



THE COMMONWEALTH OF MASSACHUSETTS
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January 5, 2021
AO-21-01

Massachusetts Republican State Committee
c/o David W. Carr, Esq.
4 Newman Way
Arlington, MA 02476

Re: Massachusetts Republican State Committee Legal Defense Fund

Dear Mr. Carr:

This letter is in response to your recent request for an advisory opinion regarding the Massachusetts Republican State Committee's ("the Party's") legal defense fund ("the fund").

Your request stems from an email that was sent by Party Chairman Jim Lyons to potential supporters on November 24, 2020, in which Chairman Lyons asked for contributions to the fund. The email stated that donations were needed for the purpose of "safeguarding our election process."

You have stated that the fund should be available as a source of money to pay for "ongoing ballot access issues," specifically issues relating to federal and state Republican candidates who may face challenges in obtaining signatures on nomination papers, and also for legal expenses that may be incurred in connection with redistricting based on the recent census.

You have asked for an opinion regarding whether the anticipated fundraising and expenditures by the fund would be consistent with campaign finance law.¹

QUESTION

May the legal defense fund be used in connection with unspecified ongoing ballot access legal challenges that may be faced by federal and state candidates, and for expected legal issues relating to redistricting?

ANSWER

No. Legal defense funds may be used to raise money for *existing* legal matters, not for possible matters that may or may not exist in the future.

¹ The office does not ordinarily address, in advisory opinions, actions that have already occurred. Although a fundraising appeal has already been sent by the Chairman to raise money for the Party's legal defense fund, this opinion is issued since the described activities by the fund concern not only activities that have already occurred, but also future anticipated financial activity. In addition, the guidance in this opinion may be helpful for other candidates or committees that create a legal defense fund.

DISCUSSION

Legal defense funds may, in accordance with M.G.L. c. 55, § 18E, be created by candidates or political party committees.² Donations received by legal defense funds are not “contributions” subject to the limits and restrictions of the campaign finance law, but must be disclosed on a monthly basis, on or before the fifth day of the month following the month in which the donations were received. The donation reports must disclose the name and address of all persons or entities donating more than \$50 during a monthly reporting period. *See* M.G.L. c. 55, § 18E(b).³

The requirements for legal defense funds are further defined in regulations issued by OCPF. *See* 970 CMR 1.22(6) which states that legal defense funds “may be used to defend against a criminal matter or to pay costs associated with a civil matter if the criminal or civil or administrative matter is not primarily personal in nature.” OCPF has also advised that the statute does not generally contemplate the use of a legal defense fund “for a speculative matter that may or may not arise in the future.” *See* M-10-02 (enclosed).

The Party established a legal defense fund on September 17, 2014, and that fund has not been dissolved by the Party. Your questions, however, concern the creation of a *new* legal defense fund. Before any consideration is made regarding the creation of a new legal defense fund, the existing fund should be dissolved. *See* M-10-02, which states that “when all donations have been received and all payments made to accomplish the purposes of the fund, any money remaining in the fund’s account must be disposed of in a manner consistent with the residual funds clause, and OCPF must be notified, by filing a Notice of Dissolution (Form CPF 18E), stating that the fund has been closed.”

The Party’s email which led to your request for an advisory opinion says that the legal defense fund was launched “because Democrats used the COVID-19 pandemic to try and keep Republicans like our own Helen Brady off of the 2020 ballot.” You have asked if the legal defense fund may be used for ongoing future ballot access legal costs, including costs related to ballot access for both federal and state candidates. In addition, you ask if the legal defense fund may be used to pay expected legal expenses that may be incurred as a result of redistricting.

The described anticipated expenditures, however, are speculative. *They are not associated with an existing legal matter.* The Party may therefore not use a legal defense fund to raise money for purposes of paying for the anticipated legal costs. Once a legal matter actually exists relating to state election activity, however, a legal defense fund may be formed and used to pay for legal expenses.⁴

In accordance with the opinion of the Supervisor of Public Records, this letter is a public record.

Sincerely,



Michael J. Sullivan
Director Pro Tem

² Section 18E also allows candidates to create inaugural or recount funds.

³ The statute also requires disclosure of the employer of all persons donating more than \$50 during the reporting period.

⁴ In addition, the use of a Massachusetts legal defense fund in connection with federal election activity may raise preemption issues, and the Party should contact the FEC to ensure compliance with federal law.