



OCPF Reports

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From the Director

Clean Elections candidates file

As this issue of OCPF Reports went to press, we were reviewing applications by candidates seeking certification in the Clean Elections program, which provides funds to candidates who agree to spending and contribution limits.

The qualifying period, during which candidates must raise the small contributions that would make them eligible for certification, ended on May 28 for legislative candidates and June 4 for statewide candidates.

Several candidates were in the process of being certified, joining the handful that had already been certified prior to the deadline.

A total of 37 candidates filed, and did not withdraw, a declaration of intent to participate in the program. Of that number, 21 ultimately filed for certification.

As you may have read in recent months, funding for the Clean Elections program is still uncertain. OCPF is unable to distribute any money from the Clean Elections Fund without an appropriation from the Legislature, which has not occurred.

Some candidates have been awarded funds as damages in a suit brought against OCPF in the Supreme Judicial Court. The money has come partly from the account used by the Commonwealth to pay such damages. In addition, the plaintiffs chose to seize some state vehicles and auction them off, with the proceeds going to the candidates.

Whatever the source of the funds,

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Electronic filing enters next phase in September

Electronic filing of campaign finance reports in Massachusetts takes a big step forward in September, with first reports due to be e-filed by both legislative candidates and state ballot question committees,

Candidates for the House and the Senate will file three reports for this election year. They will be required to file electronically if their receipts or expenditures for the election cycle exceed, or are expected to exceed, statutory thresholds.

The thresholds for e-filing for 2002 are raising or spending \$3,240 for House candidates and \$9,740 for Senate candidates. The figures are found in M.G.L. Chapter 55A, Section 6, and are adjusted for inflation every two years.

The vast majority of legislative candidates in 2000 reported fundraising and

spending well above the above figures, so it is expected that most candidates in 2002 will file electronically.

Meanwhile, committees organized to support or oppose questions on the November state ballot will also file their first electronic reports in September.

These committees are required to file if their fundraising or expenditures exceed \$25,000 since the 2000 state election.

E-filers will also be required to submit signed paper copies of their reports by each deadline.

Electronic filing got underway last January, with the start of mandatory reporting by candidates for the six statewide offices and Governor's Council. Several incumbent legislators also e-filed their year-end reports on a voluntary basis.

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Reporting deadlines ahead for 2002 state candidates

Nomination papers have been filed and the field of candidates for the upcoming state election has taken shape.

Candidates for the six statewide offices, Governor's Council, the House and Senate, as well as some county offices, face campaign finance reporting deadlines, which vary according to the office sought.

OCPF is in the process of notifying all candidates on the upcoming ballot of their filing obligations. This

includes new candidates, as well as those who already have committees organized with OCPF.

To help with the process, OCPF once again will hold a round of seminars for candidates and committees throughout the Commonwealth this summer. A complete list of the workshops will be sent to candidates and committees in June and will also be posted on the office's web site, at www.mass.gov/ocpf.

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Upcoming filing dates for campaign finance reports
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Campaign finance reporting dates for the 2002 state election

Non-depository filers

(Legislative candidates, PACs, people's committee's & local party committees).

Pre-Primary Report

Report Due: Monday, Sept. 9

Dates covered: Day following the ending date of any previous report through Aug. 30.

Pre-Election Report

Report Due: Monday, Oct. 28

Dates covered: Aug. 31 - Oct. 18

Year-End Report

Report Due: Tuesday, Jan. 21, 2003**

Dates covered: Oct. 19 - Dec. 31

** The statutory deadline of Jan. 20 falls on a holiday.

Depository System

(Statewide and county offices and Governor's Council)

Reports filed by banks on the 5th and 20th of each month from July 1 through Dec. 31. Committees file reports summarizing all activity for the year on Jan. 21, 2003.

State ballot question committees

Initial Report

Due Date: Friday, Sept. 6

Dates covered: Day after closing date of any previous report through Sept. 1.

Subsequent Reports

Due Dates: The 5th and 20 day of the months through Wednesday, Nov. 20

Dates covered: Day after closing date of previous report through the 1st or 15th of the month.

Year-End Report

Due Date: Tuesday, Jan. 21, 2003

Period covered: Nov. 16 - Dec. 31

Regular reporting for 2002 election

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Candidates and committees in the non-depository system (House, Senate, PACs, people's committees, local party committees) will file three times this election season: eight days before the primary and general elections and on Jan. 21, 2003. Local party committees must file only if their activity for the period exceeds \$100.

Ballot question committees file on Sept. 6, then twice a month, on the 5th and the

20th, through Nov. 20. A year-end report is also required on Jan. 21.

Candidates in the depository system, which includes candidates for statewide and county office and the Governor's Council, will have their banks file reports with OCPF twice a month, also on the 5th and 20th, starting July 1 and running through the end of the year. A year-end summary report is due with OCPF on Jan. 21.

Electronic filing: Stage two

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Electronic filers will use the *Reporter* recordkeeping and filing software developed by OCPF. *Reporter* is capable of tracking all campaign finance activity, including various receipts and expenditures, liabilities and reimbursements.

