



City of Cambridge Police Department

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Director of Planning,
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Lt. Christopher J. Burke
Quality Control

Officer Frank Pasquarello
Aide to the Commissioner

TO: Robert Healy, City Manager 

FROM: Ronnie Watson, Police Commissioner

RE: Fundraising Council Order # 05 dated June 3, 2003

DATE: September 22, 2003

CC: City Solicitor Donald Drisdell
Deputy Superintendent Timothy McCusker
Sergeant Richard Linehan

RECEIVED
2003 SEP 23 AM 10:20
OFFICE OF THE CITY MANAGER

Enclosed you will find a copy of the response received from the State Ethics Commission concerning police solicitation.



Commonwealth of Massachusetts STATE ETHICS COMMISSION

John W. McCormack Office Building - One Ashburton Place - Room 619
Boston, Massachusetts 02108-1501

September 11, 2003

00

IAL

Cristina Beamud, Esq.
Legal Advisor
Police Department
City of Cambridge
5 Western Avenue
Cambridge, MA 02139

Dear Ms. Beamud:

I am writing in response to your recent request for advice under the conflict of interest law, G. L. c. 268A. The following is based upon your written request.¹ You are the Legal Advisor for the City of Cambridge's Police Department and are seeking general advice on behalf of the City's police officers.

Question

You ask whether the conflict of interest law will prohibit police officers in the City of Cambridge from soliciting funds on behalf of the Cambridge Police Department Mutual Aid Association, a private, non-profit, charitable organization.

Short Answer

No, the police officers may solicit on behalf of the Association, as long as they follow the restrictions described in detail in *EC-COI-93-6*.

Facts

The Cambridge Police Department Mutual Aid Association, which is a private, non-profit organization subject to the regulation of the Attorney General, recently conducted a fundraising campaign. The Association was organized to provide death, retirement, sickness and hospitalization aid to its members. Members pay dues in order to receive benefits and the Association solicits funds from the public to supplement benefits to members.

¹ Although you are entitled to receive a formal opinion issued by the Commissioners of the Ethics Commission if you believe one is necessary or desirable, this informal advice from the Legal Division of the Commission is based upon relevant Commission precedent. In addition, this opinion "shall be binding on the Commission in any subsequent proceedings concerning the person who requested the opinion and who acted in good faith, unless material facts were omitted or misstated by the person in the request for an opinion." G. L. c. 268B, § 3(g).



The Association's recent telephone solicitation campaign was conducted by a professional fundraising company, Eastern Advertising, which receives 60% of the proceeds for these types of solicitations. You report that the City Council has expressed some concerns about this percentage and other issues involving fundraising by police.

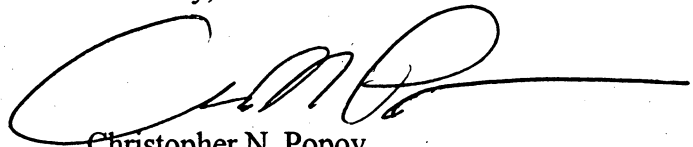
You ask whether the conflict of the interest law would prohibit the City's police officers from performing telephone solicitations for the Association, in lieu of using a professional fundraiser. The officers would perform the solicitation after working hours and from a private location.

Discussion

As you may know, the Ethics Commission has considered issues involving police officers and their solicitation for charitable purposes. These are described in detail in *EC-COI-93-6*, a copy of which is enclosed for your reference. Please also note that the conflict of interest law expressly states that its restrictions do not preclude municipalities from impose conditions that are more restrictive than the state law "minimums" set forth in G. L. c. 268A.² Accordingly, the City may impose conditions that are more restrictive than those described in *EC-COI-93-6*, as long as those additional conditions do not violate any other applicable law.

I hope that this advice is helpful.³ If I can be of further assistance, after you have reviewed *EC-COI-93-6*, please do not hesitate to call me.⁴

Sincerely,



Christopher N. Popov
Senior Staff Counsel
Legal Division

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² G. L. c. 268A, § 23(e).

³ The Ethics Commission may not disclose your identity or any other identifying information about your request without your consent. You, however, may disclose this advice to anyone, but if you publicly disclose that you have requested or received advice from the Commission, the Commission may determine, after reviewing the specific circumstances, that you have consented to our making the full text of this letter available to the public. See G. L. c. 268B, § 3(g); 930 Code Mass. Regs. § 3.01(8).

⁴ Please also note that you may obtain general information and guidance from the Commission's web site, www.mass.gov/ethics.

^{2/} We note that §4(c) prohibits you from acting as agent for anyone other than the Commonwealth in connection with a particular matter in which the Commonwealth or one of its agencies is a party or has a direct and substantial interest. It appears unlikely, however, in light of the duties of a part-time pharmacist and the §4(a) restriction, that you will have any contact with a state agency as agent for the pharmacy by which you will be employed. Moreover, submissions made by the pharmacy to the Department of Public Welfare and the Department of Public Health do not contain the names of the dispensing pharmacists among the data required to be reported. We caution you, however, that you may not act as agent for the pharmacy before any non-state entity as well (such as at a press conference or before a federal agency) in connection with matters in which the Commonwealth is a party or has a direct and substantial interest.

^{4/} Section 23(e) provides that the head of a state agency may establish and enforce additional standards of conduct. You should therefore consult with your agency before beginning your proposed private employment to ascertain whether the agency has adopted any such additional standards.

CONFLICT OF INTEREST OPINION EC-COI-93-6

FACTS:

You are a police officer in the Town of ABC and the President of the ABC Police Relief Association (the Association). The Association is a private, voluntary organization of ABC police officers that raises funds for charitable purposes, including a drug and alcohol abuse prevention program and special events for children.

The Association wishes to solicit donations from ABC residents and businesses. It may wish to employ a professional solicitor for this purpose.

