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INTERPRETIVE BULLETIN

**Disclosure and Reporting of
Contributions and Expenditures Related to
Ballot Questions**

This interpretive bulletin defines when contributions and expenditures made to influence a ballot question become subject to the campaign finance law and provides guidelines regarding the disclosure of contributions and expenditures made to promote or oppose a ballot question by ballot question committees, corporations, associations, organizations and by individuals. For purposes of this bulletin, associations, organizations and other groups (including groups of two or more persons making expenditures to promote or oppose a ballot question) will be referred to collectively as "associations."

Summary

Ballot question committees, which solicit or receive funds and make expenditures to favor or oppose a ballot question, must disclose all contributions, expenditures and liabilities with this office or the appropriate local election official. The campaign finance law also requires disclosure of all expenditures, as well as "promises to give, pay expend or contribute," made by corporations or associations to promote or oppose a ballot question, including those made in anticipation that a question will appear on a ballot.

In addition, any person who makes an expenditure or incurs a liability of \$250 or more must file a report to disclose the expenditure or liability.

Disclosure reports are filed with OCPF for statewide or county ballot questions or advisory questions submitted to voters of a legislative district. Reports are filed with the local election official for local ballot questions.

M.G.L. c. 55, the campaign finance law, refers to ballot questions in a number of areas. Section 1 of M.G.L. c. 55 defines a "ballot question committee" as "a political committee which receives or expends money or other things of value for the purpose of favoring or opposing the adoption or rejection of a specific question or questions submitted to the voters including, without limitation, a charter change, an initiative or referendum question or a constitutional amendment."



In addition, in its definitions of “contribution,” “expenditure,” and “political committee,” Section 1 refers to funds received or spent for “the purpose of promoting or opposing a charter change, referendum question, constitutional amendment, or other question submitted to the voters . . .” Section 18 provides a reporting schedule of activity by political committees organized to “favor or oppose a question submitted to the voters.” Also, Section 22 requires reporting by corporations and associations for expenditures¹ “made to influence or affect the vote on any question submitted to the voters.” Section 22 also requires any person making an expenditure of \$250 or more to influence or affect a ballot question (other than a contribution to a ballot question committee) or incurring a liability of \$250 or more, to disclose such expenditure or liability. Section 22A requires the filing of reports by governmental entities that make such expenditures.²

If a corporation or association solicits or receives³ any money or other thing of value for the purpose of promoting or opposing a question submitted to the voters, the corporation or association is functioning as a ballot question committee and immediately must organize as such. In these circumstances, the corporation or association would be acting as a ballot question committee and would be subject to all the provisions of the campaign finance law as of the date of the solicitation or receipt of such money or other thing of value. Any corporation or association (or individual) which solicits or receives any money for the purposes of influencing a ballot question, or which holds itself out to the public as a political committee making expenditures to promote or oppose a ballot question, must organize with OCPF or the local clerk or election commission as a ballot question committee.

I. When do expenditures become subject to the campaign finance law?

The campaign finance law requires disclosure of all expenditures made to promote or oppose a ballot question, whether made by a ballot question committee, corporation or association and also of expenditures by individuals if the expenditure is of \$250 or more. See M.G.L. c. 55, Sections 1, 18 and 22. A corporation or association seeks to “promote or oppose” a ballot question when expenditures are made or liabilities are incurred in an effort to influence the vote on a question.

Additionally, corporations and associations which make “promises to pay” for goods or services to influence a ballot question must file a report disclosing such promises, even if the corporation or association has not yet made any expenditures. A promise to pay exists and must be reported if the corporation or association has (1) made an express or implied promise to make an expenditure, or

¹ Sections 22 and 22A require the reporting of any corporation or association, or any governmental unit, “which has given, paid, expended or contributed, or promised to give, pay, expend or contribute, any money or any valuable thing in order to influence or affect the vote on any question submitted to the voters . . .” The term “expenditure” is used in this bulletin to include all of the referenced transactions, including promises made to give, pay, expend or contribute.

² The obligation in Section 22A to disclose such expenditures does not, however, reflect an authorization allowing expenditures of public resources. See M-95-06, outlining the procedure that city and town clerks or election officials, and treasurers or financial officers of local or regional governmental units, should follow to comply with M.G.L. c. 55, § 22A and IB-91-01, regarding the use of public resources to influence ballot questions.

