



TOWN OF UPTON, MASSACHUSETTS

Library Feasibility Committee

MINUTES

Committee: Joint Library/COA Feasibility

Meeting Day, Date, Time: Monday, January 26, 2016, 7:00 PM

Location: Town Hall Ground Floor Conference Room

JOINT LIBRARY/COA FEASIBILITY COMMITTEE

William Taylor, Chair	Robert Fleming	Leah Hagen
Linda Arthur, Vice Chair	Kelly McElreath	Janice Nowicki
Fran Gustman, Secretary	Steven Rakitin	Alan Rosenfield, Esq.

ASSOCIATE MEMBERS

John Robertson, Jr., Chair Library Board of Trustees
Matthew Bachtold, Library Directory

OPM Steve Kirby, Vertex

TECTON ARCHITECTS: Barbara Joslin, Consultant; James Becker, Associate, Project Architect

PRESENT: All present

ADDITIONAL PARTICIPANTS: Board of Selectmen Chair Ken Picard, Selectman Jim Brochu

1. Call meeting to order / review agenda. The meeting was called to order at 6:59 pm.
2. Invited guests: Upton Board of Selectmen. Discuss process for moving project forward, including town meeting dates, warrant articles, grant requirements/timing, site acquisition process/timing, etc. The Selectmen will also take questions from the committee. See below.
3. Discussion and vote on which type of project to proceed with: stand-alone library that includes all of the services outlined in the library building program, a joint library-COA facility that includes all of the services outlined in the library and COA building programs, a "community center" project that does not include all of the services listed in the library and COA building programs and is roughly the same size as the stand-alone library with all the services in the library building program, and a shared library-COA facility project that provides all of the services listed in the library and COA building programs but by through greater sharing of spaces.

A long discussion ensued. Bob Fleming spoke about the services offered by the COA as a community center. Alan spoke on lack of funds and lack of support for a joint building. John reminded us that the charge from the Trustees and the Selectmen was to investigate the options of a joint building and a stand-alone library. Fran asked if the community would support the additional cost of a combined building. Bob said if the vote on a combined building failed it would be hard to go back to the voters to ask them to support a stand-alone library. Kelly said she was

seeing taxpayers with “sticker shock”; she thinks it will be very hard to get either vote passed. Leah suggested that based on cost the library alone had a better chance.

A stand-alone library will be \$4.5M in construction costs. Matthew explained that the town must approve the designs before receiving a construction grant from the MBLC, which would take six months; however, the grant is a solid commitment from the state.

Figures from Tecton showed the maximum anticipated project costs to the town are quite close on the Maplewood and the Pederson sites, including all expenses except property. The Pederson site is \$5,098,346 for the stand-alone library and \$8,396,919 for the joint building. The Maplewood site is \$5,142,621 for the stand-alone library and \$8,528,919 for the joint building. These are costs in today’s dollars, not for 2018.

The MBLC provides \$200,000 towards the cost of the site.

Fran asked if a master plan could be designed to allow for an addition of a COA in the future. The designers said it could be done.

A Motion was made to have a vote for no project, a stand-alone project, or a dual project. A Friendly Amendment suggested, “All those in favor of a stand-alone library,” which was seconded. A Motion was made and passed to allow the guests to offer their opinions.

Jim reminded us that we were building for the future; he felt that the project would be more saleable to the community, the more benefits it represented. Linda commented that rather than two inadequate facilities with a common wall, we should sell a vision of what can be added later. John urged the need for dynamic PR. Matthew reported that the Friends of the Library were in favor of more services, despite increased cost; he felt that the stand-alone library would provide the most services at the least cost. Bill believes that the dual building, as affected by the need to fulfill MBLC requirements, does not represent the synergy we would like. Janice said that she was not willing to compromise on the COA to the extent necessary and cited an expert who said the biggest mistake would be to build the COA too small.

A Motion was made and seconded to move the vote. The vote was unanimous in favor of a stand-alone library.

A Motion to amend the task of the committee to a stand-alone feasibility study was voted unanimously by the Selectmen.

The Motion in favor of a stand-alone library will be reported to the Library Trustees, who will have to reappoint the current COA members to the stand-alone committee.

COA and library money will be separated.

