

OCPF Reports

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From the Director

Uncertain times

On Dec. 3, the Supreme Judicial Court heard arguments in the case of Bates v. Sullivan, which deals with funding of candidates in the Clean Elections program. The plaintiffs, in simplest terms, asked the Court to order OCPF to make funding for the law available to certified candidates. The recently approved state budget does not contain any such funds, and the \$23 million already in the Clean Elections Fund may not be released without appropriation by the Legislature.

The court had not released a decision as of press time for this edition of OCPF Reports.

Speaking of Clean Elections, gubernatorial candidate Warren Tolman was the first candidate to apply to OCPF for certification by delivering over 6,000 qualifying contributions, which are contributions of \$5 to \$100 from Massachusetts voters. We subsequently certified that he had reached the 6,000 contributions required by statute, but informed him that we were unable to release any money to him because of the lack of funds.

In other news, the arrival of electronic filing of campaign disclosure reports is right around the corner. OCPF is prepared to roll out three versions of software to comply with the new mandate. The first, Reporter 3, is an upgraded version of our non-depository software used by legislative candidates, PACs, ballot question committees, and local political party committees. Depository Reporter is designed for use by statewide and Governor's Council

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Electronic filing is here: 2002 reports to be online

Campaign finance reporting enters a new era in early 2002, with the start of electronic filing of reports by candidates for several state offices and some other political committees.

The new system will also mark the debut of three new recordkeeping and filing software programs for candidates, committees and banks, and a searchable online database of campaign finance activity.

Nine offices affected

Candidates for the six statewide offices -- Governor, Lieutenant Governor, Attorney General, Treasurer, Secretary and Auditor -- and the Governor's Council will be required to file electronically, starting with the monthly reports filed by their banks for January.

Candidates for the Legislature are also required to file electronically in 2002. However, their first reports for the year are not due until Sept. 9.

State ballot question committees will also file electronically in 2002, starting with the first report of the year, due on Sept. 6. PACs will file electronically starting in 2004.

Backup paper copies will still be required until further notice to ensure that there will be no gaps in disclosure as the new system gets off the ground.

Electronic filing is mandated by M.G.L. Chapter 55, Section 18C, which was approved by voters at the 1998 state election. The change was part of the Clean Elections ballot question, but is a separate section of the law.

Section 18C requires electronic filing by candidates who exceed statutory fundraising or spending thresholds, which vary by the office sought and are set forth in Chapter 55A, Section 6. For example, a

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Clean Elections funding is omitted from new state budget

The new state budget, enacted by the legislature and sent to the acting governor, does not contain any funding for the Clean Elections program, the state's public campaign financing system.

No new funds were appropriated into the fund, which contains more than \$23 million from past appropriations and the proceeds of an annual income tax check-off. In addition, that money cannot be distributed without a further appropriation by the Legislature.

This means that there are currently no

funds for candidates planning to participate in the Clean Elections program, barring a court order or a future appropriation.

A group of Clean Elections advocates and candidates has brought suit to compel the release of funds. Oral arguments in the case were heard by the Supreme Judicial Court on Dec. 3, but no decision had been handed down by press time for this edition of *OCPF Reports*.

Further information will be posted as it becomes available on the office's web site at www.state.ma.us/ocpf.

Electronic filing: Starts in 2002

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candidate for governor must file electronically if he or she expects to raise or spend more than \$324,000 in 2002.

The corresponding thresholds for Senator and Representative are \$9,740 and \$3,240, respectively.

The law does not require electronic filing of the 2001 year-end reports, which are due on Jan. 22, 2002. To test the system, however, OCPF has asked legislative candidates to consider e-filing their year-end reports in addition to the paper copies.

New software

The advent of e-filing is accompanied by the release of the latest version of OCPF's popular reporting software. *Reporter 3*, for candidates and committees in the non-depository system, contains many new features, including an e-file component, and is based on the existing 2.0 version.

The two new software packages are

for depository candidates and committees, whose banks file regular reports with OCPF: *Depository Reporter*, for the use of the candidates and committees, and *Bank Reporter*, for their designated institutions.

Even those candidates who will not e-file, such as municipal and county candidates, will be able to use *Reporter's* recordkeeping features to track all their campaign finance activity. They can also use the software to print out reports for hard-copy filing.

Non-depository candidates who are using the two previous versions of *Reporter* do not need to do anything to get the new edition. OCPF will send it along in early 2002.

To ensure a smooth start for the software, OCPF plans to expand its online support. Visitors to OCPF's web site will be able to download the user guide and upgrades, and review a bulletin board of comments relating to the program. The site is at www.state.ma.us/ocpf.

State PAC contributions topped \$2m in 1999-2000 election cycle

Contributions to state and county candidates by political action committees exceeded \$2 million in 1999-2000, continuing a rise from an all-time low in the mid-1990s, according to a new OCPF study.

The study states that Massachusetts PACs reported contributions to state and county candidates of \$961,840 in 1999 and \$1,092,639 in 2000, for a two-year total of \$2,054,479. (Contributions to candidates in cities and towns in those two years amounted to an additional \$383,055.)

