



OCPF Reports

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From the Director *More online*

As you are no doubt aware, the 2004 election season is well underway. Candidates are working hard trying to earn the support of voters, while also meeting their obligation to file timely campaign finance disclosure reports.

Of the approximately 400 candidates for the Legislature who were required to file a disclosure report with OCPF by September 7, more than 93% filed on time. Most reports were filed electronically and are available for public inspection on our website at www.mass.gov/ocpf.

In addition to allowing you to search for any particular candidate's report, OCPF has also created a new database that allows web visitors to view a summary of all reports filed by each candidate for each legislative district. You can access that database from our home page as well.

In the spirit of an even playing field in the area of disclosure, the office has begun to post images on our website of independent expenditure reports filed to support or oppose candidates. There is currently no statutory requirement to file such reports electronically; the only requirement is that the reports have to be filed within seven business days of the expenditure. As a result, I felt the public should have, to the extent possible, the same access to these

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Online PAC reports start the next wave of e-filing

The range of campaign finance reports that are available online has expanded yet again with the addition of political action committees to OCPF's Electronic Filing System (EFS).

A total of 130 PACs filed their pre-primary reports electronically by the Sept. 7 deadline. Another 19 e-filed later in September. All told, just about half of the PACs registered with OCPF filed online.

M.G.L. Chapter 55, Section 18C requires PACs to e-file starting in 2004 if they have receipts or expenditures of over \$10,000 for the 2003-2004 election cycle.

The list of required e-filers starting this year also included party committees that exceeded the \$10,000 threshold. The four state party committees

have already been e-filing since at least January 2004. Another 15 party committees on the local (ward, town or city) level e-filed pre-primary reports.

Candidates and committees that already e-file includes candidates for statewide office, Governor's Council and the Legislature, as well as state ballot question committees.

The roster of e-filers will expand in 2005 with the addition of candidates for

county office and mayoral and councilor-at-large candidates in Boston, Cambridge, Lowell, Springfield and Worcester. OCPF will formally notify those candidates in advance of the change in the requirement.

To access the EFS, click on the "Electronic Filing" tab on OCPF's web site at www.mass.gov/ocpf.

**Stay up to date
with your e-filing
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Law changed to expand payroll PAC contributions

A recent change in the law has expanded the means by which a contributor can give to a political action committee, allowing contributions by payroll deduction in any amount up to the annual limit of \$500.

On July 22, the House and Senate overrode the Governor's veto of two outside sections of the state budget that amended Chapter 55, Section 9A, dealing with contributions to political

action committees in the form of wire transfer. Section 9A had previously allowed a contributor to transfer funds to a PAC, but only through his or her own bank, not through another party. The change now allows electronic transfers of funds to a PAC from a contributor's funds through his or her employer, such as deductions from wages.

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Independent expenditure reports are now available on the Internet

OCPF's web site now includes reports of independent expenditures made by persons or groups to support or oppose candidates.

M.G.L. Chapter 55, Section 18A requires any person or organization that is not a political committee to disclose any expenditure of more than \$100 that expressly advocates the election or defeat of any candidate.

The form CPF 18A must be filed within seven business days after the expenditure.

OCPF Online, at www.mass.gov/ocpf, now contains images of CPF 18A reports filed for the 2004 state election.

Unlike contributions to candidates, there is no legal limit on the amount of independent expenditures. Such ex-

penditures, however, must be truly independent; they may not be made in "cooperation or consultation" with, or at the request or suggestion of a candidate.

Expenditures made in tandem with a candidate are likely to be in-kind contributions, which are subject to statutory limits.

Independent expenditures by political committees such as political action committees are not disclosed on Form 18A. Rather, those expenditures are disclosed on a committee's regularly-filed campaign finance reports.

Reports filed by PACs and other committees may be found on OCPF's Electronic Filing System, which may also be accessed through the office web site.

Remaining 2004 filing deadlines for candidates and committees

The state ballot this year includes candidates for the House, Senate, Governor's Council and some county offices, including sheriff. There are no statewide offices on the ballot this year.

Non-depository filers

(Legislative candidates, PACs, people's committee's & local party committees).

Pre-Election Report

Report Due: Monday, Oct. 25

Dates covered: Aug. 28- Oct. 15

Year-End Report

Report Due: Thursday, Jan. 20, 2005

Dates covered: Oct. 16 - Dec. 31

Depository filers

(County offices and Governor's Council)

Reports are filed by candidates' banks on the 5th of each month. Banks also file reports on the 20th of each month from July through December on behalf of candidates on this year's ballot. All depository candidates and committees file reports summarizing all activity for the year on Jan. 20, 2005.

State ballot question committees

All committees organized with OCPF to support or oppose any questions on the Nov. 2 state ballot, such as advisory questions appearing in some legislative districts, file reports twice a month through the election.

From the Director

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reports as it does to candidates' filings.

