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# INTERPRETIVE BULLETIN

## The Applicability of the Massachusetts Campaign Finance Law to Unregistered Political Groups and Non-Massachusetts Political Committees

This bulletin provides guidance regarding political activity to promote or oppose Massachusetts candidates by unregistered or non-Massachusetts political committees. These groups include political committees organized in another state or at the federal level but not organized in Massachusetts, as well as other groups, unions or organizations that raise money to influence elections but are not required to be organized in Massachusetts, at the federal level, or in any other state.

This bulletin ***does not*** address political activity in Massachusetts by groups, unions, associations or other types of organizations, including non-profit corporations, which do not raise money for a political purpose. Such groups may generally make political expenditures in Massachusetts up to a certain amount without being subject to the provisions of M.G.L. c. 55. See OCPF's IB-88-01 for a complete discussion of the rules applicable to such activity.

***Summary***

While Massachusetts political committees may generally contribute to non-Massachusetts candidates and political committees subject to any relevant limits of the non-Massachusetts jurisdiction,[1] unregistered political groups and committees not registered in accordance with Massachusetts law may not contribute to Massachusetts candidates and political committees other than to ballot question committees.

[1] This office previously advised that such contributions were subject to chapter 55's contribution limitation.

**I. How does an Organization become a Massachusetts political committee subject to the provisions of M.G.L. c. 55?**

The Massachusetts campaign finance law defines a political committee as any:

> committee, association, organization or other group of persons, including national, regional, state, county or municipal committee, which receives contributions or makes expenditures for the purpose of influencing the nomination or election of a candidate, or candidates... or for the purpose of opposing or promoting a charter change, referendum question, constitutional amendment, or other question submitted to the voters.

In IB-88-01, this office narrowed the definition of "political committee" to include only groups that *raise money to influence Massachusetts elections and subsequently expend those funds to influence Massachusetts elections*. Therefore, any organization or group which ***solicits or receives*** any money or any other thing of value to influence the election of a Massachusetts state, county or municipal candidate, or to favor or oppose a Massachusetts local ballot question is acting as a political committee and is subject to the campaign finance law as of the date of the solicitation or receipt of funds. The campaign finance law requires, among other things, the group formally organize a political committee with OCPF, or the appropriate local election official, and appoint a treasurer prior to soliciting or receiving any funds for a political purpose.

**II. Which Organizations are Considered Unregistered or Non-Massachusetts Political Committees?**

For the purposes of this Interpretive Bulletin, "unregistered or non-Massachusetts political committees" shall include: (1) all political committees duly organized in another state or at the federal level but not organized in Massachusetts; and (2) all other organizations, unions, associations or groups, no matter how informal, that are not required to formally organize as a political committee in Massachusetts (because they do not raise money to influence Massachusetts elections, See Section I, above), at the federal level, or in any other state but nonetheless raise money for a political purpose, i.e. to influence elections or to support or oppose a political party.

**III. Complying with M.G.L. c. 55; Contributions by Unregistered or Non-Massachusetts Political Committees to Certain Massachusetts Political Committees Prohibited**

**A. Contributions to Ballot Question Committees**

An unregistered or non-Massachusetts political committee may, contribute to a ballot question committee without first organizing in Massachusetts if the unregistered or non-Massachusetts political committee does not solicit or receive funds specifically to influence the Massachusetts ballot question. An unregistered or non-Massachusetts political committee may also make expenditures to support or oppose the ballot question but must disclose such expenditures. See M.G.L. c. 55, § 22 and OCPF's IB-92-02.

**B. Contributions to Candidates and All Other Political Committees**

M.G.L. c. 55 does not authorize unregistered or non-Massachusetts political committees to

contribute to Massachusetts candidates, candidate committees, PACs, or political party committees. Only certain political committees organized and registered with OCPF may make such contributions, subject to the contribution limitations and other requirements of Chapter 55.

