



OCPF Reports

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From the Director

E-filing expands

Another state election year is upon us, and once again OCPF is working with candidates new and old on campaign finance disclosure.

For the last several months new candidates have been organizing their committees with us in anticipation of their campaigns. In early June the office received from the Secretary of the Commonwealth the final list of those who made the ballot.

We subsequently sent a mailing to all candidates notifying them of upcoming filing deadlines along with other important information, especially the electronic filing process.

Legislative candidates must e-file if they raise or spend more than \$5,000 in the two-year election cycle. For the sake of comparison, more than 300 of the 372 House and Senate candidates in 2002 exceeded that amount in either fundraising or spending. It stands to reason that a similar majority of candidates will file online this year.

The number of online filers will expand even further this year with new categories of committees now subject to the e-file requirement.

Starting with the upcoming pre-primary report on Sept. 7, political action committees and some party committees will e-file for the first time. They will join statewide, legislative and Governor's Council candidates as well as state ballot question committees, who started e-filing in 2002.

PACs and people's committees that raise or spend more than \$10,000 in the two-year election cycle will be required to e-file. Those

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New guidance available on Internet campaign activity

The popularity of the Internet as a campaign tool has grown steadily in recent years, as more candidates and committees take to the web to get their message out.

To help candidates and committees use the Internet, OCPF has issued an interpretive bulletin addressing issues such as campaign web sites, links and the use of e-mail.

Interpretive Bulletin IB-04-01, "Use of the Internet and E-Mail for Political Campaign Purposes," is available from OCPF and is online at www.mass.gov/ocpf/ao/IB-04-01.pdf.

"This bulletin is the product of conversations with committees and the public in recent years and reflects the issues that have come up in those conversations and in our seminars," said OCPF Director Michael Sullivan. "It gives advice in areas that many candidates and committees are getting into, like web sites and

online solicitations."

Among the issues addressed are website development, both by a paid vendor and as a personal service by a campaign volunteer; restrictions on the placement of links to campaign sites from government web sites; and the use of e-mail and e-mail lists for political purposes, especially when such activity is subject to disclosure.

The bulletin also discusses the application of some other sections of the campaign finance law to e-mail issues.

Specifically, it notes that e-mails to or from government buildings that ask for campaign contributions would be prohibited. E-mail recipients and senders should therefore be careful about forwarding such messages to addresses they know would reach government offices or facilities.

2004 filing deadlines
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New regulations cover the use of debit cards

A section of newly issued OCPF regulations allow certain political candidates and committees to use debit cards to make expenditures and conduct online transactions.

The regulation, which was promulgated in May, allows candidates and committees to use the cards in the same manner as a check, as long as sufficient records are kept of a transaction and proper disclosure is given.

The regulation applies to candidates

and committees in the non-depository reporting system, which includes candidates for the Legislature and most municipal offices as well as PACs and people's committees and local party committees.

Candidates and committees in the depository system (statewide party committees and candidates for statewide or county office, the Governor's Council or mayor or councilor-at-large in Boston, Cambridge, Lowell, Springfield or Worces-

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Upcoming 2004 filing deadlines for candidates and committees

The state ballot this year includes candidates for the House, Senate, Governor's Council and some county offices, including sheriff. There are no statewide offices on the ballot this year.

Non-depository filers

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

Pre-Primary Report

Report Due: Tuesday, Sept. 7 (one day later than usual due to Labor Day)
 Dates covered: The day following the ending date of any previous report through Aug. 27.

Pre-Election Report

Report Due: Monday, Oct. 25
 Dates covered: Aug. 28- Oct. 15

Year-End Report

Report Due: Thursday, Jan. 20, 2005
 Dates covered: Oct. 16 - Dec. 31

Depository System

(County offices and Governor's Council)
 Reports are filed by candidates' banks on the 5th of each month, covering activity for the previous month. Banks also file reports on the 20th of each month from July through December on behalf of candidates on the ballot. All depository candidates and committees file reports summarizing all activity for the year on Jan. 20, 2005.

