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MEMORANDUM

To: Interested Parties
From: Michael J. Sullivan, Director *MJS*
Subject: Use of bulk mail permits by candidates and political committees

This memorandum addresses questions relating to a candidate or political committee's use of a bulk mail permit provided free of charge by the owner of the permit.¹

A contribution is defined as any "gift, subscription, loan, advance, deposit of money or thing of value..." M.G.L. c. 55, § 1. Regulations issued by this office state that "the use of any thing of value by a political committee, other than of those things...for which the political committee has paid the fair market value for the use thereof, shall constitute a contribution in-kind to that political committee by the person or entity which has ownership of the thing of value." 970 CMR 2.07(3). To the extent a candidate or committee receives the free or discounted use of a bulk mail permit, it receives an in-kind contribution, which is subject to the limitations and restrictions of the campaign finance law.

This memorandum does not address a candidate's or committee's use of services provided by a mailing house in the business of providing direct mailing services, for which the candidate or committee pays fair market value.

1. BULK MAIL PERMITS - GENERALLY

Individuals or organizations, including political committees, may obtain bulk mail permits from the U.S. Postal Service upon payment of an application fee (currently \$220) and in addition, an annual fee, payable each year (the annual fee is also \$220).²

¹ A political committee may purchase its own bulk mail permit to distribute campaign material, subject to Postal Service regulations. As with any expenditure, the committee would need to report all expenditures made in connection with the use of the permit. Questions more often arise in the context of a committee's temporary use of a bulk mail permit owned by another entity, or by an individual.

² Although this memorandum concerns the use of bulk mail permits that are imprinted on mailings (the type of bulk mailing most often used by candidates and committees), it should be noted that there are other options for sending bulk mail – postage meters and pre-cancelled stamps. When postage meters or pre-cancelled stamps are used, the Postal Service charges a \$220 annual fee, but does not also charge a \$220 application fee.



Using a bulk mail permit allows individual pieces of mail to be sent at a discount, but only if the sender takes the time to sort the mail and otherwise complies with postal regulations. The postage for each item sent as part of a bulk mailing varies depending on a number of factors, including the total number of items sent, the size and weight of the items, the nature of the presorting accomplished prior to bringing the items to the post office, and the destination of the items. Permits may be granted to for-profit or non-profit entities. A standard size piece of mail sent out using a for-profit bulk mail permit currently costs about 31 cents per piece, as opposed to the 49 cents per piece that would have to be paid using regular first class mail.

According to U.S. Postal Service regulations,³ political committees organized with OCPF, with the exception of state party committees, may not obtain non-profit permits. In addition, if a candidate's committee, or other type of committee that is not a state party committee, uses a permit owned by a non-profit entity, the political committee must pay the for-profit rate for such mail, i.e., approximately 31 cents per piece rather than the 19.1 cents that might be charged to a non-profit.

The cost of obtaining and using a bulk mail permit has increased over time and likely will continue to increase. Candidates and committees receiving the use of a bulk mail permit as an in-kind contribution are responsible for contacting the Postal Service to determine the value of the contribution and to determine the rules applicable for such use.

2. CAMPAIGN FINANCE ISSUES

A. Calculating the value of an in-kind contribution

An individual or an entity⁴ that owns a bulk mail permit may allow a candidate or committee to use the permit, subject to Postal Service regulations.

Such use, however, is considered an in-kind contribution from the owner of the permit and therefore, must not exceed the limit on what may be contributed during a calendar year. For example, an individual may contribute no more than \$1,000 to a candidate during a calendar year, including the value of the bulk mail permit. See M.G.L. c. 55, § 7A.

The amount of the contribution in the first year of the permit's use, not including the cost of the postage for each piece mailed, would be \$440 (the application fee plus the annual fee). If an individual provides a committee with a bulk mail permit in consecutive years, the value of such use in the second year would not include the application fee. It would include only the annual fee, currently \$220. The value of the in-kind contribution must be reported, like any other in-kind contribution, on a committee's campaign finance report.

³ See U.S. Postal Service Domestic Mail Manual document DMM 703, Nonprofit Standard Mail and Other Unique Eligibility, § 1.3, which is available on the Postal Service website, www.usps.com.

⁴ As discussed below, however, a business or professional corporation, or a limited liability company or partnership, may not donate the use of its bulk mail permit to a candidate, or to a committee (other than a ballot question committee or independent expenditure political action committee).

B. Use of a corporation's bulk mail permit

The campaign finance law prohibits the receipt of corporate or partnership contributions by candidates and all political committees except ballot question committees and independent expenditure political action committees. See M.G.L. c 55, § 8. Therefore, if a business (or professional) corporation, or a limited liability company or partnership owns a bulk mail permit, it may not allow it to be used by a candidate or committee (other than a ballot question committee or independent expenditure PAC) unless it is reimbursed for such use.⁵

C. Transfers between committees

The use of a bulk mail permit owned by one political committee and used by another committee would be considered a contribution from the committee that owns the permit and would be subject to the applicable contribution limits defined in Section 6 of Chapter 55. Accordingly, a candidate committee may not use a bulk mail permit owned by another candidate committee, as the value of the permit – and the in-kind contribution that would result from such a use of the permit – exceeds the candidate committee-to-candidate committee contribution limit. However, candidate committees may use bulk mail permits owned by political action committees, which may contribute up to \$500 to a candidate's committee, and local party committees, which may make unlimited in-kind contributions to a candidate's committee. To ensure compliance with these limits, committees should consult with OCPF prior to using a bulk mail permit owned by another committee.

D. Use of publicly funded bulk mail permits

Public resources include a bulk mail permit obtained by a town or other governmental entity. Therefore, the use of a bulk mail permit owned by a governmental entity for political purposes would not be consistent with Anderson v. City of Boston, 376 Mass. 178 (1978).

The guidance in this memorandum is limited in scope to the campaign finance law. Candidates and committees should consult with the U.S. Postal Service to ensure compliance with relevant postal regulations.

⁵ This prohibition also applies to entities that are funded by business or professional corporations, LLCs or partnerships.