This restriction applies to both cash and "in-kind" contributions. Therefore, if an unregistered or non-Massachusetts political committee provides any support or administrative services to a Massachusetts candidate, candidate committee, PAC, people's committee or political party committee, such as office space, phones or staff, the Massachusetts committee must reimburse the unregistered or non-Massachusetts political committee in full for receiving the support or services to avoid the receipt of an improper "in-kind" contribution to the Massachusetts committee.

### C. Procedures for Establishing a Separate Massachusetts PAC

Any unregistered or non-Massachusetts political committee that wishes to participate in Massachusetts campaign finance activity must do so through a separate, financially segregated Massachusetts PAC organized and maintained in accordance with M.G.L. c. 55, including the following provisions:

(a) Statement of Organization - In accordance with M.G.L. c. 55, § 5, the new Massachusetts PAC must file a Statement of Organization with OCPF or, if organized for the purpose of a city or town election, with the city or town clerk or board of election commissioners. See IB-83-01. Campaign finance reports are due periodically and must be filed in a timely, complete and accurate manner. No Massachusetts political committee may raise or spend funds at any time unless it has a duly authorized and appointed treasurer.

The Massachusetts PAC must start with an account balance of zero. All funds received by the PAC must be kept in a separate segregated account and must comply with the Massachusetts campaign finance law. This means that the affiliated unregistered or non-Massachusetts political committee may not endow the new PAC with an initial balance, or otherwise contribute or transfer any money into the PAC.

The campaign finance law establishes specific obligations for Massachusetts PACs. The law also creates "people's committees" which, like PACs, are organized to support or oppose more than one candidate. To be certified as a people's committee by OCPF, a committee must (1) start out as a PAC; (2) be in existence for at least six months; (3) receive contributions only from individuals; (4) accept no more than $123 (indexed biennially) from any individual during any calendar year; and (5) have contributed to five or more candidates. OCPF interpretive bulletin, IB-94-02, provides a detailed discussion of the obligations of Massachusetts PACs and people's committees and should be referred to by any group which intends to organize a PAC or people's committee in Massachusetts.

(b) Name of Committee - Section 5B requires a PAC to use a name or phrase that "identifies" the common employer, if any, shared by a majority of contributors. In addition, the name or phrase must identify "the economic or other special interest, if identifiable, of a majority of [the committee's] contributors." If the committee cannot identify the contributors' common employer or interest, it must use a name or phrase that identifies the economic or special interest and common employer of a majority of the committee's organizers and must identify any individual

controlling the committee. PACs must also include the phrase "political action committee" in the committee's name.

(c) Contributions - Section 1 of c. 55 broadly defines the word "contribution." A contribution includes a "contribution of money or anything of value" as well as any "transfer of money or anything of value between political committees." Other sections of the law establish reporting and limitation requirements. For example, section 9 provides that contributions to any political committee greater than $50 may not be made by money order. Such contributions must be made by check or credit card as defined by section 9 or by electronic transfer as authorized by section 9A. Section 18 provides that the reports of contributions greater than $50 must include the name and address of each contributor, and reports of contributions of $200 or more must include occupation and employer information provided by the contributor.

Individuals may contribute an aggregate amount per calendar year of $500 to a Massachusetts PAC. In turn, a PAC may contribute to a candidate's campaign fund in an amount not to exceed $500 in any one calendar year. In addition, candidates, other than candidates for municipal office, are subject to limits on the aggregate amounts that may be received from all Massachusetts PACs during any calendar year. The limits range from $7,500 for state representative to $150,000 for governor. Contributions from people's committees, however, do not count toward a candidate's aggregate PAC limit.

(d) Bundling - Section 10A of c. 55 regulates "contributions made through an intermediary or conduit," or so-called "bundled contributions" to candidates. Such contributions, if made *through* a PAC, or an officer, employee or agent of a PAC, are treated not only as contributions from the person making the contribution but also as contributions from the person or PAC *through* whom the contributions are made. See AO-95-06, AO-95-17, AO-95-20, AO-95-24, and AO-95-35. Bundling does not apply to contributions made directly by a PAC from its own account to a candidate.