QUESTION:

What limitations does G.L. c. 268A establish for your and the Association's solicitation activities?

ANSWER:

You and the Association may solicit funds from the public, but §23(b)(2) of G.L. c. 268A prohibits police officers,^{1/} in their solicitation of funds from the public, from:

1. Making statements or engaging in conduct exploiting official police powers, i.e., that would lead

reasonable persons to infer that good or bad consequences in official dealings with the police might flow from a decision whether or not to donate.

2. Using official resources of substantial value, including paid time as on-duty police officers, or (even when off-duty) official telephones, copying or fax machines, other public supplies or facilities, official stationery or letterhead, any municipal seal or coat of arms, or badges or uniforms.

In addition, G.L. c. 68, §§18-35^{2/} and G.L. c. 41, §98E,^{3/} statutes not administered or enforced by this Commission, apply to your and the Association's solicitation activities.

DISCUSSION:

You and other ABC police officers are "municipal employees" for the purpose of the state conflict of interest law. G.L. c. 268A, §1(g). As such, you and they are subject to §23(b)(2) of the conflict law, which prohibits current public employees from using their "official position[s] to secure for [themselves] or others unwarranted privileges or exemptions which are of substantial value and are not properly available to similarly situated individuals."

Whenever public employees solicit anything of substantial value^{4/} for a non-governmental purpose, the Commission has consistently scrutinized the solicitation for compliance with §23(b)(2). In particular, we have examined whether public employees are soliciting from those with whom they have official dealings, and whether the solicitation is using public resources for non-governmental purposes. We must therefore analyze your solicitation activities in both of these respects.^{5/}

1. Soliciting from regulated persons.

The Commission has consistently held that §23(b)(2) prohibits public employees, in both their public and private capacities, from soliciting anything of substantial value from persons within their regulatory jurisdiction^{6/} for a non-governmental purpose, unless the solicitation is specifically authorized by law.^{7/} See, e.g., *EC-COI-92-28* (Governor may not solicit donations to non-governmental entity from corporations subject to state regulation); *92-12* (state board member prohibited from privately soliciting individuals under his regulatory authority); *92-2* (legislator's financial aid committee prohibited from soliciting anyone with an interest in legislative business, broadly defined); *90-9* (state official prohibited from soliciting vendors of his agency to support political candidate). The

Commission has based this conclusion on its long experience with what the opinions just cited call the "inherently exploitative" or "inherently coercive" circumstances of such solicitations. For examples of Commission enforcement actions presenting such circumstances, see *In re Pezzella*, 1991 SEC 526, 528 (disposition agreement fining Governor's staff member for unauthorized solicitation of Governor's appointee to advance friend's private interest); *In re Singleton*, 1990 SEC 476 (disposition agreement fining a fire chief for attempting to use his official position to solicit private business); *In re Burke*, 1985 SEC 248 (fining official for using his official position to obtain access for private purposes to persons his agency regulated);^{2/} *In re Lannon*, 1984 SEC 208 (disposition agreement fining school superintendent for soliciting loans from subordinate teacher);^{2/} *In re Antonelli*, 1982 SEC 101 (fining county treasurer for soliciting personal loan from banks seeking deposits of county funds); *Compliance Letter 82-2*, 1982 SEC 80 (soliciting city employees, vendors and city-regulated businesses for contributions to Mayor's wife's "birthday party" violated predecessors of §23[b][2], [3]).^{10/}

Our usual concern about solicitation by public employees is exacerbated here by the substantial and pervasive authority of police officers over all residents of and businesses in the municipality, including the statutory powers to carry weapons and make arrests, see G.L. c. 41, §98, and to make warrantless administrative inspections of certain regulated businesses. See G.L. c. 140, §66; *Commonwealth v. Eagleton*, 402 Mass. 199 (1988). In this connection, we note that the Attorney General's Division of Public Charities has officially warned of the special problems that solicitations by police and firefighter organizations pose, and has cautioned citizens "not [to] feel threatened or intimidated by [such a] solicitation, or pressured to make a donation." Attorney General, *Report on Charitable Fundraising 8* (Nov. 1992).

On the other hand, the Legislature has specifically addressed these solicitations by enacting G.L. c. 41, §98E, which provides in its entirety: "No person or persons shall solicit the public in any manner or form using the word 'police' or 'firefighter' or any derivative thereof without using the name or names of the city or town police or firefighters organization sponsoring such solicitation." Conscious of our duty to construe statutes relating to the same subject together "so as to constitute an harmonious whole consistent with the legislative purpose," *Saccone v. State Ethics Commission*, 395 Mass. 326, 334 (1985), we recognize that §98E in effect condones some solicitations by police and firefighter organizations,

subject to the identification requirement it establishes. See *EC-COI-92-28* n.4; *92-12* n.10 (both suggesting that campaign finance law's exemption of elected officials from prohibition against compensated public employees' soliciting or receiving political campaign contributions, in G.L. c. 55, §13, in effect generally allows such officials to solicit political contributions in their private capacities for purpose of §23(b)(2)). In effect, notwithstanding our usual "per se" interpretation of §23(b)(2) as prohibiting all unauthorized solicitations by public employees of those they oversee, §98E allows private solicitations by police and firefighter associations under certain conditions.

It does not follow from §98E, however, that no other statute regulates solicitations by associations of police officers. "Statutes which do not necessarily conflict should be construed to have consistent directives so that both may be given effect." *Kargman v. Commissioner of Revenue*, 389 Mass. 784, 788 (1983). Certainly, G.L. c. 68, §§18-35 apply; these statutes are concerned, for example, with false or deceptive solicitations, and are enforced by the Attorney General's Division of Public Charities.

