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Office of Campaign and Political Finance
One Ashburton Place, Room 411
Boston, MA 02108

Advisory Opinion

September 26, 2001
AO-01-26

James Roosevelt, Jr., Legal Counsel
Massachusetts Democratic Party
10 Granite Street
Quincy, MA 02169

Re: Clean Elections Law – Application to legislators seeking election to DSC

Dear Mr. Roosevelt:

This letter is in response to your August 3, 2001 request for an advisory opinion.

You have stated that certain members of the Democratic State Committee (DSC) are also elected members of the General Court of the Commonwealth. As such, they maintain campaign accounts under M.G.L. c. 55 and may also be impacted by the Clean Elections Law. In the past, however, their accounts dedicated to supporting their election to the DSC have been held not to be subject to the registration and reporting requirements of c. 55.

QUESTION

In light of the Clean Elections Law, M.G.L. c. 55A, may members of the DSC who are also elected members of the General Court continue to raise and spend campaign funds for election to the DSC and if so, are there any limits or restrictions on the amounts or sources of such contributions or expenditures?

RESPONSE

A member of the General Court who is also a member of the DSC may continue to raise and spend funds into and from the candidate's campaign account established pursuant to M.G.L. c. 55 (the candidate's "campaign account") or, in the case of a candidate who is participating in the Clean Elections program, the candidate's participant election account established pursuant to M.G.L. c. 55A, to support efforts made in seeking re-election to the DSC. Alternatively, the candidate may receive and spend funds for that purpose outside of the candidate's campaign account or participant election account.

Fundraising to support a candidate's re-election to a state party committee outside of a campaign account or participant election account is not subject to the restrictions of the Clean Elections Law, unless the candidate or a person acting on the candidate's behalf receives the funds through a "testimonial," i.e., the sale of tickets or other items purchased by a donor in connection with a fundraising activity held on behalf of the candidate. See M.G.L. c. 55, § 1, 2nd paragraph (referred to in this opinion as the testimonial provision).

Regardless of whether a legislator participates in the Clean Elections program, funds raised for election to a state party committee may not be received from business or professional corporations. In addition, appointed public employees may not be involved in soliciting and receiving such funds and such funds may not be solicited or received in a building occupied for state, county or municipal purposes.

DISCUSSION

1. Restrictions imposed by M.G.L. c. 55, the campaign finance law

The campaign finance law defines the term "candidate" as "any individual who seeks nomination or election to *public* office." See M.G.L. c. 55, § 1 (emphasis added). A person seeking election to a state party committee is not seeking "public office." For that reason, except as discussed below, funds raised and spent for that purpose are not "contributions" or "expenditures" subject to the limits of the campaign finance law or the Clean Elections Law.

The testimonial provision creates an important qualification to the general rule that money received and spent in connection with a candidacy for state party committee membership is not a "contribution" or "expenditure." Specifically, donations received that result from ticket sales or other "purchases" from a candidate or elected office holder or person acting on his behalf in connection with a fundraising event held on behalf of the candidate, "*regardless of the purpose of said activity*" are "contributions," and associated disbursements "expenditures," subject to the reporting requirements and limits of the campaign finance law. See AO-87-10 and AO-01-21.

Accordingly, if tickets are sold or other purchases made by donors in connection with a fundraising event held on behalf of a legislator who is seeking re-election to a state party committee, any donations received by the candidate would be "contributions." As such, the funds would need to be deposited into the candidate's campaign account, and all contributions and expenditures would be subject to the limits and disclosure requirements of chapter 55.[1]

Regardless of whether funds are received in connection with a fundraising event subject to the testimonial provision, *under no circumstances may a legislator receive funds to be used in connection with seeking party committee membership from a business or professional corporation.* Section 8 of chapter 55 states that business corporations may not "directly or indirectly give, pay, expend or contribute, or promise to give, pay, expend or contribute, any money or other valuable thing for the purpose of . . . aiding or promoting or antagonizing the interest of any political party." If a corporation were to make payments to promote a person seeking election to a state party committee, such payments would at least indirectly promote the interests of the party. Therefore, a business or

[1] In addition, as discussed below, contributions and expenditures, as the campaign finance law defines those terms, would also be subject to the restrictions of the Clean Elections Law, M.G.L. c. 55A.

professional corporation may not donate to a fund created to support or oppose a candidate for state party committee.

