



OCPF Reports

Published quarterly by the Office of Campaign and Political Finance

Commonwealth of Massachusetts

Volume 6, Number 2

Fall 2001

From the Director

E-File is on its way

Much attention has been focused on the future of the Clean Elections Law, which was passed by voters in the 1998 election. While we await word on whether an appropriation for the program will be made, I'd like to draw your attention to another component of the ballot question: electronic filing of campaign finance reports.

This feature, which will take effect in 2002, will require virtually all statewide, Governor's Council and legislative candidates to file their reports electronically with OCPF. The requirement will also apply to PACs that raise or spend over \$10,000 and state ballot question committees that raise or spend over \$25,000 annually.

To accommodate this requirement, OCPF has developed software for all filers and is currently testing the product. We will be demonstrating the software in late September to banks that file reports with us and we will be requesting that some legislative and statewide committees volunteer to file their reports electronically at the end of the year.

Though both were enacted at the same time, the electronic filing requirement is distinct from the public financing provisions of the Clean Elections Law. Regardless of whether the Clean Elections program is funded, E-file will still get under way starting next year. Eventually, all committees that file with the office will be required to file their reports electronically.

OCPF is mandated to post the reports on the Internet within three

Continued on Page 2

New regulations set for Clean Elections program

OCPF has released new regulations designed to provide guidance to candidates during the Clean Elections program.

The regulations, 970 CMR 5.00, were promulgated on an emergency basis in July. OCPF held the required public hearing on Sept. 5 and plans to promulgate a permanent version on Oct. 12.

The regulations cover various facets of the Clean Elections program, M.G.L. c. 55A, which provides public funds to candidates to state office who agree to observe statutory contribution and spending limits.

Several candidates have filed notice with OCPF that they plan to participate in the program. As of Aug. 1, participants who are seeking statewide office were able to start collecting qualifying contributions of \$5 to \$100, which are necessary to be eligible for public funds.

The Clean Elections regulations were

developed after several months of study by OCPF staff and input from candidates, groups and the public. Any additional regulations that are promulgated will be accompanied by a public hearing.

Copies of the regulations are available from OCPF or the office's web site, at www.state.ma.us/ocpf.

Included in the regulations are provisions that:

- ◆ Define the election cycle for candidates running for offices covered by chapter 55A who were recently on the ballot for offices not covered by the law, or were recently on the ballot in a legislative special election. 970 CMR 5.04(2) In the absence of such an exception, the 2002 election cycle started on March 31, 2001.

- ◆ State that contributions received during an election cycle in excess of the

Continued on Page 4

Reporting differs slightly for legislative special elections

Recent resignations have led to the scheduling of special elections to fill two vacant legislative seats in October.

Special elections will be held on Oct. 23 to select successors to Reps. John Stefanini (7th Middlesex District) and David Tuttle (5th Worcester District).

As of this writing, three additional special elections are expected to be scheduled, due to resignations of Sen. James Jajuga and Reps. William Nagle and Brian Cresta.

While campaign reports must be submitted by candidates in a special election, the filing schedule varies slightly.

Reports are due with OCPF eight days before both the primary and general election, as in regular legislative elections.

The difference is in the third and final report, which for a regular November election is due on Jan. 20. In a special election, however, the third report is due 30 days after the election.

The filing schedule for special elections is available from OCPF after an election is called in a district. Campaign finance reporting dates and images of reports filed by candidates are available at OCPF's web site at www.state.ma.us/ocpf.

Advisories/Guidance

OCPF issues written advisory opinions on prospective activities. Each opinion summarized below also notes the OCPF file number and the requesting party. Copies of any advisory opinion are available from OCPF and online at www.state.ma.us/ocpf. The following advisory opinions were issued from May 16 through Aug. 15, 2001:

■01-08: Section 19 does not require the committee of a Cambridge city councillor, which was formed before this provision applied to the city, to enter the depository system unless the candidate is currently seeking to be nominated or elected to public office, or will do so in the future. The committee may continue to operate with the limited purpose of paying off existing liabilities, continuing to report to the city clerk, until all debts are satisfied. A depository account must be opened immediately if the councillor takes the necessary steps to get on the ballot in the fall, or otherwise accepts a contribution or makes expenditure to further her nomination or election to public office. (Born Committee).

