

OCPF Reports

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Commonwealth of Massachusetts*

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From the Director

Newsletter to be sent out online

Starting in December, you won't be getting OCPF Reports in the mail.

No, we're not stopping publication of our quarterly newsletter, which is coming up on seven years of publication. Rather, we have taken the difficult but financially necessary step of changing the way it is distributed.

Starting with the next issue in December, OCPF Reports will no longer be sent out to subscribers by U.S. mail. Instead, it will be distributed electronically to an e-mail list.

We did not arrive at this decision lightly. After all, OCPF Reports is an integral component of our public outreach program, which I have emphasized since becoming director in 1994. Readers have turned to the publication for news of office activities, interpretations of the law and recent cases and rulings.

But cuts in the state budget have taken their toll on OCPF as well as other state agencies. We are a small office, and a large reduction in spending means we have to look for ways to save money. Reducing the cost of printing and mailing several thousand newsletters each year is a necessary step.

Hard copies of OCPF Reports will continue to be available at the front counter of our office. But if you want to have a copy sent to

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Contributor database growing in popularity

OCPF's new Electronic Filing System has seen increasing volume in recent months, as the amount of information received grows along with the number of users of the online database.

For months the system has contained contribution and expenditure information for candidates for the six statewide offices, including those on the Sept. 17 primary election ballot.

The data were expected to grow significantly by mid-September, after the first filings of the year for candidates for the Legislature and state ballot question committees. Early filings were coming in as this edition of *OCPF Reports* went to press.

Even before the addition of the latest batch of data, however, strong numbers reflected regular usage of the database.

The number of online visitors to the

EFS since its introduction earlier this year was approaching 20,000 at the end of August.

About 65,000 contributions were listed on the site at the end of August. That number is expected to go well beyond 100,000 by the end of the year.

Electronic filing got underway last January, with the start of mandatory reporting by candidates for the six statewide offices and Governor's Council. Several incumbent legislators also e-filed their year-end reports on a voluntary basis.

The EFS may be accessed through OCPF's web site, www.mass.gov/ocpf. Click on the "Campaign Finance Reports and Data" tab, then on the first link, "Searchable Database of Campaign Finance Activity."

OCPF issues study of 2001 mayoral spending

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A Reminder: Campaign finance filing dates for candidates and committees in 2002

Legislative candidates and statewide ballot question committees filed their first reports of 2002 in the first half of September. House and Senate candidate reports were due on Sept. 9, while ballot question committee reports were due on Sept. 6.

Here are the remaining due dates for all filers:

Non-depository filers
(Legislative candidates, PACs, people's committee's & local party committees).

Pre-Election Report Due:

Monday, Oct. 28

Year-End Report Due:

Tuesday, Jan. 21, 2003

Depository filers

(Candidates for statewide and county offices and the Governor's Council)
Reports filed on the 5th and 20th of each month through Jan. 6. Year-end summary report due on Jan. 21, 2003.

State ballot question committees

Reports filed on the 5th and 20th of each month through Wednesday, Nov. 20. Year-end report due Jan. 21, 2003.

Spending by mayoral candidates reached \$5.8m in 2001 elections

Candidates for mayor in the November 2001 municipal elections spent \$5.85 million in their campaigns, according to a recent OCPF study.

The study, based on reports filed with OCPF and with local election officials, also recorded receipts of \$4.5 million. The receipts figure is \$1.3 million more and the spending figure \$2.6 million more than the same totals in 1999. In addition, both 2001 totals are the highest ever recorded by OCPF, which has issued mayoral spending studies since the 1997 elections.

The 2001 study included totals from 76 candidates in 38 cities, not including those who lost in preliminary elections.

The race that featured the highest spending was once again the mayoral contest in Boston, where the two finalists spent a total of \$1.7 million. The winner, incumbent Thomas Menino, spent \$1.6 million, making him the top spending mayoral candidate in 2001. Menino was also the top fundraiser in 2001, amassing \$880,714.

Other highlights from the study:

? The median level of fundraising by mayoral candidates was \$32,644, while the

median of spending was \$33,040.