³ Where more than one person pools funds, “receipt” has occurred for the purposes of the campaign finance law, i.e., if a group of two or more persons pool funds or resources to promote or oppose a ballot question, they have formed a ballot question committee, and should file a statement of organization with OCPF or the local clerk or election commission and report receipt of the funds from each person who has made a contribution.

(2) knows or reasonably should know that it will be responsible for paying for a good or service to support or oppose a ballot question. A liability exists and must be reported if the corporation or association has received a good or service that it has not yet paid for, even if the corporation or association has not received a bill or invoice.⁴ See M.G.L. c. 55, s. 22.

The office has consistently stated that “monies raised and spent in an effort to move forward [a question] which will influence the voters, such as a petition drive, are subject to the provisions of c. 55. It is not necessary that a question be legally certified as appearing on the ballot” for the activity to be considered subject to the campaign finance law. See AO-83-13. As noted in AO-84-05, a ballot question committee may make expenditures “in anticipation that a question will appear on a ballot.” See also AO-89-32, AO-90-22 and AO-91-04.

Certain types of expenditures that might be viewed as “moving forward” the ballot question process are not necessarily subject to the reporting requirements of the campaign finance law. An association⁵ would not be required to report the following expenditures because the expenditures would not be made to influence the vote: (1) expenditures to support or challenge certification of a ballot question, see AO-95-44; (2) lobbying expenditures, see AO-93-25; (3) an expenditure to pay for a poll or other research which is designed to obtain information and opinions rather than to influence voters, see AO-97-22; and (4) expenditures to hire a consultant to draft legislation, even if there is a possibility that the legislation will be defeated and eventually become the subject of an initiative petition. Unlike a petition drive, these actions do not involve an effort to influence voters.

A. State-wide elections.

Funds raised or spent to promote or oppose a ballot question after certification of the question by the Attorney General, pursuant to Article 48 of the Amendments to the Constitution, would be subject to the provisions of M.G.L. c. 55. In addition, any expenditures made prior to certification, which are made to promote or oppose a potential ballot question, are also subject to c. 55.

Although the Attorney General's certification of a question is a helpful reference point, it is not necessarily determinative. Contributions received and expenditures made by corporations or associations months before certification may be subject to the disclosure provisions of M.G.L. c. 55, if the specific purpose of the financial activity is the promotion or opposition of a potential ballot question.

For example, if an association pools resources to send a mailing to voters specifically urging support of an anticipated ballot question, and seeking contributions to purchase advertisements supporting the question, the group would be required to organize a ballot question committee and report all funds contributed and all expenditures made.⁶ On the other hand, if the same group raises funds or makes

⁴ If an amount to become due has not been determined or is in dispute, the liability should be estimated or reported as “to be determined” or “in dispute.”

⁵ The listed expenditures may also be made by ballot question committees. If made by a ballot question committee, they must, however, be reported.

⁶ An association which only makes expenditures, but does not raise funds, to influence a ballot question, is not required to organize as a ballot question committee. Such an association must, however, file a report, Form CPF 22 with this office (or Form CPF M22 with the local election official) disclosing all such expenditures.

expenditures prior to certification for the limited purpose of challenging the Attorney General's certification of a ballot question, the group would not be required to register as a ballot question committee and would not have to report its receipts and expenditures. The latter expenditure is made to enforce certain legal rights, not to influence the vote on a ballot question. See AO-93-36.

B. Municipal elections.

In municipal elections, particularly in towns, the provisions of the campaign finance laws are generally triggered once a question is "on the ballot." Once a determination is made by the appropriate municipal authority to place a question on the ballot, any expenditures made thereafter for the purpose of promoting or opposing the question are subject to the provisions of M.G.L. c. 55.⁷

Although the question of whether the selectmen or other authority has decided to put a matter on the ballot is, again, a helpful reference point, like the certification of a question by the Attorney General in the state context, financial activity prior to the decision to place a question on the ballot may be subject to the campaign finance law. For example, if an association, e.g., a group of parents, raises funds to urge voters to support a potential question on a ballot regarding a school construction Proposition 2 ½ debt override question, such activity would be subject to the campaign finance law. Therefore, the persons raising funds would be required to register as a ballot question committee and report all fundraising activity. In addition, if a group intends to raise funds or make expenditures in connection with an effort to collect signatures on a petition supporting the placing of a question on a municipal ballot, the group must register as a ballot question committee.

