



Commonwealth
of Massachusetts

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

Advisory Opinion

May 16, 2007
AO-07-05

Mike Longtin
Massachusetts Motorcycle Association
20 Linden Street
North Easton, MA 02356

Re: Use of association's website to raise contributions for PAC

Dear Mr. Longtin:

This letter is in response to your request for an opinion regarding your organization's facilitation of contributions by members to the American Bikers Acting to Educate PAC of Massachusetts (the PAC).

The Massachusetts Motorcycle Association (the Association) is a non-profit organization. Individuals and businesses may become members of the Association upon the payment of dues.

The Association utilizes a website that is designed in-house, which includes a membership dues processing capability maintained by a third party (ClubExpress). The Association is interested in encouraging its new and existing members to contribute to ABATE PAC by including an option to make a \$5 to \$45 contribution to the PAC in addition to paying dues. Members would be given notice of the monies to be processed, and would have to approve the transfer of funds in advance. ClubExpress would collect the contributions, place the funds in a segregated account, and then transfer the funds electronically to the PAC at regular intervals.

The Association has corporate members that would not be given the opportunity to make contributions to the PAC.

QUESTIONS

1. Would the proposed method of raising funds for the PAC comply with the campaign finance law?

Answer: Yes, if (1) the PAC pays all fees assessed by ClubExpress for processing PAC contributions; (2) the PAC reimburses the Association for the initial one-time cost incurred in designing the part of the website which solicits the contributions; (3) the website contains a disclaimer stating that corporations may not contribute to the PAC; (4) the information required to be maintained by the campaign finance law is requested and obtained from contributors; and (5) the PAC and Association comply with the disclosure and recordkeeping requirements of the campaign finance law.

2. May the Association ask that the PAC reimburse fees assessed for processing credit cards?

Answer: Yes – in fact, the PAC must reimburse all such fees.

3. Is the Association required to document the transactions, or is the PAC responsible for doing this?

Answer: The PAC is responsible for filing campaign finance reports to document all transactions. In addition, the Association is required to maintain records of the transactions and forward the records to the PAC.

4. May the Association raise funds in this manner even though it has business and corporate members?

Answer: Yes, if the Association complies with the requirements described in this advisory opinion.

5. If ClubExpress processes data and prepares financial reports, does this satisfy the requirements of the campaign finance law?

Answer: ClubExpress, acting as a designated agent of the PAC, is required to record and forward all information regarding the transfers. The PAC must maintain these records. The PAC is also required to file accurate reports with OCPF reflecting its financial activity.

DISCUSSION

This office has issued several advisory opinions that summarize the ways an association or other entity may, as an agent of a political committee, help a political action committee raise money. See, e.g., AO-04-04 (concerning an unincorporated business that wished to plan events at which persons could make donations to the ABATE PAC), and AO-02-36 (relating to an association soliciting contributions for state and federal PACs). In accordance with these and other OCPF opinions, the Association may help the PAC raise funds by soliciting contributions for the PAC in conjunction with the Association's dues collection process, but must be careful to ensure that the solicitation, processing, and follow-up associated with the fundraising effort complies with the campaign finance law. In addition, the Association must not deposit the funds into its own treasury, but instead immediately forward the funds to the PAC, or transfer the funds to the PAC via a separate transmittal account. See AO-02-36.¹

¹ If the Association deposited the funds into its treasury prior to transmittal to the PAC, the Association would be acting as a PAC. See IB-88-01.

1. The prohibition on the use of corporate resources to support the PAC

Section 8 prohibits expenditures by business or professional corporations to support or oppose a PAC, and prohibits the use of corporate funds by organizations such as the Association for that purpose. You have stated that the Association receives corporate funds from some of its members. Therefore, the PAC must pay the processing fees associated with contributions directed to the PAC. In addition, the PAC must reimburse the Association for the initial one-time cost incurred in designing the portion of the Association's website that will be used to solicit and process the contributions. See 02-36. Compare AO-02-22 (providing only a hyperlink allowing a visitor to an association's website to go to a candidate's website to make a contribution directly to the candidate would not constitute the provision of a "thing of value" within the definition of the campaign finance law).

2. Recordkeeping and reporting requirements and the processing of credit card contributions

Any designated agent of a political committee (i.e., ClubExpress) must forward contribution records to the PAC within three business days of receipt, and the PAC is responsible for obtaining these records. See M.G.L. c. 55, § 23. The records that must be maintained by the PAC include the name and residential address of all contributors, the date and amount of each contribution, and, where the amount received from any contributor equals or has exceeded \$200 during the calendar year, the occupation and employer of the contributor. The records maintained by the PAC must also reflect fees assessed to process the contributions. See M.G.L. c. 55, §§ 2 & 10, and 970 CMR 1.10. As with all contributions to a PAC, such contributions must not exceed, in the aggregate, \$500 annually from any one individual, and must not be drawn on an account containing corporate funds. See M.G.L. c. 55, §§ 7A and 8. Pursuant to M.G.L. c. 55, § 9, PAC contributions from any individual that exceed \$50, including any previous contributions made by that individual during the year, must be paid by personal check or other "written instrument." A "written instrument," for contributions by credit card, is "a paper record signed by the cardholder or, in the case of such contribution made over the Internet, an electronic record created and transmitted by the cardholder."

To comply with the "written instrument" requirement, as well as other requirements relating to the receipt of credit card contributions, the PAC and the Association must adhere to OCPF's regulations relating to the receipt of credit card contributions. These regulations state that where a merchant provider such as ClubExpress is used to facilitate the making of credit card contributions, the PAC, or the Association (as the PAC's agent), is required to enter into a contract with ClubExpress that conforms to the campaign finance regulations at 970 CMR 1.09. The regulations also state that the contract must be consistent with ClubExpress's customary and usual business practices, and not provide any discount that is not available to other candidates or political committees or the general public.

In addition, the website must contain a clear statement notifying members and persons becoming members that any contributions to the PAC are voluntary and in addition to dues payments. As discussed in OCPF Memorandum M-04-01, the website must also set forth appropriate questions to determine the source and amount of the contribution, clearly identify the PAC involved in the solicitation, require a contributor to certify with an affirmative action that the contributor's personal funds will be the true source of the contribution, and clearly distinguish

between required and optional information collected, before any contributions to the PAC are processed. Contributors must receive a prompt confirmation in writing via email or by regular mail.

Where a member's contribution to the PAC is provided along with the member's payment of dues, the credit card fees incurred should be split between the PAC and the Association on a proportional basis. The ABATE PAC may pay ClubExpress directly for its share of the fees or the Association may initially make the payment on behalf of the PAC. Since the Association receives funds from business corporations, however, the Association would have to be promptly reimbursed for any payment of fees it may make on behalf of the PAC.

The amount of a contribution received by credit card to be recorded by ABATE PAC is the gross amount of the contribution, prior to the deduction of fees. The PAC would record and disclose, as expenditures, all payments it makes to reimburse the Association for fees paid to process the contributions.

This opinion is provided on the basis of representations in your letter, and is solely within the context of the campaign finance law.

Sincerely,

A handwritten signature in black ink that reads "Michael J. Sullivan". The signature is written in a cursive, flowing style.

Michael J. Sullivan
Director

MJS/gb