

MICHAEL J. SULLIVAN  
DIRECTOR

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

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

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**INTERPRETIVE BULLETIN**

**Lease of Real or Personal Property by  
Candidates and Political Committees**

This Interpretative Bulletin provides guidelines regarding various issues arising from the lease of real or personal property by candidates and political committees.<sup>1</sup> Candidates and political committees that follow these guidelines will ensure that rental expenditures comply with the campaign finance law's record keeping requirements and restrictions against personal use.

The regulations promulgated under M.G.L. c. 55 state that candidates and political committees may make "reasonable and necessary expenses in connection with the operation of a campaign office or offices." These expenses may cover telephones, furniture, office rent and equipment, and utilities. 970 C.M.R. 2.05(2)(h).

Issues often arise under the campaign finance law, however, because corporations and other business entities may not provide office space or equipment at less than fair market value. In addition, issues may arise when a candidate or political committee wishes to "share" the expenses of another office, or to sublet a portion of such office space or the office or equipment leased is owned by the candidate or an officer of the political committee, an entity in which such candidate (or officer) has an interest, or a person related to the candidate or committee officer.

I. May a candidate or political committee rent, share or sublet office space, equipment or other resources from a corporation or other business entity?

**Yes.** OCPF, however, closely scrutinizes such expenditures to ensure that they involve an "arms length" relationship and not a prohibited corporate contribution. Business and professional corporations, partnerships, LLCs and LLPs may not contribute to candidates and political

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<sup>1</sup> The campaign finance law prohibits the purchase of real property by candidates or political committees. See M.G.L. c. 55, § 6, which states that a political committee may place its funds in a savings account or money market to earn interest but may not invest its funds in other things of value in any other manner, and 970 CMR 2.07(7) which does not include real property among the investments which may be made by political committees.



committees (other than ballot question committees and independent expenditure PACs). See M.G.L. c. 55, § 8. To ensure compliance with this requirement, political committees that rent office space from business entities other than sole proprietorships must ensure that the amount paid is not less than the fair market value of the space. Fair market rent may be determined by reference to advertisements, appraisals, or leases for comparable property with similar terms in the same geographic area. Candidates and committees may want to consult with a real estate professional prior to entering into a lease, to ensure that the amount paid under the lease is consistent with the fair market value of the space.

The campaign finance law defines the term "contribution" to include both "discounts" and "advances." See M.G.L. c. 55, § 1. Discounts are defined in Section 1 as "contributions" if they are a reduction in price from fair market value not available to other candidates for the same office and the general public. If payments are not made in a prompt manner and in accordance with the lease, the committee would receive an "advance." An "advance," according to Webster's New Collegiate Dictionary, means "a provision of something (as money or goods) before a return is received." An "advance" would be received if (1) the amount due under the lease is not promptly paid in accordance with the terms of the lease, and (2) the lessor does not take commercially reasonable collection action to recover the amount due.

OCPF considers various factors in determining whether a lease is bona fide and does not include a prohibited contribution from a business entity. These factors include, but are not limited to: the value for similar space in advertised notices of availability; whether the lease is for a space that has been vacant for an extended period of time; the nature of the lease (e.g., is it a short term or "at will" lease); whether the committee agrees to improve the space during the term of the lease; and whether the individual owner of the space has made contributions to the candidate or committee in the past.

If monthly lease payments are not made or liabilities for unpaid rent are not reported in a timely manner in a candidate or committee's campaign finance reports, this office will presume that the lease is not bona fide. As noted above, if lease payments are not promptly made and the lessor does not take commercially reasonable collection action, an advance (i.e., a contribution) will be attributed to the lessor.<sup>2</sup> Therefore, amounts due under a lease should very rarely appear as a liability on a campaign finance report. However, if no bill or notice of an amount due has been received by a committee in relation to a lease arrangement, the committee's reports must still reflect a liability.

In addition, a candidate or political committee may share office space with or sublet such space from a business entity or other organization, if the fair market value for such space (a pro-rated portion of the lease and any utilities and other operational expenses) is paid by the candidate or political committee. If the candidate or political committee pays less than the fair market rent, an in-kind contribution must be attributed to the organization leasing the office space to the candidate or political committee. To avoid the receipt of a contribution, any services, facilities, supplies, utilities, equipment or personnel supplied by such entities must be reimbursed in full by the candidate or political committee.