The goal of the campaign finance law is public disclosure of funds spent to influence elections. Therefore, OCPF suggests that a corporation or association that intends to raise or spend funds on a public policy issue first consider whether the issue will likely be the subject of a ballot question in the future. If the group anticipates such a question, it would be advisable for the group to consult with OCPF and organize a ballot question committee.

II. Disclosure of expenditures made to promote or oppose a ballot question by ballot question committees, corporations and associations and by individuals.

While the campaign finance law provides that ballot question committees disclose both contributions and expenditures, it also mandates the disclosure of all expenditures by corporations and associations made to favor, oppose or otherwise influence the vote on a question submitted to the voters. See Sections 18 and 22 of M.G.L. c. 55. In addition, an individual making such expenditures must disclose the expenditures if they exceed \$250. See M.G.L. c 55, § 22.

⁷ In addition, corporations and associations, and individuals spending or incurring liabilities of \$250 or more, and cities, towns, and other governmental units must report expenditures made "to influence or affect the vote" on any question submitted to the voters. See M.G.L. c. 55, Sections 22 and 22A, and M-95-06. Expenditures by governmental units for such purposes are generally inconsistent with the campaign finance law even though Section 22A requires reporting of such expenditures. See *Anderson v. City of Boston*, 376 Mass. 178 (1978).

A. Ballot question committees.

1. The following ballot question committees must file with OCPF:

(a) committees organized to promote or oppose a question submitted to all the voters of the commonwealth at a state election;

(b) committees organized to promote or oppose advisory questions submitted to the voters of the commonwealth or a legislative district, pursuant to M.G.L. c. 53, § 18 or M.G.L. c. 53, § 19; and

(c) committees organized to promote or oppose a question submitted to the voters of a county.

Each of these committees must file a Statement of Organization (Form CPF 101BQ) with OCPF prior to raising or spending any funds. In addition, these committees must file Campaign Finance Reports (Form CPF 102BQ) as follows: (1) on the day of organization; (2) on or before the sixtieth day prior to the election complete as of the preceding fifth day; (3) on or before the fifth day and the twentieth day of each month complete as of the preceding first and fifteenth day of the month, until the election; (4) on the twentieth day of November following the election complete as of the preceding fifteenth day of the month; and (5) on the twentieth day of January of each year complete as of the thirty-first day of December of the prior year, if liabilities exist.

In future years, such committees must also file a year-end report that is due by January 20, complete as of December 31 of the prior year, for every year the committee is in existence. Ballot question committees, however, may organize only to promote or oppose a specific, identifiable question or questions. Therefore, once the question or questions the committee was organized to promote or oppose are finally adopted or rejected, the committee must dissolve and file a dissolution report. See AO-97-10.

2. The following ballot question committees must file with local election officials (whether the question appears on a state or local ballot):

(a) committees organized to promote or oppose a question submitted only to the voters of a particular city or town;

(b) committees organized to promote or oppose advisory questions submitted only to the voters of a particular city or town, pursuant to M.G.L. c. 53, § 18A; and

(c) committees organized to promote or oppose a question submitted to the voters of a regional school district created pursuant to M.G.L. c. 71, § 15, a regional fire district created pursuant to M.G.L. c. 48, § 60, a regional water district created pursuant to M.G.L. c. 40, § 38, or other regional districts having a district clerk.

