



CAMBRIDGE CITY COUNCIL

CITY HALL, CAMBRIDGE, MASSACHUSETTS 02139

(617) 498-9094

David E. Sullivan
City Councillor

February 11, 1982

Mr. Paul E. Healy
City Clerk
City Hall
Cambridge, Massachusetts 02139

Dear Mr. Healy:

Enclosed is an advisory opinion of the State Ethics Commission dated February 2, 1982. The Commission advises me that I may not vote on any matter before the City Council concerning the ballot questions affecting Proposition 2 $\frac{1}{2}$. I will be guided by the Commission's opinion and accordingly will not participate in any such matter.

So that the reasons for this decision may appear on the record, for the information of my colleagues and the public, I am waiving my right of confidentiality in this opinion.

Sincerely,

David E. Sullivan



The Commonwealth of Massachusetts

State Ethics Commission

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CONFIDENTIAL

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CAMBRIDGE, MASS.

February 2, 1982

ROBERT V. GRECO
GENERAL COUNSEL

MAUREEN MCGEE
EXECUTIVE DIRECTOR

Joseph I. Mulligan, Jr.

David E. Sullivan, Counsel
Elections Division
Office of the Secretary of State
State House
Boston, MA 02133

RE: CONFLICT OPINION NO. EC-COI-82-13

Dear Mr. Sullivan:

You are legal counsel to the Elections Division of the Office of the Secretary of State. As such, you provide legal advice to an office which has various statutory functions concerning election procedure throughout the state, such as receiving nomination papers and ballot question petitions, printing ballots, compiling results, and providing regulations and certain supplies. You are also a City Councillor in the City of Cambridge (City). The City Council may, in accordance with G.L.c. 59, §21C, as recently amended by St. 1981, c. 782, §10, by a two-thirds vote, place certain questions on a regular or special City election ballot concerning Proposition 2 1/2.^{1/} If the City Council chooses to do so, you ask whether a) you may participate in the rendering of general advice by the Elections Division in relation to the question proposed by the City, or b) you may participate as a City Council member in the vote to place such a question on the ballot, without violating the state conflict of interest law, G.L.c. 268A. The Commission concludes that you may render procedural advice in regards to the ballot question concerning Proposition 2 1/2 but you may not vote as a City Councillor to put such a question on the ballot.

In rendering this opinion, the Commission has relied on the facts as you have stated them and has not made any independent investigation of those facts.

^{1/}St. 1980, c.580

Proposition 2 1/2 was enacted into law by initiative petition on November 4, 1980. Contained within that act were provisions regulating the taxing practices of the cities and towns of the Commonwealth. Specifically, the law placed limits on the property taxing power of municipalities. The recent amendment of G.L.c. 59, §21C, allows the City Council, as the "local appropriating authority," to change some of the effects that Proposition 2 1/2 imposed on the municipalities taxing power. See St. 1981, c. 782, §10.

As legal counsel to the Elections Division, you are a state employee for purposes of the conflict of interest law. G.L.c. 268A, §1(q). As such, §6 of that statute prohibits you from participating as legal counsel in any "particular matter"^{2/} in which you, a member of your immediate family or partner, a business organization in which you serve as an officer, director, trustee, partner or employee, or person or organization with whom you are negotiating or have any arrangement concerning prospective employment has a financial interest. By virtue of your City Council position, you are an employee of the City which is a business organization for purposes of §6. EC-COI-81-56; Atty. Gen. Conf. Op. No. 613. Therefore, you may not participate as a state employee in any particular matter in which the City has a financial interest.

Although the City has an obvious financial interest in any change in the provisions of Proposition 2 1/2 affecting City property tax revenues, your participation as a state employee in the Elections Division would not concern the substance of any ballot question but would address the procedural filings and other aspects of that question. The definition of "particular matter" identifies matters involving making decisions and exercising judgement rather than issues of general procedure or policy. Guide to the Conflict of Interest Law, p.7, 1980. Your advice concerning this ballot question is unrelated to the subject matter or effect of the question since the procedural matters on which you advise are unaffected by the substance of the question. Therefore, the type of procedural matters on which you state you would be giving advice would not be "particular matters" for purposes of §6 and you would not be prevented from offering such advice in relation to the City's ballot question concerning Proposition 2 1/2.

^{2/}For the purposes of G.L.c. 268A, "particular matter" is defined as any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court. G.L.c. 268A, §1(k).

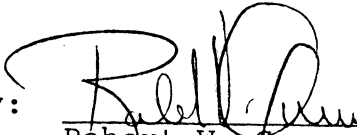
Section 19 of the conflict law, however, applies to you in your position as City Councillor. Its provisions are the same as those found in §6 regarding the financial interests of certain parties. Section 19 prohibits your participation as a municipal employee in these particular matters. Like the City in the §6 analysis, the Commonwealth is a business organization in which you are an employee as legal counsel to the Elections Division. EC-COI-82-3.

The substance of the ballot law question at issue, unlike the procedure surrounding its placement on the ballot, is a "particular matter." Because the amount of local aid which the state distributes to the City may be affected by this question, the Commonwealth has a financial interest in its outcome. Section 19 would prohibit your participation as City Councillor in this particular matter in which the business organization by which you are employed has a financial interest. An elected municipal official may be exempted from the restriction of this section if the matter involves bank deposits of municipal funds or if, by statute, the financial interest has been exempted as being too remote or too inconsequential to affect the integrity of municipal employees' services. Neither of these is applicable to this case.

In conclusion, although you may offer advice to City officials concerning the procedures for putting a question on the ballot, you may not participate in the City Council vote on whether the question concerning Proposition 2 1/2 shall be placed on the ballot.

STATE ETHICS COMMISSION

By:


Robert V. Greco
General Counsel

RVG/ph

S-73B
Comm. from Councillor David Sullivan transmitting an advisory opinion from the State Ethics Commission Re: voting on the ballot questions in connection with Prop. 2 $\frac{1}{2}$.

In City Council,

February 11, 1982