Candidates are being issued passwords to log onto OCPF's Electronic Filing System and file their reports. Once filed, the reports become part of the EFS and are available for public inspection almost instantaneously.

Filers need the most current version of

the *Reporter 3* software to e-file. To see if you have the most current version, go to the Maintenance section of the software under the Miscellaneous tab and click on "Update."

Those who do not yet have the software may order it by contacting OCPF.

OCPF has added an e-file component to the seminars the office conducts for candidates for state office. A final schedule of the seminars will be mailed to candidates and committees and also posted on the office's web site, at www.mass.gov/ocpf.

From the Director

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once a candidate accepts a payment, he or she must abide by the limits and conditions of the Clean Elections Law.

The law affects nonparticipants only if they are opposed by a participant who has been certified by OCPF. Those nonparticipants must notify OCPF if they exceed their participating opponents' Clean Elections spending limit. That notification makes the participant eligible to receive matching funds beyond the regular public funding allotment.

As you can imagine, it has been a challenge implementing a new program that has many details. In recent months my staff and I have answered countless questions from candidates, officials, the media and the public about the Clean Elections program.

As always, if you have any questions about the Clean Elections program, please feel free to contact us.

* * *

As you can read elsewhere in this issue, we are in the process of scheduling the seminars we regularly offer to candidates and committees involved in the state election. This time, there's a new feature to the sessions.

To help filers become familiar with electronic filing, which is now mandatory for many candidates and committees, we are including the e-file process in our seminars. OCPF will be available to demonstrate the electronic filing process and answer any questions you might have. If you are expected to e-file this year, I strongly urge you to avail yourselves of this opportunity to get acquainted with the process.

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 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

⚡01-18: **Kenneth Rezendes and KR Rezendes, Inc., Freetown.** *No Further Action (disclosure of independent expenditures and use of corporate resources for a political purpose); 3/1/02.* In order to constitute "express advocacy" for the purposes of c. 55, s. 18A, material must (1) clearly identify a candidate(s) and (2) explicitly urge the election or defeat of such candidate(s). Therefore, the law did not require disclosure where one letter to voters urged a town to "unite by electing seasoned people" without specifying a candidate, and another generally disapproved of a selectman candidate without otherwise urging his defeat at the town election. However, corporate resources should not have been used to distribute the material since c. 55, s. 8 prohibits business corporations from directly or indirectly contributing money or anything of value for the purpose of helping or hindering any political candidate.

⚡02-04: **Robert K. Coughlin, Dedham.** *No Reason to Believe (personal services); 3/19/02.* A professional who, on his own time, provided website and graphic design services to a candidate did not make a contribution to the candidate's committee, even if the committee initially reported the receipt of an in-kind contribution for the value of the services.

⚡01-61: **Sally Lazo, Southbridge.** *Did Not Comply (failure to report independent expendi-*

tures); 3/19/02. Individuals, including a candidate's family members, can make independent expenditures on behalf of a candidate's campaign. Such expenditures are, however, subject to the reporting requirements of c. 55, s. 18A.

⚡01-63: **Jack Sharp, Joann Sharp, Edward Davidian, Millard Berryman, Warren LaBaire, and James Casella, Northborough.** *Did Not Comply (failure to disclose ballot question activity); 3/20/02.* A ballot question flyer "signed" by six individuals was distributed to voters. Because the flyer purported to be from this group, the group should have formed a ballot question committee and filed campaign finance reports disclosing its activity, even if only one individual paid for the flyer.

⚡02-08: **Amherst Charter Commission.** *No Reason to Believe (use of public resources for a political purpose); 4/2/02.* It was appropriate for a charter commission to use public resources to distribute a "status report" well in advance of the eventual election where the purpose of the report was primarily to obtain input needed to develop the charter proposal prior to a public meeting. Mere reference to a future election did not result in conclusion that the status report was distributed primarily to influence the election.

⚡02-16: **Thomas M. D'Amato, Peabody.** *No Further Action (disclosure of campaign finance activity); 4/22/02.* A municipal candidate filed amended campaign finance reports to accurately disclose the return of an excess contribution.

⚡02-17: **Northborough-Southborough School District.** *No Further Action (use of public resources for a political purpose); 5/3/02.* Statements made by the school superintendent in a letter to parents announcing budget informational meetings could reasonably be read as favoring an override, even though the issue had not officially been placed "on the ballot" at the time the letter was distributed.

⚡02-21: **Myra Wilks, Adams.** *Did Not Comply (solicitation and receipt of political contributions by a public employee and in a public building); 5/7/02.* A public school teacher's solicitation and receipt of contributions in the school building did not comply with c. 55 ss. 13 and 14, and the solicitation and receipt of contributions by another person in town hall did not comply with s. 14. The committee took appropriate remedial action by promptly returning contributions.

⚡02-28: **Patty Graney, Norton.** *No Reason to Believe (use of public resources for a political purpose); 5/15/02.* A town may place links to candidates' and political committees' web pages on the town website so long as the town provides equal access, if asked, to all political candidates and committees similarly

situated. The content of the websites, in this context, is not relevant because equal access protects against the improper use of public resources to advocate for or against a particular candidate, party or position on a ballot question.