While on the subject of campaign finance disclosure, the pre-election report for legislative candidates, PAC's and local party committees is due Monday, October 25th. To assist these filers, OCPF staff, as is our past practice, will be available via phone for extra help on Sunday, October 24 from 11 a.m. – 5 p.m. Help is available by phone only; the McCormack Building will be closed to visitors that day.

* * *

In personnel related matters, the office welcomes Anne Bourque to our audit staff. Anne comes to OCPF from Rockland Trust Company and started with us in July.

Mike Sullivan
Director

Payroll deductions

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Contributions may now be made by payroll deduction up to the legal individual limit of \$500 per year. Aggregate contributions to any individual PAC of more than \$50, up to and including \$500 in the aggregate, may now be made by personal check, credit card or electronic transfer, such as payroll deduction.

Section 9A allows electronic transfers to be made only after the contributor completes a card authorizing such an action and submits it to the bank or employer. The authorization may also be revoked at any time by the contributor, also in writing.

The amendments were codified as Chapter 149 of the Acts of 2004. The new text of Section 9A may be found in the Legal Guidance section of OCPF Online, www.mass.gov/ocpf.



Visit OCPF Online at
www.mass.gov/ocpf

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.

Public Resolution Letters

- **04-16: Lincoln Elementary School, Winchester.** Did Not Comply (use of public resources for a political purpose); 6/4/04. Public school staff should not have distributed to students a pro-override letter from the school council, even though the letter was prepared and reproduced using private funds.
- **04-20: Lexington Republican Town Committee.** Did Not Comply (political fundraising by public employees); 6/16/04. A fundraising letter from a local party committee that contained a list of members, including three public employees, and provided a public employee's address as the return address for contributions, did not comply with M.G.L. c. 55, s. 13. At OCPF's direction, the committee refunded the contributions received by the public employee as the result of the mailing.
- **04-14: Coalition for Taxpayer Protection, Arlington.** Did Not Comply (disclosure of independent expenditure); 7/8/04. A group ran a radio ad regarding a special election. After being contacted by OCPF, a report disclosing the costs associated with the ad was filed pursuant to M.G.L. c. 55, s. 18A, which deals with independent expenditures.
- **04-19: Chris Quatrone, Agawam.** Did Not Comply (political fundraising by a public employee); 7/8/04. An employee of a public

housing authority hosted fundraisers for two candidates in his home, in violation of M.G.L. c. 55, s. 13. The committees took appropriate remedial action by either refunding or donating the proceeds of the fundraisers to charity.

- **04-38: Sen. Theresa Murray, Plymouth.** No Further Action (excess PAC contributions); 7/14/04. A senator's committee received PAC contributions in 2003 that totaled more than the annual aggregate statutory limit of \$18,750. The committee worked with OCPF to identify and refund the excess contributions and also amended its previous campaign finance reports to ensure accurate disclosure.
- **04-08: Sheriff Thomas M. Hodgson, Fall River.** Did Not Comply (disclosure of campaign finance activity); 7/26/04. The candidate's committee did not deposit \$51,000 in contributions raised in late October 2002 until 2003. County candidates and other candidates in the depository system must deposit contributions in the bank within seven days of their receipt. The committee's delay in depositing the contributions resulted in the filing of inaccurate year-end reports for 2002 and 2003, and the appearance that certain individuals may have made excess contributions. The committee agreed to make a \$4,000 payment to the Commonwealth, of which \$2,000 was suspended upon the condition that the committee complies with the provisions of Section 19(b) in the future. In addition, the committee filed amendments to correct the year-end reports.
- **04-25: Sheriff Andrea Cabral, Boston.** Did Not Comply (political fundraising by public employees); 7/26/04. Postcards endorsing a candidate that bore the names of public employees also contained a solicitation of contributions, in violation of M.G.L. c. 55, s. 13. The committee made a \$500 payment to the Commonwealth to represent the disgorgement of any funds that may have been received through such solicitations.
- **04-36: Jackson Street Elementary School, Northampton.** Did Not Comply (use of government resources for a political purpose); 7/26/04. Public school teachers should not have distributed to students a pro-override flyer that was sponsored by a private group.
- **04-36: Parents in Action for our Children's Education (PACE), Northampton.** Did Not Comply (disclosure of campaign finance activity); 7/26/04. The private group that sponsored a pro-override flyer, which was inappropriately distributed by teachers in a public school, should have disclosed the costs associated with the production of the flyer with the city clerk pursuant to M.G.L. c. 55, s. 22.