■01-09: Subject to the Clean Elections Law, a non-profit corporation whose general treasury does not contain funds derived from business or professional corporations may make political contributions to legislative or constitutional candidates. This opinion discusses applicability of IB-88-01 to such an entity. (TEAM).

■01-10: A candidate who leaves elected office does not have to dissolve his campaign committee as long as he believes that he will run for public office in the future. Where this is the case, the individual remains a "candidate" for the purpose of the campaign finance law and his committee may spend and raise money in a manner otherwise consistent with the campaign finance law. (Nagle Committee).

■01-11: A committee for a statewide candidate may rent a bus to transport individuals to the state party convention to hold signs and greet people on behalf of the candidate. (Galvin Committee).

■01-12: Where a town leases office space to commercial tenants in a public building, section 14 does not prohibit the receipt of political contributions in the private commercial offices. (Barry).

■01-13: The prohibitions of Section 14

do not apply to a fundraising event that takes place on the grounds of a municipal golf course even though the clubhouse is "occupied for municipal purposes." This opinion overrules AO-91-19 in part. (City of Lynn).

■01-14: Melrose Memorial Hall, a city-owned building used primarily to accommodate gatherings of private parties, may be used for fundraising events, even though the public employee responsible for overseeing the hall has an office in the building. (Connolly Committee).

■01-15: A town party committee chartered to support local issues and candidates may, from its general treasury, make unlimited in-kind contributions to candidates or any ballot question committees formed in connection with a town charter revision election. The Committee may also raise money to make further in-kind contributions to candidates and/or ballot question committees involved with the election as long as it does not raise money specifically to influence a ballot question, or otherwise solicit or receive contributions "earmarked" for a particular candidate or ballot question committee. (Scituate Republican Town Committee).

■01-16: A Clean Elections participant may raise money, before filing a declaration of intent, over the \$100 limit on allowable contributions, if before filing a declaration of intent the candidate returns or refunds all amounts received over \$100. Funds raised in amounts exceeding \$100 must, however, be deposited into a "prior year election account." Once the amount exceeding \$100 is returned or refunded, the remaining amount may be transferred to the candidate's segregated participant election account. The Clean Elections Law does not, however, provide an opportunity for candidates who decide to participate and who become certified candidates to later opt out of the system before the end of the election cycle, even if the system is not fully funded. (O'Brien Committee).

■01-17: A contribution to a Clean Elections participant should be considered to be given "in exchange" for something of value if the contribution would not have been made "but for" the providing of the thing of value to the contributor. To determine whether food and entertainment constitutes "something of value" provided

From the Director

From Page 1

days of receipt; our goal is to make them available the day of receipt. It is important to note that the law requires committees to file paper copies of their reports as well, until such time as we are certain that the system works appropriately.

If you are a statewide, Governor's Council or legislative candidate and would like to volunteer to file your year-end report electronically, please contact us at (617) 727-8352 or (800) 462-OCPF.

* * *

Election season in cities (and some towns) has arrived and there are many competitive races across the commonwealth this fall. To assist candidates, OCPF has conducted seminars in about 20 communities this summer. I urge all local candidates who have any questions about their campaign finance activity to call OCPF or ask their local election official for clarification. Candidates should be aware that although they do not file with OCPF, this office performs random reviews of campaign reports at the local level.

* * *

Like all of you, we here at OCPF were saddened by the recent events in New York City, Washington and Pennsylvania. Our thoughts and prayers go out to those touched by the tragedies.

**Mike Sullivan
Director**

in exchange for contributions, it is helpful to apply the standard used in determining whether such food and entertainment would be considered "ordinary hospitality" and therefore not a "contribution" as that term is defined in section 1 of chapter 55. (O'Brien Committee).

■01-18: Donations made to a non-profit corporation created to fund the councilor's district office may be considered "contributions," and as such, they would be subject to the requirements and limitations of the campaign finance law. (Simmons).

Recent Cases and Rulings

OCPF audits all campaign finance reports and reviews all complaints alleging violations of the campaign finance law. These audits and reviews may result in enforcement actions or rulings such as public resolution letters, disposition agreements or referral to the Office of the Attorney General for further action.

