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INTERPRETIVE BULLETIN

Use of the Internet and E-mail for Political Campaign Purposes

This office is frequently asked about the extent to which the Internet and e-mail may be utilized by candidates, political committees or other persons in connection with elections occurring in Massachusetts. The Internet and e-mail allow candidates and committees, and others, to reach potential voters or contributors at relatively little expense, and in recent years there has been a surge in the political use of the Internet and e-mail. A number of questions have arisen regarding expenditures that may be made for Internet access, the services that may be provided to candidates or committees to help them establish websites, the use of links to campaign websites, and access to government websites and e-mail networks. This bulletin does not address the use of credit cards and the Internet to receive contributions. Candidates and committees that use the Internet to raise funds must obtain and report the same information regarding contributions that would be required for other methods of fundraising. For guidance regarding the receipt of credit card contributions made using the Internet, see OCPF Memorandum M-04-01 and 970 CMR 1.09.¹

This bulletin does not, and could not, attempt to anticipate every question that may arise. **Candidates or other persons who have questions not specifically addressed by this bulletin should contact OCPF for advice.**

THE INTERNET

I. Website Development and Maintenance

OCPF has issued a number of opinions regarding the payment for and receipt of web development and maintenance services. Some of the issues addressed include whether campaign funds may be used to pay for website development, whether candidates and committees may contract with business corporations for web development or hosting, whether candidates or political committees must consider the receipt of personal services provided by individuals working on their own time to develop political or campaign websites as "contributions," and whether public resources can be used to help a legislator update a private constituent services website.

¹ See also AO-10-03, in which the office stated that contributions may be received by text message, but only if the committee receiving the contributions ensures that the contributions comply with the limits of the campaign finance law and are properly disclosed.



A. Committee Expenditures

Candidates and committees may make expenditures from their political accounts to design, implement and/or maintain a website. A candidate may make such an expenditure whether a website is intended to keep constituents informed of legislative activities, or is intended to be used for campaign purposes, or both. See AO-97-06.

B. Corporate Involvement

Candidates and political committees (with the exception of ballot question committees and independent expenditure PACs) may not receive anything of value from a business or professional corporation, or LLC, LLP or partnership, including an in-kind contribution of web development or hosting services or a discount or rebate for such service that is not available to the general public. See M.G.L. c. 55, § 8. If a candidate or committee's web site is developed or hosted by a business corporation, the candidate or committee must pay the fair market value for the provision of the corporation's web services.

C. Internet activity by individuals - Personal Services

M.G.L. c. 55, § 1 defines the term "contribution" to exclude the uncompensated "rendering of personal services" to a candidate or committee, or payments incidental to providing personal services that are made by those rendering personal services. Therefore, candidates and committees may accept an individual's voluntary "personal services" to administer a website. Such services and the incidental expenses related to the rendering of such services are not contributions within the meaning of the statute and, therefore, need not be listed on a campaign finance report.

For example, a person who uses his own computer to assist a campaign or who provides a personal service to a candidate by designing or administering a website, and is not otherwise compensated by another individual or entity² for the time spent while doing this activity, is providing a personal service, not a "contribution." See M.G.L. c. 55, § 1. An individual may also provide personal services to design a website that promotes a number of candidates or committees. See AO-04-11 and AO-04-14. Such a website may be developed after consultation with the candidates and committees being supported and may be used to facilitate the making of contributions to the candidates and committees.

Costs incurred by an individual to engage in political speech on the Internet may be considered payments incidental to providing personal services. It is this Office's opinion that Internet activities by individuals on their own time intended to influence a Massachusetts election with incidental use of equipment, software, Internet services, web hosting services, or domain

² If the person receives compensation from a third party for the time spent developing or administering the website, i.e. the person does the work at his or her place of employment during working hours or is otherwise paid by another to do this work, the individual or entity compensating such individual would be making a contribution to the campaign. Such an entity may not be a corporation, LLC, LLP or partnership; as noted in Section I. B., such entities are prohibited from contributing any money or other thing of value to any candidate or political committee other than a ballot question committee. See M.G.L. c. 55, §§ 8 and 22.

names that he or she provides or otherwise owns should generally not be considered "contributions" or expenditures" for the purposes of the Massachusetts campaign finance law. Internet communications placed on another person's web site for a fee, however, may be considered to involve contributions or expenditures subject to the limits and disclosure requirements of the campaign finance law.

A blogger's costs for carrying news stories, commentary and editorials are not considered "contributions" or "expenditures" subject to the campaign finance law. The costs for publishing news stories on the Internet do not have to be disclosed on campaign finance reports, and bloggers who communicate on the Internet are entitled to the same exemption as traditional media entities.

