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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 by unregistered or non-Massachusetts political committees. These groups include political committees organized in another state or at the federal level but not organized in Massachusetts, as well as other groups, unions or organizations that raise money to influence elections but are not required to be organized as a political committee in Massachusetts.

This bulletin *does not* address political activity in Massachusetts by groups, unions, associations or other types of organizations, including non-profit corporations, which do not raise money for the purpose of making political contributions or expenditures. See OCPF's IB-88-01 for a complete discussion of the rules applicable to such activity.

Summary

Unregistered groups, unions, associations or other types of organizations¹ that solicit funds for the purposes of making political contributions or expenditures may not contribute to Massachusetts candidates and political committees other than to ballot question committees or independent expenditure PACs.

I. How does an Organization become a Massachusetts Political Committee Subject to the Provisions of M.G.L. c. 55?

The Massachusetts campaign finance law defines a political committee as any:

committee, association, organization or other group of persons, including national, regional, state, county or municipal committee, which receives contributions or makes expenditures for the purpose of influencing the nomination or election of a candidate, or candidates... or for the purpose of opposing or promoting a charter change, referendum question, constitutional amendment, or other question submitted to the voters.

¹ Such groups are referred to in this Interpretive Bulletin as "Unregistered or Non-Massachusetts Political Committees."



In IB-88-01, this office narrowed the definition of “political committee” to include only groups that *raise money to influence Massachusetts elections and subsequently expend those funds to influence Massachusetts elections*. Therefore, any organization or group which *solicits or receives* any money or any other thing of value to influence the election of a Massachusetts state, county or municipal candidate, or to favor or oppose a Massachusetts local ballot question is acting as a political committee and is subject to the campaign finance law as of the date of the solicitation or receipt of funds. The campaign finance law requires, among other things, that the group formally organize a political committee with OCPF, or the appropriate local election official, and appoint a treasurer prior to soliciting or receiving any funds for a political purpose.

II. Which Organizations are Considered Unregistered or Non-Massachusetts Political Committees?

For the purposes of this Interpretive Bulletin, “unregistered or non-Massachusetts political committees” include: (1) all political committees duly organized in another state or at the federal level but not organized in Massachusetts, if the committee solicits funds for the purpose of making political contributions or expenditures in any jurisdiction; and (2) all other organizations, unions, associations or groups, no matter how informal, that are not required to formally organize as a political committee in Massachusetts (because they do not raise money to influence Massachusetts elections, See Section I, above), at the federal level, or in any other state but nonetheless raise money for a political purpose, i.e., to influence elections or to support or oppose a political party.

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 solicits funds to influence elections whether in Massachusetts or elsewhere, or to support or oppose a political party. Labor or other organizations may, however, 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, and do not solicit funds to influence elections. Other political organizations established under Section 527, however, would be considered unregistered or Non-Massachusetts political committees if they solicit funds to influence elections in Massachusetts or elsewhere.

III. Complying with M.G.L. c. 55; Contributions by Unregistered or Non-Massachusetts Political Committees to Certain Massachusetts Political Committees Prohibited

A. Contributions to Ballot Question Committees or Independent Expenditure PACs

An unregistered or non-Massachusetts political committee 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 specifically to influence the Massachusetts ballot question. An unregistered or non-Massachusetts political committee may also 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 independent expenditure PAC may receive contributions from unregistered or Non-Massachusetts political committees, but all such contributions are subject to disclosure requirements. See 970 CMR 2.17(3) and IB-10-03.

An organization that raises funds for political purposes, but does not indicate to donors that the funds may 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 in the state. See AO-14-05. When an independent expenditure PAC receives funds from such an organization, the independent expenditure PAC is required to disclose the receipt as coming from the organization.

B. Contributions to Candidates and All Other Political Committees

M.G.L. c. 55 does not authorize unregistered or non-Massachusetts political committees to contribute to Massachusetts candidates, candidate committees, political party committees, people's committees, or PACs (although an unregistered or non-Massachusetts committee may contribute to independent expenditure PACs or ballot question committees). Only certain political committees organized and registered with OCPF may make contributions to Massachusetts candidates, candidate committees, political party committees or people's committees, subject to the contribution limitations and other requirements of Chapter 55.