A public resolution letter may be issued in instances where the office found "no reason to believe" a violation occurred; where "no further action" or investigation is warranted; or where a subject did not comply with the law but, in OCPF's view, the case may be settled in an informal fashion with an educational letter or a requirement that some corrective action be taken. It is important to note that a public resolution letter does not necessarily imply any wrongdoing on the part of a subject and does not require agreement by a subject.

A disposition agreement is a voluntary written agreement entered into between the subject of a review and OCPF, in which the subject agrees to take certain specific actions.

OCPF does not comment on any matter under review, nor does the office confirm or deny that it has received a specific complaint. The identity of any complainant is kept confidential. Public resolution letters and disposition agreements are matters of public record once cases are concluded.

Disposition Agreements

■ James R. Norton, James Norton Sr. and Maureen Norton, Sandwich (5/24/01).

James R. Norton, a candidate for state Senate in 2000, and his parents, James Sr. and Maureen, entered into an agreement with OCPF for violations of the campaign finance law in 1999 and 2000. The agreement states that the James R. Norton's committee received excess contributions from Mr. and Mrs. Norton totaling \$18,549.07 over the two-year period, consisting of both loans and direct payments of campaign expenses. Mr. and Mrs. Norton agreed to make a payment of \$2,500 to the Commonwealth in the nature of a civil forfeiture. OCPF agreed not to refer the matter to the Attorney General.

According to the agreement, Mr. and Mrs. Norton used their joint checking account to make campaign expenditures on behalf of the Committee totaling \$17,857.36. These expenditures were disclosed on the Committee's campaign finance reports. Mr. and Mrs. Norton also deposited \$1,941.73 directly into the Committee's account. The total amount of loans provided by the Candidate's parents to the Candidate, and in turn reported as

loans from the candidate, was \$19,799.09, according to materials provided by the Committee after OCPF began its review.

OCPF concluded that the payments by Mr. and Mrs. Norton were contributions to the Committee. The Nortons contended that they were loans made directly to their son, who loaned the money to his Committee. The statutory limit on contributions, including loans, to a candidate from any individual except the candidate, including a parent, is \$500 per calendar year.

■ Rep. Paul Kujawski, Webster (8/2/01)

Rep. Kujawski, OCPF, and the Attorney General entered into an agreement for violations of the campaign finance law concerning reimbursements and record keeping in 1997-1999. After a review by its audit department, OCPF concluded that Kujawski and the Committee did not keep proper records of reimbursements made to him in the amount of \$17,128 and \$1,307 in payments by the Committee for a credit card in 1997 and 1998. In addition, OCPF found evidence of failure to maintain proper records for \$1,318 in reimbursements to Kujawski in 1999.

Kujawski agreed to make a payment totaling \$10,000 out of personal funds to be paid in the following manner: \$3,000 paid to the Commonwealth within 30 days and \$7,000 paid as a reimbursement to the Committee in equal annual installments by Dec. 31, 2003. The agreement also stipulates that in the future (1) the Committee will not make any reimbursements to the Candidate; (2) all expenditures on behalf of the Committee by Rep. Kujawski will be made with the Committee's credit card; and (3) all Committee expenditures must be made by check or using the Committee's credit card. Finally, Rep. Kujawski and the Committee agreed to appoint a new treasurer; retain an accountant to review and verify all reports for the next five years; and attach bank statements to reports for the next five years.

The lack of adequate documentation for the reimbursements led OCPF to question whether the candidate and the committee had complied with M.G.L. c.55, s.6, which states that campaign funds may not be used "primarily for the candidate's or any other person's personal use." Rep. Kujawski and the Committee denied any such violation.

Public Resolution Letters

■ **01-11: Rep. Scott P. Brown, Wrentham.** *No further action (solicitation or receipt of political contributions in a building occupied for government purposes); 5/23/01.* Candidate who sponsored a road race donated registration fees collected by his committee in the lobby of a state hospital building to charity.

■ **01-02: Donald F. Collamore, Holyoke.** *No further action (inaccurate reporting); 6/4/01.* A local candidate amended his campaign finance report to correct minor errors.

■ **01-19: Georgetown PTA.** *No reason to believe (failure of private group to report expenditures made to influence ballot question); 6/11/01.* PTA disclosed its ballot question activity in accordance with M.G.L. c. 55, s. 22. However the group, which had promptly reimbursed the school department for the use of certain resources, was cautioned against using public resources in the future.

