

OCPF Reports

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From the Director *End of a session*

The end of 2004 also marks the formal end of the two-year legislative session. We've previously reported on the campaign finance bills that gained final approval, including the repeal of the Clean Elections Law, a change in electronic filing thresholds and contributions to PACs by payroll deduction.

Dozens of other campaign finance bills were filed, but did not get final approval. One such bill that is worth noting was sponsored by OCPF.

That bill, which I joined in submitting with several legislators, codified the 1978 Supreme Judicial Court decision prohibiting the use of public resources for political purposes, such as ballot questions. It also created an optional mechanism for cities and towns to provide information to voters concerning all upcoming questions, including a brief explanation of its effect and arguments both for and against.

The bill was intended to address some of the many complaints we receive concerning the improper use of public resources and at the same time create a mechanism for providing neutral and balanced information to voters, based on the voter's guide for statewide ques-

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County and city candidates to start e-filing in 2005

The final missing pieces of the roster of electronic filers are about to be filled in with the addition of the last two categories of candidates to the online lineup.

Starting in January 2005, candidates for county office will e-file their reports, along with candidates for mayor or councilor-at-large in the state's five largest cities: Boston, Cambridge, Lowell, Springfield and Worcester.

Approved by voters in 1998, M.G.L. Chapter 55, Section 18C called for the phase-in of electronic filing over two election cycles. Candidates for statewide office, the Governor's Council and the Legislature, as well as ballot question committees, started e-filing in 2002, while political action committees and party

committees followed in 2004.

Section 18C gave OCPF the power to require e-filing by any other "class of candidates, individuals, or political committees" after Jan. 1, 2005.

The office is using that authorization to require e-filing by the county candidates and citywide candidates in those five communities.

"Those two categories were notable by their absence from electronic filing,"

said OCPF Director Michael Sullivan. "We were consistently being asked why they were not online, especially given the substantial spending by some candidates for sheriff in the recent election. We could only reply that for now, the information is only required to be filed on paper."

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Year-end filing date is Jan. 20
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OCPF issues further guidelines for credit card contributions

How can my committee accept contributions over the Internet? What kinds of credit cards can be used? Can contributors give using the PayPal system?

A new OCPF memorandum helps answer those questions and allows candidates and committees to take advantage of the change in the law allowing them to accept contributions by credit card.

The memorandum, M-04-01, is

available along with all past memoranda in the Legal Guidance section of OCPF Online, at www.mass.gov/ocpf.

M.G.L. Chapter 55, Section 9 allows candidates and committees to accept contributions by credit card, as long as each contribution is accompanied by a paper record or, in the case of an Internet transaction, an electronic record created and transmitted by the cardholder.

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Year-end reports due by Jan. 20 with OCPF or local officials

Thursday, Jan. 20 is the deadline for all candidates and committees to file their year-end campaign finance reports.

The deadline applies to all candidates, including those who did not seek office in 2004. Also included are any open committees, such as PACs, people's committees, ballot question committees and party committees, regardless of their level of activity.

For candidates for the state legislature in 2004, the year-end report will be the third of the three that were required for the year. Candidates in the depository system, which includes statewide, county and Governor's Council candidates, state party committees and candidates for mayor and councilor-at-large in Boston, Cambridge, Lowell, Springfield and Worcester, will file a report summarizing activity reported by their banks throughout the year, along with liabilities and in-kind contributions.

Local party committees – at the ward, town and city level – must file

with OCPF only if their activity exceeds \$100 in a reporting period.

Most local candidates file with their city or town clerks or election commissioners by the same date. The exceptions are the citywide candidates noted above, who file with OCPF.

Most candidates and committees are now required to file their reports electronically. The reports will be posted on OCPF's Electronic Filing System, which may be accessed through the office's website, www.mass.gov/ocpf. Click on the "Electronic Filing" tab.

Any report not filed by Jan. 20, either electronic or paper, is subject to a \$10 per day fine, which cannot be paid out of committee funds.

OCPF has scheduled extended hours for phone calls the last two evenings before Filing Day.

Office staff will take calls from 5 p.m.-8 p.m. on Tuesday and Wednesday, Jan. 18 and 19. The numbers are (617) 727-8352 and (800) 462-OCPF (6273).

From the Director

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tions prepared by the secretary of state.

The bill, Senate 2221, was vetoed by the lieutenant governor in October. In her veto message, Lt. Governor Healey said the new law was not necessary because expenditures of public money for a political purpose "are already understood to be unlawful."

I'd like to thank those who have supported the bill, including its sponsors in recent sessions, the Massachusetts city and town clerks associations and the Massachusetts Municipal Association.

* * *

All of us at OCPF wish you and yours a very happy holiday and prosperous New Year.

Mike Sullivan
Director

E-filing: County, city candidates now online

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OCPF has notified all of the candidates affected by the change, who number about 200.