Fran asked the Selectmen, “Will I, as both an elected Trustee and an appointed member of the Feasibility Committee, be able promote the new library? Jim B. said to simply state facts and to avoid being a cheerleader. Bob handed out a bulletin for reference on conflict of interest, which Matthew will review. See attachment.

The Selectmen left at 8:23 pm.

4. Site selection

a. Discuss site assessment services and procurement process, including geotechnical survey, wetlands delineation, topographic survey, utilities survey.

The town has groundwater and ledge issues. There is \$16,700 left of grant funds to use for site assessment. Borings will cost about \$2,000 each. Surveys will be needed to locate utilities (DPW) and to create topographic maps.

Barbara will send a list of survey needs to Bill, who will forward it to Kelly, who will contact a resident who volunteered to do a survey for the town hall project. Steve K. will send a list of surveyors and wetlands experts to Bill. Bill will send out a Request for Quotes.

Tecton’s civil engineer will review the geotechnical report.

Kelly will contact DPW and Scott Hennessy at the water department to learn what the requirements are for water, sewer, natural gas, storm drainage, and electric.

b. Discuss site selection as needed.

The Pederson site is expensive at \$750,000. The Maplewood site has been offered to us as a leased property, but may be more expensive to develop. The Maplewood site isn't large enough to allow future expansion, while a building on the Pederson site could be designed to allow for a COA to be added.

Before arranging for borings on the Pederson site, the Town Manager will be consulted to learn how much of the property is developable. The town requires three appraisals. Barbara suggested checking Blackstone Valley School data on the Maplewood site.

The number of parking spaces needed is tied to how large the building's meeting room is. The current plan shows 50 spaces.

5. Review Tecton plans.

Matthew will question Rosemary of the MBLC about decreasing the size of the most recent plan.

6. Discuss community outreach plans and process.

The Friends of the Library will put up signs and create a Facebook page. Steve R. suggested setting up easels with information about the library on Election Day. Tecton will supply this information on foam core boards. A suggestion was made to schedule presentations about the library before the election.

It was suggested that meetings be arranged soon with the Capital Budget Committee and the Finance Committee. The CIC meeting should include the Feasibility Committee and the Trustees; Matthew noted that \$5M for the new library has already been on the CIC agenda for the last few years. Tecton will create a PowerPoint presentation.

7. Review project schedule as needed. No changes.

8. Approve minutes of December 14, 2015, and January 11, 2016. Postponed.

9. Library Trustees update. Postponed.

10. Library Director update. Postponed.

11. Financial update. Postponed.

12. Audience participation. As above.

13. Future meeting date: Monday, February 8, 7 pm, Little Town Hall. [This was postponed to 2/17.]

14. Other topics not reasonably anticipated by the Chairman 48 hours in advance.

15. Adjournment. The meeting was adjourned at 9:08 pm.

Attachment: Office of Campaign & Political Finance Interpretive Bulletin

Submitted February 17, 2016

Fran Gustman, Secretary



MICHAEL J. SULLIVAN
DIRECTOR

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INTERPRETIVE BULLETIN

**Activities of Public Officials
in Support of or Opposition to Ballot Questions**

This office frequently is asked about the extent to which public officials may act or speak in support of or in opposition to a question submitted to the voters.

In general, officials may undertake various official actions that concern ballot questions relating to matters that are within their areas of authority, such as voicing their opinions, holding or attending meetings and making information available to the public. Officials should not, however, use public resources to engage in a campaign to influence voters concerning a ballot question, for example by authorizing a publicly funded mass mailing to voters or using city or town resources to support or oppose a ballot question.

This Interpretive Bulletin addresses restrictions on the use of governmental resources for political purposes under the campaign finance law, M.G.L. c. 55. It is important to note, however, that a separate statute, the Massachusetts conflict of interest law, M.G.L. c. 268A, also restricts public employees' use of governmental resources. In some cases, the conflict of interest law prohibits activity not addressed by the campaign finance law. Public officials should ensure that their activities comply with both statutes. The conflict of interest law is enforced by the State Ethics Commission, and questions regarding the conflict of interest law should be directed to that office.¹

In Anderson v. City of Boston, 376 Mass. 178 (1978), appeal dismissed, 439 U.S. 1069 (1979), the Supreme Judicial Court ruled that public resources may not be used to influence voters concerning a ballot question.

