

LAW DEPARTMENT  
CITY OF SPRINGFIELD  
CITY HALL, ROOM 210, 2nd FLOOR  
36 COURT ST  
SPRINGFIELD, MA 01103  
TELEPHONE (413) 787-6085  
FACSIMILE (413) 787-6173



## **INTERNAL MEMORANDUM**

**TO:** All City Employees, Elected and Appointed Officials  
**DATE:** May 21, 2013  
**FROM:** Edward M. Pikula, City Solicitor  
**SUBJECT:** Casino Referendum and Ethics Issues

---

### **1. Introduction**

The City of Springfield recently approved a ballot question referendum for approval of a destination resort casino in downtown Springfield. Chapter 268A of the Massachusetts General Laws, more commonly known as the State Ethics Law, imposes restrictions on public employees engaging in “election-related political activity.” Election-related political activity includes activity directed at influencing people to vote for or against ballot initiatives, such as the upcoming voter referendum on whether Springfield should host a resort casino. Furthermore, Massachusetts campaign finance laws impose restrictions on the use of public resources in actions concerning a voter referendum. The purpose of this memorandum is to provide guidelines for all City employees regarding what actions they can and cannot take in connection with the casino referendum.

The restrictions imposed by the State Ethics Laws are different for different types of municipal employees.

- If you are not an elected official, do not serve as a department head, and do not regularly make decisions on City policy<sup>1</sup>, please refer to the guidelines in Section Two.
- If you serve as a department head or regularly make decisions on City policy, please refer to the guidelines in Sections Two and Three.
- If you are an elected official, please refer to the guidelines in all three Sections.

If you have any questions about which category of employee you fit into, or any other matter related to the State Ethics Law, please contact the Law Department for further advice.

### **2. Guidelines for all employees**

The guidelines in this section apply to all City employees, but especially to those who are not elected, do not serve as department heads, and do not regularly make decisions on City policy. Any election-related political activity regarding the casino referendum that you engage in should be guided by the

---

<sup>1</sup> Employees that “regularly make decisions on City policy” are those holding high-level management positions in which they dictate major policy goals for the City or a City department.

following three rules. In addition, information relating to the applicability of the State Ethics Law to gifts is included.

First, you may not engage in election-related political activity in your “official capacity.” For example, you may not use your title (such as “Assistant Principal” or “Administrative Assistant”), the City seal, or the name of a City department in any communications supporting or opposing the casino referendum. Uniformed employees, such as police and firefighters, may not engage in election-related political activity while wearing their uniforms.

Second, you may not engage in election-related political activity using the City’s resources. For example, you may not express your views on the casino referendum in an email sent from your City email account or in a letter printed on City paper. You may not use the City’s printers, copiers, phones, fax machines, computers or facilities to advocate a certain view on the casino referendum. If you have access to a City-owned vehicle, you may not use it to attend a pro-casino or anti-casino rally, or to distribute literature on the casino referendum. And if you have employees under your direction and supervision, you may not direct them to take any action that you would be prohibited from taking.

Third, you may not engage in election-related political activity at work or “on the City’s time.”

These guidelines are not intended to stifle all election-related political activity. You are free to play an active role in supporting or opposing a casino as long as you do so in your capacity as a private citizen, using your own resources, and on your own time.

### Gifts

All City employees should also be aware of the restrictions that the State Ethics Law imposes on the solicitation and acceptance of gifts of substantial value.

Generally, a public employee may not solicit or accept anything of substantial value if it is related to his or her official position or intended to influence official action. A gift can be anything, including food, drinks, travel, gift certificates, tickets to events, and tangible objects. “Substantial value” means anything with a face value or fair market value of \$50 or more. All gifts solicited or accepted in a 365-day period may be combined for determining whether the “substantial value” threshold is met. An invitation from a pro-casino or anti-casino organization for City department heads to attend a fancy dinner (the value of which is more than \$50 per person) is one example of a prohibited gift.

Even gifts with a face value or fair market value of less than \$50 can be problematic under the State Ethics Law if (1) the employee-recipient took some official action on a matter involving the gift giver within the previous six months, or (2) a matter involving the gift giver comes before the employee-recipient in the six months following the gift. In either of those situations, the employee must file a written disclosure with the State Ethics Commission.<sup>2</sup> For example, suppose you are invited, along with every other resident of Springfield, to a free movie with complimentary popcorn paid for by supporters or opponents. The value of the movie and popcorn is \$10. An employee of the City Planning Department attends the movie. This is not ordinarily prohibited, both because the gift is not related to the employee’s official position and because it’s worth less than \$50. However, three months later, the employee is required to review and approve building plans submitted by the developer or a complaint submitted by opponents. The employee may act on the building plans, but must first file a disclosure with the City Clerk. If you have any questions about gifts, please contact the Law Department for further advice.

---

<sup>2</sup> Contact the Law Department for instructions on filing the disclosure.

### 3. Guidelines for elected officials and policymaking employees

If you are an elected official, a department head, or regularly make decisions on City policy, the guidelines in this section apply to you. Elected officials, department heads and policymakers may engage in election-related political activity in their individual capacities, using their own resources, and on their own time as described in Section 2. They may also express opinions on ballot initiatives *in their official capacities* if both of the following conditions are satisfied.

