



OCPF Reports

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From the Director

No down time

"Now that the election is over, what does OCPF do now?" That question is posed to me occasionally. It's a good question and one that deserves an answer. Let's take a look at what's going on these days in the four areas of OCPF's operation: Audit, Legal, Public Information and MIS.

The Audit division reviews all reports filed throughout the election season, both by candidates and other political committees. We recently started our annual PAC cross check – comparing contributions that PACs disclose with the reports filed by candidates. We've also started our comprehensive audits of those candidates who ran statewide, which entail a review of all campaign records. We are also conducting reviews of the three reports filed by legislative candidates for 2002, as well as those filed by candidates involved in Clean Elections. Banks also continue to file reports with us on a monthly basis for activity concerning candidates for statewide or county office, the Governor's Council, or mayor or councilor-at-large in Boston, Cambridge, Lowell, Springfield and Worcester.

There's much more going on in Audit, but that provides a snapshot of an auditor's workday. They, as well as everyone in the office, also respond to daily phone calls from the public.

Let's look at the Legal division. Many complaints are filed with our office, especially during the election season. Our legal staff works to resolve these cases as expeditiously as possible. That includes a large amount of telephone work, some interviews with candidates and witnesses, and some

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Two OCPF bills are filed for new session

Two bills sponsored by OCPF have been filed for the new legislative session, which started in January.

One bill is a refile of a measure that failed to gain approval in recent sessions. The other includes a few features, including a clarification of the limit on contributions from members of a candidate's family and a provision making it easier for local party committees to make contributions.

The bills were referred to the Joint Committee on Election laws at the start of the session. A hearing had not been scheduled as this edition of *OCPF Reports* went to press, but is expected to be held in April.

The first bill, **Senate 349**, concerns the use of public resources to influence voters and would allow distribution of voters' guides concerning local ballot questions, such as Proposition 2½ overrides.

The Supreme Judicial Court ruled in *Anderson v. City of Boston* in 1978 that public resources may not be used for political campaign purposes. Communities are barred from distributing at public expense any information to voters concerning a ballot question, such as a Proposition 2½ override or debt exclusion.

Senate 349, which has previously received the support of the Massachusetts city and town clerks' associations, would allow communities to distribute voter guides

containing a neutral description of a question, its impact and brief pro- and con-statements. The measure is a local option bill, meaning a community may choose whether to implement such a system.

The bill also codifies the restrictions stated by the court in *Anderson*.

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Clean Elections
limits are
adjusted for 2004
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Spending on state ballot questions reached \$2.3 million in 2002

Approximately \$2.3 million was spent to promote the passage or defeat of the three questions put before voters on the November 2002 statewide ballot, according to a recent OCPF study.

The study showed a total of \$2,099,366 raised and \$2,332,881 spent on the questions, which concerned the abolition of the state income tax, changes in bilingual education and public funding of political campaigns.

Of the total spending, \$2,070,791 was spent by six ballot question committees

registered with OCPF and \$262,090 was spent independently by other organizations, such as corporations, unions and associations.

The total spending in 2002 did not exceed the record aggregate of \$16.1 million that was set in 1992, when four questions were on the ballot. In addition, none of the committees set an individual record in 2002, nor did those organized for any single question set a single question record.

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Clean Elections: Limits adjusted for inflation for the 2004 cycle

OCPF recently adjusted several aggregate contribution and spending limits for participants in the Clean Elections program for the 2004 state election.

The maximum amounts candidates may raise and spend in an election cycle were raised to reflect inflation.

M.G.L. Chapter 55A, Section 13 requires OCPF to adjust the limits to reflect "the percentage increase in the consumer price index from December of 1998 to the most recent December." The indexing is to take place by Feb. 1 of the year preceding an election year.

The limits for the three offices on the 2004 ballot that fall under the program -- Senate, House and Governor's Council -- were therefore increased by about 6.8 per-

cent, which was the rise in the consumer price index for the Boston area.

The Senate spending limit rose from \$97,400 to \$104,000, while the House limit rose from \$32,400 to \$34,600. The Governor's Council limit increased from \$43,300 to \$46,300.

A breakdown of the new limits for the primary and general election portions of the election cycle is available in the Clean Elections section of the OCPF web site, www.mass.gov/ocpf.

