

Advance Notice of Proposed Rulemaking

OCPF Regulations on the Applicability of the Campaign Finance Law to Groups that do not Engage in Political Fundraising, but Do Make Expenditures or Contributions

I. Description of proposed change to regulations, and why change is needed

The campaign finance law defines “political committees” to include any “organization or other group of persons... which receives contributions or makes expenditures for the purpose of influencing the nomination or election of a candidate, or candidates...”. Under this definition, as literally applied, a union or nonprofit organization that makes even a nominal political contribution would be considered a political committee subject to the limits, and registration and reporting requirements, of the campaign finance law. In 1988, the Office of Campaign and Political Finance (OCPF) issued Interpretive Bulletin IB-88-01, in which the office stated that an organization that does not solicit or receive funds for a political purpose will only be considered a political committee if it makes “more than incidental” political expenditures, defined as contributions and expenditures made to benefit or oppose candidates “exceed[ing], in the aggregate, .. either \$15,000 or 10 percent of [the] organization’s gross revenues..., whichever is less.”

On September 6, 2018, in 1A Auto, Inc. v. Director of the Office of Campaign and Political Finance, SJC-12413, the Massachusetts Supreme Judicial Court issued a decision upholding the constitutionality of M.G.L. c. 55, § 8, which prohibits direct contributions to candidates from business corporations. IB-88-01 was mentioned in the briefs submitted by the plaintiff and discussed in an *amicus* brief submitted to the Court. The Court did not address the accuracy of OCPF’s interpretation, and noted that consideration of IB-88-01 was not necessary to its decision. The Court, however, observed that the bulletin may “not carry the force of law” because the interpretation has not benefited from the full rulemaking process. 1A Auto, fn. 10.

In light of the Court’s statement, and a Request for Rulemaking received by this office from Common Cause Massachusetts on November 7, 2018, OCPF believes it is important to provide an opportunity for comment and hearing on regulations to better define the appropriate standard for determining when an entity should be considered a “political committee” for purposes of Section 1.

II. Request for comments and timeline

Interested persons are invited to appear in person at a public hearing, or to submit written comment to OCPF at any time, in accordance with the following schedule. Written comment may be submitted in person, or by US Mail, fax or email.

- A. Initial comments on whether the Interpretive Bulletin should be codified or if it should be replaced with a different standard, with comments including proposed alternative approaches, to be received by November 30, 2018.
- B. Initial public hearing to be held on December 6, 2018
- C. Initial draft regulations to be completed by OCPF and available by February 1, 2019
- D. Public hearing on draft regulations to be held on March 5, 2019
- E. Comments on draft regulations to be received by March 15, 2019
- F. Final regulations to be available by May 1, 2019

The hearings will be held at 2:00 p.m. at One Ashburton Place, 21st floor, in Boston.

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