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DIRECTOR

January 17, 2014
AO-14-01

Steve Revilak, Treasurer
Massachusetts Pirate Party PAC
25 Moore Street
Somerville, MA 02144

Re: Bitcoins

Dear Mr. Revilak:

This letter is in response to your request for an opinion regarding whether political committees, including PACs, are permitted to accept contributions in Bitcoins. You have also asked how such contributions, if permitted, should be reported.

You have stated that Bitcoins are a form of privately-issued digital currency that was created in 2009. Bitcoins are typically represented by an algorithm or a long string of numbers and letters in a user's computer file, and users may purchase Bitcoins using U.S. currency. The user would then transfer the Bitcoins from their Bitcoin online account or "wallet" to other users as payment for goods or services, to merchants who accept Bitcoins for payment, or through third-party exchanges that convert the Bitcoins back to government-issued currency. Bitcoin transfers are conducted online and are essentially instantaneous.

Bitcoins are attractive to users for several reasons, including the anonymity associated with this digital currency. Merchants accepting Bitcoins will often provide a discount to customers paying in that format because payments made in Bitcoins cannot be rescinded and because of the ease and speed of Bitcoin transactions. Bitcoin values fluctuate wildly, however; between May 27, 2013 and November 26, 2013, one Bitcoin exchange reported market prices ranging from $68 to $899 per Bitcoin.[1]

QUESTION 1

May a political committee accept contributions in the form of Bitcoins?

ANSWER

Yes, a political committee may accept contributions in Bitcoins, subject to the same disclosure requirements and source and limit restrictions applicable to all contributions made under the campaign finance law.

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[1] See, for example, Bitcoinmagazine.com/charts/

DISCUSSION

M.G.L. c. 55, § 1 defines a contribution in part as "money or anything of value to an individual, candidate, political committee, or person acting on behalf of said individual, candidate or political committee, for the purpose of influencing the nomination or election of said individual or candidate, or for the purpose of supporting or opposing a political party committee...". The Uniform Commercial Code, found in M.G.L. c. 106, §1-201, defines money as "a medium of exchange authorized or adopted by a domestic or foreign government and includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more nations."

Although Bitcoins do not constitute "money" as defined by Massachusetts state law since they are not "authorized or adopted by a domestic or foreign government," they are clearly a thing of value – they may be used to obtain goods or services, or they may be exchanged for U.S. currency. Therefore, political committees may accept Bitcoin contributions subject to the restrictions and prohibitions of the campaign finance law.

For example, committees accepting contributions by Bitcoin are still required to obtain the relevant contributor information, including the contributor's name and residential address, for all contributions received.[2] See M.G.L. c. 55, §§ 2 and 5. Committees are also required to obtain occupation and employer information for any individual who contributes $200 or more in a calendar year, whether those contributions are monetary, in-kind, or in the form of Bitcoins.[3] Id. Committees accepting Bitcoins may not accept contributions from corporations, partnerships, or limited liability companies, nor may they accept contributions from individuals who are not U.S. citizens or green card holders. See M.G.L. c. 55, § 8; AO-08-06.

Bitcoin contributions, like any other contribution, are subject to the individual $500 aggregate annual contribution limit.[4] Therefore, if an individual contributes $200 by check in a calendar year to a candidate's committee or PAC, that individual is limited to a $300 Bitcoin contribution in the same year to the same committee. If a Bitcoin contribution results in an excess contribution, the committee is required to refund the excess to the contributor or to purge the excess in accordance with the residual funds clause. M.G.L. c. 55, § 18; 970 CMR 1.04(8). In addition, if the Bitcoins transferred to a committee are valued at in excess of $500 at the time the Bitcoins are transferred, the committee must reject the contribution and return the Bitcoins to the contributor. Id.

