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OCPF-IB-88-01
Issued: September 1988
Revised: February 15, 2007

INTERPRETIVE BULLETIN

The Applicability of the Campaign Finance Law to Groups That Do Not Engage in Political Fundraising

This bulletin defines when activity supporting or opposing Massachusetts candidates and candidate committees, PACs or political party committees by organizations that do not raise money for a political purpose becomes subject to the provisions of M.G.L. c. 55, the campaign finance law. In particular, where an organization makes expenditures, but does not raise funds to support or oppose candidates, political action committees or political parties, this bulletin defines (1) when and to whom the organization must report its political expenditures, (2) what the reporting obligations are, and (3) the relevant limitations on political expenditures.

Summary

Organizations that do not solicit or receive funds for any political purpose (i.e. to support or oppose candidates, political action committees, or political parties, whether in Massachusetts or elsewhere), and whose treasuries do not contain funds derived from business or professional corporations, do not need to organize separate Massachusetts political committees in order to make expenditures to support or oppose Massachusetts candidates and candidate committees, PACs and party committees. However, if an organization's political expenditures in Massachusetts become "more than incidental," the organization becomes subject to the contribution limitations and reporting requirements that apply to political action committees until one year after the last year that the organization's political expenditures did not exceed the incidental threshold. Expenditures are "more than incidental" if they exceed, in the aggregate, in a calendar year, either $15,000 or 10 percent of such organization's gross revenues for the previous calendar year, whichever is less.

Part I of this bulletin describes when a group or organization is considered a "political committee" under the campaign finance law. These guidelines apply to groups, unions, associations or other types of organizations, including non-profit corporations, "social welfare," i.e., "501(c)(4)," or other tax-exempt organizations established under Section 501(c) of the Internal Revenue Code, and also to political organizations created under Section 527 of the Internal Revenue Code.

The remainder of this bulletin provides guidance for organizations that make political expenditures, but do not engage in political fundraising. As discussed below, such organizations, even if they are not required to organize as political committees, may be subject to the contribution limitations and reporting requirements of the campaign finance law. Where specific reporting and disclosure provisions of M.G.L. c. 55 are applicable, reference is made to those provisions. This part of the bulletin does not address expenditures made by (1) business or professional corporations, or groups, organizations or associations funded by business or professional corporations; (2) political committees, whether organized in Massachusetts or elsewhere; (3) other groups or organizations that raise money for a general political purpose, i.e. to influence state or federal elections or to support or oppose a political party, that are not required to formally organize as a political committee pursuant to M.G.L. c. 55, at the federal level, or in any other state or (4) partnerships.[1] In addition, this bulletin does not address expenditures made to support or oppose ballot questions. See IB-90-02 for information on the disclosure and reporting of such expenditures, or people's committees, which may only accept contributions from individuals. See M.G.L. c. 55, § 1.

I. When must a group or organization formally register as a Massachusetts political committee?

The Massachusetts campaign finance law defines a political committee, in part, as "any committee, association, organization or other group of persons, including a 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." A strict application of this definition would, however, place an extraordinary burden, not intended by the Legislature, on non-political organizations making only incidental expenditures for a political purpose without achieving a compelling governmental objective. Accordingly, ***OCPF treats groups and organizations that make expenditures but do not solicit or receive funds for any political purpose differently than groups and organizations that engage in political fundraising***.

Any organization that intends to solicit or receive money or any other thing of value to

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[1] Business and professional corporations are regulated by M.G.L. c. 55, § 8, and all corporations, including non-profit corporations, which make expenditures to influence ballot questions, are regulated by M.G.L. c. 55, § 22. Political committees are regulated by the express provisions of the campaign finance law and by regulations issued by this office. Unregistered political groups and non-Massachusetts political committees may not contribute to Massachusetts candidates and committees, other than ballot question committees, unless they do so through an affiliated Massachusetts PAC duly organized with OCPF and operated in accordance with M.G.L. c. 55 and 970 CMR. See IB-82-01. Partnerships are treated differently than other organizations. See OCPF advisory opinions AO-95-05 and AO-93-29. See also M.G.L. c. 55, § 1 which governs communications by membership organizations and M.G.L. c. 55, § 8A, which governs political advertising by media organizations for "qualified candidates."

influence the election of a Massachusetts state, county or municipal candidate or candidates, must comply with the provisions of Chapter 55, formally organize a political committee, and appoint a treasurer prior to soliciting or receiving any funds for a political purpose. See M.G.L. c. 55, §§ 5 and 7. In addition, groups or organizations that solicit or receive money or any other thing of value for a general political purpose not specifically intended to promote or oppose the nomination or election of candidates in this state (i.e. groups that raise money to influence elections in other states or nationwide or support political parties, whether or not registered as a political committee in another jurisdiction, including 527 organizations) must comply with the provisions of Chapter 55 and formally organize a Massachusetts political committee, with a separate, segregated account, prior to making contributions to a Massachusetts candidate, candidate committee, PAC, or party committee. See IB-82-01.