The same rule of construction applies to §23(b)(2) of the conflict law. See, e.g., *EC-COI-92-12* (comprehensive statutory regulation of campaign finance in G.L. c. 55 did not prevent applying §23(b)(2) to soliciting campaign contributions in some contexts). This is especially true in view of the courts' consistent recognition of the conflict law as "comprehensive legislation [enacted to] strike at . . . inequality of treatment of citizens and the use of public office for private gain." *Everett Town Taxi, Inc. v. Board of Aldermen of Everett*, 366 Mass. 534, 536 (1974); *McMann v. State Ethics Commission*, 32 Mass. App. Ct. 421, 427 (1992) (both quoting Special Commission on Code of Ethics, *Final Report*, H. 3650, at 18 [1962]). Here, §23(b)(2) at least forbids statements or conduct by police officers that exploit their official powers. Since §23 (as appearing in St. 1986, c. 12, §14) imposes liability for violations committed "knowingly, or with reason to know," the test is not whether the public employee subjectively intends the statement or conduct to be coercive, but whether reasonable persons would infer from it that good or bad consequences in their official dealings with the police might flow from their decisions whether or not to donate.

Thus, examples of prohibited solicitation activities would include: representing that a donation (including purchasing tickets to a fundraising event or purchasing an advertisement in a publication) could result in

preferential police treatment, or that failure to donate could result in police reprisals;^{11/} implying that a decision whether or not to donate could affect the timing or quality of police services;^{12/} and the practice (mentioned in our public request for comments, see note 5 *supra*) of sending stickers or decals intended for display on donors' private automobiles, from which, in our judgment, reasonable persons would infer the hope of favorable treatment -- or of avoiding adverse treatment -- by the police.^{13/} On the other hand, if police officers (personally and through their association and agents, see part 3 below) do not engage in such prohibited activities, and do not use official resources (see part 2 below), G.L. c. 268A will not prohibit them from soliciting funds for their private association from the public -- whether through advertisements, telephone or door-to-door solicitations, or fundraising events.

2. Prohibited use of official resources.

We have also consistently held that §23(b)(2) prohibits public employees from using official resources for private purposes. E.g., *Commission Advisory No. 4 (Political Activity)* (1992) (public resources "are intended for the conduct of public business, not for advancing the personal, private or political interests of public employees"); *Public Enforcement Letter 92-3* ("public resources may only be allocated for public business, and may not be utilized to address individual concerns of public employees"); *EC-COI-92-5* (using state seal or state coat of arms for campaign purposes "benefits a personal rather than a public interest," and is therefore prohibited by §23(b)(2)).

Far from limiting this principle, G.L. c. 41, §98E (quoted in part 1 above) supports it. That statute seems clearly intended to distinguish police officers' private solicitations from their public duties; that is the same purpose served by §23(b)(2) in prohibiting use of public resources for private purposes. While we recognize and commend the many beneficial purposes for which police associations raise funds, §23(b)(2) -- and the principle it embodies, of public employees' accountability for their use of public resources -- applies "even if [these purposes] are public-spirited in nature." *Public Enforcement Letter 92-3*.

Therefore, police officers may not solicit for their private association while on duty. Even when off duty, they may not use official resources of substantial value, including official telephones, copying or fax machines, or other public supplies or facilities.^{14/} They may not use official stationery or letterhead, any municipal seal or coat of arms, or badges or uniforms,

in their private solicitation activities, because these public insignia "could reasonably be perceived as an endorsement by a public agency of the solicitation [or give] the appearance that the solicitation is officially sponsored ... [or] foster a sense of credibility which the solicitation might not otherwise have had." *EC-COI-92-5*. See *Public Enforcement Letter 89-4*, 1988 SEC 369; *In re Buckley*, 1983 SEC 157. For similar reasons, they may not use their official police rank,^{15/} since we have found an appointed public employee's official title to be a public resource for this purpose. *EC-COI-92-39* and cases cited.

3. Application to associations and agents.

Section 23(b)(2) applies not only to personal acts of public employees, but also to acts of their agents, so long as the public employees know or (in the words of §23) have "reason to know" of those acts taken on their behalf. Thus, we have previously applied §23(b)(2) to public employees' associational activities. In *Compliance Letter 82-2*, 1982 SEC 80, we attributed to Boston Mayor Kevin White the solicitation activities of a "Birthday Celebration Committee" composed of his close associates, since he knew the general nature of the solicitation activities, although he did not know exactly whom the "Committee" was soliciting.^{16/} More recently, in *EC-COI-92-23*, we advised Town Clerks that they would violate §23(b)(2) if their private association accepted funds from a private news service in return for the Clerks' calling the service with immediate election results.

We acknowledge the constitutional rights to associate and to solicit funds for charitable purposes. See, e.g., *Riley v. National Federation of the Blind of North Carolina*, 487 U.S. 781 (1988). However, narrowly tailored regulation is permissible to promote the compelling government interest in the integrity of public employees. See *Pickering v. Board of Education*, 391 U.S. 563, 568 (1968); *National Treasury Employees Union v. United States*, 788 F. Supp. 4 (D.D.C. 1992). There is an important public interest in regulating even the off-duty activities of police officers to promote public integrity, especially if (as here) the activities do not constitute "pure" speech. See *O'Brien v. DiGrazia*, 544 F.2d 543 (1st Cir. 1976), *cert. denied*, 431 U.S. 914 (1977); *Broderick v. Police Commissioner of Boston*, 368 Mass. 33 (1975); *Wilmarth v. Town of Georgetown*, 28 Mass. App. Ct. 697, 701-03, *further appellate review denied*, 408 Mass. 1103 (1990). We are satisfied that our narrow application of §23(b)(2) here, to prohibit both specific exploitation of official police powers and the use of official resources for the

purpose of private solicitations, easily meets the constitutional standard.^{17/}

Therefore, this opinion's advice applies to police officers when acting through the Association and its agents, including any "professional solicitor" (defined in G.L. c. 68, §18) that it retains. We note that G.L. c. 68, §22 requires most contracts between charitable organizations and professional solicitors to be in writing and to be filed with the Attorney General's Division of Public Charities, and you would be well advised to include contract provisions that incorporate this opinion's conclusions in order to indicate reasonable efforts to seek compliance with §23(b)(2) by the association's professional solicitor.

