



THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF CAMPAIGN & POLITICAL FINANCE

ONE ASHBURTON PLACE, ROOM 411  
BOSTON, MASSACHUSETTS 02108

MICHAEL J. SULLIVAN  
DIRECTOR

TEL: (617) 979-8300  
(800) 462-OCPF  
FAX: (617) 727-6549

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**INTERPRETIVE BULLETIN**

**The Applicability of the Massachusetts Campaign Finance Law to  
Unregistered Political Groups and Non-Massachusetts Political Committees**

This bulletin provides guidance regarding political activity to promote or oppose Massachusetts candidates or ballot questions by unregistered groups, unions, associations or other types of organizations that receives funds for the purposes of making political contributions or expenditures.<sup>1</sup>

*Summary*

Unregistered or non-Massachusetts political committees may not contribute to Massachusetts candidates and political committees other than to ballot question committees or independent expenditure PACs. A group planning to solicit or receive funds for the purposes of influencing a Massachusetts state or local election must first register as a political committee.

**I. Contributions to Certain Massachusetts Political Committees Prohibited**

**A. Contributions to Candidates and Political Committees Other Than Independent Expenditure PACs and Ballot Question Committees**

The Massachusetts campaign finance law, M.G.L. c. 55, does not authorize contributions by unregistered or non-Massachusetts political committees to Massachusetts candidates, candidate committees, political party committees, people's committees, or PACs (other than ballot question committees or independent expenditure PACs, as discussed on the next page of this bulletin). The law imposes limits on contributions, and disclosure requirements, that are different from, and often more restrictive, than requirements in other jurisdictions. It expressly provides that candidates may not receive funds from federal committees. *See* M.G.L. c. 55, § 7. A similar prohibition on the transfer of funds from unregistered non-federal political committees is consistent with the overall intent of the statute as reflected in its various provisions.

<sup>1</sup> Such groups are referred to in this Interpretive Bulletin as "unregistered or non-Massachusetts political committees."



The restriction on contributions from unregistered or non-Massachusetts political committees to candidates, PACs (other than ballot question committees or independent expenditure PACs) and political party committees applies to both cash and “in-kind” contributions. For example, if an unregistered or non-Massachusetts political committee provides any support or administrative services to a Massachusetts candidate’s committee, such as office space, phones or staff, the Massachusetts committee must reimburse the unregistered or non-Massachusetts political committee in full for receiving the support or services to avoid the receipt of an improper “in-kind” contribution.

In addition, a committee that receives a contribution from an organization, whether existing in Massachusetts or in another state, may be required by OCPF to obtain a statement from the organization, made under the penalties of perjury, verifying that the organization is not an unregistered political committee, *i.e.*, that the contribution is from an entity that has not raised funds to support or oppose a candidate or candidates, a political party, or a ballot question, whether in Massachusetts or elsewhere. The written statement from the contributing organization must verify that the contribution was made solely from general treasury funds and not in any part from funds solicited for political purposes. If such statement is not obtained, OCPF may require the committee to return the contribution. *See* 970 CMR 1.22(5)(b).

#### **B. Contributions to Ballot Question Committees and Independent Expenditure PACs**

An unregistered or non-Massachusetts political committee (or any other group) may contribute to a ballot question committee without first organizing in Massachusetts if the unregistered or non-Massachusetts political committee does not solicit or receive funds to influence the Massachusetts ballot question. If the organization raises money for that purpose, it must file a statement of organization as a ballot question committee and disclose its financial activity. If it does not raise funds for that purpose, an unregistered or non-Massachusetts political committee may independently make expenditures to support or oppose the ballot question but must disclose such expenditures. *See* M.G.L. c. 55, § 22 and OCPF’s IB-92-02. In addition, an unregistered or non-Massachusetts political committee may make independent expenditures or contribute to a Massachusetts independent expenditure PAC if the unregistered or non-Massachusetts committee does not also receive funds for the purpose of making such independent expenditures or contributions.