State ballot question committees

All committees organized with OCPF to support or oppose any questions on the Nov. 2 state ballot must file Form CPF 102 BQ starting Sept. 3, covering activity from Jan. 1, 2004, or their dates of organization, if later, and then file twice a month through the election.

Regulations: Debit cards etc.

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ter) are still not able to use debit cards, because they are required to use specially formatted checks that state the specific purpose of an expenditure, a procedure that is not possible with debit cards.

The campaign finance law requires that all expenditures of more than \$50 be by check or credit card. Debit cards have become a common means of conducting transactions, similar to a credit card.

The new procedure is especially helpful to those candidates and committees that do not have a campaign credit card. They may use a debit card for online or other electronic expenditures that may be impossible to make with a check.

While candidates and committees may use a debit card for purchases, however, the regulation expressly prohibits the use

of a card to obtain cash from a campaign account. So while banks provide debit card that could be used for ATM withdrawals, candidates and committees should restrict their use to expenditures, not cash advances.

Among the new regulations are the following provisions:

- **Electronic filing of campaign finance reports:** The regulations define an "election cycle" for the purposes of the e-filing threshold, which requires electronic filing by those who exceed the fundraising or spending threshold in a two- or four-year cycle. The cycle starts on Jan. 1 in the year after the last election for the seat and runs through Dec. 31 of the year of the next election for the seat. For example, the election cycle for the House and Senate elections this year started on Jan. 1, 2003 and ends on Dec. 31, 2004. For statewide candidates, who will next be on the ballot in 2006, the cycle also started on Jan. 2003, but ends on Dec. 31, 2006. The new regulations also stipulate that once a candidate exceeds the electronic reporting threshold and files electronically, all subsequent reports in future cycles must

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with activity below that threshold have the option of e-filing and not filing paper reports if they do so.

The \$10,000 threshold also applies to party committees, but the vast majority of ward, town and city committees do not reach that level of activity. The four state party committees -- Democratic, Republican, Libertarian and Green-Rainbow -- are already e-filing monthly reports.

You may recall that in January 2004 we eliminated the requirement that e-filers submit backup paper copies of their reports, due to the success of the Electronic Filing System. Even those who don't meet the e-file threshold and would therefore file on paper may still file electronically, avoiding the paper requirement altogether.

As always, we at OCPF are ready to help assist first-time and veteran e-filers. Feel free to contact us with questions or check out one of the e-file seminars we're giving around the state this summer. Click on our website, www.mass.gov/ocpf, for a schedule.

Mike Sullivan
 Director

be filed in the same manner, regardless of the level of activity.

- **Public financing:** The Clean Elections public financing program was repealed in 2003 and replaced by the more limited program for statewide candidates that had preceded it. These regulations are identical to those that were in effect the last time this public financing program operated in 1998.

Other new regulations include further guidance on receiving credit card contributions and a definition of "liability" that includes situations where a candidate or committee receives goods or services or is otherwise legally obligated to make a payment for such goods or services.

The full text of the regulations may be found online in the "Legal Guidance" section at OCPF's website, at www.mass.gov/ocpf.



Visit OCPF Online at www.mass.gov/ocpf

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

Quincy Democratic City Committee (3/1)

The local party committee did not organize and file the required organizational statement after members were elected at the March 2000 presidential primary. In addition, it took in receipts and made expenditures through 2003 that were not disclosed in campaign finance reports. Bank records indicate the committee raised approximately \$21,000 and spent about \$18,000 from 2000 through 2003.

For the most part, the Committee's financial activity involved a single fundraising event each year, an annual brunch in October. The Committee did not make any contributions to candidates or expenditures to promote or oppose candidates during this period.

OCPF became aware of the Committee's ongoing activity in the normal course of its review of expenditures disclosed by other candidates and political committees to the Committee. On February 17, 2004, after OCPF contacted the Committee chairman and the treasurer, the Committee filed its statement of organization with OCPF.