Committees accepting Bitcoins are required to follow the criteria set forth for web sites that solicit political contributions by credit or debit card. See 970 CMR 1.09(2)(b). Specifically, Committee web sites must: 1) set forth appropriate questions, which require an affirmative response from a contributor, to determine that the source and amount of the contribution complies with M.G.L. c. 55 and 970 CMR 1.09; 2) clearly identify the name of the candidate or committee involved in the solicitation; 3) require a

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[2] Because Bitcoins are increasing in popularity in part due to the anonymity they provide, committees that choose to accept Bitcoins must exercise care to ensure that they obtain accurate contributor information. Although you have not indicated how you intend to obtain contributor information or verify its accuracy, OCPF expects that you will comply with your disclosure and recordkeeping obligations.

[3] See Question 2, below, for a discussion on the valuation of Bitcoin contributions.

[4] All individual contributions to candidates, candidate committees, and PACs are subject to the $500 annual limit; individual contributions to local party committees and state party committees are subject to a $5,000 annual contribution limit, while there is no limit on individual contributions made to a ballot question committee.

contributor to certify with an affirmative action that the contributor's personal funds were used to purchase the Bitcoins being contributed to the candidate or committee; and 4) clearly distinguish between required and optional information collected. Committees accepting Bitcoins are also required to obtain from individual contributors the value of the Bitcoins being transferred at the time of transfer. This will allow committees to determine whether the contribution is within the individual contribution limit and, consequently, whether the contribution may be accepted by the committee or must be rejected and returned to the contributor.[5] 970 CMR 1.04(8).

QUESTION 2

If a political committee accepts Bitcoin contributions, how should those contributions be valued and reported?

ANSWER

A political committee must liquidate all Bitcoins within 5 days of receipt by exchanging the Bitcoins for U.S. currency through a high-volume public Bitcoin exchange open to transactions in the U.S.[6] The Committee must then immediately deposit the money received as a result of the liquidation and report the receipt of a monetary contribution on the day the Bitcoins are liquidated from the individual who contributed the Bitcoins. The contribution must be reported as the gross amount for which the Bitcoins are exchanged, before any fees are paid or deducted. All exchange or transaction fees must be paid by the candidate or committee and reported separately as either an expenditure (for all non-depository candidates and committees) or as a negative receipt (for all depository candidates and committees).

DISCUSSION

Upon receipt of the Bitcoin contribution, the Bitcoins become part of the funds of the political committee. Section 6 of the campaign finance law permits committees to place funds "in a savings account or money market to earn interest thereon," but prohibits committees from investing their assets in any other manner. 970 CMR 2.07(5) also states, in pertinent part, that "A political committee may invest its funds only in...savings accounts, which shall include any interest bearing account or deposit in a bank or savings institution; [or] money market instruments...". Since the intent of Section 6 is clearly to limit the ways in which a political committee may invest its funds, the campaign finance law would not permit a committee to hold Bitcoins in its Bitcoin wallet, as a virtual wallet is not a "bank or savings institution." Therefore, a political committee is required to liquidate its Bitcoins within 5 days of its receipt as a contribution to comply with Section 6 and the regulations.

A committee is required to liquidate its Bitcoins by exchanging them for U.S. currency through a high-volume public Bitcoin exchange open to transactions in the U.S. The committee would then be required to immediately deposit the funds received into the committee bank account and disclose a contribution in the gross amount determined as a result of the exchange or liquidation. The contribution

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[5] Committees and contributors should note that the value of the Bitcoins at the time of transfer to the committee is relevant *only* to whether the committee may accept the contribution. The method by which committees should value Bitcoins for reporting purposes is not the value of the Bitcoins upon transfer to the committee, and is discussed in greater detail in Question 2.
[6] See AO-83-07 (requiring candidates and political committees that receive contributions in the form of stock to liquidate the stock within 5 days of receipt).

is attributable to the individual who contributed the Bitcoins exchanged, and the date of receipt is the date on which the Bitcoins were liquidated. Contributors and committees should be aware, however, that the value of the Bitcoins contributed may be different on the day the contributor transfers the Bitcoins to the candidate or committee and the day the candidate or committee liquidates those Bitcoins. Therefore, the contribution amount is the gross amount the candidate or committee receives as a result of the liquidation (see *Examples*, below).