■ **01-24: John Hanlon, Everett.** *No further action (use of government resources for political purpose); 6/15/01.* Congratulatory letters sent by city clerk running for mayor to local students who won a science award might be viewed as an attempt to further his campaign.

■ **01-21: Treasurer Shannon P. O'Brien, Boston.** *No reason to believe (receipt of corporate contribution); 6/20/01.*

Though it was funded by a corporation, the treasurer's public service announcement discussing the commonwealth's supplemental retirement plan is within the scope of her official responsibilities.

■ **01-20: H. Alan Hartnett and Brian Cranney, Danvers.** *No further action (failure to disclose an independent expenditure); 6/22/01.* A citizens group that does not solicit, receive or expend money for political purposes is not a "political committee" under M.G.L. c. 55 and independent expenditures made by group members are not attributed to the group. Hartnett and Cranney, who each paid for political advertisements to influence a se-

Continued on Page 4



Visit OCPF Online at
www.state.ma.us/OCPF

Regulations: Clean Elections rules are promulgated

From Page 1

limits established by the Clean Elections Law must be refunded before a candidate can file a declaration of intent to become a participant. 970 CMR 5.07(1)-(6).

◆ Clarify expenditures that may be made during an election cycle from a prior year election account, such as debts incurred prior to the start of the election cycle, bank service charges, and taxes on interest from such account, which will not count against a candidate's expenditure limit. 970 CMR 5.06 & 5.09.

◆ Define the forms that must be used by contributors when making qualifying contributions and by candidates when submitting lists of such contributions, the

role of a local Board of Registrars in certifying such contributions, and what must be included in a participant's application for certification, submitted to OCPF. 970 CMR 5.12 and 5.13.

◆ State that some transactions, including contributions refunded by the committee, and personal payments by the candidate for charitable or religious purposes or for constituent and legislative services, do not count towards the expenditure limit. 970 CMR 5.21(2).

◆ State that expenditures made and liabilities incurred for goods or services purchased during the election cycle are considered made or incurred during the period in which the goods or services are

received, except when goods expressly advocate a particular candidacy in a later period. 970 CMR 5.21(3).

◆ Specify that a candidate may carry assets forward to a new candidacy of that candidate. 970 CMR 5.22.

Candidates or anyone else with questions about the regulations are advised to contact OCPF.

Note: Actual disbursements to candidates depend on what funds are available in the Clean Elections Fund. At this writing a House and Senate conference committee is reviewing the state budget and a possible appropriation for the fund. For further information, contact OCPF or go to www.state.ma.us/ocpf.

Recent Cases

From Page 3

lectman race, filed independent expenditure reports upon notification by OCPF of the requirement to do so.

■01-27: **Joseph Pascucci, Middleton.** *Did not comply (failure to disclose campaign finance activity): 7/17/01.* A selectman candidate filed his campaign finance reports late and failed to disclose a known liability on the pre-election report. A candidate should disclose any known liability on his report, even if the exact amount of the debt is undetermined at the time of reporting.

■01-36: **Wareham Middle School.** *No reason to believe (use of public resources*

for political purpose); 7/23/01. Two notices regarding a new school project that were sent home with students were consistent with the campaign finance law.

01-40: **League of Women Voters of Winchester.** *No reason to believe (failure to disclose campaign finance activity): 7/25/01.* A membership organization that regularly distributed its monthly bulletins to local public officials and town meeting members at the town officials' request did not have to report the cost of distributing issues containing campaign advocacy, under the membership communications exception to the definitions of "contribution" and "expenditure."

01-22: **Winchester Taxpayers Association.** *Did not comply (failure to disclose*

campaign finance activity); 7/24/01. Local association reported expenditures to oppose two local ballot questions after being informed of the requirement.

01-26: **Walter Timilty, Milton.** *Did not comply (excess contribution and failure to disclose campaign finance activity); 8/16/01.* Candidate's committee received funds from a partnership without identifying which members were making the contributions; failed to identify the purposes of certain expenditures; and made an excess contribution to another candidate's committee. After review, the committee complied with OCPF's request for disclosure and the candidate reimbursed the committee for the excess campaign contribution.

Office of Campaign and Political Finance
John W. McCormack Building
One Ashburton Place
Room 411
Boston, MA 02108