? Eleven mayoral candidates raised more than \$100,000 in 2001; 12 spent more than that figure.

? As a group, candidates spent more than \$100,000 in each of 13 cities, most of which featured hotly contested races.

After Boston, the top five in spending included Springfield, Quincy, New Bedford and Everett.

? Incumbents and winning candidates showed substantially higher medians than non-incumbents and unsuccessful candidates, respectively, in 2001. Contests for open mayoral seats also saw significant activity.

? The candidate who spent the most money won in 27 of the 34 contested races, or 79 percent of the time.

? The average amount spent per vote by the 76 candidates was \$11.70, an increase of almost 37 percent from the 1999 average of \$8.57.

A copy of the study is available on OCPF's web site at www.mass.gov/ocpf/homepage_studies.htm. Reports filed by the individual candidates are on file at their respective municipal election offices.

OCPF sets new rules and procedures for Clean Elections hearings, expenditure reports

OCPF has issued rules and procedures for hearings to be conducted under the Clean Elections Law, the program that provides funds to candidates who observe statutory contribution and spending limits.

The rules will apply to all Clean Elections hearings, including any proceedings called to consider decertifying a candidate from eligibility to receive funds. The Clean Elections Law, M.G.L. c. 55A, authorizes the Director of OCPF to take certain actions affecting participants and other candidates after notice and the opportunity for a hearing. These hearings are "adjudicatory proceedings" for the purposes of the State Administrative Procedure Act, M.G.L. c. 30A, though the standard adjudicatory rules of procedure set forth at 801 CMR 1.01, 1.02 and 1.03 do not apply to the proceedings.

A copy of the rules may be found at

OCPF's web site at www.mass.gov/ocpf/hrgrules.htm.

OCPF has also issued regulations concerning the filing of Excess Expenditure Reports by candidates who are not participating in the Clean Elections program but are opposed by participants. The filing of these reports triggers the release of matching funds to participants.

Another section of the new regulations deals with the reporting of public funds left over after a primary or general election.

The regulations were promulgated on an emergency basis in early August and took effect immediately. The required public hearing has been scheduled for Monday, Oct. 7, at 10 a.m. in Conference Room 2, 21st Floor, One Ashburton Place, Boston, MA. The agency will also accept public comment by mail at One Ashburton Place, Room 411, Boston, MA 02108.

From the Director

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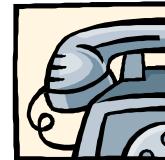
you by e-mail, you must let us know.

To sign up for our subscription list, just e-mail us at newsletter@cpf.state.ma.us. Each quarter, you will be sent a copy of OCPF Reports in "pdf" image format.

* * *

On another computer front, the first few weeks of September have been pretty busy for us, as ballot question committees and most legislative candidates filed their disclosure reports electronically for the first time. Statewide and Governor's Council candidates have been filing since earlier this year. I invite you to visit our Electronic Filing System Database at OCPF's website, www.mass.gov/ocpf, to view the latest in campaign finance reporting.

Mike Sullivan
Director



Extra hours set for filing help on the phone

OCPF will once again offer weekend help over the phone to candidates and committees preparing their pre-election reports in October.

Office staff will be available to answer questions on Saturday and Sunday, Oct. 26 & 27.

The call-in hours are 9 a.m.-4 p.m. on Saturday and 11 a.m.-4 p.m. on Sunday. The help is available over the phone only, as the McCormack Building will not be open to the public.

The office numbers are (617) 727-8352 and (800) 462-OCPF.

The pre-election campaign finance reports are due at OCPF on Monday, Oct. 28. Legislative candidates must file electronic versions of their reports in addition to paper copies. PACs, people's committees and local party committees are only required to file paper copies.

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 Agreements

David M. McGeney and Barry A. Feinstein, Peabody (8/9/02).

OCPF entered into separate disposition agreements with Feinstein and McGeney for violations of the campaign finance law relating to a loan made to McGeney's unsuccessful campaign for mayor of Peabody in 2001.