The two-year total of contributions to state and county candidates is the fourth highest of any election cycle since OCPF began tracking and publishing total PAC activity in 1982 and about \$82,000 less than the contribution total for the 1997-98 cycle.

For individual years, the PAC total for 2000 ranks as the sixth largest overall, while the 1999 contribution figure ranks as the highest total for a non-election year.

Just under 300 PACs are organized with OCPF. Activity by PACs has been on the increase since 1996, when changes in the law led to the lowest annual aggregate

contribution figure in a decade and an all-time low in the average contribution.

Other findings from the study:

? PACs reported spending a total of \$4,434,006 in the 1999-2000 election cycle, which in addition to contributions includes administrative and fundraising expenses.

? The usual preferred recipients of PAC money in past cycles – candidates for the Legislature, winning candidates, Democrats and incumbents — continued to receive a substantial majority of contributions in 1999-2000.

? The average PAC contribution was \$221 in 1999, down \$4 from the year before, and \$228 in 2000. The average in 2000 was the highest since 1994, but well below the record average of \$332 posted in 1983.

? Once again, PACs ended the period covered in this report with more funds than they started with. The committees reported cash on hand of about \$3.06 million at the start of 1999 and a cumulative ending balance of about \$3.38 million at the end of 2000.

A copy of the study is available on OCPF's website, www.state.ma.us/ocpf.

From the Director

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candidates, while Bank Reporter will be used by banks that service these depository accounts.

Electronic filing for legislative candidates will begin on a trial basis with the year-end report due January 22, 2002, while the other two versions will "go live" in January/February of 2002. OCPF will be working closely with candidates, treasurers, and their banks to ensure a smooth implementation.

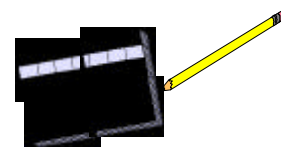
Electronic filing also brings the arrival of our searchable database. As reports are filed electronically, they will be immediately available to the public for viewing on our website. The public may search the reports by contributor, city, occupation, employer, or in various other categories.

Continuing on the disclosure front, you may have noticed that, while we prepare for the introduction of electronic filing, we are currently imaging the monthly reports of statewide incumbents, as well as any announced statewide candidates. Reports of legislative candidates that were or are involved in a special election are also available on the site. Although these images are not searchable, they do provide important disclosure to the public about the financing of campaigns.

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All of us at OCPF extend best wishes for a happy holiday season to you and your families.

**Mike Sullivan
Director**



Don't forget ...

Year-end campaign finance reports are due on Jan. 22, 2002

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.

Disposition Agreement

Charles Mosesian, Watertown (10/24/01).

OCPF and Mosesian entered into an agreement concerning a loan he made to Marilyn Petitto Devaney, an incumbent candidate for the Governor's Council.

According to the agreement, in September 2000 Devaney approached Mosesian, an acquaintance of several years, and asked him for a loan. Based on this request, Mosesian lent Devaney \$14,000 without interest on Sept. 7. Devaney repaid Mosesian the full amount on Feb. 1, 2001.

OCPF concluded after its review that Devaney used a substantial portion of the loan for campaign purposes. Because the definition of a contribution includes anything of value, including a loan, this raised issues under M.G.L. c. 55, s. 7A, which limits the amount an individual may contribute to any candidate to \$500 per calendar year.

In the agreement, Mosesian agreed to observe the \$500 contribution limit when contributing or loaning money to candidates in the future. OCPF agreed not to refer the matter to the Attorney General for further action.

Public Resolution Letters

01-30: Concerned Citizens of Lunenburg. *No Further Action (formation of a ballot question committee); 9/25/01.* A citizens group should have formed a ballot question committee prior to soliciting contributions to oppose a local override question, despite having filed regular PAC reports by mistake.

01-44: Marilyn C. MacEachern, Townsend. *Did Not Comply (anonymous contribution); 10/1/01.* A local candidate amended her campaign finance report to disclose the receipt of an anonymous gift of lawn signs. The signs were listed as an in-kind contribution, and the candidate was advised that it was improper for her committee to have made use of the gift.

01-43: Milton Public Schools. *No Further Action (use of government resources for a political purpose); 10/24/01.* Local PTOs received a discount as a result of using the school department's bulk rate permit for a mailing discussing a local ballot question. Prior to having been contacted by OCPF, the PTOs made a payment to the post office in the amount of the discount.

01-51: Robert Mielde, Easton. *No Further Action (failure to form a political committee and report ballot question activity); 11/1/01.* An individual who made a ballot question expenditure that purported to be "from a group of concerned taxpayers and homeowners" should have registered as a ballot question committee and reported the expenditure.

01-16: Massachusetts Teachers Association, Boston. *No Further Action (excess political expenditures); 11/2/01.* An association making "more than incidental" political expenditures since 1998 was obligated, pursuant to Interpretive Bulletin IB-88-01, to file annual expenditure reports with OCPF and to observe contribution limits. An audit of the association and its PAC revealed that no such reports had been filed and excess contributions had been made to the PAC. After OCPF initiated its review, the association filed consolidated expenditure reports for 1998, 1999 and 2000, and the PAC returned \$12,377 in excess contributions to the association.

