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OFFICE OF CAMPAIGN & POLITICAL FINANCE

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MEMORANDUM

To: Interested Persons
From: OCPF
Subject: Charitable and Civic Activities by Candidates and Political Committees

This memorandum addresses questions relating to charitable fundraising and expenditures by candidates and political committees.¹

OCPF is occasionally asked if a candidate or committee may raise funds or make expenditures for charitable or civic purposes. The most common questions are addressed below. Committees are encouraged, however, to contact OCPF to discuss any of these issues, or other related questions.

Questions

(1) May a political committee donate to a charity, and if so, is there a limit to such donations?

Yes, a committee may donate to a charity, subject to the restrictions defined in OCPF's regulations (summarized below). There is no limit on the amount donated.

(2) May a political committee, either on its own or jointly with a charitable entity, raise funds for the charitable entity?

Yes, but the amount received, if deposited into the committee account prior to donation to the charity, would be considered a contribution 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.

(3) May a political committee donate to a scholarship fund, establish and finance a charitable foundation or other charitable entity, or award scholarships, and may the recipient entity reflect the name of the candidate?

Yes, but such activity is subject, as discussed below, to restrictions described in OCPF's regulations.

(4) May a political committee make a direct charitable donation to a constituent in need?

In limited circumstances, such donations may be permitted after consultation with OCPF. The office considers several factors in determining whether charitable donations to an individual are consistent with the campaign finance law, including the timing, the stated purpose, and the item donated.

(5) May a candidate make personal donations to a charitable or civic entity or activity, even if making the donations provides an incidental political benefit to the candidate, without the donations being considered contributions or expenditures subject to the campaign finance law?

Yes, a candidate may generally make such donations, but OCPF considers several factors in determining whether such donations were primarily made for a political purpose. If primarily made for a political purpose, the donations would be required to be disclosed in the candidate's campaign finance reports as in-kind contributions to the candidate's campaign.

Discussion

1. Committees may make charitable expenditures

M.G.L. c. 55, § 6 authorizes expenditures that are made to enhance a candidate's political future or the principle for which the committee was organized, while prohibiting any expenditure that is primarily for any individual's personal use. The regulation governing charitable contributions, 970 CMR 2.06(3)(t), states, in relevant part, that a committee or candidate may make charitable expenditures if:

1. The contribution is made to an entity which is subject to either M.G.L. c. 12, § 8(f), M.G.L. c. 67 or M.G.L. c. 180 [i.e., it is a non-profit corporation or public charity registered with the Attorney General's Division of Public Charities];
2. Neither the candidate, treasurer, or any official of the political committee is a trustee, officer, principal or beneficiary or involved in any manner in the operations of said entity;
3. Neither the candidate, treasurer, nor any official of the political committee is related by consanguinity or affinity to any trustee, officer, principal or beneficiary of said entity; [and]
4. The candidate or political committee will receive publicity and foster political goodwill as a result of making the contribution.

Neither Section 6 nor the regulations impose a specific monetary limit on charitable donations, other than limiting such expenditures to a “reasonable value.” Therefore, charitable donations that comply with the standard described in the regulation may be made regardless of the amount of the donation. *See* AO-97-18.

2. Political committees may assist charities in their fundraising activities

A committee may hold a fundraising event for the benefit of a charity if donors make payments directly to the charitable entity. Similarly, a committee may hold an event jointly for the committee and a charity, but only if donors submit contributions to the committee separately from contributions to the charity.

If a committee raises funds intended at least in part for charitable purposes and deposits the funds into its account prior to donation to the charity, the entire amount collected would be considered contributions to the committee, even if a portion of the funds are ultimately given by the committee to a charitable entity. Persons making the contributions must be informed that the funds given are campaign contributions, and not charitable donations. In addition, the committee would be required to disclose the amount received from each contributor as a contribution, and any resulting charitable donation from the committee as an expenditure. The committee (unless it is a ballot question committee or an independent expenditure only PAC) would not be able to accept any corporate contributions. M.G.L. c. 55, § 8.

Public employees who assist a political committee in its fundraising activities must also ensure compliance with the part of the campaign finance law that prohibits the solicitation or receipt of political contributions by public employees. *See* M.G.L. c. 55, § 13. Section 13 specifies that “no person employed for compensation, other than an elected officer, by the commonwealth or any county, city or town shall directly or indirectly solicit or receive” money or anything of value for a political purpose. This provision applies to fundraising for candidates or political committees and includes a situation where a committee raises funds at a single event held to benefit both a charity and the committee.² Section 13 also applies if a committee raises funds for deposit into its own account and then transfers such funds to a charity. It does not apply, however, to charitable fundraising events or activities that are undertaken independently of a candidate’s campaign, even if there may be some incidental political benefit received by a candidate or committee from the activity.

Public employees and officials should ensure that their anticipated activities, in addition to complying with the campaign finance law, also comply with the Massachusetts conflict of interest law, M.G.L. c. 268A, which is enforced by the State Ethics Commission. In addition, individuals interested in raising funds for charitable purposes should contact the Attorney General’s Public Charities Division to ensure compliance with the registration and other requirements administered by that office.

² An event held to benefit both a political committee and a charity would also have to comply with Section 14 of the campaign finance law, which prohibits political fundraising in any building or part thereof that is occupied for state, county or local governmental purposes.

