



WILLIAM C. CAMPBELL  
DIRECTOR

THE COMMONWEALTH OF MASSACHUSETTS  
**OFFICE OF CAMPAIGN & POLITICAL FINANCE**  
ONE ASHBURTON PLACE, ROOM 411  
BOSTON, MASSACHUSETTS 02108

TEL: (617) 979-8300  
FAX: (617) 727-6549  
OCPF@CPF.STATE.MA.US

June 8, 2021  
AO-21-04

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

Re: Massachusetts Republican State Committee Legal Defense Fund – use of Fund to raise and spend money for the benefit of a Republican candidate

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").

You have asked if the Fund may be used to pay legal fees and costs for the benefit of a Republican candidate or candidate committee facing legal actions initiated by a state administrative or state law enforcement agency. You ask if the Fund may either "contribute toward legal fees and costs [or] be applied directly to attorneys that are retained by Republican candidates and/or candidate committees as lawful expenditures." You state that such use of the Fund would be consistent with the Party's bylaws, i.e., to promote, endorse and support Republican candidates.

QUESTION

May the Party's legal defense fund be used to pay legal fees and costs of Republican candidates or candidate committees facing legal actions initiated by a state administrative or law enforcement agency?

ANSWER

A state party committee may not use an existing legal defense or create a new legal defense fund to raise and spend money to pay the legal expenses of candidates registered in the party. However, a candidate may create a legal defense fund and designate the state party committee as agent to manage the legal defense fund. The name of the fund shall specifically identify the candidate on whose behalf the fund is organized, and the candidate and state party committee would be required to comply with the disclosure and other requirements that apply to legal defense funds.

## DISCUSSION

One of the purposes of the campaign finance law (M.G.L. Chapter 55) has been to provide for disclosure of political contributions. Prior to 2010, legal defense funds were permitted or not permitted to be established for the benefit of candidates on an ad hoc basis after review of the particular facts of the matter. *See* AO-91-13, AO-91-29 and AO-09-02. AO-09-02, an advisory opinion issued prior to the adoption of M.G.L. c. 55, § 18E, stated “the campaign finance law defines ‘contribution’ to include money given to a candidate, or person acting on behalf of the candidate ‘for the purpose of influencing the nomination or election’ of the candidate...” and “the term ‘expenditure’ is defined to include a payment made for such purposes. Because the donations to and disbursements from the separate legal defense fund would be exclusively connected with, and strictly for the purpose of, paying the costs of [the candidate’s] legal defense..., such donations and disbursements would not be ‘contributions’ or ‘expenditures’ as those terms are defined in the campaign finance law.” Although the advisory opinion set forth some limitations on the legal defense fund, it was conceded that disclosure of donations that might be received by such a fund would be voluntary.

In 2009, the Legislature adopted M.G.L. c. 55, § 18E, which stated that a candidate and the candidate’s political committee may create their own legal defense fund for the purpose of making expenditures to defend against a criminal matter or to pay costs associated with a civil matter that is not primarily personal in nature.<sup>1</sup> The intent of the Legislature was to allow a candidate or candidate’s committee to create a legal defense fund, to make disclosure of certain donations mandatory and to establish limitations on the management of the legal defense fund and use of donations.<sup>2</sup> Donations to the legal defense fund are not subject to the same limitations on amounts or restrictions on sources such as corporate contributions as apply to contributions made under other sections of the campaign finance law. The statute was amended in 2014 to allow a state party committee to create a legal defense fund for the purpose of making expenditures to defend against a criminal matter or to pay costs associated with a civil matter not primarily personal in nature involving the state party committee.<sup>3</sup> *See also* 970 CMR 1.04(13), 970 CMR 1.20 and M-10-02.

This office has not previously been asked whether a political party committee may use an existing legal defense fund organized by the party to make expenditures to benefit one (or more) of the party’s candidates.<sup>4</sup>

The statute, by specifically and separately identifying each entity that may utilize a legal defense fund (candidates, the candidate’s political committee and the state political parties) and by including in later legislation state party committees as an entity entitled to establish a legal defense fund, suggests that the intent of the legislation was to allow state party committees to create a legal defense fund to pay legal costs directly related to a matter involving the party

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<sup>1</sup> See Chapter 28 of Acts of 2009, effective January 1, 2010.

