

be deemed to be a direct or indirect 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.

Penalty.

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 one thousand dollars.

Soliciting political contributions in public buildings forbidden.
1946, 537, §10.
1975, 151, §1.

SECTION 14. No person 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.

Penalty.

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 one thousand dollars.

Making political contributions within the public service forbidden in certain cases.
1946, 537, §10.
1954, 530.
1975, 151, §1.

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 person holding elective public office from contributing to a candidate or to an elected or non-elected political committee.

Penalty.

Violation of any provision of this section shall be punished by a fine of not less than one hundred nor more than one thousand dollars.

Persons in public service not required to contribute or otherwise render political service.
1946, 537, §10.

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 one hundred nor more than one thousand dollars.

Certain persons in state and municipal service not to be affected by failure to contribute.
1946, 537, §10.
1975, 151, §1.

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 one hundred nor more than one thousand dollars.

Penalty.

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the office of Representative in the General Court. His failure to meet a preliminary requirement will prevent the printing of his name on the ballot, but does not render him ineligible to hold the office within the meaning of G. L. c. 53, § 14. In fact, Mr. MacDonald may still run a sticker and write-in campaign, and—should he win the general election—he will be eligible to hold the seat in question.

The requirement of notice of acceptance would mean little if candidates could ignore it and then be placed on the ballot by action of a committee. It is my opinion that Mr. MacDonald is not an ineligible candidate, as that expression is used in the statute, and that the action of the delegates in filling the vacancy is a nullity. Accordingly, I answer your second inquiry in the negative.

Very truly yours,

EDWARD W. BROOKE

A contribution by a state, county or municipal employee to a political committee legally constituted in behalf of incumbent office holders does not violate the provisions of G. L. c. 55, § 13.

OCTOBER 27, 1964.

HON. ALFRED A. GARDNER, *Chairman, Massachusetts Crime Commission.*

DEAR MR. GARDNER: — I have received your letter of October 23, 1964, wherein you refer to the \$100 contribution made by you to the current campaign of the incumbent Attorney General. You have requested an advisory opinion as to whether such a contribution violates the provisions of G. L. c. 55, § 13—a section of the so-called "Corrupt Practices Act." This law is an old one. Some of its provisions are ambiguous. Since its provisions affect an enormous number of state, county and municipal officials and employees, it is important that the statute's language, intent and history be carefully examined.

General Laws, Chapter 55, § 13, provides as follows:

"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 person holding elective public office from contributing 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 one hundred nor more than one thousand dollars." (Emphasis supplied.)

The first paragraph of §13, therefore, prohibits the giving of political contributions to certain specified persons in the state, county or municipal service.

The second paragraph, added in 1954, limits the first by providing that any person holding elective public office may lawfully contribute to any candidate or to any elected or non-elected political committee. This is the only reference to a political committee in § 13.

The third paragraph provides a criminal penalty for violation of § 13.

The first paragraph of c. 55, § 13 became law for the first time in 1884, (c. 320, § 9) in substantially its present form.

Political committees, and contributions to such committees, are mentioned in our statutes for the first time some eight years later, in Chapter 416 of the Acts of 1892. That Chapter authorized contributions to political committees, and provided for the selection of a treasurer for every such committee. Accounts of receipts and expenditures were required to be kept and filed. The Legislature did not amend the aforementioned 1884 statute in 1892. It must therefore be assumed that the Legislature did not intend the 1892 law to expand the effect of the earlier statute in any way. Had the General Court intended to prohibit gifts to political committees by a large class of citizens it could have and undoubtedly would have expressly so provided in the 1892 Act, or, in the alternative, by amending the 1884 statute, the precursor of c. 55, § 13.

But, the first paragraph of c. 55, § 13 has now been the law in this Commonwealth for eighty years. At no time has it ever made reference to political committees.

Chapter 55, § 13, the section in question, is part of a more complete statutory framework providing for the regulation of contributions and other political activity. Accordingly, other sections of the Corrupt Practices Act (Chapter 55 of the General Laws) may well aid in the interpretation of § 13.

Section 6 of Chapter 55 regulates receipts and disbursements of political contributions, and provides in part:

"... any individual may make campaign contributions to candidates or non-elected political committees; provided, that the aggregate of all such contributions for the benefit of any one candidate and the non-elected political committees organized on such candidate's behalf shall not exceed in any one calendar year the sum of three thousand dollars. . . ."

This section was reconsidered by the General Court and amended as recently as the year 1962. Had the Legislature desired to restrict the general authorization of gifts to political committees, such language could easily have been expressly included.