According to the agreement, Feinstein, who was McGeney's brother-in-law and his campaign committee treasurer, loaned McGeney \$20,000 in August 2001. McGeney subsequently deposited the money in his campaign account and reported it as a loan from himself to the committee in a disclosure report filed with the Peabody City Clerk in September 2001.

McGeney acknowledged to OCPF that he borrowed the funds from Feinstein, who, in turn, had obtained a personal bank loan for \$20,000. According to a promissory note between McGeney and Feinstein, McGeney agreed to repay the loan with interest on a monthly basis. Feinstein also acknowledged that he had loaned McGeney the money received by the Committee.

OCPF concluded that the \$20,000 loan obtained from Feinstein was a campaign contribution that Feinstein knew or reasonably should have known would be transferred to and used by the Committee. Because Feinstein had already loaned the Committee the legal maximum of \$500 on April 5, he made, and the Committee accepted, a \$20,000 excess contribution. OCPF also con-

cluded that Feinstein and McGeney violated the campaign finance law by accepting the excess contribution on behalf of the Committee, by failing to accurately report the true source of the \$20,000, and by failing to accurately report the receipt of the excess contribution.

To resolve the issue, Feinstein agreed to pay \$6,000 from his personal funds to the Commonwealth in the nature of a civil forfeiture. McGeney agreed to pay \$2,500 to the Commonwealth and to continue to make monthly payments to Feinstein to repay the loan with interest. The Committee also agreed to amend its campaign finance report to accurately reflect the loan. OCPF agreed not to refer Feinstein or McGeney to the Attorney General for any further action.

Public Resolution Letters

02-30: North Andover Taxpayers Association. *No Further Action (ballot question activity by a committee and its founding association); 5/23/02.* Individuals who form a civic association and also a separate ballot question committee must be careful to separate the activities of the two entities. In this instance, flyers used to raise money for a ballot question committee ambiguously appeared to be paid for by the association because they reflected the association's letterhead and most of the page contained a letter from the president of the association.

02-20: Town of Erving. *Did Not Comply (use of public resources for a political purpose); 5/24/02.* An article from the Board of Selectmen urging residents to support a ballot question should not have been included in a newsletter financed, in part, with public funds.

02-25: English for the Children of Massachusetts. *No Reason to Believe (ballot question activity by an organization other than a political committee); 6/12/02.* An out of state political committee did not have to register in Massachusetts prior to raising funds that were later contributed to a Massachusetts ballot question committee, where the funds were not raised specifically to influence the Massachusetts election.

02-12: Debbie Boschetti, Reading. *No Further Action (failure to disclose ballot question activity); 6/12/02.* Expenditures by a PTO to prepare and distribute an edition of its newsletter, which supported a ballot question, were disclosed by the group after it was contacted by OCPF.

02-13: Ralph Wilbur, North Andover. *Did Not Comply (failure to report an independent expenditure); 6/21/02.* After being instructed to do so by OCPF, an individual who prepared and distributed a flyer supporting local candidates, filed Form CPF 18A disclosing the expenditure with the town clerk.

02-26: Town of Andover. *No Further Action (use of public resources for a political purpose); 6/27/02.* Although public resources may be used to advocate the passage at town meeting of a budget that is contingent on an override, there should not have been a reference to the election in the school department's newsletter and a school committee member should not ask for voter support at the election in the newsletter. In addition, a flyer explaining the benefits of the Community Preservation Act should not have been distributed with public resources because it mentioned the need for the measure's approval at an election.

02-11: Newton Taxpayers Coalition. *No Further Action (ballot question activity by a PAC); 6/27/02.* A PAC raising money to oppose a ballot question formed a separate ballot question committee after OCPF initiated its review.

02-35: James F. Murphy, Millbury. *Did Not Comply (political solicitations by a public employee); 7/3/02.* Pursuant to M.G.L. c. 55, s. 13, it was not proper for a public employee running for state representative to hold a political fundraiser prior to his formally establishing a campaign committee. In this instance, the candidate and the committee treasurer submitted affidavits stating that the candidate did not solicit or receive any funds in conjunction with the event.