D. Use of Public Resources

The campaign finance law prohibits the use of public resources for a political purpose. See Anderson v. City of Boston, 376 Mass. 178 (1978), appeal dismissed, 439 U.S. 1069 (1979). Public resources include the time of public employees during the workday. A legislator's State House staff may, however, update information regarding the legislator's State House activities, bills filed, and issues of interest to the legislator, on a legislator's private constituent service website. This activity serves a governmental purpose and the participation of public employees during the workday in updating such a website to include this information would be consistent with the campaign finance law and the Anderson decision. See GL-04-07.

II. Web Page Links

OCPF has considered questions regarding whether a governmental entity such as a municipality may post links on its website to candidate or committee websites. In addition, questions have arisen regarding whether corporations, federal committees or other groups or associations may post links on their websites to candidate or committee websites.

A. Candidate or Committee Links on Government Sites

In Anderson, the Supreme Judicial Court concluded that a municipality could not appropriate or use municipal funds or use other municipal resources to influence an election. The court concluded, however, that a municipality or other governmental entity could, under limited circumstances, make certain public resources available to private groups for election-related activities, such as a meeting room at town hall provided that "equal access," upon request, must be afforded to any other group on the same terms regardless of the group's point of view.

Consequently, a governmental entity may, for the purpose of enhancing voter education and participation, provide links on its website to candidate or committee websites (or to candidate's social media sites) if equal access is provided for all other candidates or committees. OCPF has advised, however, that a disclaimer should be included on the governmental website stating that: (1) the links to candidate sites are provided by the candidates and that neither the URL (Web address) nor the site have been reviewed for content or accuracy; (2) the links are displayed for voter information purposes and the municipality, by posting the links, is not attempting to influence the nomination or election of any candidate or committee; (3) the candidate or committee websites are not monitored or regulated by the municipality; and (4) the links are available to any candidate

or committee. See AO-96-04, AO-99-14, and AO-01-29. A governmental website, other than a restricted website as discussed below, may provide a link to a candidate or committee website even if the candidate or committee website contains campaign material, i.e., it solicits contributions, votes or volunteers.

A governmental entity may also refuse to post a link or may remove a link once it is posted if it is done in accordance with an approved policy that ensures that all persons and groups, regardless of political view, have equal access (or equal lack of access) to the website and are treated uniformly. See AO-00-15.

B. Incumbents' Links on Restricted Government Sites

Alternatively, a governmental entity may decide to limit the provision of links on an official website to incumbent candidate's websites (or social media sites). Under these circumstances, since equal access is not provided to other candidates for the same offices, the content of the links and linked websites is restricted, as noted in the next paragraph. Where there is a link from the governmental site to an incumbent candidate's website, there should be a disclaimer advising readers that they will be leaving the official website if they click the link. See AO-01-05.

In AO-01-05, this office advised that a link from a legislator's web page on the General Court website to the legislator's private website is permissible only if the text of the link and the web address do not advocate a particular vote for or against a candidate *and* the content of the private website is limited to providing information for constituents, not campaign related material. In plain terms, the legislator's private site cannot solicit political contributions, votes or volunteers, or contain any express advocacy supporting or opposing any candidate, party or ballot question if it will be linked to the General Court's official website. Nor would it be appropriate for the legislator to provide a *further* link from a constituent information page that can be accessed from the legislator's official site, to a page that solicits such contributions, votes or campaign volunteers. See AO-01-05.

C. Candidate or Committee Links on Corporate Sites

Candidates and political committees (with the exception of ballot question committees) may not receive anything of value, including an in-kind contribution of services, from a business or professional corporation. See M.G.L. c. 55, § 8. A link to a candidate or political committee's website (other than a ballot question committee's website) or social media site, from the website of a business or professional corporation, would raise issues under M.G.L. c. 55, § 8 and should be avoided absent guidance from OCPF.

Alternatively, a corporation or other commercial entity that normally sells space on its website, website banners, or links for a market rate fee may provide space, a banner, or a link to a candidate or committee, provided the candidate or committee pays the fair market value for the space, banner or link.

D. Candidate or Committee Links on Other Sites

1. Federal Political Action Committee (PAC) Sites

A federal PAC may post a link to a state candidate or committee's website or social media site on its website. The inclusion of such a link does not constitute a "thing of value," within the meaning of M.G.L. c. 55, § 1.