In accordance with the Anderson decision, OCPF has consistently advised that governmental entities may not contribute or expend anything of value in support of or opposition to a ballot question,

¹ The Ethics Commission has issued Advisory 11-1 "Public Employee Political Activity," which is posted on the Commission's website at <http://www.mass.gov/ethics/education-and-training-resources/info-section-7/advisories/advisory-11-1.html>. The Ethics Commission can be reached at 888-485-4766 or 617-371-9500.



whether it is on the statewide ballot or placed before voters in a single city or town.² See OCPF Interpretive Bulletin IB-91-01 and advisory opinions cited therein for more specific guidance on activities that fall under this prohibition. In addition, public resources may not be used to distribute even admittedly objective information regarding a ballot question unless expressly authorized by state law. See IB-91-01.

Anderson, however, does permit public officials to act and speak regarding ballot questions, subject to certain limitations. As the Anderson court noted with apparent approval:

At oral argument, the plaintiffs conceded that the mayor and persons in relevant policy-making positions in . . . government are free to act and speak out in support [of a ballot question]. Id. at 199 (emphasis added).

In short, the decision reflected a recognition that if officials were prohibited from stating their positions regarding a ballot question related to their official responsibility, such a prohibition would unnecessarily (and probably unconstitutionally) restrain such officials from carrying out the duties of their offices.

Nevertheless, OCPF always advises caution on the part of officials to avoid the appearance of improperly using public resources to support or oppose a ballot question. In Anderson, the court indicated that the campaign finance law reflects an interest “in assuring the fairness of elections and the appearance of fairness in the electoral process.” 376 Mass. at 193. In general, officials should be aware that some of their actions or comments may be viewed unfavorably by those who oppose their positions, even if those actions are not specifically prohibited by the campaign finance law. On the other hand, members of the public who may question an official’s conduct or comments concerning a ballot question should be aware that, as noted by the court in Anderson above, an official has the right to voice his or her opinion on a public policy issue, including a ballot question. Objections to the speech or actions of officials concerning a ballot question are sometimes based not on the law, but on other considerations that are beyond the scope of OCPF’s jurisdiction.

This bulletin provides more specific guidance regarding the scope of such permissible activities concerning a ballot question, but it cannot be seen as encompassing all situations that might arise. OCPF is aware that ballot questions, especially those concerning Proposition 2 ½ overrides and debt exclusions, are often contentious issues. Given the limited treatment of this issue in Anderson, and the absence of relevant statutory provisions, questions and issues not addressed or reflected in this bulletin will continue to be raised regarding the extent to which officials may speak or act regarding ballot questions in a manner consistent with Anderson. Those who have questions not addressed here may contact OCPF for advice.

I. Permissible Official Activity by Public Officials

In general, a public official may comment regarding a ballot question. In addition, a public official may take certain actions regarding a ballot question, if the actions are consistent with his

² Anderson generally does not address or restrict activities of officials concerning town meeting. There may be some limitations, however, in the case of a ballot question that is also the subject of a town meeting, such as a Proposition 2½ override. See IB-91-01.

official responsibilities.³ An official may therefore address an issue or advocate a position regarding a ballot question that may affect the official's agency or which relates to a matter within the scope of his agency's enabling legislation. See AO-02-03.

On the other hand, if an official could utilize governmental resources to promote or oppose a ballot question, the fundamental prohibition set forth in Anderson would be meaningless. While voters have the right to know an official's position, they also have the right to expect that their tax dollars will not be used for political purposes, whether to support the election of a candidate or to gain approval of a question put before voters. Therefore, officials may not use public resources in an attempt to promote or oppose a ballot question, e.g., by placing an advertisement in a newspaper urging a "yes" or "no" vote on the question, or by conducting a mass mailing of flyers urging a yes or no vote on a question or by distributing such a flyer through students at a public school.

In general, officials are prohibited from using any publicly funded publications, including newsletters, to influence voters concerning a ballot question. Such materials may be prepared, but they may not be sent unsolicited to voters.

