



OCPF Reports

Published quarterly by the Office of Campaign and Political Finance

Commonwealth of Massachusetts

Volume 10, Number 2

Summer 2005

From the Director

Focus on the cities

With cities preparing for their elections, we at OCPF have been fielding many questions from candidates seeking local office such as mayor, councilor and school committee.

Contenders have been gathering signatures on nomination papers in more than 40 cities. At the same time, they're gearing up the other aspects of their campaigns, including raising and spending funds.

Local election officials are reminding candidates that, like their counterparts running for state and county offices, they are subject to the campaign finance law and must disclose their financial activity.

Most city candidates file reports with their local election officials eight days before their preliminary election, eight days before the Nov. 8 general election, and on Jan. 20. If there is a preliminary election anywhere in the city, all candidates file reports, regardless of whether they appear on the preliminary ballot; conversely, if there is no preliminary at all, there is no report due until the pre-election filing on Oct. 31.

The exception is the five largest cities in the Commonwealth, where candidates for mayor and councilor-at-large

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Legislative campaigns spent record amounts in '04

Candidates for the House and Senate broke several fundraising and spending records in the 2004 election, according to a newly-released OCPF study.

The 390 candidates were not the highest number ever, but the contenders posted all-time highs in several categories, including aggregate fundraising and spending for both chambers and average fundraising and spending per candidate.

Total receipts and expenditures by legislative candidates in 2004 each rose almost 50 percent over the 2002 figures, which were posted by 372 candidates. House and Senate candidates raised a total of \$17,275,537, up 49 percent from 2002. Total spending was \$17,640,644, an increase of 47 percent from two years before and more than \$5 million higher

than any previous spending total. The new spending record eclipses the previous high of \$12.3 million recorded in 1992.

The substantial increases in fundraising and spending were also reflected in averages in both chambers, which also rose to new records.

The greatest jump in activity was in the races for the Senate, which saw a 33 percent increase in the number of candidates over 2002. Total fundraising by the 81 candidates almost doubled from two years before to \$7,562,984. Total spending increased 82 percent to \$7,620,649. The average amount raised by a candidate for the Senate was \$93,370, an increase of 49 percent over 2002, and average expenditures were \$94,082, a rise of 37 percent. The aggregate

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Reporting schedule posted for special election for Senate vacancy

The death of a state senator has led to the scheduling of a special election to fill his seat in the fall.

The Senate called the special election after the passing of Charles Shannon of Winchester, who had been re-elected to the 2nd Middlesex District seat last November.

The Senate scheduled the special election for Tuesday, Sept. 27, with the primary slated for Aug. 30.

Candidates in the special election will file three campaign finance reports: one report eight days before both the primary and the final elections (Aug. 22 and Sept. 19, respectively) and a final report due 30 days after the election, or Oct. 27.

The e-filed reports will be available for public inspection on OCPF's Electronic Filing System, at www.mass.gov/ocpf.

Fundraising, spending by House and Senate candidates reached all-time highs in the 2004 state election

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gate and average figures were all new records.

In the House elections, the number of candidates dropped two from 311 in 2002 to 309 in 2004, but aggregate receipts and expenditures increased. Total receipts were \$9,712,553, up 25 percent, and total expenditures were \$10,019,995, an increase of 28 percent. This is the first time total expenditures have cracked the \$10 million mark; in fact, it's the first time they have exceeded \$8 million. Average receipts rose 26 percent to \$31,432 and average expenditures rose 29 percent to \$32,247, marking new all-time highs for both averages.

Of the 200 legislative seats, 130, or 65

percent, were contested by more than one candidate. That rate is up 14 percentage points from 2002 and 21 percentage points from 2000.

The legislative candidate spending the most money in his or her race in 2004 won in 117 of the 130 contested races, for a success rate of 90 percent. That is an increase of two percentage points over 2002 and 9 percentage points over 2000.

As in past years, Democrats and incumbents showed significantly more campaign finance activity than their opponents. Candidates who won their races in 2004 usually started and finished the year with more money than their opponents.

The lists of the top ten most active

candidates in terms of fundraising and spending was made up mostly of incumbents and other candidates who won their elections.

Of the 390 candidates for the General Court, 186, or 48 percent, were incumbents and 204, or 52 percent, were non-incumbents. Of the 186 incumbents, 183, or 98 percent, were re-elected, 70 after running unopposed. Seventeen non-incumbents were elected: four new senators and 13 new representatives.

A copy of the study may be found on OCPF's website at www.mass.gov/ocpf. Click on the "OCPF Studies" tab.

Totals in the study may be altered by subsequent amendments to candidates' reports. A chart of the most up to date figures may also be found on the website.

Disposition Agreement

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. The following agreement was recently signed:

Sheriff Richard M. Bretschneider, Nantucket (5/16/05).

OCPF and Bretschneider entered into an agreement regarding violations of the campaign finance law in 2004, including his failure to disclose expenditures in a timely manner, the use of public employees in fundraising, and the receipt of political contributions in a government building.

