online

www.state.ma.us/ocpf

Office of Campaign and Political Finance

One Ashburton Place, Room 411

Boston, MA 02108

Advisory Opinion

August 16, 1999

AO-99-14

Russell B. Higley, City Solicitor
City of Cambridge
795 Massachusetts Avenue
Cambridge, MA 02139

Re: Use of City resources to provide local candidate Web access

Dear Mr. Higley:

This letter is in response to your August 3, 1999 letter asking for an advisory opinion regarding use of City of Cambridge (City) resources to comply with a City Council request to provide local candidates with access to the City's Web site.

The City Council's request, in essence, asks the City Manager to use City resources to:

- a. provide an internet Web link from the City's Web site to any site prepared by a certified candidate for municipal office in the November 2, 1999 election for City Council and School Committee;
- b. provide assistance to any such certified candidate to publish information on that person's candidacy;
- c. notify each certified candidate of the availability of links to the City's Web site by September 1, 1999; and
- d. publicize the availability of candidate information on the City's Web site through "newspapers, television and other media outlets" and at the Cambridge Public Library computer terminals.

The Council request asks that the area of the Web site designated for the link be a prominent area on the Web site and that the area be the only area on the Web site where a site prepared by or on behalf of a certified candidate would be linked.¹

¹ If all candidates are treated equally, there would seem to be no problem with limiting candidate links to this area of the City's Web page.

I understand that the purpose of the request is to increase voter participation and access to information regarding the candidates.

Question

May the City provide the resources as outlined in the City Council request?

Answer

- (a) The City **may** provide links from the City's web site if candidates provide the City with their Web addresses.
- (b) The City **may not** provide training on Web site development to candidates or political committees.
- (c) The City **may** notify each certified candidate of the availability of the links.
- (d) The City **may** publicize the links in a manner consistent with how it publicizes its Web site. In addition, as discussed below, it may publicize the links in other ways not requiring unusual or substantial expenditures.

Discussion

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.² The court stated that the campaign finance law 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 193-195.

Accordingly, this office has concluded that governmental entities may not expend public resources or contribute anything of value to support or oppose a candidate, political committee or ballot question. See IB-91-01. "Public resources" include, but are not limited to: staff time, office space, stationery and office supplies, office equipment such as telephones, copier and fax machines and computers, as well the use of a state, county or municipal seal. Even the occasional, minor use of public resources for a political purpose is inconsistent with state law and should be avoided.

Certain resources may be provided, however, if "*equal access*" is provided to other candidates. The court in Anderson stated that "the city's use of telephones and printed materials provided by public

² In discussing Anderson in this opinion, we refer to the use of public resources by "municipalities," to affect candidate elections. Our analysis also applies, however, to the use of public resources by other state, county and local public entities. In addition, the analysis applies not only in the context of candidate elections, but also to the use of public resources to influence ballot questions.

funds, and its use of facilities paid for by public funds, would be improper, at least unless each side were given equal representation and access." 376 Mass. at 200.³

In addition to considering whether equal access is provided, we should also consider the *purpose* of the expenditure. Providing resources involves the making of a "contribution" or "expenditure" subject to the campaign finance law only if made for the purpose of influencing an election, e.g., supporting or opposing candidates. See M.G.L. c. 55, § 1. If links to the City Web site are created *for the purpose of promoting voter participation* and all candidates have equal access to the links (even if all candidates do not actually create links), expenditures associated with the links would not be "expenditures" subject to the campaign finance law.

In some circumstances, however, *regardless of the existence of a legitimate purpose or equal access*, a municipality should not provide public resources to benefit candidates. In Anderson the court suggested that a municipality could provide certain limited resources to proponents and opponents of a ballot question. The court did not, however, consider whether a municipality could provide *services* to assist candidates or the extent to which public resources could be provided even if equally available to other candidates. The court emphasized that to comply with the campaign finance law municipalities must maintain a "hands off" approach to political fundraising and disbursing, and that such activities should be kept "out of city and town halls." 376 Mass at 187 and 195. To ensure compliance with Anderson the extent to which municipalities become involved in supporting campaign efforts of candidates should be limited, particularly in the context of providing *services* to candidates (an issue not addressed in Anderson). Providing services raises different concerns than providing use of property such as a mailing list or a room; for example, it would be difficult to monitor the performance of an arrangement to provide services to ensure that all candidates are treated equally. In addition, the level of concern regarding the appearance of fairness would be magnified if the arrangement might involve a substantial expenditure of public resources.