In other Clean Elections news, Chapter 2 of the Acts of 2003, which was signed by Gov. Romney in February, included a provision suspending the application of the law in the upcoming special House election in the 5th Norfolk District.

Legislation: Two OCPF bills filed

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House 2588 concerns such issues as liabilities and contributions by local party committees. The measure would allow local party committees that do not have checking accounts to still make political contributions of over \$50 in a calendar year. The law now prohibits contributions to candidates or committees that exceed that amount unless they are by check or credit card.

The bill allows such contributions by a negotiable instrument such as a certified check, bank check, or money order.

The bill also adds the definition of "liability" to the campaign finance law and

clarifies the definition of "contribution" to specifically include donations from relatives of a candidate. Such persons may not contribute more than \$500 per year to a candidate, a limit that would not be changed by the legislation.

A few dozen additional bills relating to campaign finance were filed by legislators and were also awaiting hearings in the spring.

The bills concern a wide range of topics, from the expansion of disclosure of ballot question contributions to the amendment or repeal of the Clean Elections Law, the public financing program for candidates for state office.

Campaign finance kits are now online

OCPF's web site now offers "one-stop shopping" for candidates and committees looking for the basics for completing and filing their campaign finance reports.

OCPF Online, at www.mass.gov/ocpf, now offers campaign finance kits containing forms, guides and other material such as instructions for completing forms and an order form for OCPF's software.

Previously, those looking for this material would have had to visit several sections on the web site.

Kits are available for each type of filer, including candidates for statewide, county, legislative or municipal office, as well as political action committees, people's committees, ballot question committees and party committees.

To access the kits, click on the "Campaign Finance Kits" tab on the web site.

Another new feature on the web site is a single link for information on the use of public resources in local ballot question elections.

From the Director

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fieldwork. In addition, we continue to provide advice on the campaign finance law through our advisory opinions and interpretive bulletins. At this time of the year, we hear quite often from towns that are holding their annual elections. Many of them have ballot questions coming up and look to us for guidance as to officials' actions concerning supporting or opposing a question.

Our Public Information division remains busy responding to print and broadcast media inquiries from across the state. In the evening, we are often out holding seminars in communities. These seminars may be geared toward candidates and their disclosure requirements or explaining ballot question disclosure to local advocates or school committees. In addition, the public information division (really, Denis Kennedy) is responsible for ensuring that our publications and website are up to date with current advisory opinions, forms, and other information.

Our MIS Director, Al Grimes, is constantly expanding our computer capability. Whether he's improving one of our three software reporting packages, fine tuning our electronic filing capability or expanding applications for OCPF's in-house intranet, there's very little down time in this area. Al also continues to work with committees to ensure that their own computer applications are compatible with OCPF's software requirements.

That's a quick snapshot of OCPF's operations in the months following a statewide election. As 2003 marches on (and the snow finally melts), we'll see an increase in activity at the local level as towns hold their spring elections and cities hold their elections this fall.

Mike Sullivan
Director

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 is able to 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.

Disposition Agreements

Rep. Marie St. Fleur, Dorchester (1/5/03)

OCPF concluded that Rep. St. Fleur's receipt of \$5,000 from her committee as a "down payment" for the planned future purchase of her personal vehicle by the committee violated M.G.L. c.55, s. 6, which prohibits the use of campaign funds for the personal use of the candidate or any other person.

Campaign funds may be used to reimburse a candidate for campaign, legislative or constituent travel using a personal automobile, but only if the expense is not otherwise paid, provided or reimbursed by the Commonwealth. St. Fleur received per diem payments of \$10 for each day that she traveled to the State House during 2001 and 2002, according to the agreement.

The remaining \$8,000 of the planned purchase price was not paid and "the transaction was not completed," according to the agreement. St. Fleur made a personal payment of \$750 to the Commonwealth in the nature of a civil forfeiture and agreed to reimburse the \$5,000 to her committee from her personal funds. St. Fleur also agreed to file an additional campaign finance report covering the first half of 2003 in July 2003.

Sen. Jarret T. Barrios, Cambridge (2/4/03)

The agreement concerned the Barrios Committee's delay in reporting approximately \$70,000 in expenditures in the 2002 pre-primary period, Jan. 1 through Aug. 30.

The Committee's original report, filed on Sept. 9, disclosed total expenditures of \$236,090. On Oct. 28, however, the Committee filed an amended report disclosing an additional \$70,101 in expenditures, bringing the total actually spent in the period to \$306,191.

