



OCPF Reports

Published quarterly by the Office of Campaign and Political Finance
Commonwealth of Massachusetts

Volume 11, Number 3

Fall 2006

From the Director Public funds and campaigns

As you can imagine, this has been a busy time at OCPF, as we draw to the end of a state election.

Several hundred candidates for statewide office, the Legislature and county offices have been filing regular reports with us, most of them online. We conducted a series of filing seminars across the state and have also been fielding many follow-up questions from candidates and committees and helping solve filing problems as they develop. On top of that, the office recently disbursed more than \$1.3 million to three candidates in the state's system of partial public financing of candidates for statewide office.

Though the campaign ceased after Nov. 7, our election-related work didn't stop. Our audit staff continues to review all reports we receive, and our legal department works to resolve recent complaints and cases arising from the election.

The new year also brings an added focus on elections in towns, including Proposition 2 1/2 override ballot questions. OCPF will be asked by local officials and the public for

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Overrides put spotlight on the use of public resources

While the campaign finance law may be better known for its disclosure requirements and contributions limitations, there's another aspect that often gets lower billing: the restrictions on using public resources for political purposes.

In the 1978 case *Anderson v. City of Boston*, the Supreme Judicial Court cited the campaign finance law as the basis for its decision prohibiting the use of public funds to support a ballot question.

Some facets of the public resources prohibition are simply common sense. For example, an incumbent mayor is clearly prohibited from using his office

staff to do campaign work on city time and from using city postage and paper to generate campaign flyers.

The most common application of *Anderson*, however, is to local ballot questions, especially Proposition 2 1/2 override or debt exclusion proposals. The restriction on the use of public funds to influence voters bars the use of public

mailings to voters' homes that advocate for or against an override, as well as other publicly funded distribution such as take-home packets at public

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**Debit card
regulations set
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Public financing: Two candidates receive funds for general election

Two candidates for governor recently received matching public funds for their general election campaigns, marking the final payouts in this year's program for statewide candidates.

Democrat Deval Patrick received \$403,422 and unenrolled candidate Christy Mihos received \$150,955, for a total of \$554,377.

In July, Patrick and fellow Democrat Thomas Reilly had each received \$403,422 for their primary campaigns. That makes a total of about \$1.36 million distributed for this election.

All three candidates had agreed to

observe statutory spending limits in return for eligibility for matching public funds. Gubernatorial candidate Grace Ross, of the Green-Rainbow political designation, had agreed to limits but did not raise enough in contributions to qualify for public funds.

The other candidates for statewide office who had agreed to limits ultimately did not receive any money from the State Election Campaign Fund. State law calls for gubernatorial candidates to receive funding first, with any remaining funds to go to candidates for

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Public financing: Two candidates get funding

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the other offices.

The public campaign fund, which is funded solely by a \$1 checkoff on state income tax forms, has never contained enough money to provide the full statutory allotment to all statewide candidates who decide to participate.

The spending limit for gubernatorial candidates for the general election was originally \$1.5 million, the amount set by the public financing law. However, the limit was raised to \$15 million, a figure set by Republican Kerry Healey, who did not participate in the program but was required to set a limit because she was opposed by Patrick, Mihos and Ross.

Because candidates for governor and lieutenant governor run as a team in the November election, the money distributed to Patrick and Mihos could also have been used to benefit their running mates, Timothy Murray and John Sullivan.

Though candidates for the other four statewide offices did not receive public funds, their races featured spending limits because each featured

at least one candidate who had agreed to restrict spending.

In the race for Attorney General, Democrat Martha Coakley and Republican Lawrence Frisoli had both agreed to the statutory limit of \$625,000.

In the three other races, the limits were set by the Democratic incumbents, who had each declined to participate in the public financing program but were opposed by a candidate who has done so. The races and the respective limits were:

Treasurer: \$2 million for Democrat Timothy Cahill and Green-Rainbow candidates James O'Keefe.

Secretary: \$900,000 for Democrat William Galvin and Green-Rainbow candidate Jill Stein.

Auditor: \$750,000 for Democrat Joseph DeNucci and unenrolled candidate Rand Wilson.

Further information on the public financing program may be found on OCPF's website at www.mass.gov/ocpf. Click on the "Public Financing" tab.

Public resources: Avoiding improper activity when an override is on the local ballot

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schools.

OCPF often receives complaints regarding such actions as mailings and materials sent home from schools. The resolution of such cases often involves reimbursement for the costs by the person who authorized the mailing in question.

