



OCPF Reports

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From the Director

Timely filing

It's that time again. Legislative candidates, PACs, people's committees, and local political party committees have filed the first of the three campaign finance reports of this year's election cycle. The first report was due Sept. 11. The other two are due Monday, Oct. 30, and Monday, Jan. 22. If you're running for a county office this year, your bank is submitting your reports and you have no filing obligation until Jan. 22.

It's important that you file your report on time. There is tremendous public interest in reviewing those reports and the office's lobby is usually packed with people waiting to review the reports on the due date. In addition, if the report is not received on time, the office must assess a fine of \$10 per day for every day the report is late. The fine is assessed personally to a candidate and to the treasurer of all non-candidate committees. We really don't want to be in the business of fining people and then acting as a collection agency; we just want to make sure that your report arrives here when it's due.

A report cannot be considered filed until it is physically received in the office with the original signature of the candidate and treasurer; postmarks and faxed copies don't count. If you're going to mail your report, please plan ahead and allow ample time for it to arrive. Also, as you can read elsewhere in this issue, we will be available the weekend before the report is due to answer any questions you might have.

Thanks for your cooperation.

Mike Sullivan
Director

Changes in law affect credit cards, Internet

The end of the formal legislative session July 31 was marked by changes in the law that will affect state and local candidates and committees.

The new provisions include allowing political contributions by credit card and over the Internet and the postponement of the start of the Clean Elections program until early 2001.

In addition, a bill sponsored by OCPF that would make technical changes to Clean Elections, House 5063, was held back for further study, a move that likely means no action on it this year.

Both the House and Senate ended formal sessions on July 31, in accordance with their rules. For the rest of the year, both chambers are expected to meet only in informal session, during which only non-controversial matters are taken up and no roll calls are taken.

Both the credit card and Clean Elections provisions were in the Fiscal Year 2001 budget that gained final approval in

late July. The Clean Elections measure was vetoed by Gov. Paul Cellucci, but the veto was overridden by the House and Senate.

Here is a closer look at the two changes:

Credit card/Internet contributions

Previously, M.G.L. Chapter 55, Section 9 required that contributions totaling more than \$50 in a calendar year be made only by check. The definition has now been changed to allow contributions by credit card as long as a contribution is accompanied by a "written instrument." That means a paper record or receipt or, in the case of a contribution made over the Internet, an electronic record created by the contributor and sent to the recipient.

The paper record requirement means a committee still would not be able to receive credit card contributions over the telephone, unless a contributor also completes a record and sends it to the committee.

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Federal tax law change requires committees to register with IRS

Political committees throughout the Commonwealth should be aware of a recent change in federal tax law that may require them to file additional reports with the Internal Revenue Service.

On July 1, President Clinton signed Public Law 106-230, which amended Section 527 of the Internal Revenue Code. The amendment creates new federal reporting requirements for "political organizations," including political committees organized with state or local election officials, including candidate committees, party committees, political action commit-

tees and people's committees. (Ballot question committees generally do not fall under this requirement.)

It is OCPF's understanding that all candidate committees, party committees, PACs and people's committees must register with the IRS unless a committee "reasonably expects its annual gross receipts to always be less than \$25,000." Existing committees should file Form 8871 with the IRS immediately; new committees must notify the IRS within 24 hours of their organization.

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Legislation: Formal session closes

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OCPF is now drafting regulations to govern credit card transactions and will hold a public hearing before they are promulgated.

In the meantime, however, committees planning to receive credit card contributions should be aware that they must still record the names and addresses of all contributors, as well as the full amount donated, not the net amount after credit card service charges are deducted. Those service charges must also be reported as expenditures.

Clean Elections

The Clean Elections Law, M.G.L. Chapter 55A, first takes effect for the 2002 election. The starting dates of the election cycle had varied according to which office a candidate was seeking.

For statewide candidates, whose next election is in 2002, the cycle originally started in December 1998. For candidates for the House, Senate and Governor's

Council in 2002, the cycle was slated to start this coming December.

The starting date of the 2002 cycle will now be March 31, 2001, regardless of which office candidates are seeking.