Therefore, to avoid possible violation of the principles articulated in Anderson, municipalities should not enter into arrangements to provide services to candidates, particularly where the services that would be provided might enhance a candidate's ability to raise funds.

Previous advisory opinions issued by this office relating to the use of the internet by municipalities are consistent with this standard. The office has stated that the City may provide links from the City's homepage to homepages of members of incumbent City Councilors. See AO-96-04, in which the office stated:

The link would be consistent with the limitations specified in Anderson. Since (1) the creation of the link would not involve the use of public resources to support or oppose any councillor, (2) the minimal use of public resources to establish the link allows councillors to provide services

³ "Equal access" means that proponents and opponents who request and obtain space for a meeting or hearing must be provided space on the same terms and conditions. OCPF has applied the "equal access" exception to mailing (AO-88-27), rooms in a municipal building (AO-94-11) and space in a public park (AO-92-28).

to constituents, and (3) the disclaimer which will be used minimizes any potential appearance of impropriety.

The disclaimer referenced in AO-96-04 stated that the links were being provided as a public service, and that councillor's Web pages might contain partisan opinions which were the responsibility of the councillors and did not reflect any official position of the City. The City suggested that the link if deemed unfair to non-incumbent candidates, could be disconnected 60 days before municipal elections. The office recommended the cut-off be adopted and I understand that it was made part of the City's policy.

In addition, the office stated in AO-99-06 that a municipality may use its Web site to post information related to a school construction ballot question assuming the information does not refer to an election or otherwise appear to be intended to influence the election. In that opinion the office also stated that posting the information on a publicly funded school Web site, unlike mailing or e-mailing the information to voters, would not be inconsistent with Anderson. The office reasoned that posting the information on the town's Web site was similar to posting a resolution of a town board on a town hall bulletin board. See also AO-99-02 (prohibition on corporate contributions does not apply where newspaper provides *all* candidates with the opportunity, on the same terms, to have free Web site space on newspaper's Web site).

Like OCPF, the Federal Election Commission has recently considered the extent to which a public entity may provide links to candidates' Web pages. See FEC Advisory Opinion 1999-07, in which the FEC concluded that links could be provided by the Minnesota Secretary of State in a nonpartisan way to all candidates providing Web site addresses.

It follows from this analysis that item (a) -- the provision of the link, and item (c) -- the notification of candidates, could be provided by the City. These services would not be provided for the purpose of influencing an election, would be available equally to all candidates, would involve only minimal expenditure of public resources.⁴

The City should, however, adopt a policy which ensures that candidate links are created in a timely manner, i.e., within a certain time frame after receipt of a Web address from a candidate.

Item (b) asks the City to "provide assistance" to certified candidates. I assume that such "assistance" would involve training on how to develop a Web site. Several hours of training are generally required before a person can develop a Web site. As discussed above, providing this type of service would raise issues of compliance with the campaign finance law, as interpreted in Anderson.

Item (d) asks the City to publicize the availability of the candidate information through "newspapers, television and other media outlets" and the Cambridge Public Library computer terminals. The City may publicize the links the way it currently publicizes its Web site. No substantial expenditure

⁴ In addition, the definition of "contribution" excludes discounts that are available to other candidates for the same office and the general public. See M.G.L. c. 55, § 1. Although providing a link is something of value, the cost associated with providing the links would not be considered a contribution because the "discount" is available to all candidate for the same office.

Russell B. Higley
August 16, 1999
Page 5

would occur if the City were to publicize the availability of the information on its Web site or in the Public Library computer terminals. Similarly, the City could publicize availability through the local government access cable television channel and by sending a notice to the local newspapers, for the newspapers to publish at their discretion. The City should not, however, make extraordinary or unusual expenditures to advertise a notice.

