



OCPF Reports

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Commonwealth of Massachusetts

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From the Director

Clean Elections developments

As I write this installment of From the Director, the Senate has approved its version of the Commonwealth's budget for fiscal 2002, which starts July 1. The next step is for a joint House and Senate committee to meet in conference to resolve any differences between their versions of the budget.

Among the many items expected to be considered is the funding mechanism for the Clean Elections Law, the actual amount authorized for distribution during the 2002 election season, and several other changes, including higher qualifying thresholds and a possible delay in the start of the Clean Elections cycle.

There's not much new information to provide on this subject at the time I write this, so my advice is to read your local paper and periodically check the office's website at www.state.ma.us/ocpf. Meanwhile, we continue to review our draft regulations on the law and hope to issue them very soon. Although the regulations will be issued on an emergency basis, allowing them to take effect immediately, we will be holding a public hearing on them and look forward to comments from interested parties.

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While much attention is focused on the Clean Elections law, don't forget that this is an election year in the cities. Most mayoral seats in the Commonwealth are up for election, and with several mayors announcing they are not seeking re-election, there should be some interesting contests.

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OCPF releases rules for credit card fundraising

OCPF has completed its regulations governing the collection of contributions by credit card, including those gathered over the Internet.

A provision allowing such contributions was added to the campaign finance law by the Legislature last year.

The regulations were promulgated in late April after a public hearing. They are posted on OCPF's web site at www.state.ma.us/ocpf/credreg.htm, or may be obtained by contacting OCPF.

While the public and political committees are urged to review the actual text of the regulations, here is a summary:

◆ **Hiring a vendor:** Prior to receiving contributions by credit card, candidates and committees must enter into a relationship with a vendor or "merchant provider," such as a bank or other business authorized to process credit card transactions.

The vendor will process the contribution and may deduct a customary fee for

its services. Payment of such fees is considered an allowable expenditure by a committee.

◆ **Collecting information:** The committee or vendor may accept a contribution only if it determines that the contributor's billing information (such as name and address) corresponds to what is on file with the contributor's issuing bank or credit card company. If the information does not correspond, the committee and vendor may not accept the contribution and must notify the person attempting to submit it.

Each credit card contribution received over the Internet must be confirmed by the vendor by e-mail or, if the contributor does not have an e-mail address, by first class mail.

As with all other contributions, a candidate or committee is required to

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City candidates are the focus in the 2001 election season

Much of the campaign finance spotlight this year shifts to the cities of the Commonwealth, where hundreds of candidates will be on the ballot for mayor, council and school committee.

The campaign finance law applies to those candidates, who are required to file disclosure reports prior to the preliminary and general elections and at year-end.

Municipal reporting forms are available from local election offices or from OCPF. Municipal forms may be downloaded from OCPF Online at

www.state.ma.us/ocpf.

Most candidates file their reports with their city clerk or election commission. The exceptions are in the five most populous cities – Boston, Springfield, Worcester, Lowell and Cambridge – where contenders for mayor and at-large council seats report directly to OCPF.

Reports are due eight days before each election. If there is a preliminary election anywhere in the city, all candidates must file, even those whose races

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Regulations: Use of a credit card

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properly disclose money donated by credit card in campaign finance reports. Here are a few things to keep in mind:

◆ **Date of receipt:** Contributions received by credit card are considered received by the candidate or committee on the day the money is credited by the contributor's bank to the candidate's or committee's vendor. This date may differ from the date on which the contributor actually clicked on the mouse or sent in the form to make the credit card contribution.

◆ **Contribution amount:** When reporting a contribution, a committee must report the gross amount of the contribution, not the net after the vendor deducts its processing charge. That processing charge would then be reported as an expenditure by the committee.

◆ **Depository reports:** Vendors must deposit the net proceeds of any contribution in the depository account of a candidate within three days of receiving it from the contributor. The vendor or committee is then responsible for submit-

ting the additional required information, such as name and address of a contributor, to the depository bank. The information is in turn forwarded to OCPF by the depository bank on the regular reporting schedule (monthly or semi-monthly).

* * *

The regulations cover contributions made over the Internet, but also those made by credit card in other circumstances such as by mail or in person. In those cases, the vendor must still request the required information from the contributor and make sure it corresponds with billing information maintained by the contributor's bank. A paper record of the transaction must also be generated and kept as part of the committee's records.

The regulations specifically prohibit credit card contributions by phone.

OCPF advises any candidate or committee setting up a credit card contribution system to contact the office if it has any questions or problems. The technology is new to most candidates, and it is important that those using it get off on the right foot.

From the Director

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As always, OCPF staff will be holding seminars to explain the law and reporting process in several cities, especially those where spirited contests are anticipated. Sessions have already been scheduled in almost a dozen cities.

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In staff news, Tracey Dano has joined the office as a staff attorney and will also assist in our electronic filing initiative. She comes to OCPF from the Commonwealth's Committee for Public Counsel Services.