If a Bitcoin exchange deducts a transaction fee prior to depositing the proceeds of the liquidation into the candidate or committee's account or otherwise assesses a fee for processing the transaction, the committee should report the gross amount received as a result of the liquidation, before any fees are deducted by the exchange. See 970 CMR 1.09(5)(c) (requiring the same treatment for credit or debit card contributions where a fee is charged by the vendor or merchant provider). All exchange or transaction fees paid by the candidate or committee must be reported separately from the contribution as an expenditure on Schedule B (by non-depository candidates and committees), or as a negative receipt on a Deposit Report or an expenditure reflected in a bank report (by depository candidates and committees).

If the liquidation results in an aggregate annual contribution in excess of the relevant contribution limit, the committee must refund the excess to the individual contributor, payable by committee check.[7] However, if the Bitcoins transferred to the committee are valued in excess of the relevant contribution limit *at the time of transfer*, the committee must reject the transfer of the Bitcoins and return the Bitcoins to the contributor.[8] See M.G.L. c. 55, § 18; 970 CMR 1.04(8) (stating that "Any contribution which is believed by a candidate or committee to be illegal under M.G.L. c. 55 or any other law prior to its deposit into the account of a political committee or candidate shall be returned to the contributor in its original form."). A contributor should, at the time the Bitcoins are transferred to the recipient committee, inform the committee of the value of the Bitcoins at the time of transfer. The recipient committee must then determine, based upon the contribution limit applicable to that committee, whether the contribution may be accepted or if it must be rejected and returned to the contributor in the form in which it was received.

Example 1: On December 1, John Doe gives the (non-depository) Committee Bitcoins which, at the time of transfer, are valued at $500. The Committee liquidates those Bitcoins on December 5 and receives $300 as a result of the liquidation. The Committee should report that John Doe has made a contribution to the Committee on December 5 in the amount of $300. Any fees for the transaction will be paid by the Committee (either as a deduction from the gross liquidated sum or as a separate payment to the vendor) and should be reported as an expenditure. The Committee is required to obtain occupation and employer information for John Doe, and John Doe may contribute an additional $200 to the Committee during that calendar year.

Example 2: On December 1, John Doe gives the (non-depository) Committee Bitcoins which, at the time of transfer, are valued at $500. The Committee liquidates those Bitcoins on December 5 and receives $900 as a result of the liquidation. John Doe has made a contribution to the Committee on December 5 in the amount of $900. Any fees for the transaction will be paid by the Committee (either as

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[7] 970 CMR 1.04(8) states, in relevant part, "Any contribution which is believed by a candidate or committee to be illegal, subsequent to its deposit, shall be refunded to the contributor immediately. This refund shall be in the form of a check written to the contributor on the account of the candidate or political committee into which the original contribution was deposited."

[8] It is OCPF's understanding that any transfer of Bitcoins may be rejected by the intended recipient. Therefore, if a committee receives Bitcoins that, at the time of transfer, are worth in excess of the relevant contribution limit, the committee is required to reject the transfer and return the Bitcoins to the contributor.

a deduction from the gross liquidated sum or as a separate payment to the vendor) and should be reported as an expenditure. The Committee must disgorge John Doe's $400 excess contribution by issuing a refund to John Doe. The Committee must also obtain occupation and employer information for John Doe.

Example 3: John Doe gave the (non-depository) Committee a personal check for $250 on March 1. On December 1, John Doe gives the Committee Bitcoins which, at the time of transfer, are worth $250. On December 5, the Committee liquidates the Bitcoins and receives $300 as a result of the liquidation. The Committee must report John Doe's Bitcoin contribution as a contribution of $300 received on December 5. Any fees for the transaction will be paid by the Committee (either as a deduction from the gross liquidated sum or as a separate payment to the vendor) and should be reported as an expenditure. Therefore, John Doe has made contributions totaling $550 for the calendar year, resulting in an excess contribution of $50. The Committee must issue a refund to John Doe of $50 or disgorge the excess in accordance with the residual funds clause.