<sup>2</sup> Note that the Act used the term “donations” rather than contributions, and such donations include money or in-kind and loans.

<sup>3</sup> Chapter 210, § 23 of the Acts of 2014.

<sup>4</sup> OCPF has previously stated in an advisory opinion issued to you that the Party’s existing Legal Defense Fund may only be used to raise money for existing legal matters in which the RSC or its agents are parties. *See* AO-21-01. That Opinion remains in effect and is not altered in any way by the responses to your new question.



committee itself, not to also pay legal expenses incurred by candidates. There is no reference in the statute to the possibility of a state party committee using an existing legal defense fund to pay legal defense costs for individual candidates. Such an allowance could have been included if it had been the intent of the Legislature. Further, the purpose of a legal defense fund is defined by the statute with some specificity, i.e., to defend against “a” criminal matter or to pay costs associated with a “a” civil matter, which by implication refers to a fund established as to a particular matter and not as a general fund to be used for speculative matters. In addition, if a state party committee’s legal defense fund could be used to pay multiple candidates’ legal expenses, the resulting disclosure provided under Section 18E would not reflect the intent of donors to support one particular candidate rather than a different candidate, or the possible intent of a donor to support the party in its payment of its own legal expenses. In short, the statute does not address, and does not seem to contemplate, a state party committee using an existing legal defense fund or creating a new legal defense fund to make legal payments to assist with legal matters pending against particular candidates registered with the party.

Inquiry need not stop there, however. It seems that the statute and the regulations promulgated thereunder allow for a different option for a state party committee to assist a party’s candidate in the raising of money to pay the candidate’s legal costs: the statute does not prohibit a candidate or candidate’s committee from establishing its own legal defense fund and designating the state party committee to manage the legal defense fund *on behalf of* a candidate. It is important to note, however, that the statute does not appear to contemplate the creation of more than one legal defense fund for any one candidate.<sup>5</sup> Therefore, if a candidate designates the state party as its agent to manage a legal defense fund on behalf of the candidate, the candidate may not also create an additional legal defense fund related to the particular criminal or civil matter for which the legal defense fund was created. In addition, if the state party is designated as the agent of the candidate in the management of a legal defense fund on behalf of a candidate, the party, as agent of the candidate, must ensure compliance with the requirements specified below, including the disclosure and other requirements of Section 18E.

The name of the legal defense fund must include the name of the candidate on whose behalf it is organized. In addition, a legal defense fund may be managed on behalf of *one* candidate – it may not be managed on behalf of multiple candidates. If the state party committee intends to assist more than one candidate, a separate legal defense fund must be created by each candidate and each candidate must designate the state party committee to manage the fund on its behalf. Finally, the Party and the candidate would be required to comply with the registration and reporting requirements that apply to legal defense funds. For example, donations received by the legal defense fund must be kept separate from all other funds of the Party (and the candidate), the candidate must file a notification of organization with OCPF prior to the receipt of any funds, and donations must be disclosed on or before the fifth day of the month following receipt. *See* M-10-02. When all donations have been received and all payments made to accomplish the purpose of a legal defense fund, any money remaining in the fund’s account must be disposed of in a manner consistent with the residual funds clause of M.G.L. c.55, §18. *See* 970 CMR

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<sup>5</sup> A candidate or a candidate’s committee may also use the candidate’s committee account and the state party committee may also use the state party committee account to make legal expenditures, but these funds would be subject to limitations on amounts and sources of contributions.

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1.04(13) and 970 CMR 1.20(8). In doing so, the state party committee would be able to provide support to its candidates and ensure disclosure as intended by the Legislature.

This Opinion is based solely on statements in your request for guidance and is limited in scope to the campaign finance law.<sup>6</sup> In accordance with the opinion of the Supervisor of Public Records, this letter is a public record.

Sincerely,



William C. Campbell  
Director

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<sup>6</sup>This AO is specifically limited to the establishment of legal defense funds; this analysis is not extended, at this time, to inaugural funds or recount funds.