In the agreement, OCPF concluded that the Committee violated two sections of M.G.L. Chapter 55, Section 5, which requires a local party committee to file a statement of officers after the primary and which prohibits a committee from having any campaign finance activity until a treasurer is formally appointed and accepts the posi-

tion in writing; and Section 18, which requires a local party committee to file campaign finance reports if it exceeds the \$100 threshold during a reporting period. OCPF concluded that reports should have been filed for 2000 through 2003.

To resolve the matter, the Committee agreed to file campaign finance reports disclosing Committee activity between January 1, 2000, and December 31, 2003, within 30 days. The Committee also agreed to pay a civil forfeiture of \$2,000 to the Commonwealth of Massachusetts. OCPF agreed not to refer the Committee or the Treasurer to the Attorney General for the violations of the provisions of M.G.L. c. 55 referenced in the agreement.

Citizens for Freedom from Excessive Taxation and Intrusive Government, Lexington (3/1)

In the agreement, OCPF concluded that Citizens was operating as a ballot question committee but failed to file a timely statement of organization as a ballot question committee prior to beginning its fundraising activity to oppose a June 2003 override in Lexington, as required by M.G.L. Chapter 55, Section 5.

An issues advocacy group becomes a ballot question committee, and is no longer merely an issues advocacy group, and must organize as such if it solicits or receives funds to support or oppose a ballot question.

Citizens opened a bank account and began raising funds and making expenditures to oppose the override in March 2003, but did not organize a separate ballot question committee until after being contacted by the town clerk and OCPF in May. Its pre-election campaign finance report, however, showed no contributions or expenditures through May 16, while its post-election report showed receipts and expenditures of \$2,044 through July 2.

Citizens also filed disclosure reports on a form used by associations and other groups making ballot question expenditures, showing \$7,965 spent for activity starting in April. Citizens' report did not provide contributor information or otherwise list the sources of the funds that had been spent, information that is required from a ballot question committee.

To resolve the matter, Citizens agreed to file a combined ballot question committee campaign finance report listing all contributions received and expenditures made from March 24 through June 22, 2003. Citizens also agreed to pay a civil forfeiture of \$1,900 to the Commonwealth for late filing of a pre-election campaign finance report reflecting contributions received by Citizens. OCPF suspended payment of an additional \$1,550, the amount of the civil penalty assessed for the late filing of the post-election report, on the condition that Citizens substantially complies with the agreement in the future.

Citizens also agreed to organize a ballot question committee before soliciting or receiving funds from members or others to influence a scheduled or anticipated ballot question and to file timely and complete campaign finance reports. While such a committee is organized, Citizens will temporarily suspend all financial activity, other than routine administrative expenses unrelated to the ballot question.

Public Resolution Letters

• **04-12: Mary Stewart, Rockland.** No Further Action (political fundraising by a public employee in a government building); 4/15/04. A public employee inappropriately used a town hall fax to send invitation to a candidate's fundraiser. No funds were raised, however, as a result.

• **03-58: Malden Democratic City Committee.** Did Not Comply (disclosure of campaign finance activity); 4/30/04. A local party committee's 2002 report lacked contributor information. According to the treasurer, detailed records of the committee's 2002 financial activity were not maintained because agents of the committee received and deposited funds in the committee's bank account without providing her with details regarding the contributions. This resulted in the committee not complying with the record keeping and reporting requirements of the campaign finance law, as well as M.G.L. c. 55, s. 23, which requires that treasurers be notified on a timely basis of all committee activity.

• **03-57: Morris Jones Committee, Springfield.** Did Not Comply (disclosure of campaign finance activity); 5/17/04. A city council candidate's committee failed to file disclosure reports along with the deposits made into its depository bank account, contrary to M.G.L. c. 55, s. 19(b). As a result, the public did not have disclosure of contributor information during the relevant campaign. After being contacted by OCPF, the committee provided the required information to OCPF for the public file.

OCPF study shows almost \$4 million in spending by mayoral candidates statewide in 2003

Candidates for mayor spent just under \$4 million in their campaigns last year, according to a study recently released by OCPF.