This restriction 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 to the Massachusetts committee.

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, to verify that the organization is not an unregistered political committee, i.e., that the contribution is from an entity that has not raised funds for political purposes. 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(4).

C. Procedures for Establishing a Separate Massachusetts PAC²

Any unregistered or non-Massachusetts political committee that wishes to participate in Massachusetts campaign finance activity by making contributions to support or oppose candidates must, except as provided in AO-14-05, do so through a separate, financially segregated Massachusetts PAC organized and maintained in accordance with M.G.L. c. 55, including the following provisions:

(a) Statement of Organization - In accordance with M.G.L. c. 55, § 5, the new Massachusetts PAC must file a Statement of Organization with OCPF or, if organized for the purpose of supporting or opposing candidates who file reports with a local election official, with the city or town clerk or board of election commissioners. See IB-83-01. Campaign finance reports are due periodically and must be filed in a timely, complete and accurate manner. No Massachusetts political committee may raise or spend funds at any time unless it has a duly authorized and appointed treasurer.

² For guidance regarding establishing an independent expenditure PAC, see IB-10-03.

The Massachusetts PAC must start with an account balance of zero. All funds received by the PAC must be kept in a separate segregated account and must comply with the Massachusetts campaign finance law. This means that the affiliated unregistered or non-Massachusetts political committee may not endow the new PAC with an initial balance, or otherwise contribute or transfer any money into the PAC.

The campaign finance law establishes specific obligations for Massachusetts PACs. The law also creates "people's committees" which, like PACs, are organized to support or oppose more than one candidate. To be certified as a people's committee by OCPF, a committee must (1) start out as a PAC; (2) be in existence for at least six months; (3) receive contributions only from individuals; (4) accept no more than \$161 (indexed biennially)³ from any individual during any calendar year; and (5) have contributed to five or more candidates. OCPF interpretive bulletin, IB-94-02, provides a detailed discussion of the obligations of Massachusetts PACs and people's committees and should be referred to by any group which intends to organize a PAC or people's committee in Massachusetts.

(b) Name of Committee - Section 5B requires a PAC to use a name or phrase that "identifies" the common employer, if any, shared by a majority of contributors. In addition, the name or phrase must identify "the economic or other special interest, if identifiable, of a majority of [the committee's] contributors." If the committee cannot identify the contributors' common employer or interest, it must use a name or phrase that identifies the economic or special interest and common employer of a majority of the committee's organizers and must identify any individual controlling the committee. PACs must also include the phrase "political action committee" in the committee's name.⁴

(c) Contributions - Section 1 of c. 55 broadly defines the word "contribution." A contribution includes a "contribution of money or anything of value" as well as any "transfer of money or anything of value between political committees." Other sections of the law establish reporting and limitation requirements. For example, section 9 provides that contributions to any political committee greater than \$100 may not be made by money order. Such contributions must be made by check or credit or debit card as defined by section 9 or by electronic transfer as authorized by section 9A. Section 18 provides that the reports of contributions greater than \$50 must include the name and address of each contributor, and reports of contributions of \$200 or more must include occupation and employer information provided by the contributor.

Individuals may contribute an aggregate amount per calendar year of \$500 to a Massachusetts PAC. In turn, a PAC may contribute to a candidate's campaign fund in an amount not to exceed \$500 in any one calendar year. In addition, candidates, other than candidates for municipal office, are subject to limits on the aggregate amounts that may be received from all Massachusetts PACs during any calendar year. The limits range from \$7,500 for state representative to \$150,000 for governor. Contributions from people's committees, however, do not count toward a candidate's aggregate PAC limit.

³ This amount was initially set at \$100 per calendar year when the statute was enacted in 1994. It has been increased for inflation several times since then. The \$161 figure is in effect until December 2015. See M-97-05, which is revised in December of every odd-numbered year to announce the revised amount in effect for the next two years.

⁴ An independent expenditure PAC must use the term "independent expenditure political action committee" in its name.

