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MEMORANDUM

To: Interested Persons
From: Michael J. Sullivan, Director *MJS*
Subject: Receipt of Membership and Employee Discounts and Benefits

This memorandum addresses questions relating to the receipt, by candidates and political committees,¹ of discounted goods and services initially provided by a club, organization, or business entity to a member or employee, as a benefit of membership or employment.

OCPF is occasionally asked if a candidate or other person, who is a member of a club or organization, may use their membership benefits on behalf of a committee. For example, a person who is a member of a country club may be entitled to free or discounted use of a function hall because of their membership. Individuals have asked whether they may personally book the function hall at the membership rate on behalf of a committee, for the committee to use the space for a fundraiser or other committee event. This situation raises issues regarding compliance with several provisions of the campaign finance law, including the prohibition on corporate contributions to candidates, contribution limits, and disclosure requirements.

Similarly, employees of business corporations may receive free or discounted goods or services from a business as one of the fringe benefits of employment. Employees have asked whether they may pass that discount on to committees. For example, an employee of a printing company running for office may like to use an employee discount to print campaign materials for his or her own committee at a reduced rate. This raises the same issues as when membership benefits are passed on to a committee.

Questions

(1) If a committee receives the benefit of an individual's membership or employee discount, is that a contribution which may, consistent with the campaign finance law, be received by the committee?

(2) If so, who is the contribution from – the corporation or organization offering the discount or benefit, or the person who is entitled to the discount or benefit and provides it to the committee?

¹As used in this Memorandum, "candidates and political committees" or "committees" means all candidates and political committees within the scope of the Massachusetts campaign finance law.



Response

(1) A discount/benefit provided to a member or employee in the ordinary course of business may be received by a committee.

(2) The discount/benefit would be considered to be from the member or employee, not the organization or business entity.

Discussion

A “contribution” is something of value given to a candidate or political committee “for the purpose of influencing the nomination or election” of the candidate, or for the purpose of supporting or opposing a PAC, party committee, or ballot question committee. See M.G.L. c. 55, § 1 and *Weld for Governor v. Director of OCPF*, 407 Mass. 761 (1990). An organization or employer that offers a member or employee a discount *in the ordinary course of business* does so as a benefit of membership or employment, and not for the purpose of supporting or opposing a candidate or political committee. The determination of whether a discount or benefit is provided in the ordinary course of business is based on an assessment of the apparent intent in providing the discount or benefit. Generally, if the discount or benefit is provided based on a pre-existing employment or membership relationship and is available to all members or employees regardless of the purpose for which the goods or services are ultimately used, the goods or services would be considered provided in the ordinary course of business.

If an individual, who is entitled to a membership or employment benefit, chooses to use the benefit for the purpose of supporting a candidate or committee, the individual would be making a choice to provide something of value – a discount – to the candidate or committee. Accordingly, when a member of a fraternal organization arranges for a committee to take advantage of the discounted rate, for example, for a function hall, or an employee of a corporation similarly allows a committee to use a discounted printing rate or other benefit received by the employee in the ordinary course of employment, *the contribution would be from the individual member or employee, not the organization*. The contribution, since it would be from the member or employee, would be subject to the individual contribution limits, e.g., \$1,000 during a calendar year from an individual to a candidate. See M.G.L. c. 55, § 7A.

If an individual organization member or employee offers a committee a discount on goods or services that would, if accepted, result in the committee receiving an excess contribution, the committee may not accept the full amount of the discount. For example, if an individual (who makes no other contributions to the committee during the calendar year) offers to provide a candidate’s committee with a discount on printing of \$1,250, the committee could only accept \$1,000 of the discount, and would have to pay the remaining amount due for the printing.

If a committee pays less than market value for goods or services, because it uses a discount earned by a member or employee, then the committee should, in addition to reporting the expenditure, also report the receipt of an in-kind contribution from the individual. The in-kind contribution, in the

amount of the discount, would be reported in the committee's campaign finance report for the reporting period during which the goods or services were received by the committee.²

This Memorandum is issued to provide guidance, solely within the context of the campaign finance law. Public employees and officials who may be receiving discounts or other items from private employers or organizations should ensure that such receipt, in addition to complying with the campaign finance law, also complies with the Massachusetts conflict of interest law, M.G.L. c. 268A, which is enforced by the State Ethics Commission.

For further information and guidance with respect to the campaign finance law, please contact OCPF at (617) 979-8300.

² Since the receipt of goods or services from a member or employee, initially provided by a corporation in the ordinary course of business, involves the receipt of an in-kind contribution from the member or employee rather than a corporation, such receipt is consistent with M.G.L. c. 55, § 8 (which prohibits contributions from business corporations and other business entities to candidates, PACs and party committees).