



OCPF Reports

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From the Director

A new look on the Web

As you can read elsewhere in this newsletter, the Clean Elections program remains in limbo. While we wait for a final decision on this matter, we at OCPF continue to advise candidates about the law and its potential effect on their 2002 candidacies. In the meantime, we have updated our website and received our first electronic filing of campaign disclosure reports.

Our website has a new look and a new address. The revamping of the state's website has led to a change in our web address to one that is a little easier to remember: www.mass.gov/ocpf. We've reorganized the site for easier navigation, with tabs to take visitors directly to specific areas, rather than requiring them to scroll down one large homepage. We're constantly striving to make the site more user-friendly and have received positive feedback from candidates, committees and the public.

Probably our most popular online area is "Campaign Finance Reports and Data," containing a substantial number of the disclosure reports filed with the office, including recent filings by legislative incumbents, candidates in recent legislative special elections and candidates for statewide office. We are continuing to post images of bank reports for statewide candidates in 2002, as we work out our initial foray into electronic filing.

Speaking of electronic filing, our implementation of the three new

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Clean Elections funding remains in doubt

The Clean Elections program has been upheld in a ruling by the state's highest court, but a subsequent decision has left the funding of the program still in doubt.

The Supreme Judicial Court ruled on Jan. 25 that the state Constitution requires the Legislature to either fund or repeal the Clean Elections Law, which was enacted by the voters at the 1998 state election. The court found in favor of a group of plaintiffs, including advocacy groups, citizens and candidates who had sued OCPF and the Secretary of the Commonwealth to force funding of the program.

The Clean Elections program provides public funds to candidates who observe contribution and spending limits in campaigns for the six statewide offices, Governor's Council, Senate and House. The 2002 election cycle for the program started on March 31, 2001, but it has been unclear whether the system would receive

funding. The Clean Elections Fund contains about \$23 million, but the money cannot be disbursed without a further appropriation, which has not occurred.

The Jan. 25 ruling led to the first payment of funds to a Clean Elections participant. Warren Tolman, a candidate for governor who was the first candidate to file a declaration of intent to participate in the program a year ago, received a check for \$582,094, a partial payment on the \$811,050 for which he is eligible after being certified by OCPF.

The payment to Tolman is considered Clean Elections funds, although it did not come from that account. After the full SJC decision, Justice Martha Sosman ruled that while the court expected the Legislature to provide funds, the court could not force an appropriation from the Clean Elections

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Regulations update includes credit card contributions

OCPF recently made changes to various sections of its campaign finance regulations, covering such areas as returned contributions, recordkeeping, and credit card contributions.

The following changes were made to 970 CMR 1.00 and 2.00, effective March 15:

- Significant changes were made to the section governing the acceptance of credit card contributions, 970 CMR 1.09, in order to better conform to the customary business practices of the credit card industry and to simplify the reporting requirements for depository candidates. One major change is that depository

committees receiving contributions by credit card must now file CPF Form D106, containing information regarding the deposits of credit card contributions, directly with OCPF, instead of with their depository banks. Candidates for statewide office and Governor's Council are required to file these reports both electronically and in paper form.

- Language was added to 970 CMR 1.04(7) to clarify that contributions returned by committees in their original form do not need to be reported. Other

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Legislative candidate spending in 2000 topped 1998 totals

Total fundraising and spending by candidates for the House and Senate in 2000 exceeded their 1998 levels despite a drop in candidates, according to a study released recently by the Office of Campaign and Political Finance.

The 2000 figures also showed increases in the fundraising and spending averages in each chamber.

The study covered activity by the 330 candidates for the General Court: 265 in the House and 65 in the Senate. It is the sixth such study OCPF has issued since 1990.

Among the findings of the study:

?Total raised and spent: Total receipts and expenditures in 2000 showed gains from two years before, with a large increase in Senate activity overcoming a drop in House figures from 1998. Senate and House candidates combined raised a total of \$12,223,071, which was an increase of 16 percent over 1998. The same candidates reported spending \$11,013,392, an increase of 3 percent over 1998.

The 2000 fundraising total is the highest ever recorded in an OCPF study, eclipsing the total of \$12,016,643 posted in 1992. The 2000 spending figure is more than \$1 million less than the record of \$12,336,446, also posted in 1992.

In the individual chambers, however, the totals went in opposite directions. Total Senate receipts rose 44 percent from 1998 and total spending rose 15 percent. Total receipts

by House candidates in 2000 showed a drop of less than 1 percent, while total expenditures dropped about 3 percent from 1998.

?Average receipts and expenditures for candidates in both the Senate and the House rose to all-time highs in 2000. The largest increases were in the Senate, where average receipts were \$84,691, up 58 percent from 1998, and expenditures were \$67,227, an increase of 25 percent. In the House, the average receipts were \$25,351, an increase of 11 percent from 1998, and expenditures were \$25,070, a rise of 8 percent.