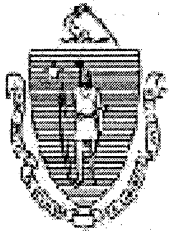
Finally, the City should include a disclaimer on its Web site. The disclaimer might be similar to the disclaimer described in AO-96-04. The City might want to include a statement in the disclaimer that (1) the links to candidate sites are done in reliance on the addresses (URLs) provided by the candidates; (2) the links are displayed for voter information purposes and not to influence the nomination or election of any candidate; (3) candidate Web sites are not monitored or regulated by the City; and (4) Web sites are available to any certified candidate. There is no need, however, to disconnect the links prior to the election, as recommended in AO-96-04. The links suggested by the Council would be available to all candidates, not just incumbents. In addition, the purpose of the links, i.e., to increase voter participation, would be defeated if the links were disconnected before the election.

This opinion is issued on the basis of your letter and solely within the context of the campaign finance law. I encourage you to contact us in the future if you have further questions regarding any aspect of the campaign finance law.

Sincerely,



Michael J. Sullivan
Director



Commonwealth
of Massachusetts

OCPF Online

www.state.ma.us/ocpf

Office of Campaign and Political Finance

One Ashburton Place, Room 411

Boston, MA 02108

Advisory Opinion

September 30, 1999

AO-99-15

Timothy J. Toomey, Jr.
City Councillor
Cambridge City Council
City Hall
Cambridge MA 02139

Re: Use of City resources to provide local candidates with access to City's Web site

Dear Councillor Toomey:

This letter is in response to your September 8, 1999 request for an advisory opinion regarding use of the City of Cambridge (City) Web site to post information regarding candidates.

This office recently issued an advisory opinion to the City Solicitor of Cambridge regarding the City's proposal to provide local candidates with links to the City's Web site. See AO-99-14. The office stated that the City could provide links from the City's Web site to candidate sites if candidates provide the City with their Web address. One of the questions asked was "may City resources be used to provide assistance to any such certified candidate to publish information on that person's candidacy?" Because other parts of the City's letter related to providing links to candidates, the office answered the question by stating that the City may not provide training on Web site development to candidates or political committees.

You have stated, however, that your proposed City Council order, which was the basis for the questions posed by the City Solicitor leading to AO-99-14, anticipated that candidates without a Web site would be offered the opportunity to provide information to be included on the City's Web site. The Web site would include a category entitled "1999 Candidate Information" (or a similarly titled category). This would link to a page that would either provide links to Web sites maintained by a candidate or the candidate's committee, *or, for those candidates without a Web site, a place where information on that person's candidacy could be submitted by the candidate and posted by the City.*

You have also stated that your proposed order is intended to allow equal access by all candidates, "leveling the playing field" for those candidates without the ability or finances to develop

and maintain a Web site. Therefore, you envisioned that candidates could submit material on disk to the City's webmaster, or, for those without access to a computer, that the same material could be submitted in printed form which could easily be scanned. In either case, the use of City resources would be minimal. You expect that the City would establish reasonable rules for the amount of information a candidate could include on this site.

Question

May the City provide candidates with a place on the City's Web site to post information provided to the City by the candidate on a disk or submitted in printed form and scanned by the City's webmaster?

Answer

Yes, but candidates, regardless of whether they own or have access to a computer, should be given the opportunity of either having the City provide a link to their own Web site or having the City provide space for their material on the City's Web site, but not both. The opportunity must be provided on an equal basis to all candidates.

Discussion

Certain City resources may be provided to candidates if "equal access" is provided to other candidates. See Anderson v. City of Boston, 376 Mass. 178 (1978), appeal dismissed, 439 U.S. 1069 (1979) and IB-91-01. Such resources may be provided only if the extent of the resources used is minimal and there is a legitimate public purpose for such use, e.g., resources may be used to promote voter participation. Public resources may not be used primarily for the purpose of benefiting candidates. In addition, to avoid possible violation of the principles articulated in Anderson, municipalities should not enter into arrangements with candidates, even if there is equal access, which require substantial expenditure of public resources or the provision of services to candidates. See AO-99-14, in which the office stated that providing services such as training on Web site development to candidates raises concerns because it would be difficult to monitor such an arrangement to ensure that all candidates are treated equally.