2. State or Local Political Action Committee (PAC) Sites

A state or local PAC may post a link to a state candidate or committee's website or social media site on its website. The inclusion of such a link does not constitute a "thing of value," within the meaning of M.G.L. c. 55, § 1. The candidate or committee is, therefore, not required to report the link as a contribution from the state or local PAC.

Contributions made to a candidate or committee through a link from a state or local PAC may be subject to the bundling provisions of the campaign finance law if the PAC either physically receives contributions that are then forwarded to a candidate, or provides information to a candidate indicating that the PAC arranged for the making of the contributions. See M.G.L. c. 55, § 10A, which states, in part, that such bundled contributions made to a candidate count toward the PAC's annual campaign contribution limit of \$500 to a candidate in addition to counting toward the actual contributor's limit.

3. Individuals' Sites

A person who provides a link from his personal website to a candidate or committee website or social media site is providing a personal service, not a "contribution." Consequently, there is no reporting requirement for the link provided.

III. Endorsements

Whether an endorsement on a website or e-mail involves the making of a "contribution" or "expenditure" depends on a consideration of several factors. An endorsement that is restricted to the members of a membership organization, and the families of members, is not a "contribution" or "expenditure." See M.G.L. c. 55, § 1. If the making of endorsements on an organization's website involves only *de minimus* expenditures (such as the minimal use of staff time or the payment of a small web hosting fee), the endorsements would not involve the making of contributions or expenditures.

If, however, a separate "endorsement" page is created and involves the making of more than *de minimus* expenditures, then the endorsements would involve either an independent expenditure or, if there is coordination with the candidate(s) being endorsed, an in-kind contribution.³ If endorsements are not coordinated and cost more than \$250, the organization would be required to

³ There may be instances where substantial expenditures are required to design an endorsement page or social media endorsement campaign. An organization anticipating making such expenditures should disclose the expenditure, or if the expenditure is coordinated with a candidate or committee, the candidate or committee should disclose the receipt of an in-kind contribution.

file a report of independent expenditures in accordance with M.G.L. c. 55, § 18A. If there is an in-kind contribution, the recipient committee would be required to disclose the receipt of the contribution.

A corporation or other business entity prohibited by Section 8 from contributing to candidates may endorse candidates on its website, subject to the disclosure requirements of Section 18A, if the endorsements are made independently of the candidates.

IV. Use of Social Media

Candidates and committees, and persons interested in becoming involved in the political process, are increasingly using "social media" to communicate with supporters. Candidates can tweet, post campaign messages and photos to Facebook, and allow supporters to see rallies or other events on YouTube. Social media includes Twitter, Facebook, YouTube, Flickr and other sites. These are generally free networking sites. To the extent the activity, like the activity involved in posting endorsements on a website, involves some use of compensated staff time, it would generally involve only a *de minimus* expenditure, or would involve the provision of a "personal service." As such, it is generally exempt from campaign finance limitations or disclosure requirements. See M.G.L. c. 55, § 1 (which excludes "personal services" and expenditures made incidental to the provision of personal services from the definitions of "contribution" and "expenditure.")

A candidate or committee may also have a Facebook page or use another social media network to solicit contributions. When candidates and committees use social media to raise money, however, such activity is subject to the same restrictions that apply when a campaign website is used to raise money. If social media is used to raise funds, the recordkeeping requirements and limits of the campaign finance law apply in the same manner as when funds are raised using a website. This means, for example, that a committee receiving funds must ensure that none of the funds are received from a corporation or other entity that is prohibited from contributing by M.G.L. c. 55, § 8. In addition, a committee receiving contributions made through social media must keep records of the name and residential address of all persons contributing, regardless of amount, and also must keep information regarding the occupation and employer of contributors.

As noted in AO-10-05, Facebook (or other social media) may be used to direct persons interested in making contributions to a candidate's website.

V. Attribution/Disclaimer Requirements

Section 18G of the campaign finance law contains several requirements for disclaimers on internet advertisements. The first paragraph of Section 18G states that when a political committee, or an individual, corporation, group, association, or labor union pays for Internet advertising by making an independent expenditure the advertisement must include a statement disclosing the identity of the individual, corporation, group, association, or political committee paying for the advertisement. Such a statement is also required when an individual, group, association, or labor union makes an electioneering communication. The second paragraph of Section 18G states that when an entity pays for an internet ad by making an independent expenditure or electioneering communication, the entity must include a statement disclosing the top five contributors making contributions to the entity in excess of \$5,000 during the 12-month period before the advertisement.