DATE AUTHORIZED: January 26, 1993

^{1/} This advice applies to police officers' private solicitation activities whether taken personally or through their private association or agents, acting on their behalf with their knowledge or reason to know, as discussed in part 3 below.

^{2/} These statutes regulate charitable solicitations in general and are enforced by the Attorney General. You may obtain information about them from the Attorney General's Division of Public Charities.

^{3/} As discussed in part 1 below, §98E requires anyone soliciting the public using the word "police" or "firefighter" (or any derivate thereof) to use the name of the police or firefighters organization (here, the "ABC Police Relief Association") sponsoring the solicitation.

^{4/} Anything valued at \$50 or more is "of substantial value." *Commonwealth v. Famigletti*, 4 Mass. App. Ct. 584, 587 (1976); *Commission Advisory No. 8 (Free Passes) (1985)*. Since amounts solicited for a common purpose are aggregated, see *EC-COI-92-23; 92-2*, we assume in this opinion that the total value of all the donations you solicit will be at least \$50 and thus "of substantial value."

^{5/} Because the application of G.L. c. 268A to solicitations by associations of police officers is an important question of first impression, we publicly invited legal arguments from any interested person. We acknowledge helpful submissions by the law firms of Sandulli, Grace, Shapiro & Horwitz (on behalf of the Massachusetts Coalition of Police, AFL-CIO); Roche, Carens & DeGiacomo; Brooks & Lupan; and Cosgrove, Eisenberg & Kiley, P.C. (on behalf of the Massachusetts Police Association).

^{6/} The Commission has reached the same conclusion about soliciting others with whom a public employee has official dealings, including subordinate employees and agency vendors. See *EC-COI-92-7*.

^{7/} General Laws c. 268A, §3(b) also prohibits a public employee from either soliciting or receiving anything of substantial value "for himself" from such persons. See *EC-COI-92-2*. Because your and the Association's solicitations seem from your facts to be on behalf of others than the member police officers themselves, this discussion focuses on §23(b)(2).

In addition, §23(b)(3) may apply. It prohibits a public employee from engaging in conduct that gives a reasonable basis for the impression that any person or entity can improperly influence him or unduly enjoy his favor in the performance of his official duties, but allows the employee to dispel any such impression by written public disclosure. However, its requirements are no more restrictive here than those of §23(b)(2), and in any event could be satisfied by written public disclosure to the police officers' appointing authority.

^{8/} The Commission relied primarily on §3 in this case, which was decided at a time when the Commission lacked authority to enforce §23. See *Saccone v. State Ethics Commission*, 395 Mass. 326 (1985); St. 1986, c. 12, §§2, 6 (amending and reenacting §23 and conferring Commission jurisdiction to enforce it as of April 8, 1986). See also *In re Burke*, 1985 SEC 248, 249 nn.4 & 5, 253 n.12.

^{9/} The Commission relied on the predecessor of §23(b)(3) here, in circumstances where it would also find a violation of §23(b)(2) today. See *EC-COI-92-7*.

^{10/} We decline to abandon this longstanding interpretation of §23(b)(2) and its predecessors, as we have been urged on various grounds. In particular, any interpretation of "privileges" that excludes gifts of money is belied by the Legislature's 1986 reenactment of what is now §23(b)(2), see note 8 *supra*, adding the "knowingly, or with reason to know" and "substantial value" requirements, following our well publicized *Compliance Letter 82-2*. See *Lorrillard v. Pons*, 434 U.S. 575, 580-81 (1978) (when, after agency construes statute, legislature reenacts it without material change, legislature is presumed to adopt agency construction); *Commonwealth v. Miller*, 385 Mass. 521, 524 (1982) (same for judicial construction); 2B N. Singer, *Sutherland on Statutory Construction* §49.09 (5th ed. 1992). Furthermore, the "privilege" here may be best viewed, not as the gifts of money themselves, but as the special consideration from potential donors that police officers are able to obtain for private purposes by exploiting their official powers. Finally, any reading of the phrase "similarly situated individuals" (also added in the 1986 reenactment) to refer only to other police officers would deprive the statute of much of its meaning; instead, we read it here to apply to others soliciting charitable donations.

^{11/} In a civil action by the Attorney General under G.L. c. 68 and c. 93A, the Superior Court recently enjoined a professional solicitor for a police organization from "falsely" making such a representation. *Commonwealth v.*

Suffolk Apr. 22, 1992). Our construction of §23(b)(2) forbids such representations whether they are true or false, if reasonable persons would infer that they might be true.

^{12/} See, e.g., *In re Singleton*, 1990 SEC 476, 477-78 (fire chief told contractor from whom he was soliciting private construction business that "it could take forever to obtain [necessary Fire Department] inspections").

^{13/} *In State Police Ass'n of Massachusetts v. Massachusetts Police Ass'n*, No. 79-2219 (Mass. Super., Middlesex 1979), a consent judgment enjoined an organization of municipal police officers and its professional solicitor from (among other things) falsely representing that automobile bumper stickers sent to donors would give them "a break" if stopped by a state police officer, a representation which the plaintiff state police union alleged to be the defendants' practice. We also note the following statement in a January 15, 1993 letter to this Commission from Kenneth T. Lyons, National President, International Brotherhood of Police Officers, NAGE, AFL-CIO: "I can assure you that many citizens respond . . . because they believe the window decals prove beneficial if they are involved in any kind of traffic violation."