Each of these committees must file a Municipal Statement of Organization Form (Form CPF M101 BQ) with the city, town or district clerk or election commission prior to raising or spending any funds. In addition, these committees must file Municipal Campaign Finance Reports (Form CPF M102) as follows: (1) on or before the eighth day before the election complete through the eighteenth day prior to the

election; (2) on the thirtieth day following the election, complete through the twentieth day following the election (for town elections and special elections in cities); (3) a year end report due by January 20 of each year complete through December 31, after a ballot question on the ballot in a regular city election or if liabilities exist; and (4) upon dissolution of the committee.⁸

3. Municipal ballot question committees organized to promote or oppose ballot questions in more than one city or town.

If a question appears on the ballot in more than one town (or city, if applicable), the committee must, if it is organized to promote or oppose a ballot question in each town, file a Statement of Organization in *each* town, according to the election schedule in each particular town.⁹ If the elections are held on the same date, original campaign finance reports can be filed in one town, with copies filed in each of the other towns. If the elections are held on different dates, however, the committee must file original reports in each town, to cover the entire, different, reporting period that must be covered in accordance with the statute.

For example, if a regional school district consists of three towns, and the elections in the towns are on different dates, the committee, if it is making expenditures to influence the election in each town, must file three separate pre-election reports eight days before each town's election, and each report must include all activity by the committee up to the eighteenth day prior to the election. For further guidance regarding their filing obligations, such committees should contact OCPF.

B. Corporations, associations and individuals.

Corporations, both business and non-profit, and associations are required to report "the amount or value of every gift, payment, expenditure or contribution or promise to give, pay, expend or contribute" to influence or affect ballot questions, pursuant to Section 22 of M.G.L. c. 55. Corporations and associations comply with this requirement by filing Form CPF 22 or Form CPF M22 ("Report of Ballot Question Expenditures by Corporation, Organization or Individual") with this office or the local election official, depending on whether the question is on the state or local ballot. In addition, individuals making an expenditure of \$250 or more other than a contribution to a ballot question committee, or incurring a liability of \$250 or more to influence or affect the vote on a ballot question must file the Form CPF 22 or Form CPF M22.

1. The following corporations, associations and individuals must file with OCPF:

(a) corporations, associations, or individuals promoting or opposing a question submitted to all the voters of the commonwealth at a state election;

(b) corporations, associations, or individuals promoting or opposing advisory questions submitted to the voters of the commonwealth or a legislative district, pursuant to M.G.L. c. 53, § 18 or M.G.L. c. 53, § 19; and

⁸ Ballot question committees may organize only to promote or oppose a specific, identifiable question or questions. Once the question or questions are adopted or rejected, such committees must dissolve. See AO-97-10.

⁹ Filing in each town is also required where a committee is organized to promote or oppose a ballot question in each town that is part of a district that does not have a district clerk (i.e., a school district).

(c) corporations, associations, or individuals promoting or opposing a question submitted to the voters of a county.

Each corporation, association, or individual must file Form CPF 22 with OCPF as follows: (1) the sixtieth day prior to the election complete as of the preceding fifth day; (2) on or before the fifth day and the twentieth day of each month complete as of the preceding first and fifteenth day of the month, until the election; (3) the twentieth day of November following such election, complete as of the fifteenth day of the month; and (4) the twentieth day of January of each year, complete as of the thirty-first day of December of the prior year, until all declared liabilities of have been discharged.

2. The following corporations, associations and individuals must file with local election officials (whether the question appears on a state or local ballot):

(a) corporations, associations or individuals promoting or opposing a question submitted only to the voters of a particular city or town;

(b) corporations, associations or individuals promoting or opposing advisory questions submitted only to the voters of a particular city or town, pursuant to M.G.L. c. 53, § 18A; and

(c) corporations, associations or individuals promoting or opposing a question submitted to the voters of a regional school district created pursuant to M.G.L. c. 71, s. 15, a regional fire district created pursuant to M.G.L. c. 48, § 60, a regional water district created pursuant to M.G.L. c. 40, § 38, or other regional district having a district clerk.

Form CPF M22 must be filed with the city, district or town clerk or election commission as follows: (1) on or before the eighth day before the election complete through the eighteenth day prior to the election; (2) on the thirtieth day following the election, complete through the twentieth day following the election (for town elections and special elections in cities); and (3) a year end report due by January 20 of each year, complete through December 31, after a ballot question on the ballot in a regular city election (or if a corporation, association or individual makes expenditures after the most recent report filed or if there are remaining liabilities).

3. Corporations, associations and individuals making expenditures to promote or oppose ballot questions in more than one city or town.