In addition, the top five contributor disclosure is required on an internet advertisement purchased to influence or affect the vote on any ballot question submitted to voters. The advertisement must also direct viewers to OCPF's website (www.ocpf.us). These requirements apply to paid internet advertising on an organization's website, or for paid advertising on a social media site, if the advertisement exceeds 15% of a display screen using standard resolution. OCPF has issued regulations regarding these disclaimer requirements. See 970 CMR 2.20.

The campaign finance law does not require attribution on uncompensated Internet communications made by individuals or by groups that do not pay for such communications.

VI. E-mail

OCPF has responded to numerous inquiries regarding the use of e-mail for political purposes. Generally, the concerns addressed involve whether a political committee has received a "contribution" as a result of e-mailed correspondence, or, if public resources are involved, whether such activity is inconsistent with the Anderson opinion, or M.G.L. c. 55, §§13 or 14. As discussed above, an e-mail sent only to members of a membership organization, or the families of members, does not involve the making of a contribution or expenditure.

A. Contribution Issues

1. May a person use his or her own computer to send e-mails endorsing a candidate?

Yes. If a person, on his own time and using his own personal computer, volunteers to send e-mails supporting a candidate or ballot question, he is providing a personal service. As such, he is not making a contribution to a candidate or committee. See AO-01-07.

2. If a candidate receives a mailing list from a supporter, has the candidate received a contribution?

It depends. Lists of e-mail addresses may be considered items of value depending on the source of the list. If a committee or candidate purchases or otherwise receives a mailing list or membership list from a person or entity that ordinarily receives compensation for the preparation or sale of such lists, the committee or candidate must report an expenditure or the receipt of an in-kind contribution. See AO-01-07. If, however, an individual who is not in the business of compiling such lists creates an e-mail list using his own contacts (personal e-mail address book), and provides the list to a candidate or committee, such activity would involve the provision of a personal service. Therefore, it would not be considered a contribution, unless an entity other than the candidate or committee compensates the person for the preparation and use of the list.

3. May an organization send an e-mail endorsing a candidate to its members?

If a group, other than a corporation subject to the restrictions in M.G.L. c. 55, § 8, qualifies as a "membership organization" within the meaning of M.G.L. c. 55, § 1, communications via e-mail from the membership organization to its members and their families on any subject shall not be deemed to be a contribution or expenditure as defined in M.G.L. c. 55, § 1. See AO-00-05 and OCPF Memorandum M-98-04.

4. May an organization pay for the posting of an Internet communication?

Yes. If the communication endorses a candidate, paying for the communication will result in either an expenditure or contribution subject to the campaign finance law. A corporation or entity that may not, consistent with M.G.L. c. 55, § 8, contribute to a candidate, PAC or political party, pay for such a communication if the corporation is coordinating the activity with a candidate or committee.

B. Disclaimers

Disclaimers are not required in email communications unless the email contains, in addition to the email text itself, a paid advertisement purchased through an independent expenditure, and the advertisement meets or exceeds 15% of a standard display resolution computer screen. If the advertisement displayed meets or exceeds this size, then the disclaimers required by Section 18G must be included in the email.

VII. Public Resource and M.G.L. c. 55, §§ 13 and 14 Issues⁴

A. Public Resources

1. Use of Internet or e-mail by public entities

Although a governmental entity may post information regarding a ballot question on its website, it may not use e-mail to proactively distribute such information to voters or a subset of voters except in response to a specific request for information. See IB-92-02 and AO-99-06. Similarly, access to an e-mail network or list created or provided by a governmental entity is a public resource. For example, a principal or teacher may generally not use a school's e-mail access to send e-mails supporting or opposing a particular candidate or ballot question.

2. Use of Internet or e-mail by public employees

While public employees may be involved in non-fundraising political campaign activity such as sending political e-mails during their own time, they should avoid such activity during their workday. Therefore, if a legislator maintains a campaign website or a campaign social media site, State House staff members may not, during their workday, be involved in maintaining such sites. They may, however, update constituent services sites that provide information to the public of legislative activities. As discussed below, however, non-elected public employees may not be involved in maintaining the political fundraising portion of such sites, even on their own time.

B. Solicitations in Public Buildings

Section 14 states that "no person shall in any building or part thereof occupied for state, county or municipal purposes demand, solicit or receive any payment or gift of money or other thing of value for [political campaign purposes]."

⁴ This bulletin addresses issues within the scope of the campaign finance law. A separate statute, the Massachusetts conflict of interest law, M.G.L. c. 268A, also restricts public employees' use of public resources and their political activities. Public employees should contact the State Ethics Commission before becoming involved in political activity, to ensure compliance with that statute.