02-24: Republican Liberty MA PAC and Steven Jens, Cambridge. *Did Not Comply (failure to disclose political activity and failure of candidate to resign as treasurer of a PAC); 7/3/02.* The treasurer of the PAC failed to resign after becoming a city council candidate and the PAC failed to file a 2001 year-end report. After being contacted by OCPF, the committee filed a dissolution report disclosing that its final activity was in September 2001.

02-24: Mass. Coalition for Freedom PAC, Quincy. *Did Not Comply (failure to organize a political committee); 7/3/02.* A PAC that received funds before organizing with OCPF filed an amended Statement of Organization and a 2001 year-end report disclosing its early activity.

02-27: Rep. Marie P. St. Fleur, Boston. *Did Not Comply (political solicitation in a public building); 7/3/02.* A state representative's consultant delivered copies of a fundraiser invitation to the State House mailboxes of other legislators. The representative sent a letter prior to the event asking her colleagues to disregard the invitation and no contributions were received as a result of the improper solicitation.

02-47: Katherine Fricker, Lexington. *No Reason to Believe (use of public resources for a political purpose); 7/29/02.* Public resources were not used to send e-mails supporting a ballot question.

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.mass.gov/ocpf.

AO2-23: The requirement that an individual must subscribe to a mailing list to receive certain benefits and information from a membership organization is sufficient to establish the subscriber as a "member" of the organization for the purposes of the campaign finance law even though there may be, according to the organization's internal structure, a second tier of membership requiring a service commitment or the payment of dues. (Mass. NARAL).

AO2-24: OCPF would decertify a Clean Elections statewide party candidate who fails to receive the required level of delegate support for nomination purposes, and such a candidate would be required to repay, with interest, the clean election funds received. The candidate may, however, apply for a waiver. (Wagner).

AO2-25: An association with a PAC and people's committee may make political contributions and expenditures, subject to IB-88-01, to the PAC only. People's committee's may only accept contributions from individuals. (Mass. Dental Society).

AO2-26: Political party committees may sponsor a fundraising event to benefit charities, where no funds would be raised or spent by the committees. The individuals associated with the committees would volunteer their time. The only involvement of the committees would be lending their names as sponsors. It should be made clear to persons making contributions, however, that they are contributing to the charities, not to the political committees. (Springfield Republican City Committee).

AO2-27: A candidate may obtain a personal credit card for the exclusive use of his depository committee, as long as the committee makes all payments directly to the credit card company and complies with 970 CMR 2.09, including the disclosure requirements specified in the regulation. (Grabauskas Committee).

AO2-28: A consultant under contract with the Boston School Department who makes his own hours, has no taxes withheld, is not supervised by the department, and receives no benefits is an independent contractor for the purposes of the campaign finance law, even though he sometimes uses office space in a public building. (Sanchez).

AO2-29: This AO sets forth fundraising dos and don'ts for appointed public employees. (State Police Association PAC).

AO2-30: The advice given in AO-01-21 regarding testimonials for retiring candidates applies to any type of testimonial or fundraiser where tickets are sold to benefit a "candidate." Also, it would be inconsistent with the campaign finance law to apply the proceeds raised by a testimonial towards a gift of "money or anything of value" for the candidate or any other

person's personal use. A candidate may, however, be presented something nominal such as a plaque or certificate to commemorate the event, i.e. a symbolic or sentimental gesture, as opposed to goods or services with an ascertainable market value intended to provide a material benefit to the candidate. (Creedon).

AO2-31: Name recognition is not a relevant factor for committees to consider when apportioning costs for joint expenditures. Not only would it be confusing, if not impossible, to advise on or enforce a standard for the allocation of joint expenses that turned on an assessment of an indeterminate factor such as name recognition; it would be improper to impose such a vague criterion on a regulation that, due to its source in M.G.L. c. 55, s. 6, may carry a criminal penalty where it is willfully violated. OCPF regulations contemplate that only measurable factors be considered in the allocation of costs for joint expenses, e.g. amounts of print space or airtime, or consultant or staff time, devoted to a particular committee; how material is distributed; and the market value of services received by committees. (Pines Committee).

IMPORTANT NOTICE



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