^{14/} For example, the telephone number printed on the Association's stationery appears to be that of the Police Department. This use of public resources for your Association's private purposes must be discontinued (unless authorized by statute or bylaw).

^{15/} We believe they may truthfully answer questions asking whether they are police officers.

^{16/} By reenacting what is now §23(b)(2) following this widely publicized compliance letter, adding only requirements that would not alter the result, the Legislature is presumed to have adopted this construction of §23(b)(2). See note 10 *supra*.

^{17/} Since your facts indicate that the Association raises funds solely for charitable purposes, we need not consider here what effect, if any, G.L. c. 150E might have on our analysis if the Association engaged in collective bargaining.

CONFLICT OF INTEREST OPINION EC-COI-93-7*

FACTS:

You are a full-time employee of the City of Chicopee Highway Department (Department).

QUESTION:

Can you run for and, if elected, hold office as an Alderman-at-large while serving as a full-time employee of the Department?

ANSWER:

Although G.L. c. 268A will not prohibit you from running for the office of Alderman-at-large, if you are elected to that position, you may not be compensated in your current Department position.

DISCUSSION:

Section 20 prohibits a municipal employee from having a financial interest in a contract with a municipal agency, unless an exemption is available. Section 20 applies whenever an individual holds more than one position (at least one of which is appointed and compensated) in the same municipality. Therefore, if you are elected as Alderman, you will have a financial interest in your employment contract with the Department. See *EC-COI-80-89* (selectman has a financial interest in employment contract as a teacher).^{1/}

Applying the restrictions of §20, if you are elected to the position of Alderman-at-large, you will have a prohibited financial interest in your Department employment contract. In other words, unless an exemption applies, §20 will prohibit you from receiving compensation in your Department position. By definition, the position of alderman may not be designated as a special municipal employee position. G.L. c. 268A, §1(n).^{2/} The only exemption therefore available to an alderman who seeks to receive compensation in an appointed municipal position is found in §20(b). That exemption requires that the municipal employee meet certain specified criteria. Among the criteria are:

(1) the employee must not be employed in an agency which regulates the activities of the contracting agency;

(2) the employee cannot participate^{3/} in or have official responsibility^{4/} for any of the activities of the contracting agency;

(3) the contract must be made after notice or competitive bidding;

(4) the employee cannot be compensated for more than 500 hours in the second position during a calendar year.

As Alderman-at-large, it appears that you would have either regulatory control over, or you would participate in, activities of the Highway Department. See *EC-COI-91-9* (city councilors regulate and/or participate in activities of municipal agency); *83-158* (discussing meaning of "regulate"). Moreover, an alderman cannot receive compensation in a full-time appointed municipal position because the §20(b) exemption restricts additional compensated municipal employment to 500 hours during the course of a year. See *EC-COI-89-28* (full-time police officer cannot also hold city council position without violating §20); *85-66*. No other exemption from §20 is available to you. We note that §20 contains exemptions that allow a member of a board of selectmen or town council to hold an appointed municipal position provided that the selectman or town councillor complies with certain restrictions. No similar exemption to the §20 prohibition, however, is available to members of a board of alderman or city council.

Because you will not qualify for the §20(b) exemption and because no other exemptions are available to you, if you are elected to the position of Alderman-at-large, §20 will prohibit your receipt of compensation in your Department position. The §20 prohibition will not apply until you assume the office of Alderman-at-large. Furthermore, the conflict of interest law will not prohibit you from running for the office of Alderman-at-large. However, the Highway Department or the City of Chicopee may impose additional restrictions on running for political office or otherwise engaging in political activities. §23(e).

DATE AUTHORIZED: February 23, 1993

* Pursuant to G.L. c. 268B, §3(g), the requesting person has consented to the publication of this opinion with identifying information.

^{1/} However, an elected official's compensation is not received pursuant to an employment contract. *EC-COI-82-26*. Any compensation you may receive as Alderman will not be pursuant to an employment contract with the City. As a Department employee, you would not therefore have a prohibited financial interest in a municipal contract by virtue of your compensation as an Alderman.

^{2/} Similarly, the definition of "special municipal employee" excludes members of a city council as well as members of a board of selectmen in a town with a population in excess of 10,000 persons. G.L. c. 268A, §1(n). However, members of a board of selectmen in a town with 10,000 or fewer inhabitants are, by definition, special municipal employees.

^{3/} "Participate," participate in agency action or in a particular matter personally and substantially as a state, county or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise. G.L. c. 268A, §1(j).

^{4/} "Official responsibility," the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and whether personal or through subordinates, to approve, disapprove or otherwise direct agency action. G.L. c. 268A, §1(i).

CONFLICT OF INTEREST OPINION EC-COI-93-8

FACTS:

You represent ABC, Inc. ABC, Inc. is a private non-profit corporation devoted to fostering and advancing the interests of certain wholesale distribution companies. ABC, Inc. retains a lobbyist to monitor legislation of concern to its members.

ABC, Inc. intends to host a sporting event at a resort on Cape Cod. The event will include a barbecue lunch, sports activities, a cocktail hour, a clambake dinner, and a post-dinner raffle to benefit a local charity. Attendance at the event will be by invitation only and invitees will include members of the legislature, their staffs and spouses, ABC, Inc. members, suppliers, sports figures and other celebrities.

ABC, Inc. intends to pay for the event by soliciting donations from its wholesale suppliers. Prior events have cost approximately \$150 per person. ABC, Inc. hopes to ask corporate sponsors to increase the amount of their contributions over the amount that they have previously contributed in order to expand the raffle to benefit the charity and to increase their donation. Additionally, ABC, Inc. plans to charge invitees an entrance fee correlated to the actual expenses of the event. ABC, Inc. will request that the entrance fee check be made payable to the charity. ABC, Inc. also expects that attendees will purchase raffle tickets which will also benefit the charity.