Legislative and Governor's Council candidates now have almost four more months from the original start date until the new start of their cycle. For statewide candidates, whose cycle previously started 1½ years ago, the clock is turned ahead: the cycle will not start until next March.

The starting date of the cycle was the only feature of the Clean Elections Law that was changed. Spending limits were left intact, though they now cover a shorter period of time. The amounts of public money a participating candidate may receive also have not changed.

On a related note, the final state budget included another \$10 million for Clean Elections, matching the amount added by the Governor and the Legislature last year.

Sullivan chosen for second term

OCPF Director Michael Sullivan has been appointed to a second six-year term as head of the agency.

Sullivan was reappointed in June by the bipartisan commission that appoints the director under M.G.L. c.55, s.3. Commission members are Secretary of the Commonwealth William F. Galvin; Ronald Cass, dean of Boston University Law School; Sen. Joan Menard, chair of the Democratic State Committee; and Rep. Brian Cresta, chair of the Republican State Committee.

Sullivan is the fifth director in the 27-year history of OCPF and the first to be reappointed.

Prior to his initial appointment in 1994, Sullivan was city clerk of Newburyport for more than 7 years.

OCPF 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.state.ma.us/OCPF. The following advisory opinions were issued from May 16 through Aug. 15, 2000.

■00-07: Newspaper space for column provided to an incumbent legislator is not a "contribution" if no solicitation of contributions and no advocacy for or against a candidate is involved. In addition, the column may be considered a constituent service. (Stanley).

■00-08: A municipal ballot question committee organized to support a spring ballot question that did not materialize may deposit contributions received and, if an anticipated fall override does not take place, refund those contributions in accordance with 970 CMR 1.04(9)(b). Such refunds may take place more than 90 days after receipt but should be made either on a pro-rata basis or on a "last in, first out" basis. Regulations issued by OCPF at 970 CMR 1.04(7)-(9) specify that if a contribution is determined to be illegal, improper, or inconsistent with committee policy, it should be returned or refunded. The regulations are not designed to permit treasurers to keep uncashed checks "in escrow" for unlimited periods of time. (Natick Champions for Education).

■00-09: A ballot question committee organized for the purpose of promoting a ballot question that would overturn a town meeting vote may make legal expenditures in connection with a lawsuit seeking an order that would put the question on the ballot. The committee may remain in existence while the lawsuit is pending. During such time it must file campaign finance reports with the town clerk. (Maher).

■00-10: Section 5A of chapter 55, which specifies (with certain narrow exceptions) that "[n]o candidate or individual holding elective public office shall establish, finance, maintain, control or serve as a principal officer of a political action committee," does not bar an elected official from serving as principal officer of a federal PAC. (Allmerica Employees PAC).

■00-11: Section 13 of chapter 55 prohibits an appointed public employee from offering the employee's home, of which the employee is sole owner, for use by a candidate for a fundraising event. (Kane)

■00-12: A town may put information on its Web site pertaining to a ballot question, even if it references an anticipated election. Any public record created in a manner that is consistent with an official's scope of responsibilities, which can be posted on a bulletin board or given to persons who ask for copies, may also be posted on the Web site. A town Web site may not be used, however, to campaign for

a particular vote on a ballot question. (Overruling, in part, AO-99-06) (Town of Andover).

■00-13: The political committee of an elected official who is a Clean Elections participant may pay the cost of mailing birthday cards to constituents if the cost is "directly related" to the official's nomination or election. The expense would be subject to the Clean Elections Law's expenditure limits and chapter 55's reporting requirements. If the elected official pays the expense personally the expense would not be subject to Clean Elections Law's expenditure limits or to chapter 55's reporting requirements. (Giglio).

■00-14: The costs of a membership organization to have a staff member (a) escort a candidate for state office, who has been endorsed by the organization, to the homes of members, (b) go to the homes of members (without the candidate) to discuss the organization's endorsement of the candidate, and (c) organize a membership meeting for the purpose of inviting the candidate to address members, would not be "contributions" or "expenditures" subject to the campaign finance law. (Neighbor to Neighbor).