If a person sends or forwards a solicitation via e-mail to a public employee at the employee's place of work, e.g., by an e-mail sent to an e-mail account provided by a governmental entity in conjunction with that individual's employment and which is generally accessed from a computer located in a government building, such action is not consistent with Section 14. See AO-01-20. Consequently, a campaign may not keep any contributions received as a result of such an e-mail. See M-10-01.

If a solicitation is improperly sent to a public employee at the employee's place of work in a government building, the recipient may, however, advise the sender of a private e-mail address or other address to which the solicitation may be sent instead.

C. Solicitations by Public Employees – Use of E-mail

Section 13 states that “[n]o person employed for compensation, other than an elected officer; by the commonwealth or any county, city or town shall directly or indirectly solicit or receive any gift, payment, contribution, assessment, subscription or promise of money or other thing of value for the political campaign purposes of any candidate for public office or of any political committee, or for any political purpose whatever...”

Public employees may not, consistent with Section 13, be involved in any way in directly or indirectly soliciting campaign contributions. Public employees must, to ensure compliance with Section 13, refrain from any activity that indicates support for the fundraising efforts of a candidate or political committee or for other political purposes. See IB-92-01. In the context of e-mail communications, a public employee may not send or forward any e-mail, whether from a personal or governmental account, that contains political solicitations, i.e. requests for campaign contributions.

In addition, a public employee should refrain from providing a political committee with an e-mail list, i.e. his personal e-mail address book or an e-mail list compiled at his workplace, or to, in any other way, assist a political committee in determining who would receive a fundraising e-mail solicitation from the political committee since such activity would be considered an indirect solicitation from the public employee. See AO-02-29.

D. Questions and Answers Relating to Public Employees' Use of Social Media

If a candidate is also an appointed public employee and uses social media, e.g., a Facebook page, to campaign, care must be taken to ensure compliance with M.G.L. c. 55, § 13. If a Facebook page solicits contributions, it must be designed by the candidate's committee (not the candidate) and it must be clear to persons visiting the page that the page is a *committee* page, rather than a personal page of the candidate.

The following questions and answers are also helpful in addressing issues that might arise in the context of public employees' use of social media.

1. May a public employee “administer” a political committee’s Facebook page that solicits political contributions or create an event on Facebook to raise funds for a candidate or committee?

Answer: No. Because public employees, other than elected officials, are prohibited from directly or indirectly soliciting or receiving political contributions, a public employee may not administer a Facebook or other social media page that solicits contributions and may not otherwise use Facebook to raise funds for a candidate or political committee.

2. May a public employee use the employee's personal social media account to become a "friend" of, or "like," the Facebook page of a political party or candidate if the Facebook page contains a solicitation of political contributions?

Answer: Yes.

3. If a public employee receives an email or mailed invitation to a political fundraising event, may the public employee forward the invitation to others using the public employee's personal social media or email account?

Answer: No, the public employee may not forward the invitation or solicitation to others using social media and may not share the event page or link to the event page. A public employee may, however, forward an invitation to a free "meet the candidate" event.

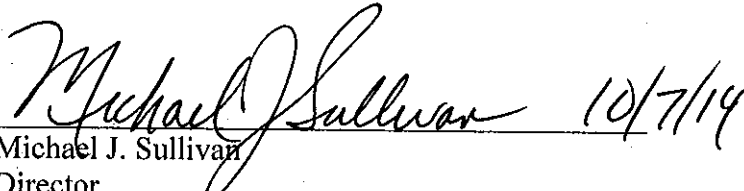
4. What should a public employee do if someone posts a comment on the employee's social media page and the comment solicits contributions for a candidate, ballot question, or political party?

Answer: Although Section 13 of the campaign finance law prohibits public employees from soliciting contributions at any time, public employees are not responsible for the acts of a third party, even if the third party's actions appear on the public employee's social media page. However, a state, county or municipal employee should not "like," "share," or "retweet" the solicitation, or respond in any way that would tend to encourage other readers to donate.

5. May a public employee use the employee's personal social media account to respond to an invitation to a political fundraising event that the employee received through social media, e.g., by an invitation on Facebook or an "e-vite"?

Answer: Yes, such a response does not constitute a solicitation, even if it is then posted on the event page or Facebook that the public employee will be attending the event.

If you have any questions or need further information regarding the application of the campaign finance law to Internet or e-mail issues please do not hesitate to contact OCPF. This is a developing area and it is expected that additional advisory opinions will be issued to respond to new questions as they arise.


Michael J. Sullivan 10/7/14
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