



TOWN of BROOKLINE

Massachusetts

CHARLES CAREY
TOWN ADMINISTRATOR

333 WASHINGTON STREET
BROOKLINE, MASSACHUSETTS 02445
TEL. (617) 730-2200
FAX: (617) 730-2054
www.brooklinema.gov

To: Select Board

From: Charles Carey, Town Administrator

Date: May 22, 2023

Subject: Update on Ongoing Evaluation of Alleged Election Law Violations

On March 31, 2023, shortly after the deadline to finalize ballot questions for the May 2, 2023 Townwide election, I issued a memorandum regarding election activities that state law prohibits municipal employees from engaging in (the “Election Activities Memo”) to all Town Department Heads and the Superintendent of the Public Schools of Brookline (“PSB”) for distribution to their staff. A copy of that memo is attached for reference.

In the immediate lead-up to and weeks following the election, my office received a number of complaints regarding actions and communications made by employees of the Public Schools of Brookline (“PSB”) which alleged that those actions violated relevant provisions of state conflict-of-interest and election laws outlined in the Election Activities Memo. Given the intense interest in the subject in the run-up to Town Meeting, this memorandum provides an update to you and the public on the disposition of those complaints.

It has been and remains my hope to address these complaints in an efficient and comprehensive manner. That effort has been complicated by the rolling nature of the complaints, the most recent of which arrived last Thursday, May 18. While some of the complaints contain overlapping claims, many are distinct. All require a careful analysis of the underlying facts. To that end, I have asked members of the Office of Town Counsel to conduct interviews of the involved parties and gather any necessary documentary evidence. Interviews have already begun, with an aim toward finishing quickly. When that process concludes, I intend to issue a report of findings and make any referrals required by law if potential violations are identified.

Below is a “frequently asked questions” section that provides additional background in response to some of the most common concerns I have seen raised regarding the complaints and how the Town will evaluate them.

Why aren’t the complaints being answered in the order in which they were received? Can’t you just address the simplest complaints first so we have at least some information?

Ordinarily, I would prefer to answer complaints of this nature as we receive them—in other contexts, I have found that grouping complaints together for a single response tends to encourage

the belief among complainants that the complaints are inherently meritorious, when in fact no determination has yet been reached.

In this context, however, I am mindful that community members have suggested that decisions should be made at Town Meeting based on the outcome here. If I were to answer some complaints but not others, or focus only on the complaints I could most easily dispose of, I would be concerned about the appearance of bias. A Town Meeting Member might allege the most salient complaints had gone unanswered by design, or that the focus was solely on complaints whose resolutions painted certain outcomes in a positive or negative light.

Under the totality of these circumstances, I would rather provide a single combined response that provides public closure rather than an incomplete response that clouds the overall picture, even if that takes additional time.

Some of these claims seem pretty open-and-shut—why aren't you just announcing that you've found potential violations of the law?

Each claim, no matter how persuasively it's presented by the parties advancing it, needs to be independently evaluated. Some complaints reference the term "unsolicited communication," for example, but refer to portions of a larger regularly-scheduled newsletter whose typical contents and uses are unclear. Some complaints reference comments from PSB employees, but the source of those comments are communications from non-PSB sources such as parent-teacher organizations.

In each instance, context matters, and understanding that context takes time. Until then, it's important not to rush to conclusions in either direction.

What will happen if you do find suspected violations of the law or Town/PSB policy?

We'll make all referrals required by state law, including filing a report with the clerk as required by Chapter 55, Section 22A of the Massachusetts General Laws (regarding the use of public resources to influence an election). The Office of Campaign & Political Finance ("OCPF"), which has already received one independent complaint that the Town is aware of regarding certain activities, will determine an appropriate sanction or additional referral with regard to violations of that law. These sanctions can include merely "providing guidance" to avoid future violations where "the use of public resources [was] minor," requiring restitution of the cost of the resources used, or, in cases rising to the level of criminal misconduct, a referral for prosecution. Please refer to OCPF's Interpretive Bulletin No. 91-01 (<http://files.ocpf.us/pdf/legaldocs/IB-91-01.pdf>) for further information.

For complaints that focus on PSB employees, it will be the responsibility of the Superintendent and School Committee as appropriate to determine whether internal discipline is warranted.

Could a finding of violations have an impact on the outcome of the elections?