All contributions and expenditures by the unregistered or non-Massachusetts entity, including independent expenditures, expenditures made to support or oppose a Massachusetts ballot question, and contributions to an independent expenditure PAC, are subject to the campaign finance law’s disclosure requirements. *See* 970 CMR 2.17(3) and IB-10-03.

OCPF has issued a regulation regarding the identification of the source of funds used by organizations which contribute to Massachusetts ballot question committees or independent expenditure PACs. *See* 970 CMR 1.22 (3). The regulation states, in part, that such an organization must register and disclose financial activity as a political committee in Massachusetts if it receives money or other things of value to influence the election of a Massachusetts candidate or candidates, or to support or oppose a Massachusetts PAC, political party, or ballot question. An organization that raises funds for legislative or other non-election purposes, but does not indicate to donors that the funds may also be used to influence state or local elections in Massachusetts, is *generally* not required to register as a political committee in Massachusetts. This is the case even if a portion of the funds raised in this manner by the organization

may subsequently be transferred to a Massachusetts independent expenditure PAC or used by the organization itself to make independent expenditures. *See* AO-14-05.

## **II. When does an Organization become a Massachusetts Political Committee?**

An organization, including a political committee registered in a non-Massachusetts jurisdiction, however, *that receives* money or anything of value to make contributions to Massachusetts candidates or political committees, including ballot question committees or independent expenditure PACs, or to make independent expenditures, must register as a Massachusetts political committee pursuant to M.G.L. c. 55, § 1. *See* 970 CMR 1.22 (3) (a), which states that “such an entity shall organize as a political committee and file campaign finance reports disclosing all contributions received, all expenditures made, and all liabilities incurred for the purpose of making contributions or independent expenditures.” This means, for example, that an entity that raises money to influence anticipated ballot questions in multiple states must register and report its activity as a Massachusetts ballot question committee if Massachusetts is one of the states in which the entity will be active. “A determination of whether an organization is required to organize and file campaign finance reports as a political committee depends on an assessment of various factors, including, but not limited to, the timing and content of solicitations and the timing of receipts.” *Id.* In addition, OCPF has stated that where an organization makes a contribution to a Massachusetts political committee that is not fully paid from general organizational income, it must identify additional donors to the extent that general treasury funds were not used. *See* 970 CMR 1.22 (11).

A political organization established under Section 527 of the Internal Revenue Code is considered an unregistered or non-Massachusetts political committee for purposes of the Massachusetts campaign finance law, if the organization receives funds to influence elections, whether in Massachusetts or elsewhere, or to support or oppose a political party. Labor or other organizations, however, may use their general treasury funds to make contributions or independent expenditures through a separate fund established by the organization under Section 527 to make such expenditures, without being considered an unregistered or non-Massachusetts committee. Such organizations operating under Section 527 are not political committees because they use only general treasury funds, including dues paid by members, and do not solicit or receive funds to influence elections. Other political organizations established under Section 527, however, would be considered unregistered or Non-Massachusetts political committees if they solicit or receive funds to influence elections in Massachusetts or elsewhere.

Political committees must organize with OCPF, or the appropriate local election official, and appoint a treasurer prior to soliciting or receiving any funds. *See* M.G.L. c. 55, § 5. A group organized to support or oppose multiple Massachusetts candidates may be a political action committee or independent expenditure PAC subject to the rules described in IB-94-02 and IB-10-03. A group that is organized to raise or spend money to influence a ballot question or questions is a ballot question committee. *See* IB-90-02 for a discussion of the disclosure requirements applicable to such committees.

## **III. Independent Expenditures and Electioneering Communications by Unregistered and Non-Massachusetts Political Committees**

### **A. Independent Expenditures**

As defined in Section 1 of the statute, the term “independent expenditure” means “an expenditure made, or liability incurred, by an individual, group, association, corporation, labor

union, political committee or other entity for goods or services to expressly advocate the election or defeat of a clearly identified candidate; provided, however, that the expenditure is made or incurred without cooperation or consultation with any candidate, or [candidate committee or any agent of a candidate.]” If made in cooperation or consultation, *i.e.*, coordinated, expenditures are considered in-kind contributions made by an entity to the candidate, *see* 970 CMR 2.21 and IB-06-01, and must be disclosed by the recipient committee.

