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MEMORANDUM

To: Statewide Political Parties
 From: Michael J. Sullivan, Director *MJS*
 Subject: Use of Federal and State Bank Accounts and Allocation of Administrative Expenses

One of the many issues addressed by the Bipartisan Campaign Reform Act (BCRA) of 2002 was federal election activity by state political parties and the concurrent relationship with state and local campaign activity undertaken by state parties. As background to this discussion, note that federal law allows individuals to donate \$10,000 per year to a state party's federal funds account and Massachusetts law allows individuals to donate \$5,000 per year to the state party's non-federal (or state) account.¹ In many, if not most, states, individuals may donate more than \$5,000 to a state party's state (or non-federal) account.

1. Treatment of contributions received

When an individual contributes more than \$5,000 in a calendar year to a state party committee, the committee must, to ensure compliance with the Massachusetts campaign finance law, limit the amount deposited into the committee's state account to a maximum of \$5,000 during a calendar year. The remaining amount may be deposited into the committee's federal account.

For example, if an individual provides a state party committee with a \$15,000 check, up to \$5,000 may be deposited into the committee's state account and the remaining amount may be deposited into the committee's federal account. If the individual requests \$5,000 to be used for state campaign purposes, then the remaining \$10,000 would be deposited into the committee's federal account.

It is OCPF's understanding, however, that if the \$5,000 is to be received by the state party committee in a manner that complies with federal campaign finance law, the entire \$15,000 contribution *must initially be deposited into the committee's federal account*. After the deposit of the \$15,000 contribution, the portion which is designated for deposit into the state party committee's account to be used for state campaign purposes (\$5,000) must then be transferred, contemporaneously, from the federal account to the state account of the party. The entire amount (\$15,000) is reported to the Federal Election Commission as a contribution to the federal account of the party, and the committee would also, in its report filed with the Federal Election Commission, disclose the transfer of \$5,000 to the state

¹ The maximum annual aggregate contribution that may be made by an individual to all committees of any one party, including those on the state and local level, is \$5,000. See M.G.L. c. 55, § 7A.



account. Finally, the committee would report the receipt of \$5,000 into the state account on the campaign finance report the committee files with OCPF. The report filed with OCPF would disclose the original source of the contribution, i.e., the individual contributor.²

2. Allocation of administrative expenditures and expenditures relating to both federal and state candidates

In addition, federal regulations address the use of funds raised into the federal account of a state party for federal activity. By broadly defining federal election activity to include expenditures occurring when a candidate for federal office is on the ballot, the regulations require that certain expenditures be made from the federal account of the state party. The concept behind the FEC provisions is to prevent large unregulated sums of money raised in most states into state (non-federal) accounts from being used to influence federal elections.

The consequences for parties in Massachusetts, however, are different than for parties in most states. Since the amount an individual can contribute to the state account of the party in Massachusetts is lower than the federal contribution limit, state parties in Massachusetts would conceivably have more federal funds available. When a federal candidate is on the ballot, many expenditures made by the party are considered federal election activity, even if, in part, the effect of the expenditure would support state or local candidates. Federal law and regulations (*see* 11 CFR 100.24 and 11 CFR 106.7) often require such expenditures to be made from the federal account. If, however, the expenditure by the party is made solely to support or oppose a state or local candidate, and does not trigger the federal requirement that federal funds be used, state law and regulation require such expenditure to be made from the state account. This issue is addressed in OCPF's regulation 970 CMR 2.16(2), which states, in essence, that expenditures made by the party to support state or local candidates must be made from the state account of the party unless federal law and regulation preempt state law and regulation.

Federal regulations require that administrative costs such as rent, utilities, office equipment, postage, etc. may be paid entirely from the federal account, or the cost may be allocated between federal and state accounts in accordance with federal rules. *See* 11 CFR 106.7(d)(2).

Under the federal regulations, wages and fringe benefits for all employees paid by the state party must be paid from the federal account for those employees who spend more than 25% of their compensated time in a given month on federal election activities or on activities in connection with a federal election. Employees who spend 25% or less of their compensated time on federal election activities may be paid entirely from the federal account or the party may allocate these salaries between federal and non-federal accounts in the same manner as administrative expenses, in accordance with the method defined in 11 CFR 106.7(d)(2). Committees must keep a monthly log of such activity. Finally, wages and fringe benefits of employees who spend none of their compensated time in a given month on federal election activities or on activities in connection with a federal election may, under the federal

² If the individual makes the contribution using a credit card, the political committee receiving the contribution is charged a fee by the merchant provider. The committee must report the payment of the fee as an expenditure. *See* M-04-01. The fee must be apportioned between the federal and state accounts of the committee. For example, if \$15,000 is contributed and \$5,000 of that amount is ultimately received by the state account, and a \$45 fee is assessed for the processing of the contribution, \$15 (1/3 of the total fee) is deemed an expenditure by the state account of the state committee, and that amount must be accounted for in the committee's campaign finance report filed with OCPF.

regulations, be paid entirely with funds from the state account (but under OCPF regulations, such expenditures *must* be paid from the state account).

To elaborate further on the expenditure rules, we list several scenarios and note which account is responsible for making the expenditure.

1. An ad that simply states "Vote Republican" or "Vote Democratic" and does not mention any candidates on the ballot must be paid for from the federal account of the state party if the expenditure takes place during the federal election activity period.³ This is defined as generic campaign activity and is defined by federal regulation as federal election activity. Federal rules require that federal election activity be paid from the federal account.
2. An ad that states "Vote Democratic, elect Jones for Congress and Bird for State Representative must be paid for entirely from the federal account of the state party. Federal regulations require that any ad that supports or opposes a federal candidate on the ballot by name must be paid from the federal account.
3. An ad that states "Vote Jones for State Senate" or "Vote Jones for State Senate on November 2" and does not mention a clearly identified federal candidate must be paid for entirely from the non-federal (or state) account. No federal candidate is mentioned; therefore, this is a state account expenditure.
4. Voter registration costs paid within 120 days of a federal election, and Voter ID costs or GOTV costs incurred in connection with an election in which a federal candidate is on the ballot during the "federal election activity period" for Massachusetts, are generally considered "federal election activity" by the FEC, and expenditures for such items must be paid entirely from the federal account, i.e., not allocated. See 11 CFR 100.24 (which defines the voter identification, registration and GOTV activities covered by the federal statute, and lists exceptions).
5. Direct monetary contributions from the state party to a state or local candidate are limited by state law to \$3,000. Such contributions must be made from the non-federal account. Monetary contributions to state or local candidates from the federal account are prohibited. Monetary contributions to federal candidates from the state account are permissible to the extent that federal law and regulation allow.

Please call OCPF at (617) 979-8300 if you have questions on this issue. In addition, the guidance in this Memorandum is based primarily on the relationship between federal law as in effect at the time of issuance of the Memorandum, and the Massachusetts campaign finance law. The relevant federal statutes and regulations may change and you should also contact the Federal Election Commission at (800) 424-9530 to ensure compliance with federal election law.

³ See <http://www.fec.gov/info/ElectionDate/2014/MA.shtml> (stating that the federal election activity period in Massachusetts for voter registration expenditures is May 12, 2014 to November 4, 2014, and for voter ID, GOTV, and generic campaign activity is May 6, 2014 to November 4, 2014).