The proposed arrangement, with the limitations discussed below, would comply with the standard described in AO-99-14 because it would not appear to involve substantial expenditure of public resources and would ensure that equal access is provided to all candidates.

The campaign finance law does not prohibit a city's desire to make its Web site equally available to all candidates for legitimate governmental purposes. See AO-99-06, in which the office has stated that "in many respects, a town's Web site is similar to a town's bulletin board." If equal access exists, a city may establish a policy for the purpose of increasing voter participation, which would allow candidates to post information on a city hall bulletin board (if the information does not relate to fundraising). Similarly, a policy may be established enabling candidates to post information on a city's Web site, if equal access exists and the information provided by candidates does not contain a solicitation for funds.¹

¹ In Anderson, the Court emphasized that the campaign finance law demonstrates "a general legislative intent to keep

The City should specify that candidates, *regardless of whether they own or have access to a computer*, have the opportunity of receiving a link from the City's Web site or having space provided on the site, but not both. In addition, the City should adopt a policy which ensures that information is posted in a timely manner,

i.e., within a certain time frame after receipt of a request for a link to the City's Web site or printed material or a disk from a candidate. Also, the City should specify that information that is provided for posting on the City's Web site may not exceed a given length and that the City will not be responsible for proofreading and correcting submissions. Finally, the City should inform Web site users, i.e., the public using the Web site, that the site is available to all candidates by link or by providing a disk or printed information. In addition, the City should inform users that the City is not endorsing any candidate, and that candidates have provided all information appearing in this section of the City's Web site and on the candidates' own Web pages.

Although the City should not edit the information provided by candidates, the campaign finance law would not prohibit the City from adopting certain rules regarding the information made available in printed form or on disk for inclusion on the City's Web site. For example, the City may adopt a policy prohibiting obscenity or restricting references to other candidates. See AO-99-02 (stating that a newspaper could offer free space on its Web site with certain editorial restrictions, e.g., a restriction that advertisements in the final week of a campaign could not mention opponents by name). Such a rule would have to be applied equally to all candidates providing printed information or disks. In addition, as noted above, the campaign finance law would prohibit fundraising on the City's Web site, even if it would not prohibit fundraising on candidates' Web pages.

This opinion is issued on the basis of your letter and solely within the context of the campaign finance law. I encourage you to contact us in the future if you have further questions regarding any aspect of the campaign finance law.

Sincerely,



Michael J. Sullivan
Director

political fund raising and disbursing out of the hands of nonelective public employees and out of city and town halls." 376 Mass. at 186-187. Consistent with that intent, the information on the City's Web site should not include solicitations for contributions. See also M.G.L. c. 55, s. 14, prohibiting fundraising in buildings or parts thereof occupied for municipal purposes. In contrast, candidates who have their own Web pages may have fundraising solicitations in their own Web pages, even if they obtain a link to the City's Web page. We recognize that this may be inconsistent with your goal of creating a "level playing field." To create a truly level playing field while still allowing use of its Web site to disseminate candidate information, the City would need to limit the options available to all candidates to providing a disk or printed material and could not provide links to candidate Web sites.



CAMBRIDGE CITY COUNCIL

CITY HALL, CAMBRIDGE, MASSACHUSETTS 02139

(617) 349-4280

FAX (617) 349-4287

Timothy J. Toomey, Jr.
City Councillor

November 29, 2000

Margaret Drury, City Clerk
Cambridge City Hall
795 Massachusetts Avenue
Cambridge MA 02139

Re: Calendar Item # 7

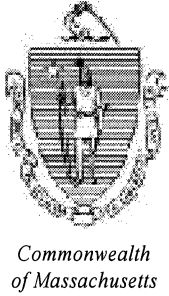
Dear Madam Clerk:

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Thank you for your attention to this matter.