Chapter 55, § 11, which specifically mentions contributions for political purposes of any candidate or of any political committee, prohibits the solicitation or receipt of political contributions by persons in the public service, but exempts from these provisions all elected officers.

Chapter 55, § 14 provides: "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 is a criminal offense.

A similar provision protecting officers and employees from retaliation for failure to contribute is to be found in § 15.

The question that must be resolved is whether a state, county or political employee can lawfully make a political contribution to a legally constituted political committee.

In order to resolve this question, it is necessary to determine the legislative intent not only at the time Chapter 55, § 13 was first enacted in 1884, but also at the subsequent times at which this statute has been examined and amended by the General Court.

In my opinion the Legislature, in the sections mentioned above, clearly intended to protect, and did protect, state, county and municipal officers and employees from coercion in so far as the solicitation, contribution and receipt of political funds are concerned. There can be no question that § 13 of c. 55 was written into law to protect public employees from political exploitation including coercion, intimidation, political blackmail or "kickbacks".

The question may well be raised as to what protection the Legislature has provided in so far as possible coercion or intimidation by a public official of state, county or municipal officers or employees in order to compel political contributions to legally constituted political committees is concerned.

The Legislature has considered this problem, and has enacted §§ 14 and 15 of Chapter 55, which sections protect the officer or employee from retaliation for failure to make such political contributions.

It is significant that § 6 of Chapter 55 specifically provides that *any* individual may contribute to a non-elected political committee organized on behalf of a candidate. The language of this section is unqualified, clear and unambiguous.

There are some two hundred two thousand, three hundred (202,300) state, county and municipal employees in Massachusetts as of September, 1964, according to the Massachusetts Division of Employment Security.

If the Legislature had intended to make a special class of these employees—if the Legislature had intended to prohibit campaign contributions from them to legally constituted political committees—it would have written such a prohibition into our law with unmistakable clarity.

The Legislature has not done so. And in my opinion there is a serious question as to the constitutionality of any act which would deny such a right to citizens solely on the basis of employment in the public service.

The first paragraph of § 13 of Chapter 55 restricts gifts "to an officer, clerk or person in said service" only. The paragraph fails to include any reference to gifts to legally constituted political committees. The fact that the second paragraph mentions contributions to political committees demonstrates that the members of the General Court had such committees in mind when considering the statute in 1954, and could easily have included them within the prohibitions of the first paragraph. Failure to do so must be construed as a legislative determination that gifts to political committees were to be exempted from the provisions of

§ 13, Chapter 55.

One section of a law cannot be construed in such a way as to render other equally valid sections meaningless. As has been stated, §§ 14 and 15 of Chapter 55 were written into law with the clear purpose of protecting those in the public service from pressure for contributions by their employers or appointing authorities.

These provisions of law would be manifestly unnecessary were § 13 of Chapter 55 to be interpreted as a blanket prohibition against all political gifts by state, county and municipal employees. Rather, it appears that the Legislature intended that certain gifts, such as those to political committees, be permitted, and consequently enacted §§ 14 and 15 of Chapter 55 in order to shield employees from official retaliation for failure to contribute.

Section 13 of Chapter 55 does not prohibit gifts to political committees with the clarity required of a penal statute. I am well aware that the statute states that none of the specified persons shall give directly or indirectly to an officer, clerk or person in said service. The words "directly or indirectly" in my opinion are intended to refer to the mechanics of making the gift. The fact that the Legislature placed the words "directly or indirectly" immediately prior to the words "give or deliver" demonstrates that the former words apply to the act of giving alone. It prohibits state employees from contributing to a public office holder personally or to a public office holder through an intermediary. It is not intended to prohibit the receipt of gifts by political committees which are, by law, required to keep detailed records and to report their receipts and disbursements to the Secretary of the Commonwealth where they become a matter of public record.

Political contributions to political candidates and on behalf of political causes are important to our system of government, providing the opportunity by which the private citizen can exercise his right to work for good and responsible government. Persons in the public service are especially sensitive to the necessity of financial support of the political parties and candidates of their choice.

In my opinion the General Court never intended to enact a law which would make it a criminal offense to contribute to political committees legally constituted in behalf of incumbent office holders, while permitting contributions to all other candidates. It would be arbitrary to make a distinction between gifts made by persons in public service for the purpose of re-electing an incumbent public official, and gifts made by the same employees to the incumbent official's opponent. On the basis of the statutory language I do not find that the General Court has made such a distinction.

