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CAMBRIDGE CITY COUNCIL

CITY HALL, CAMBRIDGE, MASSACHUSETTS 02139

(617) 498-9094

David E. Sullivan
City Councillor

September 14, 1983

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

Dear Mr. Healy:

To date, I have abstained from voting on matters concerning the Nuclear Free Cambridge initiative, because of my employment as legal counsel to the Secretary of State's Elections Division. I did so after consulting the staff of the State Ethics Commission.

Several weeks ago, after it became clear that my vote might be decisive, I requested a formal opinion of the State Ethics Commission. The Commission did not meet until yesterday, when I received the enclosed opinion. The Commission advises me that I may legally vote on whether to place this initiative question on the ballot. I hereby waive confidentiality in this opinion, because I want it to be available to my colleagues and to the public.

I anticipate that a renewed motion to place this initiative question on the 1983 city election ballot will be made at the next City Council meeting. Because I believe that the City Council has a legal duty to do so, and that Cambridge voters have a right to vote on this measure, I shall vote in favor of such a motion.

I have asked the City Solicitor to inform the court and the parties to the pending action about this opinion and my decision. I believe that the City Council will best serve the public interest by voting to place this question on the ballot before the court so orders. I regret deeply that this has been delayed until now, but I hope that no further delay will be required.

Sincerely,

David E. Sullivan

David E. Sullivan

cc: Russell B. Higley, City Solicitor

The Commonwealth of Massachusetts State Ethics Commission

CONFIDENTIAL

John W. McCormack State Office Building, Room 1413
One Ashburton Place, Boston 02108
Telephone (617) 727-0060

September 13, 1983

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

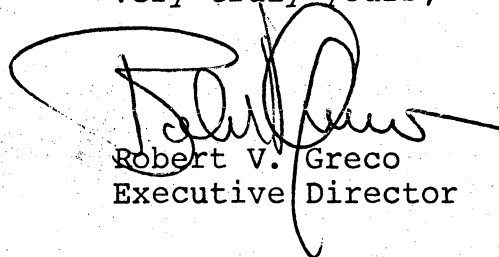
RE: CONFLICT OPINION NO. EC-COI-83-120

Dear Mr. Sullivan:

In response to your recent request, the State Ethics Commission has issued the enclosed advisory opinion which addresses the application of G.L. c. 268A to the specific situations which you have described. In rendering this opinion, the Commission has relied upon the facts as you have stated them and has not conducted an independent investigation of those facts.

Please let us know if you have any questions over the matters covered in this advisory opinion.

Very truly yours,



Robert V. Greco
Executive Director

RVG/sb
Enclosure

The Commonwealth of Massachusetts

State Ethics Commission

CONFIDENTIAL

John W. McCormack State Office Building, Room 1413
One Ashburton Place, Boston 02108
Telephone (617) 727-0060

CONFLICT OF INTEREST OPINION NO. EC-COI-83-120

FACTS:

You currently serve as the legal counsel to the Elections Division of the Secretary of State and are also an elected, paid member of the Cambridge City Council. Pending before the City Council is a local initiative petition proposing a measure entitled the Nuclear Free Cambridge Act ("Act"). Prior to any City Council vote on whether to place the measure on the 1983 city election ballot, the State Ballot Law Commission (SBLC) considered and dismissed objections to the measure which were based on the city's procedure in certifying the referendum signatures. Following the August, 1983, SBLC action, the Cambridge City Council voted on a motion to place the measure on the ballot pursuant to G.L. c. 43, §40. You disqualified yourself from participating in the matter, and the motion failed 4-4. Following the vote, one of the petitioners filed a suit in the Supreme Judicial Court seeking an order that the City Council place the matter on the ballot. The only parties to the suit are Cambridge residents and officials. Among the parties who have filed amicus curiae briefs with the court is the Secretary of State's office. The Secretary of State does not possess any statutory or regulatory authority over the procedures for adopting local initiative petitions.

QUESTION:

Does G.L. c. 268A permit you to vote as a City Councillor on whether the Act should be placed on the ballot?

ANSWER:

Yes.

DISCUSSION:

As legal counsel to the Elections Division of the Secretary of State, you are a state employee for the purposes of G.L. c. 268A. Under G.L. c. 268A, §4, you are prohibited from receiving compensation from any party other than the commonwealth in relation to any particular matter

David E. Sullivan

EC-COI-83-120

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in which the commonwealth or a state agency is a party or has a direct and substantial interest. Whether you would be prohibited from voting as a City Councillor on the placement of the Act on the 1983 ballot depends on whether the vote would be a matter in which the commonwealth or a state agency is a party or has a direct and substantial interest. On the basis of the information which you have provided, your vote would not fall within the §4 proscription.

The procedure by which municipalities adopt initiative petitions is governed by statute, G.L. c. 43, §§38-41, and is not subject to regulation by the Secretary of State's office. Therefore, local initiative matters are not customarily of direct and substantial interest to the commonwealth. While the August, 1983 SBLC proceedings were clearly matters in which a state agency was a party, the proceedings involved a procedural issue distinct from the particular matter on which you seek guidance. Further, the SBLC involvement in reviewing the City of Cambridge certification procedure for the petition signatures does not rise to the level of a direct and substantial interest by a state agency in your vote on whether to place the Act on the city election ballot.

Nor does the commonwealth appear to have a direct and substantial interest in the lawsuit pending before the Supreme Judicial Court. The lawsuit involves local residents and officials of Cambridge and does not name as a party any state officials or state agencies. The fact that the Secretary of State's office, along with other private parties, has filed an amicus curiae brief does not, without more, give the Secretary of State's office a direct and substantial interest in your vote as City Councillor. See, EC-COI-83-67. Inasmuch as your vote would not violate §4, it is unnecessary to consider whether you qualify for or are subject to any of the exemptions under §4.

DATE AUTHORIZED: September 13, 1983

3.

8-499

Comm. from Paul E. Healy, City Clerk, transmitting a comm. from Councillor David Sullivan Re: enclosing a copy of a conflict of interest opinion from the State Ethics Commission advising him that there would be no conflict of interest should he choose to vote in connection with the Nuclear Free Cambridge initiative question in the future.

In City Council,

September 19, 1983

Placed *9/19/83*
on
File

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