Sincerely yours,

Timothy J. Toomey, Jr.



OCPF Online

www.state.ma.us/ocpf

Office of Campaign and Political Finance

One Ashburton Place, Room 411

Boston, MA 02108

Advisory Opinion

August 16, 1999

AO-99-14

Russell B. Higley, City Solicitor
City of Cambridge
795 Massachusetts Avenue
Cambridge, MA 02139

Re: Use of City resources to provide local candidate Web access

Dear Mr. Higley:

This letter is in response to your August 3, 1999 letter asking for an advisory opinion regarding use of City of Cambridge (City) resources to comply with a City Council request to provide local candidates with access to the City's Web site.

The City Council's request, in essence, asks the City Manager to use City resources to:

- a. provide an internet Web link from the City's Web site to any site prepared by a certified candidate for municipal office in the November 2, 1999 election for City Council and School Committee;
- b. provide assistance to any such certified candidate to publish information on that person's candidacy;
- c. notify each certified candidate of the availability of links to the City's Web site by September 1, 1999; and
- d. publicize the availability of candidate information on the City's Web site through "newspapers, television and other media outlets" and at the Cambridge Public Library computer terminals.

The Council request asks that the area of the Web site designated for the link be a prominent area on the Web site and that the area be the only area on the Web site where a site prepared by or on behalf of a certified candidate would be linked.¹

¹ If all candidates are treated equally, there would seem to be no problem with limiting candidate links to this area of the City's Web page.

I understand that the purpose of the request is to increase voter participation and access to information regarding the candidates.

Question

May the City provide the resources as outlined in the City Council request?

Answer

- (a) The City **may** provide links from the City's web site if candidates provide the City with their Web addresses.
- (b) The City **may not** provide training on Web site development to candidates or political committees.
- (c) The City **may** notify each certified candidate of the availability of the links.
- (d) The City **may** publicize the links in a manner consistent with how it publicizes its Web site. In addition, as discussed below, it may publicize the links in other ways not requiring unusual or substantial expenditures.

Discussion

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.² The court stated that the campaign finance law 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 193-195.

Accordingly, this office has concluded that governmental entities may not expend public resources or contribute anything of value to support or oppose a candidate, political committee or ballot question. See IB-91-01. "Public resources" include, but are not limited to: staff time, office space, stationery and office supplies, office equipment such as telephones, copier and fax machines and computers, as well the use of a state, county or municipal seal. Even the occasional, minor use of public resources for a political purpose is inconsistent with state law and should be avoided.

Certain resources may be provided, however, if "*equal access*" is provided to other candidates. The court in Anderson stated that "the city's use of telephones and printed materials provided by public

² In discussing Anderson in this opinion, we refer to the use of public resources by "municipalities," to affect candidate elections. Our analysis also applies, however, to the use of public resources by other state, county and local public entities. In addition, the analysis applies not only in the context of candidate elections, but also to the use of public resources to influence ballot questions.

funds, and its use of facilities paid for by public funds, would be improper, at least unless each side were given equal representation and access.” 376 Mass. at 200.³

In addition to considering whether equal access is provided, we should also consider the *purpose* of the expenditure. Providing resources involves the making of a “contribution” or “expenditure” subject to the campaign finance law only if made for the purpose of influencing an election, e.g., supporting or opposing candidates. See M.G.L. c. 55, § 1. If links to the City Web site are created *for the purpose of promoting voter participation* and all candidates have equal access to the links (even if all candidates do not actually create links), expenditures associated with the links would not be “expenditures” subject to the campaign finance law.