QUESTIONS:

1. Under G.L. c. 268A may an organization provide legislators with an all-expense-paid day at a resort if the legislators pay a charitable contribution as an entrance fee?



City of Cambridge Police Department

TELEPHONE
(617) 349-3300

FAX
(617) 349-3320

WEB
www.cambridgepolice.org

Ronnie Watson
Police Commissioner

Robert W. Healy
City Manager

Cristina Beamud, Esq.
Legal Advisor

September 8, 2003

David J. Degou
Superintendent

Mr. Robert W. Healy
City Manager
City of Cambridge
Cambridge, Mass.

Michael D. Giacoppo
Superintendent

Timothy F. McCusker
Deputy Superintendent

Subject: Council Order 03-68

Thomas F. O'Connor
Deputy Superintendent

Dear Mr. Manager:

Garfield Morrison, Jr.
Deputy Superintendent

Attached is our response to Council Order # 03-68.

Robert Ames
Deputy Superintendent

We are awaiting a response from the Ethics Commission and will forward a copy of the response when received.

J. Michael Walsh
Deputy Superintendent

Respectfully submitted,

Christina Giacobbe
*Director of Planning,
Budget & Personnel*

Ronnie Watson
Police Commissioner

Lt. Christopher J. Burke
Quality Control

RW:smc

Officer Frank Pasquarello
Aide to the Commissioner

Attachments

RECEIVED
2003 SEP - 9 AM 10:30
OFFICE OF THE CITY MANAGER



CITY OF CAMBRIDGE POLICE DEPARTMENT

INTEROFFICE CORRESPONDENCE

TO: Commissioner Ronnie Watson

DATE: September 5, 2003

FROM: Cristina Beamud *CB*

SUBJECT: Fundraising Council Order Follow-up

As a follow-up to the response submitted by the City Manager to the City Council on August 4, 2003, a number of councilors requested some follow-up information concerning the fundraising activities of members of the Cambridge Mutual Aid Association. Councilor Murphy requested that we verify that the audit report that should have been submitted in 1999 was submitted to the Attorney General. The Public Charities Division of the Attorney General's Office has verified that the appropriate documents were submitted and the Association is currently in compliance. A copy of the financial report is attached to this response.

Mayor Sullivan requested that research be conducted as to whether the practices of the Cambridge Police Mutual Aid violated the wiretapping statute in Massachusetts. Massachusetts General Laws, Chapter 272, § 99 governs the use of wiretaps, or "interceptions." Interception is defined by statute as, "to secretly hear, secretly record, or aid another to secretly hear or secretly record the contents of any wire or oral communication through the use of any intercepting device by any person other than a person given prior authority by all parties to such communication...." The Cambridge Mutual Aid Association's fundraiser informs the party whom they are calling that they are being recorded. Thus, this practice does not violate the statute. This interpretation was upheld in Gilday v. Dubois, C.A. 1 (Mass) 1997, 124 F.3d 277, certiorari denied 118 S.Ct. 2302. In this case, the court held that the monitoring and recording of inmate telephone calls through an inmate telephone system were not "interception" of such calls within the meaning of the Massachusetts Wiretap Act, because recording and monitoring practices were not surreptitious, since both parties to calls were made aware that call contents would be recorded. The Supreme Judicial Court made a similar ruling in Commonwealth v. Jackson, 370 Mass. 502 (1979).

Additionally, Councilor Galluccio requested that the Attorney General consider legislation and/or regulations relative to the amount of fund raising money an organization can retain. This matter was discussed with Assistant Attorney General Sandra Cardone who is assigned to the Public Charities Division of the Attorney General's Office. She explained that M.G.L. c. 68, §21 restricts professional solicitors from receiving compensation which in the aggregate amounts to a total in excess of twenty-five per cent of the total money raised. However, this statute and others like it are unconstitutional and cannot be enforced. Riley v. National Federation of the Blind of North Carolina, Inc., 487 U.S. 620 (1988); Secretary of State of Maryland v. Joseph A. Munson Co., 467 U.S. 947 (1984); Village of Schaumburg v. Citizens for a Better Environment, 444 U.S. 620 (1980).

Councilor Simmons requested more information concerning the Mutual Aid Association including the names of the Board of Directors. The Mutual Aid Association was organized in 1888 in

order to provide benefits for police officers. Currently, they provide funeral benefits for police officers. A list of the names of the Board is attached to this response, as is a breakdown in the distribution of the money collected by Eastern Advertising, Inc. They are currently using Post Office Box 39711, Cambridge, MA 02140 to receive mail.

Vice Mayor Davis wanted checks collected at the door to be outlawed and wanted an informational hand out for the public. An informational hand out appears in the Attorney General's website under the Public Charities Division. (<http://www.ago.state.ma.us/pubs/dosdents.htm>). It is my understanding that the City Solicitor's office will be addressing the issue of restricting collections at the doors of residences.

Councilor Murphy asked whether it would be better to have the Mutual Aid Association conduct the solicitations in order to avoid the uneven distribution of the money that is solicited and collected from residents by the Mutual Aid Association. An advisory opinion was requested from the State Ethics Commission on August 29, 2003. A copy of that letter is attached to this response.