If a question appears on the ballot in more than one town (or city, if applicable), the corporation, association or individual must, if it is promoting or opposing a ballot question in each town, file the report in *each* town, according to the election schedule in each particular town.¹⁰ If the elections are held on the same date, the original report can be filed in one town, with copies filed in each of the other towns. If the elections are held on different dates, however, the corporation, association or individual must file original reports in each town, to cover the entire, different, reporting period that must be covered in accordance with the statute.

¹⁰ Filing in each town is also required where a corporation, association or individual promotes or opposes a ballot question in each town that is part of a district that does not have a district clerk (i.e., a school district).

For example, if a regional school district consists of three towns, and the elections in the towns are on different dates, the corporation, association or individual, if it is making expenditures to influence the election in each town, must file three separate pre-election reports eight days before each town's election, and each report must include all activity by the corporation, association or individual up to the eighteenth day prior to the election. For further guidance regarding their filing obligations, such corporations, associations or individuals should contact OCPF.

Form CPF 22 and CPF M22 provide for the listing of the amount or value of every expenditure or promise to pay, together with the date, purpose, and full name and address of the person or entity to whom it was made.

If a corporation, association or individual raises funds for the purpose of influencing a ballot question, it must organize and report as a ballot question committee.

C. Ongoing Activities.

Ongoing activities for which corporations, associations and individuals make expenditures may involve issues which become the subject matter of an initiative, or other, petition. In determining whether the campaign finance law applies to these expenditures, the office will look to whether the primary purpose of an expenditure is to influence the vote on a ballot question. This determination is made on very specific facts surrounding particular activities, taking into consideration such factors as the stated or perceived purpose, style, tenor and timing of the expenditures in question. If in doubt regarding whether a particular expenditure is reportable, the office would advise the corporation, association or individual to disclose the expenditure.

Expenditures for materials which refer to a question on the ballot and advocate a position on the question would necessarily trigger the reporting requirements described above. Activities which do not refer specifically to the ballot question may also be subject to the campaign finance law. For example, the commencement of activities just prior to an election concerning an issue which will appear as a ballot question may well compel the conclusion that the purpose of those activities is to influence the vote. Alternately, if an association, which has always made general expenditures relative to a particular issue now appearing as a ballot question, significantly increases its expenditures just prior to the election, the conclusion could be drawn that such a recent increase in expenditures is designed to influence the vote.

D. Subvendor Reports.

The subvendor reporting requirement, M.G.L.c. 55, § 18D, requires vendors¹¹ who receive \$5,000 or more from a ballot question committee (or an individual or group making ballot question expenditures) to provide the committee, individual or group with a detailed account of all subsequent expenditures of \$500 or more that the vendors, on behalf of the committee, group or individual, make to subvendors who provide goods or services. A committee, or an individual or group filing a report of ballot question


¹¹ A "vendor" is "any person including, but not limited to, a consultant, who provides goods or services to a political committee, or to an individual or group required to file a report of ballot question expenditures under section 22 and either receives or is promised \$5,000 or more in the aggregate during a calendar year by the committee, individual or group for such goods or services or contracts with another on behalf of the committee, group or individual for such goods or services valued at \$5,000 or more in the aggregate to be provided to the committee, individual or group." See M.G.L. c. 55, § 18D.

expenditures under Section 22, must file subvendor reports based on information provided to the committee by vendors. The reports are filed on the same schedule as campaign finance reports filed under Section 18 or, if filed by an individual or group making ballot question expenditures, in accordance with the same schedule as reports that must be filed under Section 22. For more information regarding subvendor reports, see 970 CMR 2.18 and IB-10-04.

E. Disclaimers.

Ballot question committees are required to include disclaimers in certain television, internet and print ads. Section 18G of the campaign finance law requires ballot question committees that pay for ads conveyed by television, internet and print media (not including mailings), to include a written statement in the ad that identifies the five persons or entities that made the largest contributions in excess of \$5,000 to the committee during the 12-month period prior to the date of the advertisement. See 970 CMR 2.20.

Individuals, political committees, corporations and associations are encouraged to contact the office for additional information. The office will also issue advisory opinions on prospective activity upon written request describing specific facts and circumstances.


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