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MEMORANDUM

TO: Interested Persons
FROM: Michael J. Sullivan, Director *mjs 6/22/18*
SUBJECT: Question & Answer Guide for Corporations, Associations, Organizations and other Groups or Individuals Making Expenditures to Influence Ballot Questions

From time to time OCPF receives questions regarding the extent to which corporations, associations, organizations and other groups, or individuals, may make expenditures to influence ballot questions. For purposes of this memorandum, associations, organizations and other groups (including groups of two or more persons making expenditures to support or oppose ballot questions) will be referred to collectively as "associations." Also, for the purposes of this memorandum, corporations, LLCs, LLPs and business partnerships will be referred to collectively as "corporations." The office hopes this Guide will answer most of the commonly asked questions. For further information and guidance regarding this memorandum, please contact OCPF.

The Massachusetts Campaign Finance Law, M.G.L. c. 55, requires disclosure of all expenditures that are made by corporations and associations to promote or oppose¹ a ballot question, including certain expenditures made in anticipation that a question will appear on a ballot. In addition, any person who makes an expenditure of \$250 or more, other than a direct contribution to a ballot question committee, or incurs a liability of \$250 or more, to influence or affect the vote on any ballot question, must file such a report. See M.G.L. c. 55, § 22, as amended by chapter 28 of the Acts of 2009.

"Ballot questions" include any question submitted to the voters, e.g., charter changes, initiative petitions, referenda questions, overrides and debt exclusions, and advisory questions. See M.G.L. c. 55, § 1.

¹ Section 22 of chapter 55 requires "any person or the treasurer of a corporation, association, organization or other group of persons, other than a political committee organized under section 5, which has given, paid, expended or contributed, or promised to give, pay, expend or contribute any money or any valuable thing **in order to influence or affect** the vote on any question submitted to the voters" to file reports disclosing such activity. (Emphasis added). Expenditures, payments or contributions which are made to "influence or affect the vote" may also be described as made "to promote or oppose" a question.



Prior to raising funds to promote or oppose a ballot question, a “ballot question committee” must be organized. If a corporation or association does not raise funds, **but makes expenditures (other than making direct contributions to a ballot question committee), incurs liabilities or makes “promises to pay”** for goods or services to be used to promote or oppose a ballot question, it must report such expenditures, liabilities or “promises to pay” by filing a Form CPF 22. See M.G.L. c. 55, § 22 and IB-90-02.

Corporations and associations that directly make monetary or in-kind contributions to ballot question committees are *not required* to file a Form CPF 22. Contributions are disclosed by ballot question committees on their regular reports.

This memorandum answers frequently asked questions which have been raised by individuals, and by corporations and associations, regarding the scope of disclosure required by chapter 55. Additional information may be found in interpretive bulletins issued by the office. In particular, see IB-90-02 (“Disclosure and Reporting of Contributions and Expenditures Related to Ballot Questions”) and IB-95-02 (“Political Activity of Ballot Question Committees and Civic Organizations’ Involvement in Ballot Question Campaigns”). This Guide may not address all issues and I encourage you to call OCPF at 1-800-462-OCPF or (617)-979-8300 for more information.

Question 1. A corporation or association, or an individual, makes an expenditure that is not a contribution to a ballot question committee, incurs a liability or makes a promise to pay to support or oppose a state ballot question. What must be filed, where, and when?

Answer. Corporations and associations report such activity on a Form CPF 22 (Report of Corporate or Association Treasurer), which is filed electronically with OCPF as follows: (1) the sixtieth day prior to the election complete as of the preceding fifth day; (2) on or before the fifth day and the twentieth day of each month complete as of the preceding first and fifteenth day of the month, until the election; (3) the twentieth day of November following such election, complete as of the fifteenth day of the month; and (4) the twentieth day of January of each year, complete as of the thirty-first day of December of the prior year, until all declared liabilities of have been discharged. An individual making such expenditures (other than by making a contribution to a ballot question committee), or incurring such a liability, must also file the report if the amount of the expenditure or liability is \$250 or more.

Question 2. What must be filed if a corporation or association, e.g., a taxpayers organization, which does not raise funds specifically to influence a local ballot question, makes expenditures for that purpose?