CAMBRIDGE POLICE MUTUAL AID ASSOCIATION

FINANCIAL REPORT

DECEMBER 31, 1999

CONTENTS

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Statement of financial position-cash basis	2
Statement of activities-cash basis	3
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PAUL A. BARONE, CPA
PO BOX 39
EAST BURKE, VT 05832

ACCOUNTANT'S REPORT

To the Board of Directors
Cambridge Police Mutual Aid Association
Cambridge, Massachusetts

I have reviewed the accompanying statements of financial position-cash basis of Cambridge Police Mutual Aid Association (a Massachusetts nonprofit corporation) as of December 31, 1999, and the related statement of activities-cash basis, for the year then ended, in accordance with Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants. All information included in these financial statements is the representation of the management of Cambridge Police Mutual Aid Association.

A review consists principally of inquiries of Association personnel and analytical procedures applied to financial data. It is substantially less in scope than an audit in accordance with U. S. generally accepted auditing standards, the objective of which is the expression of an opinion regarding the financial statements taken as a whole. Accordingly, I do not express such an opinion.

As described in Note 1, the Association prepares its financial statements on the cash basis of accounting, which is a comprehensive basis of accounting other than U. S. generally accepted accounting principles.

Based on my review, I am not aware of any material modifications that should be made to the accompanying financial statements in order for them to be in conformity with the basis of accounting described in Note 1.

July 22, 2003

Paul A. Barone, CPA

CAMBRIDGE POLICE MUTUAL AID ASSOCIATION
STATEMENT OF FINANCIAL POSITION-CASH BASIS
December 31, 1999

ASSETS	
CURRENT ASSETS	
Cash	<u>\$104,717</u>
Total current assets	<u>104,717</u>
OTHER ASSETS	
Investments	<u>115,343</u>
Total other assets	<u>115,343</u>
Total assets	<u>\$220,060</u>
 COMMITMENTS AND CONTINGENCIES	
NET ASSETS	
Unrestricted	<u>\$220,060</u>
Total net assets	<u>\$220,060</u>

See accompanying notes and accountant's report.

CAMBRIDGE POLICE MUTUAL AID ASSOCIATION

**STATEMENT OF ACTIVITIES-CASH BASIS
Year Ended December 31, 1999**

UNRESTRICTED NET ASSETS

Support and revenue

Contributions	\$ 33,415
Dues	79,822
Special events	4,112
Interest income	681
Dividend income	2,332
Unrealized gain on investments	<u>2,894</u>

Total unrestricted support and revenue 123,256

Program expenses

Benefits

Retirement	72,340
Death	<u>4,100</u>

Total program expenses 76,440

General and administrative

Officer stipends	4,650
Other compensation	2,555
Accounting	1,950
Printing and publications	177
Postage	65
Filing fee	<u>35</u>

Total general and administrative expenses 9,432

Total expenses 85,872

Increase in unrestricted net assets \$ 37,384

See accompanying notes and accountant's report.

NOTES TO FINANCIAL STATEMENTS

Note 1. Significant Accounting Policies

Nature of activities

Cambridge Police Mutual Aid Society is a not-for-profit voluntary employees' beneficiary association located in Cambridge, Massachusetts. The Association's support comes primarily from members' dues and contributions. Its primary purpose is to assist the families of deceased members of the Association, and to assist members when sick or disabled or upon their retirement or separation from the Cambridge Police Department. The Association's operations are affected by various risk factors. As a nonprofit organization, the Association is dependent upon outside support, much of which is generated from individual members and the local economy.

Basis of accounting

The financial statements of Cambridge Police Mutual Aid Association have been prepared on the cash basis of accounting. Consequently, certain revenue and the related assets are recognized when received rather than when earned, and certain expenses are recognized when paid rather than when the obligations were incurred.

Financial statement presentation

Financial statement presentation follows the requirements of U. S. generally accepted accounting principles under which the Association is required to report information regarding its financial position and activities according to three classes of net assets: unrestricted net assets, temporarily restricted net assets, and permanently restricted net assets. Net assets and revenues, gains, and losses are classified based on the existence or absence of donor-imposed restrictions as follows:

Unrestricted net assets – Net assets that are not subject to donor-imposed stipulations.

Temporarily restricted net assets – Net assets subject to donor-imposed stipulations that can be fulfilled by actions of the Association pursuant to those stipulations or that expire by the passage of time.

Permanently restricted net assets - Net assets subject to donor-imposed stipulations that the Association maintains them permanently. Generally, the donors of such assets permit the Association to use all or part of the income earned on the assets.

Note 1. Significant Accounting Policies (Continued)

Investments

Investments in marketable securities with readily determinable fair values and all investments in debt securities are reported at their fair values in the statement of financial position. Unrealized gains and losses are included in the change in unrestricted net assets.

Use of estimates

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect certain reported amounts and disclosures. Accordingly, actual results could differ from those estimates.

Restricted and unrestricted support and revenue

Contributions received are recorded as unrestricted, temporarily restricted, or permanently restricted support, depending on the existence and/or nature of any donor restrictions.

All donor-restricted support is reported as an increase in temporarily or permanently restricted net assets, depending on the nature of the restriction. When a restriction expires (that is, when a stipulated time restriction ends or purpose restriction is accomplished), temporarily restricted net assets are reclassified to unrestricted net assets and reported in the Statement of Activities as net assets released from restrictions. Revenues whose restrictions are met in the same year are reported as unrestricted.

Contributions of donated noncash assets are recorded at their fair values in the period received. Contributions of donated services that create or enhance nonfinancial assets or that require specialized skills, are provided by individuals possessing those skills, and would typically need to be purchased if not provided by donation, are recorded at their fair values in the period received.

Note 2. Cash deposits in financial institution

At December 31, 1999 the Association had \$105,560 on deposit at a bank which exceeded the \$100,000 FDIC insured limit.

Note 3. Restricted Net Assets

At December 31, 1999 there are no temporarily or permanently restricted net assets.

Note 4. Benefit Commitments

At December 31, 1999 unpaid future benefit claims amounted to \$102,970.