On the other hand, other groups or organizations that wish to make expenditures, but do not solicit or receive funds for any political purpose, and whose treasuries do not contain funds derived from business or professional corporations, do not need to organize separate political committees. These groups will, however, as discussed below, become subject to certain provisions of the campaign finance law applicable to political committees once their political expenditures become "more than incidental."

For example, a union, like any group, may not solicit or receive funds for the purposes of influencing Massachusetts elections without first organizing a political committee in accordance with M.G.L. c. 55. It is not uncommon, however, for unions to maintain accounts, such as COPE or education funds, which contain money dedicated generally to "political education." Membership dues might be used to fund such accounts, or the union may receive additional sums from members or affiliates specifically for deposit in the union's political education fund.

For a union to make political expenditures in Massachusetts without first organizing a separate political committee, the union must make the expenditures from an account containing funds that were not raised for a political purpose, such as the union's general treasury fund or a political education account *comprised solely of funds transferred into the account from the general treasury and not raised for a political purpose.* The campaign finance law *does not* authorize a union to contribute to a Massachusetts candidate or political committee (other than a ballot question committee) from any account, including a political education account, which contains funds received from any source that was given for a political purpose. See IB-82-01.

A political organization created under Section 527 of the Internal Revenue Code may make independent expenditures to support or oppose Massachusetts candidates or political parties, subject to Section 18A of the campaign finance law, if the organization does not accept funds from business or professional corporations. The organization would also be subject to the reporting requirements and limits that exist for PACs once its expenditures exceed the incidental threshold discussed below. Such an organization would be required to register as a political committee under the Massachusetts campaign finance law, however, if it plans to raise money for the purpose of making expenditures to influence a specific candidate, PAC or political party in Massachusetts. In addition, if a 527 organization plans to make *contributions* to a Massachusetts candidate, PAC or political party, it must first establish a segregated fund to receive funds and make expenditures as a PAC in accordance with the Massachusetts campaign finance law. Payments made by 527 organizations (or other organizations

or groups), if made for "issue advocacy," and if not coordinated with a candidate or committee, are not "contributions" or "expenditures" subject to the campaign finance law. See IB-06-01.

II. What are "more than incidental" political expenditures?

Political expenditures by an organization are "more than incidental" if such expenditures (1) are for the purpose of aiding, promoting or preventing the nomination or election of any person to public office, or aiding or promoting or antagonizing the interest of any political action committee or political party and (2) exceed, in the aggregate, in a calendar year, ***either $15,000 or 10 percent of such organization's gross revenues for the previous calendar year, whichever is less (the "incidental threshold").***[2]

This standard balances the public interest of disclosure and regulation of campaign finance activity in Massachusetts with the administrative and legal burdens imposed on organizations participating financially in the Commonwealth's political process.

Expenditures included in the determination of whether the incidental threshold has been met are monetary or in-kind contributions to, or expenditures or liabilities incurred on behalf of or to oppose, candidates or their political committees, PACs, and the political committees of political parties. Such expenditures include, but are not limited to, independent expenditures as defined by M.G.L. c. 55, § 18A. For the purposes of this interpretive bulletin, any liability incurred by an organization on behalf of or to oppose a candidate or political committee (other than a ballot question committee) is included in the computation of the incidental threshold for the calendar year in which the liability is incurred even if the actual expenditure to discharge such liability is not made until a later calendar year.

Expenditures not included in the incidental threshold analysis are those expenditures which are (1) not related to the nomination or election of Massachusetts state, county or municipal candidates, (2) not made to or for the benefit of political committees organized in Massachusetts, (3) made to the federal account of a political committee of a political party, (4) made to discharge liabilities incurred in a previous calendar year and (5) made for the purpose of opposing or promoting a ballot question, irrespective of whether such question appears on a Massachusetts ballot or elsewhere. In addition, costs resulting from communications between a membership organization and its members and their families are not deemed to be "contributions" or "expenditures" for the purpose of the campaign finance law, and, therefore, are not included in the determination of whether an organization has exceeded the incidental threshold. See M.G.L. c. 55, § 1.

III. Consequences of reaching the incidental threshold.

All political expenditures made after reaching the incidental threshold ***shall be subject to the contribution limitations set forth in M.G.L. c. 55, § 6 applicable to political action committees making contributions to candidates, candidate committees and other political committees.*** In addition, once the incidental threshold is met, organizations must report all expenditures made on behalf of, or to oppose, candidates, party committees or PACs.

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[2] For a new organization, i.e., an organization that has been in existence for less than a full calendar year, the incidental threshold is $15,000 or 10 percent of the organization's gross revenues for the *current* calendar year, whichever is less.

A. Limit on Expenditures.

Prior to reaching the threshold, a group may contribute any amount up to the threshold to any one or more candidate or committee without becoming subject to the limitations in M.G.L. c. 55, § 6. However, once the threshold is reached, contributions to any one candidate, candidate committee, or political action committee would be limited to an additional $500 in the calendar year in which the limit was reached, and aggregate contributions to all committees of any one political party, including those on the state and local level, would be limited to an additional $5,000 in the calendar year in which the limit was reached. These limitations would apply in subsequent calendar years until one year after the first calendar year in which the threshold is not reached.

