



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

M-10-02

Issued: December 7, 2010

Revised: June 22, 2018

MEMORANDUM

TO: Candidates, Political Committees and Local Election Officials
FROM: Michael J. Sullivan, Director *mjs 6/22/18*
SUBJECT: Legal defense, recount and inaugural funds

This memorandum is issued to provide guidance regarding the changes made to the campaign finance law by Chapter 28 of the Acts of 2009 ("the Act") relating to the creation of legal defense, recount and inaugural funds, and the disclosure required of donations received by such funds. These provisions became effective as of January 1, 2010. OCPF has issued regulations relating to such funds. See 970 CMR 1.20. A candidate or candidate's committee may establish a separate legal defense fund, inauguration fund, or recount fund. A state party committee may establish a separate legal defense fund.

1. Basic Rules

If a candidate or committee wishes to raise money, or in-kind donations, or incur liabilities to pay costs associated with a legal defense, recount, or an inauguration event, and the candidate or committee files with OCPF, the candidate or committee may set up a separate fund to raise and spend money for that purpose. The fund is separate from the candidate's committee or party committee and any donations received by the fund shall not be deposited into the candidate's campaign account or a committee account. Also, donations to such fund shall not be used to benefit a political committee. See M.G.L. c. 55, § 18E(a). A candidate or committee that files locally must file with the local election official.

A candidate who has a separate legal defense, recount or inauguration fund can also use the candidate's committee to raise funds and make expenditures for legal defense, recount or inauguration purposes if the expenditures for such purposes comply with M.G.L. c. 55, § 6. Where a legal defense fund has been created by a state party committee, the state party committee may use the legal defense fund or the state party committee's account to make legal expenditures consistent with the statute. If funds are raised by a political committee for such purposes, and if deposited into the committee's campaign account, the funds are also considered "contributions" subject to the limits of the campaign finance law.



Legal defense, recount, and inauguration funds may receive donations from business corporations or other entities that would be prohibited from contributing to political committees, and may also receive donations from individuals in excess of \$1,000. It is important to keep in mind, however, that fundraising for legal defense, recount, and inauguration funds is subject to M.G.L. c. 55, §§ 13-17. Persons employed for compensation by the Commonwealth or any of its subdivisions should not directly or indirectly solicit or receive donations for such funds, and donations should not be solicited or received in any building occupied for state, county or local governmental purposes.

2. Creation of account

The candidate or committee on whose behalf the fund is established must notify OCPF in writing of the creation of the fund. See 970 CMR 1.20(1). The notification must be filed prior to the date the first report disclosing donations is due, and must indicate the name, address, email address, and phone number of the person who will be filing the reports. The notification must also indicate the name of the fund, which needs to include the full name of the candidate on whose behalf the fund is created. The notification is done using a Form CPF 101 SFA. This form is available for download from OCPF's website.

If the candidate or committee does not file with OCPF, a Form M101 SFA is filed with the local election official.

Any funds received may be deposited into, and spent from, a bank account that is separate from the account of the candidate's political committee. It is our understanding that a Federal tax ID number (which would be different than the number used by the political committee) may be needed to open the bank account, and that the ID number may be obtained by contacting the Internal Revenue Service.

3. Filing of reports disclosing donations

Donations to a legal defense, recount, or inaugural fund must be disclosed on or before the fifth day of the month following the month in which the donations are received, complete as of the last day of the preceding month. A candidate or other person may loan the fund money, and ultimately be repaid from donations received. Loans to the fund are reported in donation reports. Expenditures do not have to be disclosed, but records must be kept of all financial activity, including expenditures.

For a candidate or committee that files with OCPF, the "donation report" must be filed electronically, and must disclose the name, address, and employer (not occupation) of all persons donating more than \$50 during a reporting period, listed alphabetically, the amount of each donation, and the total amount of donations received in the reporting period that are not itemized. The term "donation" includes donations in money, in-kind, and loans provided to such a fund.

If the donations are received on behalf of a candidate or committee that does not file with OCPF, a Form M 18E (listed in the "other reports" section of OCPF's website) is filed with the local election official.

Monthly reports of donations are not required if donations are not received by a legal defense, inauguration, or recount fund during the month that would be covered by a report.

M-10-02

Revised: June 22, 2018

4. Dissolution of fund

When all donations have been received and all payments made to accomplish the purposes of the fund, any money remaining in the fund's account must be disposed of in a manner consistent with the residual funds clause, and OCPF must be notified, in writing, that the fund has been closed. Inaugural funds must dissolve no later than one year after the inaugural event. Remaining funds may not be deposited into a candidate's or political committee's account or used for any other purpose not consistent with the residual funds clause.

Please call OCPF at (617) 979-8300, if you have any questions.