



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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MARY F. MCTIGUE
DIRECTOR

April 4, 1990
AO-90-10

Jim Marzilli
4 Brantwood Road
Arlington, Massachusetts 02174

Dear Mr. Marzilli:

This letter is in response to your request for an advisory opinion.

You have stated that you are an appointed Commissioner of the Arlington Housing Authority, for which you receive a stipend of approximately \$1,600 annually. The rate of payment is established by a formula enacted into state law. The amount paid to each Commissioner is determined by taking two percent of the total amount of rent collected by the Authority from a particular housing project, and dividing it equally among the five Commissioners. The stipend is paid on an irregular basis approximately every two months, for attendance at occasional meetings.

You have stated that you are considering running for public office.

You have posed several questions for which we provide answers below.

1. Are you a public employee, as defined by M.G.L. c.55?

Section 13 of M.G.L. c.55 states, in part:

No person employed for compensation, other than an elected officer, by the commonwealth or any county, city, or town shall directly or indirectly solicit or receive any gift, payment, contribution, assessment, subscription or promise of money or other thing of value for the political campaign purposes of any candidate for public office or of any political committee, or for any political purpose whatever, but this section shall not prevent such persons from being members of political organizations or committees. The soliciting or receiving of any gift, payment, contribution, assessment, subscription or promise of money or other

thing of value by a non-elected political committee organized to promote the candidacy for public office of a person so employed for compensation by the commonwealth or any county, city or town, shall not 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 any 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.

Section 13 prohibits any person employed for compensation by the Commonwealth or any political subdivision thereof from directly or indirectly soliciting or receiving contributions for any political purpose. The only exception to this general prohibition is a person who holds elective office. It is the general opinion of this office that any person who is paid directly any sum by the commonwealth, or a political subdivision thereof, to perform services and who is not an independent contractor falls within the prohibitions of section 13 of M.G.L. c.55. You receive compensation from the Arlington Housing Authority as a Commissioner. It is therefore the opinion of this office that you are "employed for compensation" and are subject to the provisions of section 13 of M.G.L. c.55. You would thus be prohibited from soliciting or receiving money on behalf of your own candidacy for public office. A political committee established on your behalf would be able, however, to solicit and receive monies for your campaign, provided no monies were solicited or received from parties with whom you have official business as a Commissioner.

2. Would the non-revocable refusal of your stipend for the duration of the campaign exempt you from the restrictions on soliciting contributions on your own behalf?

This office has previously offered advice to public employees who are candidates for public office that if they were to take unpaid leaves of absence of at least four months before a primary election or six months before a general election the prohibitions of section 13 of M.G.L. c.55 would not be applicable to them. Based on this analysis, if you were to refuse your stipend for the duration of the campaign (provided the primary was at least four months away or the general election was at least six months away), you would not be subject to the provisions of

section 13 of M.G.L. c.55.

3. Is there a procedure through which you may declare yourself to be on a leave of absence from the Arlington Housing Authority, permitting you to solicit contributions on your own behalf during said leave?

Clearly, pursuant to the answer to question 2 above, if you were to take an unpaid leave of absence you would not be subject to the provisions of section 13 of M.G.L. c.55. We cannot, however, offer you advice on the appropriate procedure for taking a leave from the Housing Authority and suggest that you contact counsel for the Authority should you wish to pursue this avenue.

4. Are there any other provisions which would allow you to continue to serve on the Authority, yet not be considered a public employee for the purposes of M.G.L. c.55?

We are aware of no other provisions which would allow you to remain with the Authority and not be considered subject to the provisions of section 13 of M.G.L. c.55. We would remind you that a political committee established on your behalf would be permitted to solicit and receive monies for your candidacy.

We would also alert you to the following provisions of the campaign finance law:

Section 14 of M.G.L. c.55 states: "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."

Section 15 of M.G.L. c.55 states:

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.

Should you elect to waive your stipend or take a leave of absence as discussed above in the answers to questions 1 and 2, section 15 would nevertheless preclude you from accepting any monies or checks directly from a contributor who is also a public employee or incumbent office holder. This category would include other Housing Authority

Commissioners as well as other employees of the town of Arlington, other towns, the Commonwealth, or of any county or city. A political committee established on your behalf could, however, accept contributions from such persons on your behalf.

Section 16 of M.G.L. c.55 states: "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."

Section 17 of M.G.L. c.55 states: "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."

This opinion has been rendered solely on the basis of representations made in your letter and solely in the context of M.G.L. c.55.

I have included a copy of a brochure for public employees for your information. Please do not hesitate to contact this office should you have additional questions.

Very truly yours,



Mary F. McTigue
Director

enclosure
MFM/wp