Any entity that makes independent expenditures exceeding \$250 during a calendar year must file reports disclosing the independent expenditures. *See* M.G.L. c. 55, § 18A. Section 18A generally requires the filing of reports within 7 business days after the goods or services are utilized. If expenditures are made after the tenth day before, but more than 24 hours before an election, a report must be filed within 24 hours of the date the goods or services are utilized.

An unregistered or non-Massachusetts political committee may make an independent expenditure using funds that have been previously raised for purposes other than to support or oppose a Massachusetts candidate or candidates. The independent expenditure must be disclosed with OCPF on an electronically filed report of independent expenditures. *See* M-14-03. An unregistered or non-Massachusetts political committee may not, however, receive funds for the purpose of making an independent expenditure without first organizing an independent expenditure PAC in accordance with M.G.L. c 55, § 18A(d) and 970 CMR1.22 (3) and 2.17 (3).

### **B. Electioneering Communications**

Unregistered and non-Massachusetts political committees may also pay for “electioneering communications.” Electioneering communications are broadcast, cable, mail, satellite or print communications that refer to a clearly identified candidate, that are publicly distributed within 90 days before an election in which the candidate is seeking election or reelection. *See* M.G.L. c. 55, § 1, which defines “electioneering communications” to exclude expenditures or independent expenditures that otherwise must be disclosed, and also contains other exemptions, *e.g.*, communications by email or by the Internet (other than paid advertisements). As is the case with independent expenditures, if an electioneering communication is coordinated with a candidate or candidate’s committee, such coordination converts the electioneering communication into an in-kind contribution to the candidate or committee. *See* 970 CMR 2.21 and IB-06-01.

Electioneering communication expenditures that exceed \$250 during a calendar year must be disclosed in accordance with M.G.L. c. 55, § 18F, 970 CMR 1.14, and M-14-02. In addition, an organization that raises money to make electioneering communications must disclose its donors. *See* 970 CMR 1.22 (7) and 1.22 (10) (b).

### **IV. Disclaimer requirements**

Individuals or groups, including unregistered and non-Massachusetts political committees, that make independent expenditures, electioneering communications, or communications to affect the vote on a Massachusetts state or local ballot question, may be required to include a disclaimer in the communication. Disclaimers are generally required to identify the organization and principal officer who approved and paid for the message. In addition, the statute requires disclaimer of the top five contributors

providing in excess of \$5,000 to the entity, for any purpose, during the 12-month period before the communication. *See* M.G.L. c. 55, § 18G, 970 CMR 2.20, and IB-10-01.

## V. Expenditures by Massachusetts Committees to Non-Massachusetts Committees

Subject to limitations or restrictions established by federal law or the law of other state or local jurisdictions, a Massachusetts political committee may generally contribute to a non-Massachusetts candidate or political committee or make an independent expenditure to promote or oppose a non-Massachusetts political committee if the activity is undertaken (1) to enhance the political future of the Massachusetts candidate or principle for which the Massachusetts committee was organized, and (2) is not for any individual's personal use. *See* M.G.L. c. 55 § 6.

Because non-Massachusetts political committees are not "political committees" for the purposes of M.G.L. c. 55, contributions by a Massachusetts committee to such committees are not subject to the contribution limitations set forth in M.G.L. c. 55, § 6.<sup>2</sup>

## VI. Conclusion

It should be kept in mind that this bulletin is limited in scope to the Massachusetts campaign finance law. Unregistered and non-Massachusetts political committees should contact the Federal Election Commission, the Internal Revenue Service, or their state campaign finance authority to ensure compliance with federal law or the law of another state.

While this bulletin has set out some of the basic provisions of the Massachusetts campaign finance law, OCPF urges anyone contemplating conducting campaign finance activity in Massachusetts to contact the office for more specific guidance.

  
Michael J. Sullivan  
Director

6/21/19

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<sup>2</sup> Candidates that receive public financing pursuant to M.G.L. c. 55C may not, however, contribute to candidates and committees established pursuant to federal law or the law of other state jurisdictions. *See* 970 CMR 2.06(7).