?Top Spender: In 2000, the candidate spending the most money won 72 of the 89 contested races, for a success rate of 81 percent. That was decrease of seven percentage points from 1998 and two percentage points higher than the same figure in 1996.

?Types of candidates: As in past years, Democrats and incumbents showed significantly more campaign finance activity than their opponents. Candidates who won their races in 2000 usually started and finished the year with more money than their opponents.

?The lists of the top ten most active individual candidates in terms of fundraising and spending were made up mostly of incumbents and candidates for open seats. Of the types of races, those for open seats usually saw the greatest amount of activity by an individual candidate.

The report is available on the OCPF web site at www.mass.gov/ocpf.

Funding for Clean Elections unclear despite SJC decision

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Fund to candidates. In the absence of such an appropriation, Sosman ordered the Commonwealth to disburse funds from the account that provides awards from lawsuits filed against the state. Tolman's payment came from that account, but the fund was depleted by the payment.

While the uncertainty over the Clean Elections Law continues, OCPF continues to administer the law that is on the books. As of the end of March, the office had received filings from 36 candidates declaring their intention to participate in Clean Elec-

tions; five of them have withdrawn their notices since that initial filing. In addition to Tolman, two candidates had been certified as eligible for public funds: James Eldridge and David Westerling, both candidates for the 37th Middlesex House seat.

To become eligible for Clean Elections funds, candidates must raise the number of qualifying contributions required by the law for each office. The deadline for submitting these contributions and seeking certification from OCPF is the last day nomination papers for each particular office are due with the Secretary of the

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software programs has proven to be very successful thus far. More than 20 incumbent legislators filed their 2001 year end reports electronically on a voluntary basis, in addition to their required paper filing. Beginning in January 2002, all statewide and governor's council candidates were required to file their deposit (receipt) information electronically with OCPF, as well as on paper with their bank. The banks that work with statewide and governor's council candidates are also required to file monthly reports of such candidates' expenditures, as well as a summary of all activity in the account for the month. So far, our experience with electronic filing by these entities has been a positive one.

As reports are filed electronically, they are posted on our web site. Just click on the "Electronic Filing" tab on the web site to access the database. We have noticed a huge increase in the number of visits to this portion of our web site and anticipate that those numbers will grow in the future as legislative candidates file electronically later this year. The office will be holding electronic filing workshops this summer to introduce candidates and their committees to this new process. As always, we welcome your questions and any suggestions you may have.

Mike Sullivan
Director

Commonwealth's Elections Division.

Explainers detailing the effect of the Clean Elections Law on participants and those who choose not to take part are available on OCPF's web site, www.mass.gov/ocpf. Other Clean Elections information, such as various contribution and spending limits and the text of the law, is also available.

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. 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.

Public Resolution Letters

01-31: Neighbor to Neighbor PAC, Los Angeles. Did Not Comply (failure to report independent expenditure); 11/20/01.

Federal PAC failed to comply with M.G.L. c. 55, s. 18A by not reporting an expenditure it made expressly advocating the defeat of a candidate for state representative in Worcester.

01-48: John Hanlon, Everett. No Reason to Believe (use of public resources for a political purpose); 12/19/01. City Clerk running for mayor did not improperly use public resources for a political purpose by conducting official business outside of his office during the workday or by attending political events before or after work or on his lunch hour.

01-57: Eugene F. Decareau, Saugus, and Prince Restaurant, Saugus. No Further Action (political contribution by business corporation); 12/20/01. An arrangement between a restaurant and a candidate, which allowed the candidate to pay for pizzas for the candidate's fundraising event at an undetermined time in the future, raised substantial concerns under the section of the campaign finance law that prohibits political contributions

from business corporations.

01-57: Eugene F. Decareau, Saugus. Did Not Comply (political contribution by business corporation); 12/20/01. In the Prince Restaurant case cited above, candidate did not comply with M.G.L. c. 55, s. 18 by initially reporting money owed to business corporation as an in-kind contribution rather than a liability. In addition, the manner in which the goods were provided by the corporation also raised concerns under s. 8 of the campaign finance law.

01-51: Rep. Michael Kane, Mayor Michael J. Sullivan, and Ross Insurance Agency, Holyoke. Did Not Comply (political contribution by business corporation); 12/27/01. Candidates used a phone bank at a business corporation and did not initially report the activity or make a timely payment to the corporation for such use.

01-56: Springfield Library and Museum Association. No Reason to Believe (use of public resources for a political purpose); 12/27/01. A private association that receives public funds to operate city libraries did not use public funds to make ballot question expenditures. The association used private money from a segregated account to make such expenditures and filed disclosure reports in accordance with M.G.L. c. 55, s. 22. In addition, library employees did not campaign against the ballot question during working hours.

01-53: Mayor Stanley Usovich, Jr., Salem. Did Not Comply (excess contributions); 1/4/02. Candidate's committee returned three contributions from individuals that exceeded the annual \$500 limit.