After a review of the Committee's activities for the reporting period, OCPF concluded that while the Committee's records substantially complied with recordkeeping requirements, the Committee did not comply with the campaign finance law by not disclosing \$70,101 in expenditures by the original due date.

Because the Committee did not file either an electronic or paper report providing complete disclosure of its activity until 49 days after the statutory due date, OCPF assessed a civil penalty of \$980 in accordance with M.G.L. c. 55, s. 3. The Committee paid \$490 immediately and OCPF suspended the remaining payment of \$490 on the condition of future compliance. The Committee agreed to retain an independent certified public accountant to review all reports due with OCPF through January 20, 2005 and to provide OCPF with copies of all relevant committee bank statements for each reporting period.

James W. Rappaport, Concord, (2/4/03)

A total of \$225,895 was spent outside of the Rappaport Committee's depository account in the form of payments made directly to vendors from the personal funds of Rappaport, a candidate for lieutenant governor in 2002. The expenditures, which were primarily for media purchases, occurred in the spring and summer of 2002 but were not publicly disclosed by the Committee for several months.

After learning of one such payment in July, OCPF advised the Committee that such an arrangement did not comply with the requirement that all expenditures of over \$50 be by committee depository check or, in the case of media purchases, by either depository check or wire transfer. In either case, the transaction must be conducted through the committee's depository account in order to provide proper disclosure of campaign activity.

The Committee was instructed to cease making purchases from Rappaport's personal funds and to provide details of the transaction noted by the committee. Despite repeated attempts by OCPF, however, the Committee did not forward the information until Oct. 9, when it provided documents detailing the expenditure that was discussed with OCPF, as well as four others that had not previously been made known.

Four of the expenditures were wire transfers for media buys totaling \$195,295. The fifth was a payment of \$15,000 to American Express for campaign expenditures.

Because approximately three months passed

before the Committee provided the required disclosure of the transactions, OCPF concluded that the public and OCPF did not have knowledge of five significant campaign expenditures until after the relevant election.

To resolve the matter, Rappaport agreed to pay a total of \$10,000: \$5,000 to the Commonwealth in the nature of a civil forfeiture and \$5,000 in a contribution to Children's Hospital in Boston. The Committee also augmented its paper and electronic campaign finance reports to reflect the additional expenditures.

Public Resolution Letters

02-86: John T. Donahue, Wareham. No Reason to Believe (receipt of excess contribution); 12/2/02. Candidate who is the sole proprietor of an unincorporated business may provide his committee with an in-kind contribution of office space without being subject to the \$500 annual contribution limit.

02-42: The Committee for Winchester. Did Not Comply (failure to disclose ballot question activity); 12/4/02. Ballot question committee's pre-election report did not disclose a contribution received by the committee during the relevant reporting period, and also did not disclose liabilities incurred as of the closing date of the report. The liabilities should have been disclosed even if the exact amount of the liabilities were unknown at the time. To resolve the matter the committee paid \$1,000 to the Commonwealth and \$2,000 to Winchester Public Schools to be used to provide two \$1,000 scholarships to graduating seniors.

02-90: Auburn Citizens for Public Education. Did Not Comply (failure to disclose ballot question activity); 12/10/02. Ballot question committee amended its report to disclose a \$161 advertising expenditure that was not initially reported.

02-07: James W. Hunt, III Dorchester. Did Not Comply (failure to maintain records); 12/17/02. Candidate committee disgorged approximately \$3,480 after failing to keep required contribution records in accordance with M.G.L. c. 55, ss. 2 and 5.

02-105: John T. Plouffe, Bridgewater. Did Not Comply (failure to comply with depository reporting system); 12/20/02. Candidate committee's activity was not accurately reflected on its February 2002 bank report due to the committee's failure to provide the bank with contributor information for a \$2,250 deposit, as required by M.G.L. c. 55, s. 19(b), and its failure to provide expenditure information on a \$70.70 check. After being contacted by OCPF, the candidate provided the missing information and dissolved the committee.

\$2.3 million spent on statewide ballot questions

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The side spending the greater amount of money prevailed in only one of the three questions in 2002.