All the candidates are in the depository system, in which disclosure reports are filed at least monthly by the candidates' banks. The frequency increases to twice a month in the second half of an election year. (While there are elections in the five depository cities in 2005, there are no elections for county office until 2006.)

The dawn of e-filing will change the

way some activity is reported to OCPF.

While the past submissions by depository banks have included receipts as well as expenditures, the banks will now e-file only expenditures, showing payments as the checks clear their accounts. Information concerning receipts will now be e-filed directly by the candidates or their committees, with the banks providing only the total amounts deposited in their submissions.

For candidates, the change means an end to the requirement that they complete an OCPF form, the D106, in triplicate and take all copies to the bank to document their deposits. The contributor information contained on the D106 will instead be e-filed di-

rectly, so regular bank deposit slips may now be used.

E-filers who prefer not to load the Reporter software on their computers may compile and file reports directly to OCPF's database using the online Web Reporter feature. To access this feature, go to OCPF's website at www.mass.gov/ocpf and click on the "Web Reporter" tab.

The new e-file requirement applies to all county and municipal depository candidates, regardless of the amount they raise or spend. Other candidates and committee must e-file only if they exceed certain statutory thresholds, though everyone is encouraged to file online.



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. Kathi-Anne Reinstein, Revere (11/10).

OCPF and Rep. Reinstein entered into an agreement regarding violations of the requirement in Section 18 of the campaign finance law that receipts and expenditures be accurately reported. The committee did not report approximately \$4,000 in receipts and \$17,760 in expenditures from 2001 and 2003, resulting in discrepancies between the committee's actual cash on hand and the balances listed in its campaign finance reports.

The candidate also used a committee debit card for ATM cash withdrawals to make campaign expenditures in 2002 and 2003, a practice that was inconsistent with OCPF regulations at the time. Legislative candidates may now use a debit card linked to a campaign account to pay for expenditures, but they are still prohibited from using a debit card to withdraw cash.

Reinstein's ATM transactions were not reflected as cash withdrawals in campaign finance reports. Instead, the committee disclosed the underlying expenditures that were made with the cash withdrawn. There was no indication that any expenditures were personal in nature.

OCPF concluded that Reinstein and her committee failed to accurately disclose receipts and expenditures in 2001 and 2002; failed to disclose over \$15,000 in expenditures in 2003; and failed to disclose cash withdrawals of

\$10,860 made using the committee's debit card between 2001 and 2003 as reimbursements.

Reinstein agreed to make a personal payment of \$2,000 to the Commonwealth in the nature of a civil forfeiture. OCPF suspended \$1,000 of that amount on the condition that Reinstein and the committee comply with the agreement. Reinstein also agreed to amend her reports to more accurately reflect the committee's past activity and to cease using the committee debit card for cash withdrawals.

Rep. Martin J. Walsh, Dorchester (11/23)

OCPF and Rep. Walsh entered into a disposition agreement regarding the receipt of contributions from political action committees that exceeded the aggregate annual limit over three years. M.G.L. Chapter 55, Section 6A limits the amount that candidates for certain offices may receive in the aggregate from PACs in a calendar year. The limits vary according to the office sought by a candidate; the annual limit for candidates for the Massachusetts House is \$7,500.

From 2001 through 2003, the Walsh committee received a total of \$45,040 in PAC contributions -- \$22,540 over the legal limit for this period.

Despite the committee's representations that excess contributions were refunded, its 2003 year-end report filed in January 2004 disclosed that the committee had failed to refund approximately \$7,500 in excess contributions in 2003. OCPF contacted Walsh, who stated that he believed that the committee's accountant had refunded the 2003 excess PAC contributions prior to the end of the calendar year. When this turned out to not be the case, Walsh provided OCPF with complete access to the committee's records in order to determine what, if any, remedial action should be taken.

In addition, despite the committee's issuance of refund checks, it appeared that checks totaling only \$17,390 were in fact cashed by PACs. The committee disgorged the \$5,150 remaining from the amount that was to be refunded by paying that amount to two scholarship funds.

Walsh also agreed to make a payment of \$2,500 from committee funds to the Commonwealth in the nature of a civil forfeiture. He also agreed not to deposit in the committee's account any PAC contributions received after the committee reaches the \$7,500 limit in a calendar year. All such contributions will instead be returned in their original form, namely, the original check.

Public Resolution Letters

•04-47: Concerned Citizens of Dudley. Did Not Comply (failure to organize ballot question committee or file reports disclosing campaign finance activity); 10/1/04. An individual who made expenditures to influence a municipal ballot question purported to be acting as a group or committee and was therefore required to organize and file campaign finance reports as a ballot question committee.

•04-59: Friends of the Longmeadow Charter, Longmeadow. Did Not Comply (disclosure of campaign finance activity); 9/21/04. A municipal ballot question committee did not file timely campaign finance reports before or after the election.

•04-50: Betsy Connolly, Wayland. No Further Action (candidate establishing PAC); 11/10/04. A municipal candidate was one of several individuals who organized a local PAC, which could be construed as a violation of M.G.L. c. 55, § 5A. The PAC dissolved after being contacted by OCPF.