The candidates reported raising \$3,587,911 and spending \$3,949,051 in the 38 cities that elected mayors.

The median level of fundraising for a candidate was \$31,586, while the spending median was \$27,672. Both figures represent declines from two years before, when the medians were \$32,644 and \$33,040, respectively.

The study included activity by 70 finalists in the general elections and did not include activity for candidates who lost in preliminary elections.

The totals for 2003 were significantly less than those posted in 2001, when candidates raised \$4.5 million and spent \$5.8

million. Mayoral campaigns vary significantly from year to year, with turnover of candidates and varying levels of activity.

The top spender in 2003 was incumbent Edward Lambert of Fall River, who was re-elected. Lambert, who was also the top spender in 1999, reported expenditures of \$416,324 last year. The top spender in 2001 was Mayor Thomas Menino of Boston, who spent \$1.6 million. There was no mayoral election in Boston in 2003.

The candidate who reported the highest amount raised in 2003 was Joseph Curtatone of Somerville, who was elected after the defeat of the incumbent in the preliminary. Curtatone reported receipts of \$262,218.

Mayor Menino was also the top fundraiser in 2001, with \$880,000 in receipts.

A total of 14 cities saw aggregate spending by mayoral candidates exceed \$100,000 in 2003.

The city with the greatest amount of activity was Springfield, where two finalists competed for an open seat. The two candidates, eventual winner Charles Ryan and state Sen. Linda Melconian, spent a total of \$514,016.

Rounding out the top five in spending in 2003 were Fall River, Somerville, Quincy and Revere.

The candidate who spent the most money won in 21 of the 31 contested races, or 68 percent of the time. By contrast, the success rate of the top spenders in 2001 was 79 percent, or 27 out of 34 races.

The study may be found on OCPF's web site, at www.mass.gov/ocpf. Click on the "OCPF Studies" tab.

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.

AO-04-04: This advisory opinion sets forth the manner in which a business partnership that is not subject to the prohibition against corporate involvement in candidate elections may support a PAC. Subject to the relevant statutes and regulations, including contribution limits, record keeping requirements and, where applicable, the credit card regulations, the partners may: (1) contribute directly to the PAC through the business account; (2) include separate PAC solicitations on the event announcements instructing interested individuals to make a contribution in addition to the event admission price; or (3) include a PAC contribution in the event admission price. In the case of the third option, attendees must be informed of the amount of the contribution and the business must establish a special transmittal account for the purpose of receiving the PAC contribution (so the business does not "act like a political committee" by soliciting and receiving funds intended to be contributions in its general business account) and making the appropriate disbursements. (Cote)

AO-04-05: An attorney in the private practice of law who provides as-needed legal advice to

the Secretary of the Commonwealth in accordance with a contract is an independent contractor and therefore is not "employed for compensation" by the Commonwealth and is not subject to the fundraising restrictions of Section 13. (Lazour).


AO-04-06: A school district is not required to provide "equal access" when school mailboxes are used by a teacher's union without authorization by the district and not in accordance with the collective bargaining agreement, to benefit candidates or for other political purposes. In addition, the district is not required to provide "equal access" even if mailboxes are used in accordance with a collective bargaining agreement. (Maguire).

AO-04-07: An appointed public employee may provide consulting services to candidates and political committees for a fee on his own time and without using public resources, as long as no political fundraising is involved.

(Lee)

AO-04-08: A candidate for state representative will continue to be subject to Section 13 as long as she continues to be "employed for compensation" as a lecturer by a state college, regardless of whether she is in a contract position or only teaching part-time. The fundraising restriction will no longer apply when the candidate stops working for the college, even if she continues to receive residual compensation for services that have been previously rendered. (Connaughton).

AO-04-09: A municipality may implement more restrictive policies regarding political activity conducted during working hours in or within 150 feet of municipally owned buildings than is required under the campaign finance law, so long as such prohibitions are equally applied to all candidates and committees. (Town of Yarmouth).



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