01-58: Roseann T. Bongiovanni, Chelsea. No Further Action (misuse of public resources for a political purpose); 1/9/02. An organization that receives state or local funds may not use the funds to provide services to a candidate's committee unless the organization is reimbursed for such use.

01-54: Bob Stanton, Patrick O'Brien and Michael O'Halloran, Waltham. No Reason to Believe (disclosure of campaign finance activity); 1/10/02. Local candidates disclosed expenditures to vendors, hired to prepare and distribute campaign material, on their campaign finance report.

Advisory Opinions

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.mass.gov/ocpf.

01-31: The fact that the members of a bargaining unit are also union members would not preclude the bargaining unit from engaging in political activity pursuant to IB-88-01 independent of the union if the bargaining unit is an otherwise autonomous entity with a segregated account. (Mass. Nurses Association).

01-32: A corporation may pay a stipend to a former employee who "externs" for a candidate's political committee. The stipend is not a payment made to promote the candidate because it is made to enhance the corporation's ability to retain, in the long term, promising employees. In addition, the program provides employees with an opportunity to expand their skills and experience and thereby to enhance their value if they subsequently return to the corporation. (O'Brien Committee).

02-01: A probation officer who is also a candidate for the state legislature may attend a fundraising event and speak at the event, but may not solicit or receive contributions. Such contributions should not be solicited or received from an attorney who represented a defendant in a matter that subsequently came to involve the probation officer, even if the probation officer's involvement with the defendant was limited and he did not otherwise have any contact with the attorney. (Graves).

02-02: An appointed City Solicitor who is also a candidate may attend fundraising event and speak at the event, but may not solicit or receive contributions. His wife or other family member may serve as his treasurer and may solicit contributions. His political committee may not solicit or receive contributions from persons, entities or attorneys representing such persons or entities, who have or had a matter involving the City Solicitor's office during the period in which the candidate served as City Solicitor. (Keenan).

02-03: The campaign finance law does not prohibit a public official from partici-

Advisories/Guidance

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pating in a cable television broadcast regarding the merits of a ballot question, and even endorsing a ballot question, if the subject of the ballot question is within the scope of the official's area of responsibility and is not part of a campaign event. (Boucher).

☞02-04: Because of the involvement of municipal employees in the process of placing announcements on a municipal cable service called the Community Bulletin Board, the posting of announcements for political fundraising would not be consistent with the campaign finance law. (Turenne).

☞02-05: A local ballot question committee may make expenditures to support a town meeting warrant article to fully fund the building project it was organized to promote. The same committee may not, however, spend money to support a school budget question that was not contemplated at the time the committee formed. (Campion).

☞02-06: There is no basis in the existing law to allow a depository candidate or committee to make expenditures using a debit card, which amounts to an electronic fund transfer, unless the expenditures are for payroll or media services. Expenditures by depository committees that exceed \$50 must be made by depository check or by committee credit card. (Holden Committee).

☞02-07: This opinion discusses the application of M.G.L. c. 55, s. 13,

fundraising restrictions on public employees, to such employees offered reduction in workforce incentives. A person resigning their position would not remain subject to s. 13 after leaving employment, even if the Commonwealth agrees to subsidize the worker's health benefits for a period of time after the separation. The provision would continue to apply, however, to public employees that reduce their weekly hours, agree to take intermittent time off without pay, and who take an unpaid leaves of absence with paid health benefits. (Murray).

☞02-08: Candidates running for office in special elections taking place before the November 2002 general election may not participate in the Clean Elections program. (Kocot).

Interpretive Bulletins and Memoranda

☞M-97-05, "Indexing of Certain Contribution Amounts." The annual contribution limit from individuals to people's committees and the threshold amount to trigger bundling restrictions on regulated intermediaries were, as required every two years, indexed for inflation and raised to \$123. That figure will remain in effect for 2002 and 2003.

☞M-89-02, "Information on Obtaining a Federal ID Number and Filing Tax Returns." Contact information for the IRS was updated.

Regulations

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changes were made to section 1.04, as well as 970 CMR 2.16 (expenditures for federal/state allocable expenses), to conform with the 1998 change in the law that did away with party transfer accounts and precluded state party committees from accepting funds not regarded as contributions for administrative, overhead or party building activities.

•A new section, 970 CMR 1.10, addresses candidates' and treasurers' recordkeeping responsibilities. Among other things, this provision sets forth in detail the types of records that must be preserved for six years after an election.

•The regulations governing political expenditures, at 970 CMR 2.05(4)(b)(5) and 970 CMR 2.06(6)(b)(2), were amended to allow political committees to pay for delegate to travel to state party conventions. (Payments by candidates' committees for most delegates' room and board and delegate fees are still prohibited.)

•The regulation concerning a waiver of a penalty imposed for a late-filed report was amended to require a candidate or treasurer requesting a hearing to attend the hearing.

The revised regulations are available from OCPF and are posted on the office's web site at www.state.ma.us/ocpf/970cmr.pdf.

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