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-04-10:** As long as such activity is authorized pursuant to a negotiated collective bargaining agreement and does not involve political fundraising by public employees or in public buildings, the campaign finance law would not preclude union officials from using government computers and e-mail to disseminate or forward membership communications, even if the communications are political in nature. There is nothing in the campaign finance law, however, to require a government employer to provide unions with access to its resources for any purpose. Therefore, absent a collective bargaining agreement permitting electronic membership communications, union officials, like everyone else, must avoid using government computers and e-mail for a political purpose. (Mass. Community College Council)
- AO-04-11:** Volunteers may put up a website to solicit and receive Internet contributions on behalf of candidates and committees. The website, which must conform to 970 CMR 1.09(2) will collect required contributor information and provide that information to the relevant candidate or committee's merchant provider for processing. Because the group is not soliciting contributions on its own behalf, it does not need to form a political action committee. The only costs connected to the venture are web hosting fees that will be paid personally by an individual. Such a payment will be construed as being incidental to personal services and not a "contribution" for the purposes of c. 55. (Gerace).
- AO-04-12:** A trade organization, which has corporations as members, may send membership communications to member organizations encouraging members to contribute to a candidate. The organization may not, however, pay the costs associated with holding a political fundraising event, distribute a notice of the event beyond the scope of its membership, or otherwise contribute to the candidate because the organization receives corporate funds. If the organization solicits contributions on behalf of candidates, it may only solicit personal contributions from members. Also, the solicitation should clearly state that corporations may not contribute and checks from contributors must be made payable to the candidate and should be delivered directly to

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IRS has new tax ID request number

OCPF continually receives questions from new candidates and committees about obtaining a tax ID number in order to open a bank account. Because that is a tax issue, the office refers callers to the Internal Revenue Service, which issues the numbers.

It has come to OCPF's attention that the IRS telephone number for requesting a tax ID number has changed once again.

Candidates and committees should call the IRS Business and Specialty Tax Line at (800) 829-4933 to obtain a tax ID number.

It is also possible to obtain an ID number through the IRS website at www.irs.gov, where web users may fill out and submit an online SS-4 form.

For further information, see OCPF Memorandum M-89-02, "Federal and state tax issues for political committees."

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the candidate or a committee member. (North-eastern Retail Lumber Association).

AO-04-13: Students of a public vocational school may, as part of a web design class, help a legislator develop a constituent service website that does not contain campaign material. (Lenox).

AO-04-14: An individual who is funding a website to publish information regarding Democratic party committees and candidates does not need to organize a PAC for this activity where he is using personal funds and is not otherwise soliciting or receiving contributions to promote Massachusetts elections. In addition, given the unique nature of the Internet and an individual's right to free speech, costs incurred by an individual engaged in political speech on the Internet should be included in the "personal services" exemption to the M.G.L. c. 55, § 1 definition of contribution. Therefore, Internet activities by individuals on their own time intended to influence a Massachusetts election using equipment, software, Internet services, web hosting services, or domain names that he or she personally pays for or otherwise owns will not be considered "contributions" or expenditures" for the purposes of the Massachusetts campaign finance law. (Edmundson).

E-filing: It's important to be current

OCPF first introduced its *Reporter* software in 1995. In those days, the program was issued on several floppy disks and could be used only for recordkeeping and printing out campaign finance reports. Electronic filing was not yet in effect; reports were still required in paper form.

Now, almost a decade later, electronic filing has arrived and is here to stay. Just about every kind of candidate and committee submits reports online instead of sending hard copies to OCPF.

Through the years the *Reporter* software has undergone tweaking and revision to keep up with technology as well as the needs of filers.

There are now two different versions available, reflecting the two different filing systems used by OCPF candidates and committees. The program is now available on one compact disk and can also be downloaded directly off the Internet. The recordkeeping function, the cornerstone of the original software, has been expanded to include a contributor database and other features. And perhaps most importantly, the software allows filers to submit their reports electronically, allowing round-the-clock filing and instant online disclosure.

More than 1,000 candidates and committees now use the latest version of the software, whether for e-filing for state office or paper filing to their local city or town clerks.

More than 90 percent use the *Reporter 3* software, which is used by legislative and municipal candidates as

well as political action committees, ballot question committees and local party committees. The rest use *Depository Reporter*, which is for statewide, county and Governor's Council candidates and state party committees who file monthly and semi-monthly reports in conjunction with their banks.

Reporter 3 has gone through several updates. The most recent version is Reporter 3.06, which was released in late 2003.

OCPF staff has been working to make sure that *Reporter 3* users are up to date with the software. Not having the right software could result in difficulty while e-filing. In addition, filers must complete the "electronic signature" that is available only on versions 3.05 or 3.06.

PACs and people's committees need to have version 3.06 in order to be able to e-file. Other non-depository filers, such as House and Senate candidates, need at least version 3.05 for this function.

It's easy to determine what version of *Reporter* is loaded in your computer. From the main menu, click on "IV. Miscellaneous," then "Maintenance." The version number of your program will be in a blue box in the upper left of your screen.

To move up to a higher version, click on "Update" on the same screen, then "Upgrade Reporter Now."

To order *Reporter 3* or *Depository Reporter*, contact OCPF or go online to www.mass.gov/ocpf and click on "Electronic Filing," then "Reporter Software."



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