



Commonwealth
of Massachusetts

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

Advisory Opinion

March 19, 1999
AO-99-05

Sarah K. Peake
Seven Center Street
Provincetown, MA 02657

Re: In-kind contribution from shareholder "S corporation"

Dear Ms. Peake:

This letter is in response to your March 11, 1999 request for an advisory opinion.

You have stated that you are the chairman of a political committee organized on behalf of a candidate for selectman. The candidate is the majority (60%) shareholder in an S Corporation doing business as a restaurant. The remaining 40% share is divided equally between the candidate's two sons, both of whom are employed at the restaurant.

The candidate wishes to hold a fund raising event for her campaign at the restaurant. The restaurant will provide free snacks to those attending the event and there will be a cash bar. The value of the snacks provided will be less than \$500. One of the sons, as an individual, wishes to make an in-kind contribution to the campaign in a sum less than \$500, by paying the restaurant for the cost of the event.¹

Question

May the son make an in-kind contribution in this manner, and if so, how must the committee's treasurer report the contribution?

Answer

Yes. The candidate's son may make a contribution in this manner. The committee must report the receipt as an in-kind contribution from the son. The committee receives the in-kind contribution on the date of the event, not on the date of subsequent payment to the restaurant by the son.

¹Individuals may not contribute more than \$500 to any candidate during a calendar year. See M.G.L. c. 55, § 7A. I assume that the total cost to the restaurant prior to reimbursement by the son, therefore, would be no more than \$500 and that the son's total contributions to the candidate, including the in-kind contribution, will not exceed \$500 during the calendar year.

Discussion

A "contribution" is defined to include the giving of "anything of value" to a political committee or candidate, or an individual acting on behalf a committee or candidate "for the purpose of influencing the nomination or election of said individual or candidate." See M.G.L. c. 55, § 1 and 970 CMR 2.07(3) (defining "in-kind contribution"). The in-kind contribution would be received on the date of the event, i.e. when the goods and services are provided to the committee, not on a later date when payment is actually made by the son to the restaurant. The son should report to the committee the value of the in-kind contribution, which the committee would report on Schedule C of its campaign finance report..

As noted above, you have stated that the restaurant is an S Corporation. S Corporations are defined as "small business corporations" by federal law, see 26 U.S.C. § 1361. Like other business corporations, they are subject to M.G.L. c. 55, § 8. Business corporations may not "directly or indirectly" contribute to candidates. See M.G.L. c. 55, § 8. By definition, "a discount or rebate not available to other candidates for the same office and to the general public" is a contribution. M.G.L. c. 55, § 1. I assume, therefore, that the restaurant will provide services to the candidate and bill the son in the same manner as any other customer, i.e., there would be no discount or rebate, and payment will be expected according to the same schedule as it would be expected from other customers. The son should provide the committee with a copy of a receipted bill from the restaurant for the committee's records.

This advisory opinion is issued solely within the context of the Massachusetts campaign finance law and is provided solely on the basis of representations in your letter. This office appreciates your interest in the campaign finance law. Please contact us if you have further questions.

Sincerely,

A handwritten signature in black ink that reads "Michael J. Sullivan" followed by a horizontal line.

Michael J. Sullivan
Director