Even with these restrictions, however, public officials may act or speak regarding ballot questions in a number of ways without violating the campaign finance law. Notwithstanding the Anderson restrictions, a public official may:

A. Discuss a ballot question, including at meetings of a governmental entity or at informational meetings of private groups. Officials may discuss a ballot question at any time, including at an official meeting of a governmental body, such as a board of selectmen or school committee, or at informational meetings sponsored by a private group. Although sometimes a person may complain that the statements made by officials at such meetings are inaccurate or inappropriate, the accuracy or appropriateness of officials' statements is not an issue under the campaign finance law.

B. Take a position on a ballot question. Officials may endorse, or vote as a body to endorse, a ballot question, and may issue statements supporting or opposing a ballot question. However, the distribution of such statements should be restricted to such usual methods as posting on a bulletin board or a press release, not in a manner restricted by Anderson as noted below. The fact that a ballot question is discussed or a vote is taken does not make an official meeting a "political event" and therefore does not trigger an equal access requirement for the use of the meeting room or inclusion on the agenda of the meeting. See AO-95-33 (selectmen may discuss ballot question at meetings, respond to inaccurate or misleading statements and post a statement on town hall bulletin board) and AO-00-19 (selectmen may endorse candidate or ballot question).

³ It is worth noting, however, that *elected* officials have considerably more leeway than *appointed* officials. An *elected* official may speak about a ballot question at any time, even if the ballot question is not within the official's area of responsibility. In contrast, an *appointed* official may speak regarding a ballot question during work hours only if the question relates to a matter within the scope of the official's area of responsibilities. In addition, an appointed official may not appear at a political committee's campaign function to promote or oppose a ballot question during working hours. The appointed official may attend the event during non-working hours. An elected official, however, may attend such an event at any time.

C. Analyze the impact of a ballot question. An official may conduct an analysis of a ballot question's impact on agency operations or assign staff to conduct such an analysis, provided the question would affect the official's area of responsibility or agency. For example, a police chief may prepare an analysis of the effect of a Proposition 2 ½ override that would fund his department; if the question concerned the school budget only, however, such a use of police department resources would run counter to Anderson. The results of such analysis would be considered a public document and could be made available to the public upon request, but should not be prepared or distributed in a manner inconsistent with the next section. The official may not conduct a study primarily to aid the proponents or opponents of a ballot question.

D. Provide copies of the agency's analysis of and/or position on a ballot question, or other public documents, to persons requesting copies or to persons attending public meetings of a governmental entity. An official may distribute information containing the official's position on a ballot question or the agency's analysis to persons requesting such information, and may make a reasonable number of copies available to persons attending an official meeting (such as a public forum) of a governmental entity. However, even if the study is a public record, it may not be mailed or distributed, beyond those who attend such a meeting or request such information, to voters or a class of voters at public expense without express statutory authorization. See IB-91-01. A copy may be made available to an individual or group and may be reproduced with private funds and distributed by individuals or political committees, if such distribution is disclosed in accordance with the campaign finance law. Officials should not provide an excessive number of copies to a private group, political committee, or individual, for mailing or any other type of distribution.

E. Hold an informational forum, participate in a forum held by a private group, and distribute a notice of the forum. An official or agency may hold an informational forum concerning a ballot question, or participate in a forum sponsored by a private group. As noted above, the campaign finance law generally does not cover the content of public meetings. If the governmental agency distributes a notice of a forum, however, such a notice may not discuss the substance of the ballot question or contain an argument for or against the question. For example, it may announce the date, time and location of the forum, but it may not contain a discussion of the reasons for supporting or opposing the ballot question.

F. Speak to the press. An official may speak to the press regarding a ballot question that concerns a matter within the official's area of responsibilities. An official may also respond to or direct staff to respond to questions from the press or the public about the official's position on such a ballot question. See AO-92-32. Officials should contact OCPF before a press release is prepared or distributed using public resources.

G. Post information on a government bulletin board or Web site. Information or endorsements by governmental entities or other information regarding a ballot question that are public records may be posted on a town's Web site or bulletin board. See AO-00-12. Further use of the governmental web site or the Internet for a more political purpose, such as unsolicited e-mails to voters asking for their support, should be avoided.