■00-15: An official town Web site may remove links to an individual or group if such action is taken in accordance with a policy that ensures that all persons and groups are treated

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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. It is important to note that 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

■ The Donna White Committee, Everett (7/10/00)

OCPF, the Committee and White entered into an agreement concerning violations of the campaign finance law relating to the 1999 Everett city election. The agreement included a \$1,000 payment to the Commonwealth by White. In addition, White agreed to not seek repayment of \$3,517.24 that she reported in outstanding personal loans to her committee.

In the agreement, White, who ran successfully for School Committee, acknowledged that she failed to keep records of receipts and expenditures, file the required reports on time, segregate campaign finance activity or properly organize her committee.

White raised approximately \$3,250 at two fundraisers in October and November 1999, but did not maintain records of the names and addresses of contributors and the individual amounts given. Since she did not keep records for about \$2,445 in cash that was received at the events, she could only estimate the total amount received.

White also filed all three of the required campaign finance reports after their due dates. The pre-preliminary report was filed 23 days after the September 7 due date. The pre-election report and year-end report were both filed on April 4, 2000, after OCPF initiated its re-

view, and were late by 162 days and 75 days, respectively.

In addition, the campaign represented itself to the public as a committee even though it had in fact not filed the required organization form with the city clerk.

Public Resolution Letters

■00-33: **Theodore Harvey, Salem.** Did not comply (disclosure of campaign finance activity); 5/22/00. Candidate's committee did not keep records documenting reimbursements to the candidate and did not file R-1 forms detailing such reimbursements. In addition, the committee did not keep records regarding smaller contributions and expenditures, notwithstanding the requirement that detailed accounts must be kept of all contributions and expenditures, regardless of amount.

■00-37: **Lexington Public Schools.** No reason to believe (use of public resources for political purposes); 5/31/00. Teachers' union could use school's e-mail to ask teachers to hold signs and make calls in support of ballot question where the teachers' collective bargaining agreement allowed such use. In addition, school secretaries' association could distribute a letter to members asking for their approval of a proposed advertisement urging voters to support the ballot question.

■00-45: **Wellesley Public Schools.** Did not comply (use of public resources for political purposes); 6/9/00. School officials used public resources to distribute flyer to influence ballot question. The flyer reminded parents to vote, but also discussed the content of the question and stated that passing the question would be necessary to avoid cuts in school programs.

■00-19: **Treasurer Shannon O'Brien, Boston.** No reason to believe (solicitation of persons doing business with the commonwealth and use of public resources for political purposes); 7/5/00. State treasurer's committee solicited lottery agents using public information obtained from the State Lottery Commission. Although the treasurer stopped the practice and returned contributions received, such solicitation did not violate the campaign finance law. In addition, there was no reason to believe that public employees solicited contributions or that public resources were used for campaign purposes.

■00-05: **Robert J. Alconada and Deborah A. DeSimone, Everett.** No further action (disclosure of expenditures for legal fees); 7/11/00. Candidates used personal funds to pay for representation at ballot decertification proceeding and such payment was not made or reported by the candidates' political committees.

■00-05: **David M. Ela, Jr., Everett.** No reason to believe (disclosure of expenditures for legal fees); 7/11/00. Candidate properly re-

ported expenditures made to pay legal fees.

■00-05: **Lester S. MacLaughlin, Everett.** Did not comply (disclosure of campaign finance activity); 7/11/00. Candidate's committee did not file timely campaign finance report and did not keep records of contributions in amounts less than \$50 received.

■00-05: **Frederick T. Massa, Everett.** Did not comply (disclosure of campaign finance activity); 7/11/00. Candidate's committee did not file timely campaign finance report.

■00-05: **Peter J. Dolan, Everett.** No reason to believe (solicitation of political contributions by public employee); 7/11/00. Public employee introduced a candidate, but did not solicit contributions, at a fundraising event.

■00-18: **Tomas Gonzalez, Boston.** Did not comply (receipt of corporate contributions); 7/11/00. Committee received five contributions from business corporations in 1998 totaling \$525. After OCPF initiated its review, the committee filed a dissolution report, and made a voluntary payment of its residual funds totaling \$594.56 to the Commonwealth. In addition, the candidate personally paid the Commonwealth \$150.