Section 13 of Chapter 55 of the General Laws is a penal statute which must be construed strictly. Its provisions cannot be extended by mere implication.

Commonwealth v. Paccia, 338 Mass. 4, 6.

Lustwerk v. Lytrol, Inc., 344 Mass. 647, 653.

As our General Court has reviewed, re-studied and amended the Massachusetts Corrupt Practices Act, it has undoubtedly been mindful of the federal government's experience in this field. The so-called "Hatch Act" (U.S.C.A., Title 5, Sect. 118i, et seq.) which has been in effect since 1939 permits federal employees to make voluntary contributions to regularly constituted political organizations.

For the reasons I have set forth at some length I therefore advise you that it is my considered opinion that your contribution of \$100 to the political campaign of the incumbent Attorney General is not a violation of Chapter 55, § 13 of the Massachusetts General Laws.

Very truly yours,

EDWARD W. BROOKE

The prior approval of the Governor and of the Department of Education is required where expenses are to be paid for the care of emotionally disturbed children at schools, or like institutions.

HON. OWEN B. KIERNAN, *Commissioner of Education.*

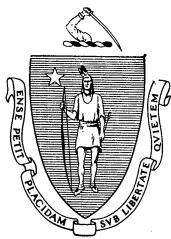
OCTOBER 29, 1964.

DEAR COMMISSIONER KIERNAN: — In your letter of July 17, 1964, you have asked for my opinion in determining whether, under the provisions of St. 1960, c. 750 (G. L. c. 71, §§ 46H and 46I), Dr. Jacques May is entitled to be reimbursed for expenses incurred in caring for his twin boys at the Parents' School for Atypical Children. The period of care extended from July 1, 1963 to June 30, 1964. In your supplementary letter of October 8, 1964 you state that the commitment of the May children to the school has not received the approval of the department or of the Governor.

Section 46I, Par. 1 of c. 71 of the General Laws reads as follows:

"The department may, upon the request of the parents or guardians and with the approval of the governor, send such emotionally disturbed children as it considers proper subjects for education to any school, hospital, sanatorium or like institution, within or without the commonwealth, affording remedial treatment for emotionally disturbed children for terms not exceeding twelve years, under regulations prescribed by the departments of education and mental health. The department may, upon like request and with like approval, continue for longer terms the education of any children therein who are meritorious pupils recommended by the principal or other chief administrative officer of such school, hospital, sanatorium or like institution."

As I interpret this statute, the *prior* approval of the Governor and of the department is required in any situation where expenses are to be paid for the care of emotionally disturbed children at schools, or like institutions. The statute seems to contemplate that the act of "sending" the child to the institution is to be the act of the department and not of the parents; the words "The department may . . . send" would be



THE COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF THE ATTORNEY GENERAL

JOHN W. Mc CORMACK STATE OFFICE BUILDING
ONE ASHBURTON PLACE, BOSTON 02108

FRANCIS X. BELLOTTI
ATTORNEY GENERAL

June 22, 1978

Paul E. Healy
City Clerk
City Hall
Cambridge, MA 02139

Dear Mr. Healy:

I am writing on behalf of Attorney General Bellotti in response to your letter of June 9, 1978. With that letter you transmitted a copy of an Order from the City Council directing you to obtain a legal opinion from the City Solicitor and the Attorney General regarding the legality of city employees making campaign contributions to candidates for offices in Cambridge or to their Committees.

The Attorney General, I must regretfully say, is not authorized to render the opinion requested by the Council through you. By law, only certain specified state officials are entitled to request and receive opinions from the Attorney General. I may, however, offer you some direction in finding an answer to the question presented by the Council's Order.

Massachusetts General Laws, Chapter 55, Section 15, generally governs contributions to candidates by public employees. (Attachment "A") That section should, however, be read in conjunction with an opinion issued by former Attorney General Edward Brooke. (Attachment "B") You should be careful to note, that the Brooke opinion refers to c. 55, § 13, which is the predecessor of c. 55, § 15, but contained essentially the same restrictions. A careful reading of these two attachments should help provide an answer to the question posed by your Council.

Paul E. Healy
June 22, 1978
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I hope we have been of some assistance to you in this matter.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Leo S. McNamara", is written over the typed name.

Leo S. McNamara
Assistant Attorney General
Chief, Elections Division

LSM:dmn

S-294

Comm. from Leo S. McNamara, Asst. Attorney
General, re: legality of city employees
making campaign contributions to candidates
for offices in Cambridge or to their commit -
tees.

In City Council,

June 26, 1978

6/26/78

Placed on File.