H. Allow private groups to use a public building for a meeting concerning a ballot question. In Anderson the court stated that the political use of certain government resources, such as facilities paid for by public funds “would be improper, unless each side were given equal representation and access.” Accordingly, ballot question committees, or other groups that support or oppose a ballot question, may use areas within public buildings that are accessible to the public (i.e., not private offices) for meetings if each side is given equal access. See AO-90-02. “Equal access” does not mean that the other side must be invited to attend a meeting. It means that both sides may, upon request, use the same space for separate meetings on the same terms and conditions. It is important to remember, however, that fundraising relating to the ballot question may not take place at such a meeting. See M.G.L. c. 55, § 14 (prohibiting any demand, solicitation or receipt of money or other things of value for any political campaign purpose in any building or part thereof “occupied for state, county or municipal purposes”).

I. Appear on cable television. The fact that an official may, as described above, discuss or take a position on a ballot question is not altered if such an action is broadcast on local access cable television. In addition to speaking at public meetings that may be broadcast, an official may appear on a local cable or broadcast television or radio show, during work hours if applicable, to discuss a ballot question that relates to a matter within the scope of the official’s area of responsibilities. During the course of the official’s appearance on the show, the official may state that he or she supports or opposes the ballot question. See AO-02-03. Questions concerning content of cable television programming and the use of cable television by municipalities should be directed to Cable Television Division of the state Department of Telecommunications and Cable at (617) 305-3580.

J. Distribution of information advising voters of election. Officials may distribute a notice (either in printed or electronic form, or by automated phone calls) to advise voters of an upcoming vote, such as a notice of the time, date and place of a municipal election. Also, such information may include a brief neutral title describing the ballot question, and the text of the ballot question. Extreme care should be taken to avoid any comment on the merits of a ballot question or the appearance of advocacy. See AO-07-03.

K. Use of a newsletter to inform persons of how they may obtain information regarding a ballot question. Although an official may not use a newsletter mailed or emailed to recipients using public resources to distribute information or advocacy regarding a ballot question, the official may use such a newsletter to let recipients know how they can get such information from the municipality or other governmental agency. For example, a newsletter may advise persons that they can visit a school district’s website to obtain information relating to an override, or may provide a link to such a website. The newsletter should not, however, be used to provide a link to a ballot question committee’s website, or to provide information on how persons may contact a ballot question committee.

II. Private activity by officials

The examples listed above concern an official’s actions while using some type of public resource, i.e., staff time or material, to promote or oppose or otherwise influence a ballot question. The Anderson opinion applies to the use of such public resources, but does not extend to the use of privately-funded resources. A person’s status as a public official does not preclude him or her from engaging in political activity when not at work, including activity supporting or opposing a ballot

question. The campaign finance law does not prohibit officials from acting or speaking in favor of or in opposition to a ballot question on an individual basis on their own time. It is important to keep in mind, however, that appointed, paid public employees may not, be involved *at any time* in fundraising to support or oppose a ballot question. See M.G.L. c. 55, § 13, which state that public employees may not “directly or indirectly solicit or receive” any contributions of anything of value for any political purpose. For more information regarding restrictions on fundraising, see OCPF’s *Campaign Finance Guide: Public Employees, Public Resources and Political Activity*.

Specifically, public officials may, on their own time:

A. Serve on a ballot question committee or perform services for such a committee. An official may, on his or her own behalf, perform services or serve as a member of a political committee, or hold any committee position, aside from treasurer or any other position that involves fundraising (if the official is appointed as opposed to elected, as noted above). In addition, as discussed below, some activities of public officials acting or speaking in favor of or opposition to ballot questions may raise issues relating to the conflict of interest law, M.G.L. c. 268A, which is enforced by the State Ethics Commission.

B. Contribute to a ballot question committee or make expenditures to support or oppose a ballot question. An official may use his or her own personal funds to contribute to a ballot question committee or otherwise to support or oppose a ballot question. There is no monetary limit to such contributions or expenditures.

This bulletin provides general guidance. To ensure compliance with the campaign finance law, OCPF strongly encourages officials to contact this office if they are in doubt regarding the scope of permissible involvement in ballot question campaigns.

If you have any questions or need further information regarding this interpretive bulletin or any other campaign finance matter, please call OCPF at (800) 462-OCPF or (617) 979-8300. The office’s web site, www.ocpf.us, provides additional guidance on this and other campaign finance topics.

 2/25/15
Michael J. Sullivan
Director