I am unaware of circumstances in which findings of a violation of the applicable laws led to the decertification of election results, and am unsure if any entity has the authority to order as much. Over the last 14 years, in the 11 most recent findings by OCPF of violations for similar

allegations, the punishment was a public reprimand. The general thrust of these OCPF decisions is that a public education letter is appropriate guidance to prevent future violations.

In last year's statewide legislative elections, even after special committees of the House found "concerns regarding human error" in races decided by five votes and one vote, respectively, the House ultimately voted to accept the certified results of the elections. The circumstances are not totally analogous (there were no allegations of undue influence in the House races), but they speak to a strong public policy preference in Massachusetts toward preserving the finality of certified election results.

What actions will you take with regard to future elections?

At the end of the Election Activities Memo, I urged municipal employees to "err on the side of caution. This is a very engaged political community, as you all know, and we should strive to avoid even the appearance of a conflict of interest." These complaints demonstrate that such appearances were not avoided, and that's very disappointing. Whether or not the challenged communications are unlawful, they clearly had an "impact [on] the trust we all continually try to build and maintain with the public," as I wrote back in March.

Whether or not there are any findings of potential violations or subsequent disciplinary action, I intend to work collaboratively with PSB to ensure that this outcome is not repeated. While I believe the Election Activities Memo was a clear and concise articulation of what is and is not permitted, I will continue to revise its language to ensure there is no room for confusion. And I will work with all relevant stakeholders to develop managerial training on the subject so employees can feel confident addressing and avoiding "edge cases."

I look forward to our team completing an efficient, fair, and comprehensive review of the complaints we have received on this subject.

END OF MAIN DOCUMENT

cc: Dr. Linus Guillory, Ph.D., Superintendent of Schools
Melissa Goff, Deputy Town Administrator for Policy & Fiscal Affairs
Joe Callanan, Town Counsel

Attachment as stated



TOWN of BROOKLINE

Massachusetts

CHARLES CAREY
TOWN ADMINISTRATOR

333 WASHINGTON STREET
BROOKLINE, MASSACHUSETTS 02445
TEL. (617) 730-2200
FAX: (617) 730-2054
www.brooklinema.gov

To: Town Department Heads
Dr. Linus Guillory, Ph.D., Superintendent of Schools

From: Charles Carey, Town Administrator

Date: March 31, 2023

Subject: Election Season Activities

Now that Brookline's ballot questions have been set and election season is officially underway, I want to remind everyone that Town and School employees are governed by strict requirements when it comes to our own political activities. Please circulate this message to members of your staff.

First, as a general rule: if you have any questions or concerns about what you can or can't do, please reach out to Town Counsel's office before you do anything. Their email is towncounseloffice@brooklinema.gov and their phone number is 617-730-2190. Don't feel embarrassed telling anyone "I'm sorry, but I just need to quickly check to see if that's okay."

Second, the Massachusetts conflict-of-interest law applies with special relevancy here. I strongly encourage you to review the following Advisory from the State Ethics Commission: [Advisory 11-1: Public Employee Political Activity](#). It features clear overviews of what we as local employees can and can't do.

Third, because the ballot questions have been finalized, Massachusetts campaign finance law now applies. The law prohibits the use of municipal resources to influence the outcome of elections. I therefore also strongly encourage you to review this interpretive bulletin from the Office of Campaign and Political Finance: [OCPF IB-91-01](#).

Many of you will receive questions about the two questions with tax implications on May's ballot. As a general rule, you may not, while "on the clock," advocate for or against those questions. And you may never use Town or School resources to do so. Those resources include things that you would immediately think about, like printer paper or an office phone, but also less obvious things, like time spent on a Town-owned computer or your professional title.

The Town has an Override Central page, <https://www.brooklinema.gov/override>, offering explanations of the debt exclusion/override, as well as a calculator for people to determine how

the passage of either or both would impact their taxes. It's often easier to refer interested parties to that page.

Fourth, be mindful of requests from candidates on the ballot. They are citizens of the Town and should be treated respectfully and courteously in accordance with our Code of Conduct, but do not allow yourself to inadvertently be drawn into campaign matters. Something as innocuous as an informational meeting or a photograph together at a Town event could be construed as using municipal resources to provide political support. If you are not prepared to offer the same level of service or access to all candidates who request things from you, I would suggest asking them whether they can delay their requests until after the election on May 2 or limit them strictly to routine non-political matters.

Above all, please err on the side of caution. This is a very engaged political community, as you all know, and we should strive to avoid even the appearance of a conflict of interest. We don't want to impact the trust we all continually try to build and maintain with the public.

END OF DOCUMENT