■00-39: **Ashburnham-Westminster Regional School District.** Did not comply (use of public resources for political purposes); 8/2/00. School official used public resources to distribute a newsletter containing an article designed to influence ballot question. Even where, as in this instance, the out-of-pocket costs associated with such distribution are minimal, the distribution should be avoided.

Don't forget...

Remaining filing dates for the 2000 state election

Legislative candidates, PACs, people's committees & local party committees

Pre-Election Report: Monday, Oct. 30

Year-end report: Monday, Jan. 22

State ballot question committees

Reports due the 5th and 20th day of the months through Monday, Nov. 20

Year-end report due: Monday, Jan. 22

County offices and Governor's Council

Reports filed by banks on the 5th and 20th of each month from July 1

through Dec. 31. Year-end summary reports due from committees on Jan. 22

IRS: New filing requirements

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The form must be filed both on paper and electronically to comply with the law. Electronic filing may be completed through the IRS web site at www.irs.gov.

The new reporting requirement does not apply to any organization that "reasonably expects annual gross receipts to always be less than \$25,000 in each taxable year" or to any committee that already reports to the Federal Election Commission, according to an IRS notification received by OCPF.

The \$25,000 threshold would seem to exempt most local candidate committees, party committees and PACs and some state candidate committees, PACs and people's committees. Nevertheless, each committee should examine the law and determine its own filing requirements.

PACs and people's committees may also face additional requirements.

PACs and people's committees that

reasonably anticipate gross receipts of \$25,000 or more must file periodic disclosure reports with the IRS, on Form 8872. State and local candidate committees and political party committees are not required to file Form 8872.

Committees that receive interest income or have annual receipts of \$25,000 or more will also have to file Forms 1120-POL and 990 annually.

All the forms referred to above are available from the IRS's web site at www.irs.gov. The direct web address for information on this topic is http://www.irs.gov/bus_info/eo/pol-file.html. For information by telephone, contact IRS customer service at (877) 829-5500.

The above requirements do not affect political committees' disclosure requirements under state law. Filing the forms with the IRS does not take the place of submitting the disclosure documents required by OCPF.

Weekend phone help available Oct. 28-29

It may be a long weekend for some candidates and committees working on their pre-election reports before the due date of Monday, Oct. 30. But once again, OCPF will be available to help.

Office staff will be available by phone on Saturday and Sunday, Oct. 28 and 29, to answer questions and help with any problems with the Reporter software.

Call OCPF's regular numbers -- (617) 727-8352 or (800) 462-OCPF -- Saturday from 10 a.m.-4 p.m. and Sunday from noon-4 p.m.

Our building will be closed, so walk-in service will not be available and no reports may be filed.

OCPF's web site (www.state.ma.us/ocpf) is also a good after-hours resource for information such as candidates' and PACs' ID numbers.

Advisories/Guidance

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equally regardless of political viewpoint. In addition, a town may remove links for a period before an election, but is not required to do so. (Town of Arlington).

■00-16: An association created by statute that the state secretary determines is the principal opponent of a ballot question may prepare a 150-word argument against the question and be listed as a contact organization in the state secretary's voters guide. (Mass. District Attorneys Association).

■00-17: A union may make independent expenditures to support a candidate even though the candidate's wife is a union employee. The facts presented in this instance did not indicate that the candidate, his committee or any other person acting on behalf of the candidate, including the candidate's wife, would be consulting or cooperating with the union, or otherwise requesting or suggesting that the union make such an expenditure. (Bittner).

■00-18: A candidate's political committee

may conduct an auction but may not organize a PAC or people's committee to conduct an auction on its behalf. Artists and others, who donate personal artwork, or other goods or services, are providing the committee with a personal service that is not subject to contribution limitations or reporting requirements. The sale of a piece of art or other good or service at auction, however, results in a contribution to the committee by the successful bidder that is subject to the relevant contribution limits of the campaign finance law. (Hildt).

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