The most financial activity for a single question in 2002 was reported on **Question 2**, which replaced the state's bilingual education law with an "English immersion" program. The question was approved by voters. Totals were \$842,905 raised by the two committees and \$1,091,585 spent by committees and other parties.

Placing second in total spending was activity concerning **Question 3**, which asked voters whether they favored the use of public funds in political campaigns. The non-binding advisory question was defeated. A total of \$720,532 was raised and \$701,189 was spent on the question. Another \$79,872 in in-kind contributions was provided to the committees.

The proposition with the least financial activity in 2002 was **Question 1**, which proposed the elimination of the state in-

come tax. The question was defeated. Total activity for Question 1 was \$535,928 raised and \$540,107 spent.

In-kind contributions, which are things of value other than money such as staff, supplies and other materials that were provided to ballot question committees, totaled another \$79,872.

A copy of the study and reports filed by statewide ballot question committees is available on OCPF's web site at www.mass.gov/ocpf.

Recent Cases

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⚡02-85: **Brant G. DuBois, Chicopee.** Did Not Comply (use of public resources for a political purpose); 1/3/03. An alderman improperly used his official stationery to send out a fundraising letter.

⚡02-89: **Roland Dupont, Bourne.** Did Not Comply (failure to appoint a depository bank); 1/6/03. Candidate for county commissioner did not appoint a depository bank as required by M.G.L. c. 55, s. 19, until immediately prior to the election despite having made campaign expenditures.

⚡02-112: **Sheriff Thomas M. Hodgson, Fall River.** Did Not Comply (failure to comply with depository reporting system and disclose activity); 1/10/03. Amended reports were eventually provided pursuant to OCPF's requests after the candidate's committee initially failed to accurately report liabilities, provided inaccurate source information for contributions and failed to provide date, source, amount or employer/occupation information for contributions on its campaign finance reports.

⚡02-82: **Rep. Mark Howland, Freetown.** Did Not Comply (failure to disclose activity and receipt of unlawful contributions); 1/23/03. Candidate's committee improperly received in-kind contributions from a business corporation, did not pay full value for the use of a billboard, and raised money through a raffle. After being contacted by OCPF, the committee disgorged the raffle receipts; paid the corporation, a restaurant, for services received; and reported the receipt of an in-kind contribution from the individual who allowed the committee to use the billboard at a discounted rate.

⚡02-102: **Brockton Hospital.** Did Not Comply (failure to report ballot question activity); 2/4/03. After being contacted by OCPF, the hospital filed the required report disclosing an expenditure that was made to influence a municipal ballot question.

⚡02-95: **J. Christopher Irsfeld, Stockbridge.** No Reason to Believe (disclosure of excess expenditures required by Clean Elections Law); 2/24/03. Candidate not participating in the Clean Elections program filed excess expenditure reports in a timely and complete manner. Expenditures for billboard advertising made during the primary campaign period, for use during the general election campaign period, were appropriately included as expenditures during the general election campaign period.

⚡02-31: **Gov. Mitt Romney, Belmont, and Lt. Gov. Kerry Healey, Beverly.** No Further Action (joint expenditures); 2/26/03. Committees' joint expenditures for goods and services were consistent with campaign finance regulations. In one instance, however, the Romney Committee paid for a mailing that appeared to be primarily intended to promote Healey's nomination. Based on OCPF's recommendation, the Healey Committee made a payment to the Romney Committee of \$628.50, the cost of the mailing, and provided a letter for the public file explaining the transaction.

⚡03-01: A union may enact a bylaw concerning contributions to its PAC, and it may use a per member figure to determine the annual aggregate amount of the contributions to the PAC. It is important, however, that the union does not take on the role of a political committee by soliciting or receiving into its general treasury funds from members that are understood to be political contributions. To eliminate these concerns, the union's bylaw should set forth the union's intent to make annual contributions to the PAC in an amount based on its total income from members, instead of emphasizing the diversion of a particular member's dues. (State Police Association of Massachusetts)


Memorandum

The following memorandum was recently issued by OCPF. Copies of all memoranda are available from OCPF and online at www.mass.gov/ocpf.

⚡M-03-01: **Golf Fundraising Events.** This memorandum concerns various issues involved in such events, including fundraising issues at municipal facilities, use of campaign funds and corporate resources, and accounting of receipts and expenditures.

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 all advisory opinions are available from OCPF and online at www.mass.gov/ocpf.



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