Note 5. Income Taxes

The Association is a not-for-profit organization that is exempt from Federal income taxes under the provisions of Section 501(c)(9) of the Internal Revenue Code.



Eastern Advertising Estimated Breakdown of
Expenses for the 2003
Cambridge Police Mutual Aid Association Campaign
AUGUST 8, 2003

- | | |
|---|-----|
| 1. Payment to Association: | 40% |
| 2. Eastern Advertising Payroll approximately: | 40% |

Payroll includes salaries and commissions paid to salespersons and drivers working on campaign and an allocation of salaries and other benefits paid to Eastern employees including business and support staff.

Items 3-16 below approximately: 20%

3. Postage
4. Program Books
5. Typesetting
6. Event - Hockey Game (Black & Gold Legends) Include player fees, expenses, rink rental, referees, master of ceremonies, photographer and event insurance.
7. After Event - Reception
9. Allocation of Eastern's office rent, taxes, & insurance

10. Allocation of Eastern's office electrical and other utility charges
11. Allocation of Eastern stationary costs
12. Advertisements or publicity placed in newspapers & other media for Event.
13. Printing of tickets, posters and other campaign printing for Event.
14. Campaign bookkeeping & accounting charges (allocation and/or direct costs from Event)
15. Campaign telephone and fax charges allocation and/or direct costs.
16. Allocation of all bank charges, financing or leasing costs, legal fees, depreciation and other business operation costs

Note: The above breakdown is only an estimate of the internal costs and expenses incurred by Eastern and the payments paid to the Association for the above campaign. Eastern generally operates and conducts multiple campaigns for different clients at the same time and out of the same offices and does not normally maintain records for a precise allocation of its fixed business costs to any particular campaign and where a client is to receive a fixed percentage of the gross revenues of a campaign without deduction

and where all expenses are to be paid by Eastern and not incurred
by a client

Officers

2003

Anthony Santiago
President

Agrait Collazo
Vice-President

Timothy McCusker, Jr.
Secretary

James DeFrancesco
Treasurer

Board of Directors

Donald Bombino
Paul Burke
Fred Correia
Anthony Grassi

Kenneth Holway
Kelley King
Edward O'Callaghan
Warren Rhone

Ronald Yusam



Ronnie Watson
Police Commissioner

City of Cambridge Police Department

TELEPHONE
(617) 349-3300

FAX
(617) 349-3320

WEB
www.cambridgepolice.org

Robert W. Healy
City Manager

August 29, 2003

Cristina Beamud, Esq.
Legal Advisor

David J. Degou
Superintendent

Michael D. Giacoppo
Superintendent

Timothy F. McCusker
Deputy Superintendent

Thomas F. O'Connor
Deputy Superintendent

Garfield Morrison, Jr.
Deputy Superintendent

Robert Ames
Deputy Superintendent

J. Michael Walsh
Deputy Superintendent

Christina Giacobbe
*Director of Planning,
Budget & Personnel*

Lt. Christopher J. Burke
Quality Control

Officer Frank Pasquarello
Aide to the Commissioner

The State Ethics Commission
One Ashburton Place
Room 619
Boston, MA 02108

RE: Advisory Opinion
Police Fundraising

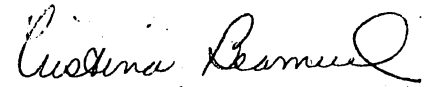
Dear Sir or Madam:

This letter serves as a request for an advisory opinion. Recently, the Cambridge Police Department Mutual Aid Association conducted a fundraising campaign. The Cambridge Police Mutual Aid Association is a private, non-profit organization that is subject to the regulation of the Attorney General. It was organized in 1888 to provide death, retirement, sickness and hospitalization aid to members of the organization. The members are required to pay dues in order to receive benefits and the Association solicits funds from the public to supplement their ability to provide benefits to its members.

Recently, the Mutual Aid Association began a telephone solicitation campaign that was conducted by a professional fundraising company. The company, Eastern Advertising, receives 60% of the proceeds. The City Council has voiced some concerns about this and other issues regarding fundraising by police. However, the purpose of this letter is to solicit the Commission's opinion as to whether there is any conflict of interest if the Cambridge Police Mutual Aid Association were to conduct this fundraising without the use of a professional fundraiser. That is, if the police members were to place the telephone calls and solicit the funds, would there be a violation of the Conflict of Interest laws in Massachusetts. Clearly, the officers would only perform this task after working hours and at a location that is not supported by the City of Cambridge.

Thank you for your assistance with this matter. Please let me know if you have any further questions.

Sincerely,



Cristina Beamud
Legal Advisor
617-349-3344

cc: D. Drisdell, Law Department
T. McCusker



8.

CITY OF CAMBRIDGE • EXECUTIVE DEPARTMENT

Robert W. Healy, City Manager Richard G. Rossi, Deputy City Manager

795 Massachusetts Avenue, Cambridge, Massachusetts 02139

Voice: 617.349.4300 Fax: 617.349.4307 TTY: 617.349.4242 Web: www.cambridgema.gov

September 29, 2003

To the Honorable, the City Council:

Please find attached a response to Awaiting Report Item Number 03-68, regarding additional information requested on fundraising tactics currently being practiced by those parties working on behalf of the Police Department received from the State Ethics Commission and Police Commissioner Ronnie Watson.

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert W. Healy", written over a horizontal line.

Robert W. Healy
City Manager

RWH/mec
Attachment

4200

Consent Agenda #8

Transmitting communication from Robert W. Healy, City Manager, relative to **Awaiting Report Item Number 03-68**, regarding requests for additional information on fundraising tactics currently being practiced by those parties working on behalf of the Police Department.

In City Council September 29, 2003

REFERRED TO PUBLIC SAFETY.

*Copy sent
me*