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.

⚡02-09: The requirement to electronically file campaign finance reports is not dependent upon participation in the Clean Elections system. A candidate's loans to his or her committee are included in the calculation of the electronic filing threshold amount. (O'Brien).

⚡02-10: A committee that supports or opposes only candidates for representative town meeting is not subject to the reporting requirements of c. 55. (McLaughlin).

⚡02-11: The committees of candidates running as a team for governor and lieutenant governor may make joint campaign expenditures as long as the primary purpose of each of the committees, in making the expenditures, is to promote the candidacy of the individual it was formed to support. Costs must be allocated proportionally based on (1) the amount of print space or air time devoted to each candidate, with consideration given to the intended recipients or audience, if the expenditure is for campaign literature or media advertising; or (2) in the case of services, the benefit provided to each candidate. (O'Brien Committee).

⚡02-12: An on-line "store" may sell campaign items. The proceeds of such sales received by the vendor would not be considered "contributions," if none of the proceeds are transmitted to the relevant committee and buyers are advised that they are not making "contributions." Otherwise, the entire amount received by the vendor, not just the profit, would be considered a "contribution" to the committee. The committee may provide a link between its website and the vendor's website, if the committee has no role in handling funds or setting prices, does not receive any funds in the transaction, and provides a disclaimer stating that funds given to the vendor in exchange for

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Advisories/Guidance

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items are not “contributions.” The arrangement may not include a system whereby information regarding the persons buying the items, the amount of sales, location of purchases, or other information would be transmitted to the committee for the purpose of enhancing the committee’s campaign efforts. (Reich Committee)

02-13: A consulting group, the sole proprietor of which is also the chairman of a PAC, may use the PAC’s office and equipment if the consulting group reimburses the PAC for a portion of the office rent and equipment cost that represents the amount of actual use by the consulting group. Where the office is rented jointly by a federal and a state PAC, each of which pay 50% of the rent and equipment cost, the consulting group may, on a monthly basis, reimburse the state PAC for 50% of that portion of office rent and equipment cost that accurately reflects the percentage use by the consulting group. (Mass. Republican Society PAC).

02-14: C-SPAN, a non-profit corporation with corporate members, may distribute tote bags for the purpose of advertising C-SPAN, at a political convention. (Mass. Democratic Party).

02-15: This opinion contains substantial analysis regarding a ballot question committee formed to raise money to support the adoption of the CPA statewide, and sets forth the committee’s extensive reporting requirements. (The Conservation Campaign).

02-16: Under the Clean Elections Law, the election cycle and qualifying period of a legislative candidate in the November 2002 biennial election who was a candidate in a

special election in April 2002 begins 31 days before the date nomination papers are due in connection with the regular election. Individuals who contributed in connection with the special election campaign may make an additional contribution in connection with the general election campaign if receipt of the additional contribution is consistent with the requirements of the limits of the campaign finance law. (Aleo Committee).

02-17: Under the Clean Elections Law, the election cycle and qualifying period of a legislative candidate in the November 2002 biennial election who was a candidate in a special election in April 2002 begins 31 days before the date nomination papers were due in connection with the regular election. (Bleau).

02-18: A university may pay a stipend to a student working as an intern for a candidate’s political committee. The stipend is not a payment made to promote the candidate because it is made to provide financial assistance to the university’s returning students. In addition, the program provides students with an opportunity to seek summer employment in their field of study thereby enhancing their education. (Stein Committee).

02-19: Chapter 55 does not prohibit governmental resources from being used in connection with lobbying activities. Public school teachers should refrain, however, from using public resources to advocate a particular vote on a ballot question and should not use such resources to distribute information regarding a ballot question. (Cambridge Public Schools).

02-20: A local ballot question committee formed to support a debt exclusion to obtain funding for architect fees in connection with a school renovation project may remain in

existence to support a subsequent question to obtain funding for the renovation work because the two phases are integrally related. The committee may amend its statement of organization to clarify its original purpose as supporting both phases of the project. (Radville).

02-21: A candidate’s committee can hold a golf tournament fundraiser at a municipal golf course if the committee uses a tent on the grounds and does not use the clubhouse for any fundraising activities. Where, as here, the municipality customarily provides pro-shop gift certificates to each golfer, the committee should forward the certificates directly to the participants and not collect them to use as prizes for the golf tournament. The committee may contract with a car dealer and insurance company for “hole-in-one” prizes so long as the arrangements are consistent with the normal course of business of these entities. (Donovan).

02-22: A federal PAC is not a “political committee” for the purposes of c. 55, therefore the bundling provisions of s. 10A do not apply to the PAC. In addition, a federal PAC may link the contributor page of a state candidate’s website to its website. The inclusion of a such a link, in itself, would not constitute a “thing of value,” within the meaning of M.G.L. c. 55, § 1 even though it might result in a benefit to the Committee. The committee, however, must reimburse the PAC for any administrative costs stemming from this, regardless of how minimal they may be, to avoid the receipt of an in-kind contribution from the PAC. (O’Brien Committee).



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