3. Committees may generally donate to scholarship funds or charitable foundations, administer scholarship funds or charitable foundations, or award scholarships, subject to certain restrictions

Committees may generally make donations to scholarship funds or make awards of scholarships, or donate funds to charitable foundations. The scholarship funds or charitable foundations may contain the name of a candidate. To ensure compliance with the restriction against personal use, however, scholarships or distributions from a foundation may not be awarded to family members of the candidate, or to any family member of a committee officer or member of a committee.

Committees other than political party committees may set up *separate* scholarship entities, not managed or operated by the candidate, officers/members of the committee, or family members of the candidate or committee officers/members. *See* 970 CMR 2.06 (3)(w). The scholarship fund or foundation may be financed by the political committee or by other persons. Donations by a committee to the scholarship fund or foundation are subject to the regulations on charitable expenditures. *See* 970 CMR 2.06(3)(t), which states that neither the candidate, treasurer, or any official of the committee may be a principal, or beneficiary of an entity receiving a charitable contribution, and may also may not be involved in the operations of the entity receiving the funds. A candidate or officer of a political committee may not select the recipients of awards from the scholarship fund or foundation, but may, however, personally present a scholarship award. *See* AO-13-04. In addition, the candidate, treasurer, or other official of the committee may not be related to an individual receiving a scholarship award. **Funds received directly by a separate scholarship fund or foundation from a donor are not “contributions” subject to the campaign finance law, notwithstanding the fact that the scholarship entity’s or foundation’s activities may incidentally benefit a candidate’s political future.**

Political party committees, unlike other types of committees, may select recipients of scholarship awards. *See* 970 CMR 2.06(3)(x). In addition, money raised for purposes of financing a party committee’s scholarship fund must be deposited into the party committee’s campaign finance account and considered a “contribution” to the party committee subject to the restrictions and disclosure requirements of the campaign finance law. Like other types of committees, a party committee scholarship fund may not award a scholarship to an individual who is related to a committee officer or member.

4. A committee may, in limited circumstances, make direct monetary or in-kind charitable donations to a constituent in need

Expenditures of campaign funds are prohibited if made primarily for any person’s personal use. Therefore, campaign funds may generally not be given to an individual unless there is a specific political purpose for the expenditure, e.g., to pay the individual for campaign services provided. In addition, the regulations governing charitable expenditures by their terms only permit expenditures to charitable or similar entities. *See* 970 CMR 2.06(3)(t). The

regulations also specify, however, in the introductory paragraph of 970 CMR 2.06(3), that other expenditures “which are similar to [those listed] and not inconsistent with 970 CMR 2.00, M.G.L. c. 55 or any other law” may also be permitted.

Occasionally a candidate or committee requests, and OCPF has allowed, campaign funds to be used to provide assistance to an individual constituent in need, for example, to contribute to a fund to pay for a constituent’s unusual medical expenses. In some cases, such expenditures are permissible. Notwithstanding the element of personal use that results from the donation, if the purpose of such donation is to enhance the political future of the candidate, making the donation would be consistent with Section 6.

The office closely scrutinizes such requests to determine if a proposed donation would be political. Factors considered include the value of the donation, the timing and nature of the donation, whether there is any relationship with the beneficiary, and the extent to which the candidate or committee will receive political goodwill and publicity from the donation. Candidates and committees considering the making of such donations should first submit a written request for guidance and obtain written permission from OCPF prior to making any donation.

5. A candidate may generally make personal donations to a charitable or civic activity, which may provide an incidental political benefit to the candidate, without the donations being considered contributions or expenditures subject to the campaign finance law, but if the donations are made substantially to promote the candidate’s political future, they must be made through the candidate’s political committee or be disclosed as in-kind contributions to the committee

Charitable donations made by candidates should be treated in a manner that furthers transparency in campaign finance disclosure. This goal is made possible by disclosure of all activity that might reasonably be seen as substantially made to promote a candidate’s political future. To ensure compliance with this standard, OCPF advises that a candidate making charitable donations before an election make the donations through the candidate’s committee or, if the candidate’s personal funds are used to make a donation directly to a charity, report the donation as an in-kind contribution from the candidate to the committee.

If an expenditure is made by a candidate substantially for the purpose of enhancing the candidate’s political future, it *must* be made through the candidate’s political committee and disclosed on the committee’s campaign finance reports as an expenditure. A candidate may, however, make charitable donations with his or her personal funds that, if publicized, provide an incidental positive impact the candidate’s political future. Such donations generally do not have to be made through the candidate’s political committee and do not have to be reported as political expenditures or as in-kind contributions.

OCPF may consider several factors relating to a candidate’s personal charitable expenditure to determine if the expenditure was in fact substantially made for political purposes. If a public pronouncement is made by a candidate regarding a charitable donation, or if the

timing and nature of the donation reflects a political intent, the donation must be considered an in-kind contribution by the candidate to the candidate's committee. The timing of a donation is particularly relevant. If a donation is made immediately before an election, this suggests that it should be reported by the candidate's committee as an in-kind contribution from the candidate. Also relevant is whether the candidate has made such donations in the past. If the donation is made for the first time, this suggests that the donation is made substantially for the purpose of promoting the candidate's political future.

This memorandum is issued to provide guidance, solely within the context of the campaign finance law. As noted above, public employees and officials should ensure that their anticipated activities, in addition to complying with the campaign finance law, also comply with the Massachusetts conflict of interest law, M.G.L. c. 268A, which is enforced by the State Ethics Commission. Individuals and entities interested in raising funds for charitable purposes should also contact the Attorney General's Public Charities Division to ensure compliance with the registration and other requirements administered by that office.

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