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MEMORANDUM

TO: Legislative Candidates
FROM: Michael J. Sullivan, Director Pro Tem
SUBJECT: Expenditures by Legislative Candidates for Automobile Use

This memorandum provides guidelines for political committees which make expenditures for the use of a candidate's or committee agent's personally owned automobile, or which may wish to lease an automobile.¹ The following guidelines are provided to help legislative candidates² comply with the campaign finance law's record keeping requirements and restrictions on personal use.

Although a political committee is not required to reimburse a candidate or other person for campaign, legislative, or constituent service related travel, it may do so *if the expenditure is "not otherwise paid, provided or reimbursed by the commonwealth or any other governmental body."* See M.G.L. c. 55, § 6.

1. Legislator's expense allowance - The law defining compensation for members of the General Court, as amended by Chapter 1 of the Acts of 2017, includes provisions allowing for compensation of members for certain services or expenses. One part of the law contains a monetary allowance for members' travel to and from the state house, stating that "each member of the general court shall annually receive an amount for expenses to be paid as follows: (i) for members whose primary residence is located at a distance that is equal to or less than 50 miles from the state house, \$15,000; and (ii) for members whose primary residence is located at a distance that is greater than 50 miles from the state house, \$20,000." See Section 9C of Chapter 1 of the Acts of 2017 (which eliminated the *per diem* and replaced it with the allowance).

¹ The campaign finance law does not provide for the purchase of automobiles by political committees.

² The term "candidate" includes not only persons seeking office, but also incumbents. This Memo provides guidance for legislative candidates and committees. See M-97-03 for guidance applicable to other committees regarding automobile expenditures.

2. Reimbursable expenses for legislators who accept the Section 9C expense allowance – A political committee organized on behalf of a member of the General Court who *accepts the allowance* may reimburse the candidate or an agent of the committee for the use of a personal automobile for (a) travel relating to campaigning for votes and fundraising, i.e., “campaign travel,” or (b) travel, *other than commuting to/from the state house*, related to providing legislative or constituent services, including traveling to or from a district office or to attend meetings or events relating to legislation or issues of interest to constituents, i.e. “constituent travel.”

The allowance is for commuting to and from the state house. If the allowance is accepted, a legislator may not also use campaign funds to pay for expenses relating to the commute.

If, however, the member *forgoes the allowance* in Section 9C, the committee, in addition to being able to reimburse the candidate or agent of the committee for campaign or constituent travel, may *also* reimburse the candidate or agent of the committee for commuting to/from the state house.

3. Amount of Reimbursement - A political committee may reimburse a candidate or other person, who is not otherwise reimbursed, for campaign or legislative travel in an amount up to and including the standard mileage rate set by the Internal Revenue Service (IRS). In 2021, the standard mileage rate is 56 cents.

If a committee is reimbursing a candidate or individual at the IRS rate, it cannot also make reimbursements for the cost of gas, oil, tires, repairs, taxes, insurance, licenses, garage rent or any other costs. Reimbursement should take place within thirty days of the initial expenditure. *See* 970 CMR 2.10(2)(d).

A committee reimbursing a candidate or other person for campaign or constituent travel at the IRS rate should generally not also make direct payments for items that are included in the mileage reimbursement rate, such as fuel. OCPF closely scrutinizes expenditures to ensure that campaign funds are not used to pay for personal travel.

4. Recordkeeping - The key to ensuring that a political committee does not inadvertently make expenditures for personal travel is accurate recordkeeping. A political committee should not reimburse a candidate or agent of the committee for the use of a personal automobile, unless the candidate or agent provides to the political committee the following information and receipts:

- (a) the date of the travel;
- (b) the purpose and destination of the travel;
- (c) the distance traveled or odometer readings; and
- (d) the automobile used and the name of the owner.

[To the extent this information is not recorded by a committee, the travel may be considered personal.] Political committees should consider using a mileage tracking app that may be loaded into a smart phone or tablet, to automatically calculate and log all travel to be reimbursed.

5. When may a political committee lease an automobile? - A political committee may lease an automobile if the committee anticipates that the automobile will be used at least 50% of the time for campaign and constituent travel. A committee organized on behalf of a member of the General Court who *accepts the allowance* in Section 9C may not, however, include miles commuting to and from the state house in this calculation.

If a legislator *forgoes the allowance*, the legislator's committee may include miles commuting to and from the state house in calculating whether it may lease an automobile. It may pay for the lease of an automobile if it will be used more than 50% of the time for a combination of campaign, constituent and commuting travel.

Regardless of whether a legislator accepts or forgoes the allowance, if a legislator's committee leases an automobile, the legislator may use the automobile to commute to and from the state house. If the legislator accepts the allowance, the candidate must reimburse the committee for commuting miles; if the allowance is not accepted, no reimbursement is required.

A committee that leases an automobile must pay all costs associated with use of the automobile, including the costs of maintenance and repair, insurance (*but the insurance may cover only the candidate and other authorized agents of the committee*) and fuel. Persons who use an automobile leased by a committee must reimburse the committee for personal travel. The committee should record the leased automobile's odometer reading each month and determine the total miles traveled. The committee must be reimbursed based on mileage personally used, by the candidate, or other person using the automobile, within 30 days of any personal travel. The amount to be reimbursed may be determined by multiplying the mileage personally used by the IRS rate.

6. Expenditures for ride sharing or taxis. A committee may make expenditures for travel using ride sharing apps such as Uber and Lyft, or may make expenditures for taxis, if the person using the ride sharing app or taxi is not otherwise reimbursed for the travel. For example, a legislator, who accepts the Section 9C allowance, may not be reimbursed or charge the legislator's campaign account for costs incurred in using a ride sharing service to commute to the state house on a day her car is not available. The specific purpose of the expenditure must be described fully in the committee's campaign finance reports.

Political committees must preserve all records relative to such expenditures for a period of six years from the date of the relevant election.

For further information and guidance with respect to this memorandum, please contact OCPF at (617) 979-8300.