THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE
ONE ASHBURTON PLACE, ROOM [redacted] 411
BOSTON, MASSACHUSETTS 02108
(617) 727-8352
(800) 462-OCPF

MARY F. McTIGUE
DIRECTOR

May 29, 1990
AO-90-18

Edward J. Samp, Jr.
Chairman
Board of Election Commissioners
362 Green Street
Cambridge, Massachusetts 02139

Dear Mr. Samp:

This letter is in response to your request for an advisory opinion. We are sorry for the delay in responding to you.

You have stated that the Board of Election Commissioners requests an opinion from this office regarding the application of section 108 of M.G.L. c.43, as amended by chapter 257 of the Acts of 1989. Section 108 of M.G.L. c.43 is a provision of the charter applicable to Plan E cities, including the City of Cambridge.

Specifically you have inquired as to whether councilors and/or school committee members (and their respective political committees) of Plan E cities may solicit and/or receive campaign contributions from city employees and if they may, under what circumstances.

In responding to your inquiry, we first address the issue of whether city councilors and school committee members are covered by the provisions of section 108 of M.G.L. c.43, which restricts the campaign finance activities of certain classes of persons in Plan E cities.

Section 108 of M.G.L. c.43, as amended, states, in pertinent part:

> No employee of any department, board or commission of the city shall, directly or indirectly, solicit or

> receive, or in any manner be concerned in soliciting or receiving any assessment, subscription or contribution for any political party, for any candidate for city office or for any political committee organized on behalf of such candidate. 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 city office of an employee of any department, board or commission of the city 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 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.

If a city councilor or a school committee member were to be considered an "employee of any department, board or commission of the city", then such councilor or member would be subject to the prohibitions in section 108 of M.G.L. c.43.

The Supreme Judicial Court has stated that "the word department . . . plainly refers to an executive or administrative department of the city government . . . It does not refer to the city council itself, even though that body may sometimes in common speech be called the legislative department of the city to distinguish it from the administrative departments." Shea v. Inspector of Buildings of Quincy, 323 Mass. 553, 558 (1949).

The general intent of section 108 of M.G.L. c.43 appears to prohibit campaign finance activity on the part of executive or administrative employees. It is therefore the conclusion of this office that a city councilor is not an "employee of any department, board or commission of the city" within the meaning of section 108 of M.G.L. c.43, and therefore not subject to the prohibitions contained therein.

The analysis with reference to the status of a school committee member as an "employee of any department, board or commission of the city" is somewhat different than that for a city council member. In a very narrow decision on this

issue, the Supreme Judicial Court noted that a "school committee in a city having one of the standard forms of charter set forth in c.43 is a 'department' or a 'board'." Eastern Massachusetts Street Railway Company v. Mayor of Fall River, 308 Mass. 232, 233 (1940).* It is therefore necessary to determine whether members of a school committee would be "employees" of the committee.

It is noted that several separate sections of M.G.L. c.43 describe the election of school committees as well as their powers and duties (see sections 31 through 36 of M.G.L. c.43). These sections pertain to all cities, not just those operating under Plan E charters. In fact, the Plan E charter (sections 93 through 116 of M.G.L. c.43) references the powers of the school committee only in describing the powers of the city council and the city manager (see sections 95, 97 and 104 of M.G.L. c.43) and outlining certain procedures related to vacancies on the school committee and the election of school committee members (see sections 102, 109 and 114 of M.G.L. c.43). These sections seem to place the school committee in a category other than that of an "employee". In fact, additional sections of the general laws appear to define the duties of a school committee solely as that of an employer. See, e.g., section 32 of M.G.L. c.43 and sections 37B, 38 and 42 of M.G.L. c.71.

It is therefore the opinion of this office that a school committee member would not be considered an "employee" "of any department, board or commission" subject to the prohibitions contained in section 108 of M.G.L. c.43.

We would note that section 108 of M.G.L. c.43 applies to city employees of Cambridge soliciting or receiving contributions for political parties or candidates for city

---

*The Court reached this conclusion in analyzing the application of section 29 of M.G.L. c.43 to the actions of a school committee in executing a transportation contract to bus schoolchildren. It noted that pursuant to section 29, such a contract would need to be approved by the mayor or city manager, as the case may be, because it is a commercial contract rather than one "in which by long established policy and tradition school committees have exercised exclusive and untrammeled control." Id at 237. Under this fact-specific situation, a school committee would appear to be more of an executive or administrative body in city government rather than a legislative one, such as the city council described in Shea.

office. More general prohibitions on soliciting or receiving contributions by any public employee, including city employees of Cambridge, for any political purpose, are contained in section 13 of M.G.L. c.55.

We would also alert you to certain other provisions of M.G.L. c.55 which would be applicable to city councilors and school committee members:

Section 15 of M.G.L. c.55, which states in pertinent part:

> 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.

This section would preclude city councilors and school committee members from accepting contributions directly from other persons in the public service, such as teachers, police officers and public works officials, whether or not such persons worked for the city of Cambridge, the county of Middlesex, the Commonwealth of Massachusetts or another governmental unit. A political committee organized on behalf of a city councilor or school committee member would be permitted to accept contributions from persons in the public service, however.

Section 14 of M.G.L. c.55, which 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 purposes set forth in section thirteen."

Section 16 of M.G.L. c.55, which 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, which 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 section 108 of M.G.L. c.43 and M.G.L. c.55.

Please do not hesitate to contact this office should you have additional questions.

Very truly yours,

Mary F. McTigue

Mary F. McTigue
Director

MFM/wp