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<sup>2</sup> If the lessor is a business or professional corporation, LLC, LLP or partnership, and the property is leased by a candidate or political committee other than a ballot question committee or independent expenditure PAC, the amount due cannot be a contribution and must be listed as a liability.

If a candidate or political committee shares equipment such as telephones, typewriters, computers and copiers, separate accounts must be kept by the candidate or political committee and the person or organization leasing the space. Separate accounts must also be kept if personnel, such as secretaries or receptionists, are shared.

As required by M.G.L. c. 55, §§ 2 and 5, candidates and political committees must maintain detailed records for six years from the date of the relevant election. Maintaining such records will help to document compliance with the campaign finance law upon review by this office. The failure to preserve the appropriate records may lead to a presumption that a corporate contribution has been received.

II. May a political committee lease office space from the candidate, from officers of the political committee, from entities in which a candidate or officer has an interest, or from persons who are related to the candidate or officers of the committee?

**Yes.** Such a lease is permitted, however, only to the extent the payments reflect the fair market rent of the property and the leased property does not include any part of any personal residence.

Section 6 of M.G.L. c. 55 allows candidates and political committees to make political expenditures if such expenditures are not "primarily for the candidate's or any other person's personal use." Payments for a lease may not involve any expenditure for personal use.

Payments for the use of a personal residence, including the candidate's or another person's home office, are prohibited because the expense of maintaining a residence would exist regardless of the candidate's seeking elected public office. Moreover, residential space is not generally leased on the open market to be used for office space.

OCPF has consistently discouraged candidates and political committees from leasing office space from candidates, officers of committees, from entities in which a candidate or officer has an interest, or from family members of candidates and officers of committees. Such leases, if bona fide, are not, however, prohibited. A committee should maintain detailed accounts and records to document that the amount paid is equivalent to the fair market rent for the property, that the terms of the lease are commercially reasonable and that payments are promptly paid in accordance with the terms of the lease.

Leases from candidates, officers of a committee, from entities in which a candidate or officer has an interest, or from persons related to the candidate or officers of the committee for non-residential property also raise personal use concerns, but to a lesser extent than leases of residential property. Such transactions typically do not reflect an "arms length" business relationship. Candidates and committees entering into such a lease should therefore ensure that the lease is consistent with ordinary business practices and payments are for the fair market rent for the property. If payments exceed the fair market rent for the property, the excess expenditure would be for the personal use of the recipient and therefore would violate M.G.L. c. 55, § 6.

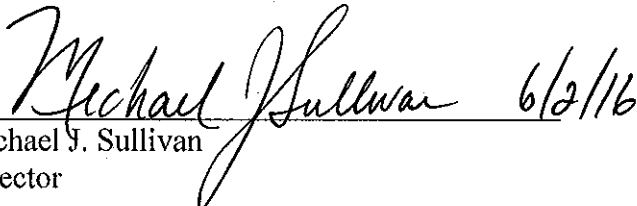
In addition, a committee's payments to an individual property owner, if for less than market value, involve the receipt by the committee of a discount, which would be considered a "contribution" subject to the \$1,000 annual limit on contributions from individuals to candidates. See M.G.L. c. 55, § 7A.

III. May a political committee lease personal property, such as office equipment, from the candidate, from officers of the political committee, or from persons who are related to the candidate or officers of the committee?

**Yes.** As with leases for real property, leases for personal property are permitted only to the extent the payments do not exceed the fair market value for the property and the primary purpose for entering into such lease is to allow the committee to use the property being leased. As with any expenditure, the payments made under a lease must be reasonable and necessary for the enhancement of the political future of the candidate or must enhance the principle for which the committee was organized.

If less than the fair market value is paid, or if payments are not made or collected in a commercially reasonable manner, a contribution (i.e., an advance or discount) must be attributed to the person from whom the property is leased.

If you have any questions or need further information regarding this bulletin or any other campaign finance matter, please do not hesitate to contact this office.

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Michael J. Sullivan  
Director