Despite the restrictions on mailings and take-home flyers, however, *Anderson* does not limit the speech of public officials. A school superintendent or town manager may, for instance, speak out in favor of an override and prepare materials that analyze, support or oppose the question.

Such material may be made available to the public or distributed at a public meeting, but it may not be sent in an unsolicited mailing to voters.

OCPF has prepared several bulletins and opinions to help officials and the public understand the application of *Anderson*. The most helpful interpretive bulletins are IB-91-01, an overview of the public resources issue, and IB-92-02, which deals with allowable and prohibited activity by public officials. The bulletins may be downloaded from the Legal Guidance section of the OCPF website, www.mass.gov/ocpf.

OCPF also conducts seminars in

New law limits committee roles of election officials

Officials who run elections now face a limitation on their involvement with political committees due to a newly signed law.

Chapter 299 of the Acts of 2006 includes a section prohibiting the secretary of the commonwealth, city or town clerks, registrars of voters or election commissioners from serving as the chairman, treasurer or other "principal officer" of any political committee, including candidate committees, PACs and local party committees.

The law makes an exception for elected city or town clerks, allowing them to serve as chairs or other officers of their own committees (though the campaign finance law has long prohibited candidates from serving as their own committee treasurers).

The law does not apply to clerks who do not conduct elections in their communities - in other words, where there is a separate elections office.

Further information, as well as the full text of the law, may be found on OCPF's website, at www.mass.gov/ocpf.

cities and towns to help officials and the public understand the law and avoid legal pitfalls. The seminars also outline the role of ballot question committees, which use private funds for their campaign activities.

Officials interested hosting a seminar should contact OCPF's Director of Public Information, Denis Kennedy, at (617) 727-8352 or (800) 462-OCPF (toll-free in Massachusetts).

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 OCPF 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 the case is able to be settled in an informal fashion with an educational letter and/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 Agreement

1199 Service Employees International Union United Healthcare Workers East, 1199 SEIU Mass. PAC (7/21/06).

OCPF entered into an agreement with SEIU, its PAC and an affiliated New York political fund for activity by the entities in 2005. According to the agreement, the PAC received funds from an out of state, unregistered political committee (an SEIU political fund in New York) and SEIU 1199 made excess contributions from its general fund to the PAC. From August through December 2005, the PAC received a total of \$400,000 from the two units: \$250,000 from the 1199 SEIU treasury and another \$150,000 from the New York fund. The PAC subsequently made contributions to, and independent expenditures on behalf of, Massachusetts candidates and ballot question committees as well as the Massachusetts Democratic State Committee. OCPF concluded that the PAC

violated the campaign finance law by receiving \$50,000 from the New York fund a week before the PAC organized with OCPF. In addition, accepting money from the New York fund did not comply with the law prohibiting contributions from committees not registered according to Massachusetts law. Subsequent contributions from 1199 SEIU to the PAC were considered to be excess contributions made after reaching the "incidental threshold" for political expenditures by groups that are not political committees. To resolve the matter, the PAC paid \$15,000 to the Commonwealth and 1199 SEIU paid \$7,500, also to the Commonwealth. 1199 SEIU agreed not to make contributions to the Democratic State Committee from its general treasury in 2006, 2007 and 2008. 1199 SEIU also agreed to observe the contribution limits that are placed on PACs until the year after the year in which it no longer makes expenditures in excess of the incidental threshold.

Public Resolution Letters

• 06-38: Milton Public Schools. Did not comply. (Use of public resources to distribute information to voters); 7/6/06. The school department's distribution of a "Budget Update" letter via students' backpacks was an improper use of public resources to influence voters. Although the letter did not specifically mention the upcoming override vote, the fact that it was distributed after Town Meeting and before the election and contained discussion of the effect of budget cuts leads to a conclusion that the update was intended to affect the election.

• 06-40: Bruce Desmond, Somerville. Did not comply. (Failure to open depository account); 07/6/06. An alderman who was also seeking county office did not file the required appointment of depository, initial report, or change of purpose with OCPF prior to raising and spending funds for the new office.

• 06-39: Bay State Physicians PAC. Did not comply (Record keeping and reporting); 07/10/06. A PAC's campaign finance report showed an expenditure of \$3,238 for a mailing that never took place, but was apparently included in the report to

reconcile the numbers with those reflected in the committee's bank statement. In addition, the committee filed its report late.

• 06-49: Winchendon Public Schools.

Did not comply (Use of public resources to distribute information to voters); 08/1/06. A school department used public resources to distribute to parents of students a "fact sheet" that supported an override on the ballot in a town election. The superintendent provided restitution in the amount of \$295 to the town and filed Form CPF 22A disclosing the expenditure of public funds.