01-34: City Councilor Peggy Davis

Mullen, Boston. *Did Not Comply.* (fundraising by a public employee); 11/13/01. A mayoral candidate's committee received funds from tickets to a fundraiser that were sold by a city firefighter during a union function. After OCPF initiated its review, the committee took remedial action by disgorging \$1,000 through a donation to a charity.

01-47: FACTS, Uxbridge. *No Further Action (disclosure of campaign finance activity); 11/13/01.* A local ballot question committee filed its dissolution report disclosing expenditures that did not appear in a previous 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.state.ma.us/ocpf.

01-21: A testimonial honoring a candidate is subject to the campaign finance law if the candidate's committee hosts the event or if it involves fundraising activity "held on behalf of" the candidate, where the candidate or committee receives money or something of value from the event. If a candidate does not accrue any such benefit from a testimonial held in his honor, then the proceeds and expenses related to the testimonial would not be "contributions" or "expenditures" under M.G.L. c. 55. (Mariano).

01-22: Voluntary political activity by union members on their own time would not be attributed to the union or be considered contributions by the union. However, the independence of union expenditures may be called into question if an employee with decision-making authority over the union's political activity was also personally active in a campaign supported by the union. (Mass. Association of Teacher Attorneys).

01-23: A legislator may solicit funds from business corporations in order to distribute a guide designed to help seniors organize the information and services that government agencies provide. (Koutoujian).

01-24: A not-for-profit corporation that receives contributions from business

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Advisories/Guidance

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corporations may host "meet the candidate" evenings if the expenses involved are consistent with ordinary hospitality. Such an entity may also send out a questionnaire to candidates, endorse candidates, issue endorsement letters to candidates and publicize its endorsement of these candidates to its members. Because the entity does not customarily issue press releases, it should not do so to announce political endorsements. (Lowell Youth Soccer Association).

☞**01-25:** Generally speaking, political contributions financed through payroll deductions cannot exceed \$50 per contributor per calendar year because such contributions do not meet the criteria set forth in M.G.L. c. 55, s. 9A and are not by way of a "written instrument." This would not be the case, however, where union members can authorize independent trustees to transfer cash from their individual vacation accounts into the PAC's account every six months. (New England Regional Council of Carpenters PAC).

☞**01-26:** The restrictions of M.G.L. c. 55, s. 8 (corporate contributions) and s. 13 (fundraising by public employees) apply to funds raised and spent in connection with a state party committee election. However, such funds are generally not "contributions" or "expenditures" under the campaign finance or Clean Elections laws unless they are raised or spent in accor-

dance with the "testimonial" provision of chapter 55. (Mass. Democratic Party).

☞**01-27:** This advisory opinion discusses the applicability of the M.G.L. c. 55, ss. 13-17 and Interpretive Bulletin IB-91-01 to different public and private groups involved in a library expansion project. (Friends of the Georgetown Peabody Library).

☞**01-28:** A state representative may use his personal van to provide constituent services and to campaign. If the candidate uses personal funds to paint campaign messages on the exterior of the vehicle, he should disclose the expenditures as in-kind contributions on his campaign finance reports. (Tirone).

☞**01-29:** A municipal website may include links to local party committees' websites if "equal access" is offered to all such committees. (Town of Groton).

☞**01-30:** Persons who collect qualifying cash contributions on behalf of a Clean Elections depository candidate may obtain a bank check for the amount collected and send the bank check to the political committee along with the information required by M.G.L. c. 55, s. 23 and the Qualifying Contribution forms for each contributor. (Holden).

Interpretive Bulletins and Memoranda

The following interpretive bulletins and memoranda were recently revised to include minor revisions due to changes in state or federal laws and regulations:

☞**IB-88-01,** "The Applicability of the Campaign Finance Law to Organizations Other Than Political Committees" (Updated to reflect the Clean Elections Law).

☞**IB-94-02,** "Implementation of Chapter 43 of the Acts of 1994: Requirements Relating to Political Action Committees" (Updated generally and for Clean Elections).

☞**M-90-04,** "Information for Banks Designated as Depositories for Campaign Funds Under M.G.L. c. 55" (Information on electronic filing was added and the list of municipalities subject to the depository reporting system was updated to include Cambridge).

☞**M-90-05,** "Instructions for Candidates on the Use of Depository Bank Accounts" (Information on electronic filing was added and the list of municipalities subject to the depository reporting system was updated to include Cambridge).

☞**M-95-06,** "Expenditure of Public Resources by Cities, Towns, or Other Local or Regional Governmental Units M.G.L. c. 55, s. 22A" (The list of municipalities authorized by the legislature to distribute ballot question information to voters was updated).

☞**M-97-02,** "Expenditures for the Use of Personal Automobiles" (The mileage reimbursement rate was updated to reflect the current IRS rate of 34 1/2 cents).

☞**M-98-03,** "Use of Candidate's Personal Funds for Campaign" (Updated for Clean Elections).

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