Also, section 13 of chapter 55 states that "no person employed for compensation, other than an elected officer by the commonwealth [or one of its subdivisions may] directly or indirectly solicit or receive any gift, payment, contribution . . . or other thing of value . . . *for any political purpose whatever*" (emphasis added). Making a contribution to support or oppose a candidate for state party committee involves making a payment for "a political purpose." Therefore, an appointed public employee may not solicit or receive contributions to support or oppose a candidate for state party committee. See AO-96-23. Finally, funds received for such purposes would be subject to the prohibition on political fundraising in governmental buildings and related prohibitions. See, e.g., M.G.L. c. 55, §§ 14-17.

2. Additional requirements imposed by M.G.L. c. 55A, the Clean Elections Law

A. For participants

The Clean Elections Law defines "contribution" and "expenditure" in accordance with the definition of these terms in chapter 55. See M.G.L. c. 55A, § 1.[2] If funds raised and spent are "contributions" or "expenditures" as defined in section 1 of chapter 55, they are also subject to the restrictions of the Clean Elections Law. If, on the other hand, funds raised by a candidate are not "contributions" or "expenditures" they are not subject to the restrictions of the Clean Elections Law.

Therefore, if funds are received outside of a candidate's campaign account to further the efforts of a legislator to be elected to the DSC, they are not subject to the restrictions of the Clean Elections Law, *unless* they are raised through a "testimonial."[3]

If the funds raised to further a candidacy for DSC are treated as "contributions" under the testimonial provision and they are raised on behalf of a Clean Elections participant, the funds, together with other funds raised, are limited to "allowable contributions" of $100 or less during an election cycle. In addition, the amount received would count towards the aggregate limit on allowable contributions in section 9 of chapter 55A. Finally, expenditures made to hold such a fundraising event would be included in calculating compliance with the candidate's expenditure limit in section 6 of chapter 55A.

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[2] The Clean Elections Law defines a "contribution" as a "contribution as defined in section 1 of chapter 55, except that the use by a participant of the participant's home, car, computer, facsimile machine, telephone or similar such equipment shall not be considered a contribution." An "expenditure" is defined as "an expenditure as defined in section 1 of chapter 55, except that expenditures shall not include in-kind contributions."

[3] The use of the term "funds" in section 2(a) of chapter 55A should not be interpreted to require deposit into the participant election account of money received by a candidate, which is not an allowable contribution. Section 2(a) states that during an election cycle, a participant "shall not accept, expend, or obligate to expend any contribution *or funds* from any source other than: allowable contributions received in accordance with and subject to section 9; in-kind contributions received in accordance with section 10; and clean election funds received pursuant to sections 7, 8 and 11." (Emphasis added). This provision means that during an election cycle, a participant may not deposit funds into a participant election account unless the funds are allowable contributions or clean election funds. Donations to further a candidacy for DSC may therefore be received consistent with section 2(a) and deposited into an account separate from the candidate's participant election account. This analysis is consistent with regulations allowing participants to deposit money received which is not an allowable contribution, in a prior year election account, e.g., money raised to retire a liability created during a previous election cycle, that are not derived from allowable contributions. See 970 CMR 5.06(2).

B. For non-participants

If an event is subject to the testimonial provision, expenditures made by non-participants would be subject to certain requirements under the Clean Elections Law. Section 11of chapter 55A states that candidates who do not participate in Clean Elections must file "excess expenditure reports" when "expenses" exceed the expenditure limits provided in section 6 of chapter 55A. Paragraphs (h) and (i) of section 11 define "expenses" considered in calculating whether an excess expenditure report must be filed by a non-participant as any "expenditures and obligated expenditures." For purposes of chapter 55A, "expenditures" are defined in section 1 of chapter 55. See M.G.L. c. 55A, § 1. In accordance with section 1 of chapter 55, payments made outside of a committee organized pursuant to chapter 55 for the purpose of promoting election of a legislator to a state party committee are not, *unless made in connection with a fundraising event subject to the testimonial provision*, "expenditures."

If a non-participant raises funds under the testimonial provision of the campaign finance law in connection with a state party committee candidacy, associated expenditures must be included in calculating whether an excess expenditure report must be filed.

In contrast, a non-participant's payments made to send out a mailing soliciting funds to support a candidacy for state party committee would not be "expenditures," if not made from the candidate's political committee. Such activity does not involve the sale of tickets or other activity involving "purchases" made from the candidate or person acting on behalf of the candidate. Therefore, such payments would not be "expenditures" under chapter 55 would not be subject to limits or disclosure requirements under chapter 55A and would not be included in the calculation of whether the legislator must file excess expenditure reports.

This opinion is solely in the context of M.G.L. c. 55 and the Clean Elections Law and is based solely on the representations made in your letter. Should you have additional questions, please do not hesitate to contact this office.

Sincerely,

Michael J. Sullivan
Director

MJS/gb