• 06-35: Norfolk Opposition Group to Overrides (NO-GO).

Did not comply (Ballot question committee organization); 08/10/06. A ballot question committee did not provide timely disclosure in connection with an override election. On June 5, No-Go filed a disclosure report, one day before the June 6 town election. On August 9, 2006, No-Go filed its dissolution report in accordance with Section 18.

• 06-29: Hopkinton Public Schools. Did not comply (Use of public resources to distribute information to voters); 08/18/06.

The school department improperly used public resources to produce and copy a newsletter supporting an override that was sent home with students, and to produce, photocopy and mail the school budget proposal, which also supported the override. The superintendent, who had authorized the expenditure, paid restitution to the town in the amount of \$450 and filed Form CPF 22A disclosing the expenditure with the town clerk.

• 06-56: Building the Future, Wayland.

Did not comply (Ballot question committee dissolution); 09/13/06. A committee organized to support a question on the ballot at a January 2005 town election failed to file its dissolution report in a timely manner. After being contacted by OCPF, Building The Future filed the report.

• 06-53: Yes 4 Milton and Citizens For an Affordable Milton.

Did not comply (Ballot question committee dissolution); 09/29/06. The campaign finance law does not contemplate ongoing ballot question committees. In this instance, two ballot question committees did not dissolve promptly after the relevant elections.

Regulations address debit and credit card contributions, disclosure of assets statements

With a new law on the books allowing political contributions by debit card, OCPF recently issued regulations to helping candidates and political committees with the process.

The regulations further define recordkeeping obligations, specifying that candidates and committees that receive credit or debit card contributions must obtain all required information regarding contributions received, including fees deducted by the merchant provider. Such information received from the merchant provider must be reconciled with the information provided by the candidate or committee's bank regarding actual deposits, to ensure the accuracy of the information that will be filed with OCPF.

Recipients of credit or debit card contributions are also responsible for seeking information concerning the

occupation and employer of some contributors, just as they do for contributions by check. The information must be sought if a contributor gives \$200 or more in the aggregate in a calendar year.

The new regulations also address a change in the filing requirements for Schedule E: Disclosure of Assets.

The schedule now must be filed only when an asset of more than \$1,000 is disposed of or when a committee dissolves. The purchase of an asset, such as a computer, will now only be disclosed in the expenditure schedule of a campaign finance report.

The revised regulations, 970 CMR, may be found online at OCPF's website, www.mass.gov/ocpf. Click on "Legal Guidance" and go to the link for the regulations at the bottom of the page.

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 opinions are available from OCPF and online at www.mass.gov/ocpf.

• **AO-06-07:** An organization may make independent expenditures to support a candidate while also making in-kind contributions to the candidate, if the organization creates a "firewall." The firewall must prohibit the flow of information about the candidate's campaign plans, projects, activities, or needs from passing from persons involved in making coordinated expen-

ditures to those involved in making independent expenditures. (1199 Service Employees International Union)

• **AO-06-08:** A ballot question committee may not establish a refund policy that would allow refunds more than 90 days after receipt of "restricted contributions" that have not been used for the "restricted purpose" of paying for television advertising. Contributions may be refunded after 90 days have elapsed from date of receipt if the committee determines that the contribution creates an appearance of a conflict of interest or other possible impropriety. Alternatively, such a refund may be made if making the refund would be consistent with a committee policy allowing refunds to a particular category or type of contributor and the entitlement to a refund can be determined objectively when the contribution is received. (Committee to Protect Dogs)

From the Director

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guidance regarding the allowable actions of officials concerning ballot questions.

In 1978 the Supreme Judicial Court ruled that the campaign finance law prohibits the use of public resources to influence voters or for any campaign purposes. Clearly, a public official may not use city or state workers for campaign work on their paid time. But the prohibition also applies to efforts by officials to get voters to approve ballot questions such as an override. The most common examples of prohibited actions are a publicly-funded mailing or using public resources to send flyers home with students -- actions that go beyond taking a position on a question and get into the realm of campaigning for a question.

The public resources issue is the subject of a story elsewhere in this edition of OCPF Reports. I strongly urge officials in cities or towns considering ballot questions to familiarize themselves with the law and to contact us if they are unsure of its application. OCPF also conducts seminars to outline the restrictions and help avoid a problem before it occurs.

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In staff news, Mary O'Neill Fowkes has joined OCPF as an information technology specialist. Mary worked for many years in the IT department at The Boston Globe and will focus on helping e-filers navigate our software and Electronic Filing System.

Mike Sullivan
Director