For example, if an organization whose incidental threshold is $15,000 reaches a total of $15,000 in contributions to candidates, PACs and political party committees before a certain date in 2003, the organization could contribute no more than an additional $500 to any one candidate or PAC, and no more than $5,000 in the aggregate to committees of any one political party, between the date it reached the threshold and December 31, 2003. The organization would then be subject to these limitations during 2004, and every year thereafter until one year after annual political expenditures by the organization are less than its incidental threshold for that year. Therefore, if the organization's threshold was still $15,000 and its total political expenditures to Massachusetts PACs, candidates and party committees is less than $15,000 in 2004, the organization would not be subject to the limitations in M.G.L. c. 55, § 6 in 2005, assuming the expenditures remain less than the incidental threshold in 2005.

If an organization makes a contribution to a candidate or political committee in an amount that causes the organization to exceed the incidental threshold limit, the portion of the contribution over the incidental threshold would be subject to the contribution limits contained in M.G.L. c. 55, § 6. For example, after an organization whose incidental threshold is $15,000 has made $10,000 in political expenditures in a calendar year, the most it could subsequently give to a single candidate during the remainder of that year (assuming no other political expenditures were made) would be $5,500, the balance of the incidental threshold plus the amount of the annual PAC limit to candidates.

B. Reporting requirements.

In addition to being subject to contribution limits, once an organization has made expenditures or incurred liabilities in excess of the incidental threshold, it must submit reports to this office in accordance with the schedule set forth in clause (e) of the second paragraph of M.G.L. c. 55, § 18.[3] Once the incidental threshold is reached, the organization must list ***all*** political expenditures on Form CPF 111, including those made in reaching the incidental threshold as well as those incurred after the threshold is met. See Form CPF 111, "*Report of Association, Organization or Other Group Supporting or Contributing to Candidates, PACs & Political Party Committees.*" If all expenditures or liabilities incurred after the incidental threshold is reached are to support local candidates in one

[3] Such reports must be filed on or before the eighth day preceding a primary or caucus, the eighth day preceding a biennial state election, and, as a final report, the twentieth day of January in the following year complete as to the thirtyfirst day of December of the prior year.

municipality, an organization must file the form with the city or town clerk or election commission in the city or town where such expenditures are made, in accordance with the schedule set forth in clause (b) of the second paragraph of M.G.L. c. 55, § 18.[4]

In any year prior to a year in which an organization initially reaches the incidental threshold, an organization is not required to periodically report expenditures (except independent expenditures, see below) made on behalf of political action committees, party committees, or candidates on CPF Form 111. **The obligation to file a report begins when the organization's expenditures exceed the incidental threshold and continues until one year after the next year that the organization's expenditures do not exceed the incidental threshold.** For example, if an organization whose incidental threshold is $15,000 makes political expenditures of more than $15,000, the reports must be filed for 2003, and in each year thereafter until one year after the incidental threshold is not reached. If in 2004 the organization makes political expenditures totaling $10,000, and that amount is less than 10 percent of the organization's gross revenues for that year, the organization would still be required to file in 2004, but not in 2005, assuming the expenditures remain less than the incidental threshold in 2005.

"Independent expenditures" in amounts exceeding $100 during a calendar year must be reported regardless of whether an organization has reached the incidental threshold. See M.G.L. c. 55, § 18A. If an organization makes an expenditure(s) over $100 during any calendar year advocating the election or defeat of a clearly identified candidate or candidates without cooperation or consultation with that candidate(s) or the candidate's committee(s), the organization must file, within seven business days after such expenditure(s) exceed $100 during a calendar year, a CPF Form 18A, "*Report of Independent Expenditures*" with this office, or with the city, town or district clerk or election commission. For organizations that have exceeded the incidental threshold, the CPF Form 18A must be filed in addition to the CPF Form 111 that is required to be filed periodically in accordance with the schedule set forth in clause (b) of the second paragraph of M.G.L. c. 55, § 18. As stated in Section II, above, independent expenditures count towards an organizations incidental threshold.

IV. Forms.

Copies of Forms CPF 18A and CPF 111 may be downloaded from OCPF's website, www.mass.gov/ocpf, or may be obtained from OCPF.

V. Record Keeping.

Each organization subject to the guidelines discussed in this bulletin shall keep records of its political expenditures for six years following the date of the relevant election.

Failure to meet the limitation, disclosure and reporting requirements of these guidelines, or failure to maintain required records, may subject an organization to penalties imposed by the campaign finance law.

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[4] Such reports must be filed on or before the eighth day preceding a city or town preliminary or primary, including a caucus, the eighth day preceding a city or town election, and if a city election, by the twentieth day of January in the following year complete as to the thirty-first day of December of the prior year, and if a town election, by the thirtieth day following said election.

VI. Conclusion.

Numerous and sometimes complex questions are raised when organizations other than political committees become involved in campaign finance activity. If you have questions or need further information regarding this bulletin or any other campaign finance matter, please call OCPF at 1-800-462-OCPF or 617-727-8352.

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