Mike Sullivan
Director

Clean Elections Update: Qualifying Period starts

Wednesday, Aug. 1, marks the start of the Qualifying Period for candidates seeking statewide office. The Qualifying Period is the interval during which those who wish to become certified Clean Elections candidates must raise a minimum number of Qualifying Contributions in order to become eligible for public funds. Qualifying Contributions are donations of \$5-\$100 that come from registered voters in the district in which a candidate is seeking election (in the case of a statewide candidate, a registered voter who lives in the Commonwealth).

The number of qualifying contributions required varies according to the office sought. A candidate must file Form CE-1, Declaration of Intent, with OCPF, **before** raising any qualifying contributions.

The Qualifying Period for legislative and Governor's Council candidates starts on Jan. 1, 2002.

NOTE: As of this writing, substantial legislative changes have been proposed for the Clean Elections program, including a delay of the start date for the election cycle, which would likely affect the start of the Qualifying Period. The above information is therefore subject to change. Candidates are advised to contact OCPF for further information or check the office's website at www.state.ma.us/ocpf.

Candidates: Focus on the cities

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are not on the ballot until November.

If there is no preliminary election, only two reports are required: the Pre-Election report, filed eight days before the election (Monday, Oct. 29 for a Nov. 6 election) and the Year-End report due on Tuesday Jan. 22. (The statutory deadline of Jan. 20 falls on a Sunday and Jan. 21 is a state holiday.)

City candidates use one of two separate reporting systems. The first is virtually identical to the non-depository system used by legislative candidates and calls for candidate and committees to file reports directly with their local election officials. This system is used by the vast majority of city candidates.

The other form of reporting, also used by statewide and county candidates, is the depository system, by which financial institutions file monthly reports with OCPF on behalf of candidates. The filings

increase to twice a month after July 1 of the election year.

This is the first year candidates in Cambridge will file reports with OCPF. Due to the results of the 2000 federal census, that city has joined the other four cities with populations of over 100,000 in the depository reporting system.

M.G.L. Chapter 55, Section 19, as amended in 1994, requires that mayoral and councilor-at-large candidates in any city with a population of more than 100,000 in the most recent federal census report in the depository system. The other four cities were added immediately after the law took effect in 1995.

The filing requirements in the five depository cities apply only to candidates for mayor and councilor-at-large. Candidates for ward or district councilor, school committee and any other elected municipal offices in these five communities will still file locally.

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 Agreement

■Rep. Christopher Asselin, Springfield (3/14/01).

OCPF, Rep. Asselin and his campaign committee entered into an agreement concerning violations of the campaign finance law in 1999 and 2000. The agreement states that the Committee did not promptly reimburse a Springfield business corporation for the use of its postage meter, phone and facilities, amounting to an undisclosed corporate contribution to the campaign.

In the agreement, Asselin agreed to make a personal payment of \$750 to the Commonwealth and to promptly report all future campaign finance activity, including liabilities. OCPF agreed not to refer the matter to the Attorney General for further action.

The corporation, Palmer Goodell Insurance Agency Inc., provided a total of \$7,485.10 in services to the Committee without being reimbursed within a reasonable period of time. In addition, the Committee did not report its liability to the corporation on its disclosure filings or pay it until OCPF initiated its review.

The campaign finance law prohibits a

business corporation from making any contribution or payment to a candidate and prohibits a candidate's committee from soliciting any such contribution or gift. The use of corporate resources by a candidate and/or a candidate's committee is permitted only if the corporation is reimbursed in the normal course of business and if expenditures and/or liabilities to the corporation are disclosed on campaign finance reports.

The Committee did not disclose any payments or liabilities to Palmer Goodell in its 1999 report, and reported only a payment of \$248.20 to the company in its pre-primary report filed on Sept. 6, 2000. After being contacted by OCPF in September 2000, the Committee made further payments to Palmer Goodell in the amount of \$7,485.10 and amended previously filed campaign finance reports to reflect the liabilities to the company.

The fact that the Committee was not billed for a substantial portion of services provided until after it was contacted by OCPF led to the conclusion that the receipt of services was intended to be an undisclosed corporate contribution, which is prohibited by M.G.L. c.55, s. 8.

Public Resolution Letters

■00-81: Sen. Dianne Wilkerson, Boston, and Grace Carolyn Brown, Lexington.

Did not comply (solicitation or receipt of political contributions by public employee); 3/8/01. The president of a community college solicited contributions for a legislative candidate. Both the solicitation by a public employee and the receipt of the funds by the legislator's committee are prohibited by the campaign finance law. In response to OCPF's review, the committee disgorged \$1,850, the amount attributed to the solicitation.

■99-18: Gary A. Sheley, West Springfield. Did not comply (disclosure of independent expenditures); 3/13/01. Resident failed to disclose independent expenditures made to influence a local election, as required by M.G.L. c.55, s.18A. Despite numerous attempts by the town clerk and OCPF to achieve compliance with the statute, Sheley refused to file the required forms. OCPF referred the case to the Attorney General's office, which instituted a civil action. Sheley subsequently filed a

report disclosing his activity and paid a \$250 penalty to the Commonwealth.