In some circumstances, however, *regardless of the existence of a legitimate purpose or equal access*, a municipality should not provide public resources to benefit candidates. In Anderson the court suggested that a municipality could provide certain limited resources to proponents and opponents of a ballot question. The court did not, however, consider whether a municipality could provide *services* to assist candidates or the extent to which public resources could be provided even if equally available to other candidates. The court emphasized that to comply with the campaign finance law municipalities must maintain a “hands off” approach to political fundraising and disbursing, and that such activities should be kept “out of city and town halls.” 376 Mass at 187 and 195. To ensure compliance with Anderson the extent to which municipalities become involved in supporting campaign efforts of candidates should be limited, particularly in the context of providing *services* to candidates (an issue not addressed in Anderson). Providing services raises different concerns than providing use of property such as a mailing list or a room; for example, it would be difficult to monitor the performance of an arrangement to provide services to ensure that all candidates are treated equally. In addition, the level of concern regarding the appearance of fairness would be magnified if the arrangement might involve a substantial expenditure of public resources.

Therefore, to avoid possible violation of the principles articulated in Anderson, municipalities should not enter into arrangements to provide services to candidates, particularly where the services that would be provided might enhance a candidate’s ability to raise funds.

Previous advisory opinions issued by this office relating to the use of the internet by municipalities are consistent with this standard. The office has stated that the City may provide links from the City’s homepage to homepages of members of incumbent City Councilors. See AO-96-04, in which the office stated:

The link would be consistent with the limitations specified in Anderson. Since (1) the creation of the link would not involve the use of public resources to support or oppose any councillor, (2) the minimal use of public resources to establish the link allows councillors to provide services

³ “Equal access” means that proponents and opponents who request and obtain space for a meeting or hearing must be provided space on the same terms and conditions. OCPF has applied the “equal access” exception to mailing (AO-88-27), rooms in a municipal building (AO-94-11) and space in a public park (AO-92-28).

to constituents, and (3) the disclaimer which will be used minimizes any potential appearance of impropriety.

The disclaimer referenced in AO-96-04 stated that the links were being provided as a public service, and that councillor's Web pages might contain partisan opinions which were the responsibility of the councillors and did not reflect any official position of the City. The City suggested that the link if deemed unfair to non-incumbent candidates, could be disconnected 60 days before municipal elections. The office recommended the cut-off be adopted and I understand that it was made part of the City's policy.

In addition, the office stated in AO-99-06 that a municipality may use its Web site to post information related to a school construction ballot question assuming the information does not refer to an election or otherwise appear to be intended to influence the election. In that opinion the office also stated that posting the information on a publicly funded school Web site, unlike mailing or e-mailing the information to voters, would not be inconsistent with Anderson. The office reasoned that posting the information on the town's Web site was similar to posting a resolution of a town board on a town hall bulletin board. See also AO-99-02 (prohibition on corporate contributions does not apply where newspaper provides *all* candidates with the opportunity, on the same terms, to have free Web site space on newspaper's Web site).

Like OCPF, the Federal Election Commission has recently considered the extent to which a public entity may provide links to candidates' Web pages. See FEC Advisory Opinion 1999-07, in which the FEC concluded that links could be provided by the Minnesota Secretary of State in a nonpartisan way to all candidates providing Web site addresses.

It follows from this analysis that item (a) -- the provision of the link, and item (c) -- the notification of candidates, could be provided by the City. These services would not be provided for the purpose of influencing an election, would be available equally to all candidates, would involve only minimal expenditure of public resources.⁴

The City should, however, adopt a policy which ensures that candidate links are created in a timely manner, i.e., within a certain time frame after receipt of a Web address from a candidate.

Item (b) asks the City to "provide assistance" to certified candidates. I assume that such "assistance" would involve training on how to develop a Web site. Several hours of training are generally required before a person can develop a Web site. As discussed above, providing this type of service would raise issues of compliance with the campaign finance law, as interpreted in Anderson.

Item (d) asks the City to publicize the availability of the candidate information through "newspapers, television and other media outlets" and the Cambridge Public Library computer terminals. The City may publicize the links the way it currently publicizes its Web site. No substantial expenditure

⁴ In addition, the definition of "contribution" excludes discounts that are available to other candidates for the same office and the general public. See M.G.L. c. 55, § 1. Although providing a link is something of value, the cost associated with providing the links would not be considered a contribution because the "discount" is available to all candidate for the same office.