(d) Bundling - Section 10A of c. 55 regulates "contributions made through an intermediary or conduit," or so-called "bundled contributions" to candidates. Such contributions, if made *through* a PAC, or an officer, employee or agent of a PAC, are treated not only as contributions from the person making the contribution but also as contributions from the person or PAC *through* whom the contributions are made. See AO-95-06, AO-95-17, AO-95-20, AO-95-24, and AO-95-35. Bundling does not apply to contributions made directly by a PAC from its own account to a candidate.

(e) Expenditures - A political committee is also required to report any and all expenditures, including but not limited to donations to Massachusetts candidates and PACs, and expenses paid on behalf of candidates and other PACs. For expenditures greater than \$50, the report must include the full amount or value, date and purpose of each expenditure. In addition, the total amount of all expenditures must be listed.

(f) Corporate Contributions - Massachusetts campaign finance law prohibits contributions by business and professional corporations, and by limited liability companies (LLCs) and partnerships, to PACs.⁵

These entities may not provide goods or services to a PAC unless such committees pay fair market value for the cost of such goods or services such as the use of facilities or compensated staff support for a PAC organized by officers or employees of such an entity. Similarly, a corporation, LLC or partnership may not offer a discount or rebate to any candidate or committee that is not offered to other candidates for the same office and to the general public. See Op. Atty. Gen. Nov. 6, 1980. A "media organization," however, as defined in M.G.L. c. 55, § 8A, may make time available to candidates at reduced or no cost subject to certain restrictions.

IV. Independent Expenditures by Unregistered and Non-Massachusetts Political Committees to Promote or Oppose Massachusetts Candidates

M.G.L. c. 55, § 18A states, in relevant part, that:

- (a) Every individual, group, association, corporation, labor union, political committee or other entity that makes independent expenditures in an aggregate amount exceeding \$250 during any calendar year for the express purpose of promoting the election or defeat of a candidate shall file with the director, except as provided in subsection (b), within 7 business days after the goods or services for which the independent expenditure was made are utilized to advocate for the election or defeat of a clearly identified candidate, on a form prescribed by the director, a report stating:
- (i) the name and address of the individual, group, association, corporation, labor union, political committee or other entity making the expenditure;
 - (ii) the name of the candidate whose election or defeat the expenditure promoted;
 - (iii) the name and address of any person to whom the expenditure was made;
 - (iv) the total amount or value; and
 - (v) the purpose and the date of the expenditure.

⁵ Corporations, LLCs and partnerships may, however, contribute to independent expenditure PACs. See IB-10-03.

(b) In addition to any reports required by subsection (a), any individual, group, association, corporation, labor union, political committee or other entity that makes an independent expenditure in an aggregate amount exceeding \$250 after the tenth day, but more than 24 hours before the date of any election, shall file a preliminary report within 24 hours after the goods or services for which the independent expenditure was made are utilized that discloses: (i) the name and address of the individual, group, association, corporation, labor union, political committee or other entity making the expenditure; (ii) the name of the candidate whose election or defeat the expenditure promoted; (iii) the name and address of any person to whom the expenditure was made; and (iv) the purpose and the date of the expenditure.

(c) The reports required by this section shall be filed with the director as provided in section 18C if expenditures are made to promote the election or defeat of any candidate who files with the director. Reports required by this section shall be filed with the city or town clerk if the expenditures are made to promote the election or defeat of any candidate seeking public office at a city or town election who does not file with the director.

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.]"

Consistent with this provision, 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, solicit or receive funds specifically for the purpose of making an independent expenditure in Massachusetts without first organizing an independent expenditure PAC in accordance with M.G.L. c 55, § 18A(d) and 970 CMR 2.17(3).

V. Electioneering Communications by Unregistered and Non-Massachusetts Political Committees

Unregistered and non-Massachusetts political committees may 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).

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.

VI. Expenditures by Massachusetts Candidates, Candidate Committees, PACs, People's Committees, and Party Committees to, or for the Benefit of, Non-Massachusetts Candidates and Political 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, § 6.⁶

VII. 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.



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⁶ 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 2.05(4)(d).