Example 4: On December 1, John Doe gives the (depository) Committee Bitcoins which, at the time of transfer, are valued at $500. The Committee liquidates those Bitcoins on December 5 and receives $300 as a result of the liquidation. The Committee must file a Deposit Report promptly after the funds are deposited into the Committee's bank account; the Deposit Report will disclose a $300 contribution from John Doe on December 5. Any fees for the transaction will be paid by the Committee and should be reported as a negative receipt on the Committee's Deposit Report (if paid as a deduction from the gross liquidated sum) or as an expenditure (if paid as a separate payment to the vendor). The Committee is required to obtain occupation and employer information for John Doe, and John Doe may contribute an additional $200 to the Committee during that calendar year.

Example 5: On December 1, John Doe attempts to give the (non-depository) Candidate Committee Bitcoins which, at the time of transfer, are valued at $800. Because the Committee may only accept individual contributions of $500 or less, the Committee must reject the contribution and return the Bitcoins to the contributor. The Committee has no reporting requirements.

Example 6: On December 1, John Doe gives the State Party Committee Bitcoins which, at the time of transfer, are valued at $3,000. Because the State Party Committee may accept individual contributions up to $5,000, the Committee may accept the contribution. On December 5, the Committee liquidates those Bitcoins and receives $6,000 as a result of the liquidation. The Committee must file a Deposit Report promptly after the funds are deposited into the Committee's bank account; the Deposit Report will disclose a $6,000 contribution from John Doe on December 5. The Committee must issue a refund to John Doe of $1,000 or disgorge the excess in accordance with the residual funds clause. Any fees for the transaction will be paid by the Committee and should be reported as a negative receipt on the Committee's Deposit Report (if paid as a deduction from the gross liquidated sum) or as an expenditure (if a separate payment is made to the vendor). The Committee is required to obtain occupation and employer information for John Doe.

QUESTION 3

May a committee use Bitcoins to purchase goods or services from vendors or merchants?

ANSWER

No, candidates and committees may not use Bitcoins to make expenditures in any amount. The campaign finance law requires committees to use committee checks for all expenditures in excess of $50. In addition, because committees are required to liquidate all Bitcoins received, they may not hold Bitcoins to make any purchases less than $50, nor may candidates or committees purchase Bitcoins to pay vendors for goods or services less than $50.
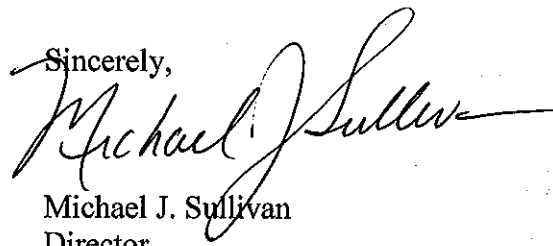
DISCUSSION

Section 9 of the campaign finance law states that "No individual, candidate, political committee, or person acting on behalf of said individual, candidate or political committee, shall make an expenditure for an amount exceeding $50 except by check or credit card..." M.G.L. c. 55, § 9. Because Bitcoins are not checks drawn on the committee account or a committee credit card, the campaign finance law does not permit candidates or committees to use Bitcoins to make purchases in excess of $50.

Committees are also prohibited from using Bitcoins to make purchases of less than $50. As discussed above, committees are required to liquidate all Bitcoins received within 5 days; therefore, a committee may not retain Bitcoins to make other purchases or expenditures. Finally, because committees purchasing Bitcoins to pay merchants or vendors for goods or services would be unable to file reports accurately disclosing those transactions, candidates and committees may not buy Bitcoins to obtain goods or services costing less than $50.[9]

This opinion is issued within the context of the Massachusetts campaign finance law and is provided solely on the basis of representations in your letter. Please contact us if you have further questions regarding this or any other campaign finance issue.

Sincerely,

Michael J. Sullivan
Director

MJS/mc

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[9] Because the value of Bitcoins fluctuates dramatically, a committee that purchases Bitcoins to pay a vendor might, after purchasing those Bitcoins, find that the Bitcoins are worth substantially more or less than the initial purchase price. Accordingly, the purchased Bitcoins may be worth more or less than what the vendor is charging the committee. Such discrepancies between the price paid for the Bitcoins and the value received for them are impossible to account for on a committee's campaign finance reports.