Russell B. Higley
August 16, 1999
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would occur if the City were to publicize the availability of the information on its Web site or in the Public Library computer terminals. Similarly, the City could publicize availability through the local government access cable television channel and by sending a notice to the local newspapers, for the newspapers to publish at their discretion. The City should not, however, make extraordinary or unusual expenditures to advertise a notice.

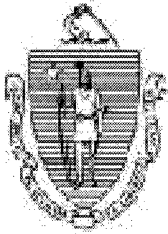
Finally, the City should include a disclaimer on its Web site. The disclaimer might be similar to the disclaimer described in AO-96-04. The City might want to include a statement in the disclaimer that (1) the links to candidate sites are done in reliance on the addresses (URLs) provided by the candidates; (2) the links are displayed for voter information purposes and not to influence the nomination or election of any candidate; (3) candidate Web sites are not monitored or regulated by the City; and (4) Web sites are available to any certified candidate. There is no need, however, to disconnect the links prior to the election, as recommended in AO-96-04. The links suggested by the Council would be available to all candidates, not just incumbents. In addition, the purpose of the links, i.e., to increase voter participation, would be defeated if the links were disconnected before the election.

This opinion is issued on the basis of your letter and solely within the context of the campaign finance law. I encourage you to contact us in the future if you have further questions regarding any aspect of the campaign finance law.

Sincerely,

A handwritten signature in black ink that reads "Michael J. Sullivan". The signature is written in a cursive style with a horizontal line at the end.

Michael J. Sullivan
Director



Commonwealth
of Massachusetts

OCPF Online

www.state.ma.us/ocpf

Office of Campaign and Political Finance

One Ashburton Place, Room 411

Boston, MA 02108

Advisory Opinion

September 30, 1999

AO-99-15

Timothy J. Toomey, Jr.
City Councillor
Cambridge City Council
City Hall
Cambridge MA 02139

Re: Use of City resources to provide local candidates with access to City's Web site

Dear Councillor Toomey:

This letter is in response to your September 8, 1999 request for an advisory opinion regarding use of the City of Cambridge (City) Web site to post information regarding candidates.

This office recently issued an advisory opinion to the City Solicitor of Cambridge regarding the City's proposal to provide local candidates with links to the City's Web site. See AO-99-14. The office stated that the City could provide links from the City's Web site to candidate sites if candidates provide the City with their Web address. One of the questions asked was "may City resources be used to provide assistance to any such certified candidate to publish information on that person's candidacy?" Because other parts of the City's letter related to providing links to candidates, the office answered the question by stating that the City may not provide training on Web site development to candidates or political committees.

You have stated, however, that your proposed City Council order, which was the basis for the questions posed by the City Solicitor leading to AO-99-14, anticipated that candidates without a Web site would be offered the opportunity to provide information to be included on the City's Web site. The Web site would include a category entitled "1999 Candidate Information" (or a similarly titled category). This would link to a page that would either provide links to Web sites maintained by a candidate or the candidate's committee, *or, for those candidates without a Web site, a place where information on that person's candidacy could be submitted by the candidate and posted by the City.*

You have also stated that your proposed order is intended to allow equal access by all candidates, "leveling the playing field" for those candidates without the ability or finances to develop

and maintain a Web site. Therefore, you envisioned that candidates could submit material on disk to the City's webmaster, or, for those without access to a computer, that the same material could be submitted in printed form which could easily be scanned. In either case, the use of City resources would be minimal. You expect that the City would establish reasonable rules for the amount of information a candidate could include on this site.

Question

May the City provide candidates with a place on the City's Web site to post information provided to the City by the candidate on a disk or submitted in printed form and scanned by the City's webmaster?

Answer

Yes, but candidates, regardless of whether they own or have access to a computer, should be given the opportunity of either having the City provide a link to their own Web site or having the City provide space for their material on the City's Web site, but not both. The opportunity must be provided on an equal basis to all candidates.