Answer. If the question is submitted only to voters of a particular city or town, the corporation or association must file a Form CPF M22 must be filed with the local clerk or election commission: (1) on or before the eighth day before the election complete through the eighteenth day prior to the election; (2) on the thirtieth day following the election, complete through the twentieth day following the election (towns only); and (3) a year end report due by January 20 of each year, complete through December 31, if liabilities exist. If the question is submitted to voters in a regional district, the form must be filed with OCPF unless there is a district clerk, in which case, the form must be filed with the clerk.

Question 3. If a corporation or association makes a **single** expenditure to promote or oppose a ballot question does it need to continue to file on the fifth and twentieth of each month?

Answer. No. Corporations or associations that make expenditures but do not incur liabilities or make promises to pay, must file only when they actually make expenditures. If a liability exists, however, a corporation or association must continue to file until the liability is satisfied.

Question 4. Do limited liability companies (LLCs), professional corporations or “s-corporations” have to report activity if they make expenditures to influence ballot questions?

Answer. Yes. Professional corporations, LLCs, and “s-corporations” must electronically file Form CPF 22 or M22. A CPF 22 or M22 is not required for direct monetary or in-kind contributions to ballot question committees.

Question 5. Do non-profit corporations making expenditures to promote or oppose a ballot question have to file a report?

Answer. Yes. They file a Form CPF M22 or electronically file a Form CPF 22 for expenditures that are not direct monetary or in-kind contributions to ballot question committees.

Question 6. A corporation or association makes expenditures for research (e.g., polling) to determine whether an initiative petition on a particular issue would be politically acceptable to the public. The research would be used to design the initiative petition, slogans and the campaign, in general. Must such expenditures be reported?

Answer. No, if the research is not designed primarily to influence the vote. If a poll is used to encourage recipients to vote for or against an anticipated ballot question (i.e., it’s a “push poll”) expenditures associated with the research must be reported.

Question 7. A corporation or association which would like to promote an initiative petition, makes expenditures to draft the petition. Does the corporation or association have to report the expenditure?

Answer. No. Expenditures made to pay for the drafting of a ballot question before certification by the Attorney General or in the case of a local ballot question, the appropriate municipal authority (i.e., the selectmen, city council, or town meeting), which do not pay for the promotion or opposition of the question are not generally subject to the campaign finance law. See IB-90-02.

Question 8. A corporation or association which is not a ballot question committee drafts an initiative petition which, after certification by the Attorney General, is transmitted to the Legislature for consideration. The Legislature debates the petition and considers enacting it as legislation. The corporation or association and its opponents make expenditures to lobby legislators and also seeks to build grassroots support for the corporation or association’s legislative or lobbying efforts. Are the expenditures reportable under the campaign finance law?

Answer. No. Such lobbying expenditures are not made to influence the vote at an election and therefore they are not subject to the campaign finance law. The corporation or association should

contact the Secretary of the Commonwealth's Division of Public Records to ensure compliance with the lobbyist registration and disclosure requirements of M.G.L. c. 3.

Question 9. Are expenditures made by proponents of an initiative petition in connection with collecting signatures to place a question on the ballot reportable?

Answer. Yes.

Question 10. Do the disclosure obligations apply to out-of-state corporations and associations?

Answer. Yes.

Question 11. If a corporation or association which supports a ballot question **promises** to provide administrative support or other support such as monetary contributions to a ballot question committee organized to promote the question, does the corporation or association have an obligation to file anything after the making of the promises?

Answer. Yes. The corporation or association must report its "promise to pay" even if the amount of in-kind support which will eventually be provided is indefinite. The promise to pay must be reported on the next date after making the promise on which a Form CPF 22 must be filed electronically (e.g., see Question 10). The corporation or association should report a good faith estimate or, if unable to make an estimate, indicate a liability in an amount "to be determined."

Question 12. A corporation or association, on September 25, arranges for television advertising that airs during the two weeks prior to the November 7 statewide election. The corporation or association does not know exactly how much it will be charged and does not receive a bill from the media outlet until November 20. Payment is not made until December 15. What has to be reported and when?