(e) Expenditures - A political committee is also required to report any and all expenditures, including but not limited to donations to Massachusetts candidates and PACs, and expenses paid on behalf of candidates and other PACs. For expenditures greater than $50, the report must include the full amount or value, date and purpose of each expenditure. In addition, the total amount of all expenditures must be listed.

(f) Corporate Contributions - Massachusetts campaign finance law prohibits contributions and expenditures by business and professional corporations to PACs.

Corporations may not provide goods or services to the PAC unless such committees pay fair market value for the cost of such goods or services such as the use of corporate facilities or compensated staff support for a PAC organized by officers or employees of a corporation. Similarly, a corporation may not offer a discount or rebate to any candidate or committee that is not offered to other candidates for the same office and to the general public. See Op. Atty. Gen. Nov. 6, 1980. A "media organization," however, as defined in M.G.L. c. 55, § 8A, may make time available to candidates at reduced or no cost subject to certain restrictions.

## IV. Independent Expenditures by Unregistered and Non-Massachusetts Political Committees to Promote or Oppose Massachusetts Candidates

M.G.L. c. 55, § 18A states, in relevant part:

> Every individual, group or association ***not defined as a [Massachusetts] political committee***, who makes an independent expenditure or [independent] expenditures in an aggregate amount exceeding one hundred dollars during any calendar year for the purpose of promoting the election or defeat of any candidate or candidates shall file [a disclosure report] with the director, or with the city or town clerk if such candidate or candidates seek public office at a city or town election, within seven business days after making such independent expenditure or [independent] expenditures, on a form prescribed by the director ...
>
> For the purpose of this section the term "independent expenditure" shall mean an expenditure by an individual, group, or association not defined as a [Massachusetts] political committee expressly advocating the election or defeat of a clearly identified candidate which is made without cooperation or consultation with any candidate, or [candidate committee], or any agent of a candidate and which is not made in concert with, or at the request or suggestion of, any candidate, or [candidate committee] or agent of such candidate. (emphasis added)

Consistent with this provision, an unregistered or non-Massachusetts political committee may make an independent expenditure using funds that have been previously raised for purposes other than to support or oppose a Massachusetts candidate or candidates. An unregistered or non-Massachusetts political committee may not, however, solicit or receive funds specifically for the purpose of making an independent expenditure in Massachusetts without first organizing a political committee as outlined above in Section III(C).

## V. Expenditures by Massachusetts Candidates, Candidate Committees, PACs, People's Committees, and Party Committees to, or for the Benefit of, Non-Massachusetts Candidates and Political Committees

Subject to limitations or restrictions established by federal law or the law of other state jurisdictions, a Massachusetts political committee may contribute to a non-Massachusetts candidate or political committee or make an independent expenditure to promote or oppose a non-Massachusetts political committee if the activity is undertaken (1) to enhance the political future of the Massachusetts candidate or principle for which the Massachusetts committee was organized, and (2) is not for any individual's personal use. See M.G.L. c. 55 § 6.

Because non-Massachusetts political committees are not "political committees" for the purposes of M.G.L. c. 55, contributions by a Massachusetts committee to such committees are not subject to the contribution limitations set forth in M.G.L. c. 55, § 6.

## VI. Conclusion

It should be kept in mind that this bulletin is limited in scope to the Massachusetts campaign finance law. Unregistered and non-Massachusetts-political committees should contact the Federal Election Commission or their state campaign finance authority to ensure compliance with federal law or the law of another state.

While this bulletin has set out some of the basic provisions of the Massachusetts campaign finance law, OCPF urges anyone contemplating conducting campaign finance activity in Massachusetts to contact the office for more specific guidance.

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