First, the opinion expressed must fall within the employee's area of official responsibility. For example, the Police Commissioner, acting in his official capacity, may express an opinion on a casino's impact on public safety and crime. However, he may not express an opinion on a casino's impact on the local construction industry, as that would be a matter outside of his official responsibility. The same is true for elected officials. A member of the School Committee, acting in her official capacity, may express an opinion on a casino's impact on the School Department budget, but may not express an opinion on a casino's impact on affordable housing. The Mayor and City Councilors, because their official responsibility extends to all areas of City business, may express opinions on any subject. If you have any questions about your "area of official responsibility," consult your appointing authority.

Second, an employee may express an opinion only for the purpose of informing the public, as opposed to advocating for or against passage of the ballot initiative. The line between "information" and "advocacy" is a fine one. An employee may express an opinion on a casino's impact on his or her area of official responsibility, and may even express an opinion on the casino referendum generally, while staying within the permissible area of "informing the public." However, endorsing or appearing in an advertisement, campaign brochure or other public communication designed to sway public opinion would fall into the prohibited area of "advocacy." Furthermore, urging citizens to vote one way or the other on a ballot initiative is never a permissible part of "informing the public." So while an employee subject to this Section may state that she is for or against the development of a casino, she may not do anything to sway the public to her side of the issue.

If both of the conditions above are satisfied, elected officials, department heads and policymaking employees may use City resources to research and inform their opinions, including email, phones, fax machines, printers, computers, and the labor of subordinate employees.

While the employees described in this section may inform the public on the subject of a ballot initiative, they are restricted in how they may distribute and publish such information. The purpose of these restrictions is to ensure that public resources are used only to inform the public, and not to influence the outcome of a ballot initiative or referendum. Employees may publish or distribute information in response to a request from the public or the press, post information on the City website or a public bulletin board, distribute information to attendees at a public meeting, issue a press release<sup>3</sup>, and talk to the press. A public employee may **not** distribute or publish information or an opinion on a ballot initiative by sending a mass email to City residents, sending a letter, flier or pamphlet to City residents, or advertising in print or broadcast media. One exception to this rule is informing the public about the date, time and place of a voter referendum. For that limited purpose, a public employee may send a mass email, flier or pamphlet to City residents, but must take care to

---

<sup>3</sup> If an official or department is proposing to distribute a press release using means that go above and beyond the official's or department's normal practice with respect to distribution of a press release, please contact the Law Department for advice prior to releasing it, as prior review and approval from the Office of Campaign and Political Finance may be required.

ensure that the information therein relates only to the date, time and location of the election, is strictly non-partisan, and does not express any opinion on the merits of the ballot initiative.

#### **4. Guidelines for elected officials only**

Elected officials may engage in election-related political activity in their individual capacities, using their own resources, and on their own time as described in Section 2. They may express informational opinions in their official capacities as described in Section 3. And they may also publicly support or oppose a ballot initiative as described in this section.

The State Ethics Law allows an elected official, in his or her official capacity, to publicly support or oppose a ballot initiative and to campaign for or against a ballot initiative. For example, City Councilor X may state at a press conference, “I, City Councilor X, strongly support the development of a casino in Springfield.” Similarly, a public body such as the City Council or School Committee may, pursuant to its internal rules, vote on a motion to publicly express a position regarding a ballot initiative.

Just as the employees described in Section 3 are limited in how they may publish and distribute information about a ballot initiative, the elected officials described in this Section are restricted in how they may publish and disseminate their opinions on a ballot initiative. Again, the purpose of the restrictions is to ensure that public resources are not used to influence the outcome of a ballot initiative or referendum. An elected official may publish or distribute information or an opinion in response to a request from the public or the press, post information or an opinion on the City website or a public bulletin board, write a letter to the editor of a newspaper, distribute information or an opinion to attendees at a public meeting, issue a press release<sup>4</sup>, and talk to the press. A public employee may **not** distribute or publish information or an opinion on a ballot initiative by sending a mass email to City residents, sending a letter, flier or pamphlet to City residents, or advertising in print or broadcast media.

The State Ethics Law also allows elected officials to actively campaign for or against a ballot initiative. For example, City Councilor X may publicly urge her to constituents to vote ‘yes’ on the casino referendum.

However, Massachusetts campaign finance laws prohibit public employees from using public resources to do so. Therefore, while City Councilor X may write a letter to the editor of a newspaper on City letterhead and state, “I support the development of a casino in Springfield,” she would be prohibited from stating in that letter using City letterhead: “I urge everyone in Springfield to vote ‘yes’ on the casino referendum.”

Actively campaigning for or against a ballot initiative is permissible only when no public resources are involved, such as speaking to the press or participating in an advertising campaign funded by an outside source. It is sometimes difficult to ascertain under what circumstances public resources are being utilized; please contact the Law Department for advice if you have any questions about the implications of your actions.

---

<sup>4</sup> If an elected official or body is proposing to distribute a press release using means that go above and beyond the official’s or body’s normal practice with respect to distribution of a press release, please contact the Law Department for advice prior to releasing it, as prior review and approval from the Office of Campaign and Political Finance may be required.