Answer. The corporation or association must estimate the amount which will be owed and electronically file Form CPF 22s on October 5, October 20, and November 5 showing the estimate or a promise to pay in an amount "to be determined" for TV advertising. On November 20 a report must be filed showing the liability in the actual amount of the bill. If there are no other liabilities remaining, the final form should be filed on January 20, showing the expenditure.

Question 13. An association, which is a membership organization, uses its newsletter to ask its members to support a ballot question. The association does not receive any public sector funding. Does the association need to file a report?

Answer. No. Communications by a membership organization that is not a business corporation or other entity within the scope of Section 8, to its members, are not within the scope of the campaign finance law. Therefore, no report needs to be filed. A corporation or association funded by the state or one of its subdivisions, however, may not produce and distribute newsletters to promote or oppose a ballot question. See Anderson v. City of Boston, 376 Mass. 178 (1978), which states that governmental resources may not be used to promote or oppose ballot questions. (But see Question 14).

Question 14. If the membership organization described in Question 13 also solicits contributions from its members and then gives the funds received from members to a ballot question committee does the organization need to file a report?

Answer. Yes. Where a corporation or association solicits and receives contributions it becomes a "ballot question committee," and must register as such and report contributions received as well as expenditures made to support or oppose a ballot question prior to such activity.

Question 15. May a corporation or association act *as an agent* of a ballot question committee to solicit contributions and then give the funds received to the ballot question committee?

Answer. Yes. A corporation or association may solicit contributions under authority and on behalf of a ballot question committee. Contribution checks received by the corporation or association must be made payable to the ballot question committee, not the corporation or association. The corporation or association must present the original checks to the ballot question committee. In addition, although the corporation or association is not required to file a report with OCPF, it must provide the committee with a detailed account of all contributions received within three business days of receipt.

Question 16. Does a corporation or association making an expenditure to help an advocacy group lobby the legislature, town meeting or an administrative body such as a local Board of Zoning Appeals have to report the expenditure?

Answer. No. The campaign finance law requires reporting of expenditures relating to elections, not lobbying expenditures or expenditures made to influence a town agency, board or town meeting. The corporation or association and the advocacy group should contact the Secretary of the Commonwealth's Division of Public Records to ensure compliance with the lobbyist registration and disclosure requirements of M.G.L. c. 3. An expenditure which is made to influence both town meeting and a scheduled election must, however, be reported on a Form CPF 22 or M22.

Question 17. A corporation or association would like to educate voters regarding an issue which may or may not become a ballot question. Does anything have to be filed?

Answer. No. If the corporation or association distributes a flyer, however, advocating a particular vote on an anticipated ballot question, it must report the expenditures.

Question 18. If a corporation or association raises funds from members to be used to support or oppose a ballot question, may the corporation or association then make a contribution to a ballot question committee in the name of the corporation or association using those funds?

Answer. No. The contribution would be reported as made by the members, not the corporation or association. The campaign finance law requires the true name and residential address of the original donor to be disclosed on campaign finance reports. A corporation or association may not serve as a "pass through" for funds to support or oppose a question. In addition, if a corporation or association solicits or receives contributions to support or oppose a ballot question it must organize as a ballot question committee. (See Question 14). Alternatively, the corporation or association could act as an agent for a ballot question committee, if contributions received by the corporation or association or are

made directly payable to the committee. (See Question 15). If acting as an agent of a ballot question committee, the corporation or association would be required to provide the ballot question committee with a detailed account of all contributions received within three business days.

Question 19. Are services provided by volunteers who help with the gathering of signatures reportable?

Answer. No. The campaign finance law excludes "personal services" and incidental payments by those rendering such services from the definition of "contributions" which would have to be reported. Therefore, persons who gather signatures (or watch polls, write press releases or perform other services) on their own time are not making reportable contributions to a committee. If a corporation or other entity reimburses the person providing such services, however, the corporation or association has made a contribution and if a committee reimburses a volunteer the committee has made a reportable expenditure.

Question 20. A corporation pays for an advertisement supporting or opposing a ballot question. Does the advertisement need to include a disclaimer?

Answer. Yes, if anyone contributed more than \$5,000 during the 12-month period before the publication of the advertisement, a disclaimer is required to state the top five donors contributing in excess of \$5,000. The disclaimer is required on paid print advertising, paid television advertising, direct mail, electronic ads sent in video format, and billboards.