Discussion

Certain City resources may be provided to candidates if "equal access" is provided to other candidates. See Anderson v. City of Boston, 376 Mass. 178 (1978), appeal dismissed, 439 U.S. 1069 (1979) and IB-91-01. Such resources may be provided only if the extent of the resources used is minimal and there is a legitimate public purpose for such use, e.g., resources may be used to promote voter participation. Public resources may not be used primarily for the purpose of benefiting candidates. In addition, to avoid possible violation of the principles articulated in Anderson, municipalities should not enter into arrangements with candidates, even if there is equal access, which require substantial expenditure of public resources or the provision of services to candidates. See AO-99-14, in which the office stated that providing services such as training on Web site development to candidates raises concerns because it would be difficult to monitor such an arrangement to ensure that all candidates are treated equally.

The proposed arrangement, with the limitations discussed below, would comply with the standard described in AO-99-14 because it would not appear to involve substantial expenditure of public resources and would ensure that equal access is provided to all candidates.

The campaign finance law does not prohibit a city's desire to make its Web site equally available to all candidates for legitimate governmental purposes. See AO-99-06, in which the office has stated that "in many respects, a town's Web site is similar to a town's bulletin board." If equal access exists, a city may establish a policy for the purpose of increasing voter participation, which would allow candidates to post information on a city hall bulletin board (if the information does not relate to fundraising). Similarly, a policy may be established enabling candidates to post information on a city's Web site, if equal access exists and the information provided by candidates does not contain a solicitation for funds.¹

¹ In Anderson, the Court emphasized that the campaign finance law demonstrates "a general legislative intent to keep

Timothy J. Toomey Jr.

Sept. 30, 1999

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The City should specify that candidates, *regardless of whether they own or have access to a computer*, have the opportunity of receiving a link from the City's Web site or having space provided on the site, but not both. In addition, the City should adopt a policy which ensures that information is posted in a timely manner,

i.e., within a certain time frame after receipt of a request for a link to the City's Web site or printed material or a disk from a candidate. Also, the City should specify that information that is provided for posting on the City's Web site may not exceed a given length and that the City will not be responsible for proofreading and correcting submissions. Finally, the City should inform Web site users, i.e., the public using the Web site, that the site is available to all candidates by link or by providing a disk or printed information. In addition, the City should inform users that the City is not endorsing any candidate, and that candidates have provided all information appearing in this section of the City's Web site and on the candidates' own Web pages.

Although the City should not edit the information provided by candidates, the campaign finance law would not prohibit the City from adopting certain rules regarding the information made available in printed form or on disk for inclusion on the City's Web site. For example, the City may adopt a policy prohibiting obscenity or restricting references to other candidates. See AO-99-02 (stating that a newspaper could offer free space on its Web site with certain editorial restrictions, e.g., a restriction that advertisements in the final week of a campaign could not mention opponents by name). Such a rule would have to be applied equally to all candidates providing printed information or disks. In addition, as noted above, the campaign finance law would prohibit fundraising on the City's Web site, even if it would not prohibit fundraising on candidates' Web pages.

This opinion is issued on the basis of your letter and solely within the context of the campaign finance law. I encourage you to contact us in the future if you have further questions regarding any aspect of the campaign finance law.

Sincerely,



Michael J. Sullivan
Director

political fund raising and disbursing out of the hands of nonelective public employees and out of city and town halls." 376 Mass. at 186-187. Consistent with that intent, the information on the City's Web site should not include solicitations for contributions. See also M.G.L. c. 55, s. 14, prohibiting fundraising in buildings or parts thereof occupied for municipal purposes. In contrast, candidates who have their own Web pages may have fundraising solicitations in their own Web pages, even if they obtain a link to the City's Web page. We recognize that this may be inconsistent with your goal of creating a "level playing field." To create a truly level playing field while still allowing use of its Web site to disseminate candidate information, the City would need to limit the options available to all candidates to providing a disk or printed material and could not provide links to candidate Web sites.

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**Communications and Reports
from City Officers #1**

A communication was received from Councillor Timothy J. Toomey, Jr., transmitting two communications regarding the use of City resources to provide local candidates with access to the City's Web site.

In City Council December 4, 2000

Referred to
City Manager