•04-71: Rep. Theodore Speliotis, Danvers. Did Not Comply (use of government resources for a political purpose, political fundraising for public employees, and political fundraising in a government building); 11/12/04. Legislator's website included (1) a "Calendar" page providing information regarding a fundraiser and listing the candidate's State House phone number and e-mail address as the contact for information regarding the fundraiser, and (2) a "Campaign" page that included the State House phone number. Rep. Speliotis took appropriate remedial action by revising the website.

•04-65: Peter Vickery, Amherst. Did Not Comply (political fundraising in government building); 11/12/04. Candidate sent an e-mail solicitation to several state and municipal attorneys at their government-provided e-mail addresses.

•04-58: Anthony McDonnell, Quincy. Did Not Comply (making expenditures outside of committee's depository account); 11/12/04. A candidate for county office made expenditures using personal funds outside of his committee's depository bank to hire a private investigator to follow his opponent. After being advised that the expenditure should have been made through the depository account, the candidate provided OCPF with a letter for the public file detailing the expenditure.

•04-43: Franklin School Committee (Franklin). Did Not Comply (use of governmental resources for a political purpose); 11/12/04. School Department included an article in a newsletter that was distributed to students

Credit cards: New memorandum provides guidance

From Page 1

Permissible credit card transactions are limited to:

1) face-to-face transactions, where the contributor signs a receipt or authorization;

2) mail transactions, where the contributor sends card information and a signed authorization; and

3) Internet transactions, where the contributor answers various questions and provides the required information, then is sent a confirmation by e-mail or conventional mail.

Telephone credit card transactions

are not allowed.

The law allows only credit cards, not debit cards, to be used for contributions.

In order to accept credit card contributions, a candidate or committee must contract with a vendor or merchant provider, much like a business, to process transactions. The service fees charged by the vendor must be reported as expenditures by the candidate or committee.

The gross amount of each contribution is reported by the committee, not the net after the deduction of the credit

card fee. For example, if a contributor gives \$100 but the committee receives \$99 after the service fee is deducted, the committee still reports a \$100 contribution and a \$1 expenditure.

As for PayPal, whether it can be used by a candidate depends on how the candidate uses the service. See M-04-01 for more information.

OCPF's website contains the full text of the office's regulations concerning credit cards, at 970 CMR 1.09. The web address is www.mass.gov/ocpf. Click on the "Legal Guidance" tab at the top of the home page.

Public Resolution Letters

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by teachers, which advocated for an anticipated override, and also provided contact information.

•04-53: Rep. Mark Howland, E. Freetown. Did Not Comply (political fundraising in governmental building); 11/16/04. Distribution of invitation to political fundraiser via e-mail did not comply with Section 14. The solicitation, which was initially sent from the legislator's

personal computer, was forwarded from the legislator's State House computer to the e-mail addresses of other legislators and staff in the State House.

•04-40: Brockton Democratic City Committee. Did Not Comply (disclosure of campaign finance activity); 11/17/04. A local party committee's 2001 and 2002 reports were filed late and when eventually filed, lacked significant contributor information.

•04-74: Cleon Turner, East Dennis. Did Not Comply (political fundraising in govern-

mental building); 11/18/04. A candidate mailed more than 600 fundraising letters to public employees at their workplaces. To resolve the matter, the candidate agreed to pay a \$250 penalty to the Commonwealth.

•04-61: Override Election Committee, Uxbridge. Did Not Comply (failure to organize ballot question committee or disclose campaign finance activity in a timely manner); 12/1/04. A municipal ballot question committee did not file timely campaign finance reports before or after the election.

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-04-15: Two local party committees may sponsor a fundraising event for a national party committee. Where no funds will be raised or spent by the local party committees, the activity will not involve financial activity subject to the Massachusetts campaign finance law. Funds paid personally by individuals to enable the event to take place would be reported as in-kind contributions to the national party committee, not the town party committees. (Belmont Democratic Town Committee).

•AO-04-16: The spouse of a candidate who is a non-elected public employee may assist candidate in a number of ways: She may prepare reports and printing labels, perform data entry,

stuff envelopes and assist with mailings. In addition, she can set up for fundraisers by inflating balloons, hanging signs, and similar work. Also, she may also attend other fundraisers as a spouse of the candidate and be named on literature as the spouse of the candidate. (Tatlow-Doucette).

•AO-04-17: Section 13's fundraising restriction would not appear to apply to a public employee who has taken a leave of absence in the fall of 2004 in anticipation of a special election that will not likely be held until the spring of 2005. (Bellegarde).

•AO-04-18: If an appointed public employee were to coordinate volunteers for a candidate's fundraising events or greet guests and volunteers on behalf of the candidate or his committee at such events, the public employee would appear to be substantially involved in the candidate's fundraising activities. To ensure compliance with Section 13, a public employee should therefore not participate in these activities. (Rodrigues).



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