■01-03: Taft Elementary School, Uxbridge. No further action (use of public resources for political purposes); 3/27/01. An article by a school building committee member that discussed a new school project should not have been included in a PTA newsletter distributed to students using public resources because it could reasonably have been construed as advocating a vote in favor of a ballot question.

■00-71: Olavo DeMacedo, Kingston. Did not comply (failure to report certain expenditures); 4/2/01. A candidate failed to report expenditures of \$4,208 in his 1998 year-end campaign finance report. The report was amended after OCPF initiated its review.

■01-06: Medway Parents for Education, Medway. No further action (failure to organize ballot question committee); 4/4/01.

A group of parents who informally coordinated efforts and made expenditures to influence the vote on a municipal ballot question should have formed a ballot question committee and filed campaign finance reports, even though no money had been pooled or funds collectively raised. The group immediately took steps to comply with the law upon notification by OCPF of the requirements to do so.

■00-86: Michele E. Merolla, Fairhaven; Robyn L. Gerry-Sylvia, Fairhaven; Cornish Insurance, New Bedford; and Paula M. Gardner, Fairhaven. Did not comply (failure to file campaign finance reports, receipt of corporate contribution, receipt or solicitation of political contribution by public employee, and failure to file independent expenditure reports); 4/20/01. Gardner, the subject of a town recall election, failed to file certain disclosure reports with the town clerk, contrary to section 18; received an in-kind corporate contribution (phone use), contrary to section 8; and received a small amount of contributions raised by a public employee, contrary to section 13. Gerry-Sylvia and Merolla made independent expenditures supporting the recall, but did not file the reports required by section 18A.

■01-07: Edward Angley, Chairman, Committee to Elect Malcolm MacGregor, Plymouth. Did not comply (excess contribu-

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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 Feb. 16 through May 15, 2001.

■01-02: A corporation may continue to employ an individual who accepts a paid position with a political committee where (1) the corporation allows its employees to perform non-business related activities during normal work hours or to take on a second job, and (2) the corporation expects an employee to make up the time that the employee misses as the result of performing non-business activities. Where activities undertaken by the employee for the committee at the corporation's offices may include infrequent use of telephones and computers owned by the corporation, such use would not involve the making of a corporate contribution if the committee promptly reimburses the corporation for the fair market value of the equipment. (Gravestar Inc.).

■01-03: Public funds should not be used to distribute a citizens' guide to the Community Preservation Act if the guide, in addition to describing the Act, also describes the benefits for a particular town and notes that for the town to adopt the Act, residents will need to vote in favor of a question on the ballot in a town election. The guide may be produced and made available to persons who ask for informa-

tion regarding the ballot question, but may not be distributed unsolicited to residents. To be distributed to voters, it would need to be revised to include only a description of the operation of the Act. (Hull Conservation Commission).

■01-04: A sole practitioner engaged in the private practice of law for a professional corporation who represents a municipal housing authority and many non-governmental clients is an independent contractor, rather than an employee of the housing authority, where he bills the housing authority on an hourly basis for work performed "as needed." (Moore).

■01-05: The Senate Clerk may provide links to senators' private websites if the name of the website, the text of the link, or the web address (URL) do not advocate a particular vote and the content of the private website is limited to information for constituents. The General Court website should not, however, provide any links to any private sites which (1) solicit contributions, votes or volunteers; or (2) contain express advocacy supporting or opposing any candidate, party, or ballot question. (Sullivan)

■01-06: This opinion responds to a number of questions posed by the Massachusetts Audubon Society concerning the extent to which it could encourage municipalities within the commonwealth to accept the Community Preservation Act by adopting local community preservation programs. The opinion also responds to questions regarding expenditures by the

Community Preservation Coalition, which is made up of Audubon and 33 other organizations working to promote implementation of the Act. (Mass. Audubon Society).

■01-07: There is no reporting requirement where supporters or members of a political committee or organization e-mail contributors, members and friends on their own time to influence the vote on a ballot question, or if a membership organization sends emails to its members. However, if an association or corporate e-mail list were given to a political campaign for this purpose there would be a contribution of a "thing of value" which would have to be reported. (Cohen).

Cases

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tion to candidate): 4/20/01. A committee chairman loaned his candidate's committee \$1,500. The loan, which by law is deemed a "contribution" and therefore subject to the \$500 limit, was promptly repaid.

■01-08: **Richard Threlfall, Town Clerk, Acushnet.** Did not comply (solicitation or receipt of political contributions by a public employee and in a building occupied for government purposes); 4/26/01). An employee of the town clerk worked on a political fundraiser for the clerk in Town Hall during the workday. This action was improper due to the prohibitions on fundraising by a public employee and on fundraising activity in a public building.

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