The campaign finance law requires candidates for county office, including sheriff, to disclose campaign finance activity by means of regular reports filed by their depository banks, showing all receipts to and expenditures from their accounts, and to make all expenditures exceeding \$50 by special depository check.

The Bretschneider Committee's cam-

paign finance reports did not reflect any expenditures through September 15, 2004, even though there was visible activity in Nantucket to raise money and promote the candidate's re-election in the September 14 primary election. The committee's activity included, at a minimum, mailings, lawn signs, ballot stickers for his write-in candidacy in the primary, and newspaper ads.

Bretschneider acknowledged that he made \$12,343 in campaign expenditures outside of the depository system, using checks drawn on his personal funds and a personal credit card.

The issue of solicitation using public employees stemmed from a July 2004 mailing that solicited contributions and included the names of approximately 33 supporters, including the Nantucket Police Department and four public employees. The inclusion of a list referencing public employee supporters with a solicitation for political contributions was not consistent with Section 13, which prohibits public employees from soliciting or receiving political contributions and also prohibits political committees from using their names for such purposes. Bretschneider stated that the committee received a total of \$3,050 in contributions in response to the mailing.

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file with OCPF in a different reporting system. Ward or district council and School Committee candidates in these cities, however, file their reports locally.

We at OCPF are currently in the middle of conducting seminars in many cities, to help candidates and their treasurers with their questions and help ensure compliance with the campaign finance law. The office also conducts field audits in selected cities after the election, reviewing reports of all candidates for completeness and accuracy.

If you are a local candidate with a question, feel free to contact us or your local election official.

**Mike Sullivan
Director**



Visit OCPF Online at www.mass.gov/ocpf

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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 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.

Public Resolution Letters

- **05-09: Arthur Larrivee, Dartmouth.** Did not comply (failure to disclose campaign finance activity); 4/29/05. A candidate failed to provide timely and accurate disclosure of contribution and expenditure information, and in particular did not e-file contribution information in a timely manner. In response to OCPF's review, the candidate visited OCPF to obtain assistance in electronically filing the required information and answered all unresolved questions.
- **05-08: Kenneth Reeves, Cambridge.** Did not comply (failure to disclose campaign finance activity); 5/9/05. A candidate failed to provide timely and accurate disclosure of contribution and expenditure information, and in particular did not e-file contribution information in a timely manner. The committee eventually responded to OCPF's repeated inquiries and submit-

ted the required information.

- **05-21: Yes for Harwich.** No further action (political fundraising in a government building); 6/13/05. A ballot question committee held organizational discussions in a governmental building, at which attendees were apparently told that funds needed to be raised to support the committee, a treasurer was selected, and attendees may have been advised that contributions could be forwarded to the treasurer. To avoid any appearance that fundraising is taking place, OCPF advised that such activity not take place in such buildings.
- **05-26: Alan Kazanjian, Lowell.** Did not comply (political fundraising by public employee); 6/13/05. The chairman of the Zoning Board of Appeals hosted a fundraiser for a City Council candidate. Because the chairman receives a stipend, he is a person "employed for compensation" by the city under Section 13 and therefore may not solicit or receive such contributions. The candidate who received contributions took appropriate remedial action by promptly refunding the contributions that were raised in violation of Section 13.
- **05-24: James O'Brien, Dedham.** Did not comply (failure to accurately disclose receipt of in-kind contributions and receipt of in-kind contribution from business corporation); 6/21/05. A corporation provided a bulk mail permit to persons who mailed an endorsement letter supporting a candidate. Appropriate remedial action involved paying the corporation the amount that it would have cost to obtain such a permit (\$300). In addition, the candidate agreed to amend his report to reflect in-kind contributions from the corporation and from four persons who paid the out-of-pocket costs associated with the mailing.
- **05-28: Medway Tax Facts.** Did not comply (failure to disclose campaign finance activity or dissolve ballot question after relevant election); 6/27/05. A ballot question committee that raised money to influence a ballot question failed to file timely campaign finance reports. In addition, it did not dissolve after the relevant election, and raised and spent funds in connection with a subsequent election. After being contacted by OCPF, the committee filed reports reflecting all financial activity and dissolved.

- **05-18: Rep. Gale Candaras, Wilbraham.** Did not comply (political fundraising in governmental buildings); 6/28/05. A candidate mailed 1,800 invitations to a fundraising event, of which 143 were sent to attorneys employed by various state, county or municipal governmental entities at their business addresses. Section 14 prohibits political solicitation in a public building. One contribution of \$125 was received from the solicitations mailed to public employees at their places of work. To resolve the matter, the candidate's committee paid the commonwealth \$250 and returned the \$125 contribution.
- **05-23: Weymouth Democratic Town Committee.** Did not comply (failure to disclose information regarding reimbursements in a timely manner); 7/1/05. The committee made twelve reimbursements in 2004 to three individuals totaling \$2,330.95, but did not file timely disclosure forms (Form CPFR-1 "Itemization of Reimbursements") reflecting the underlying expenditures. In response to OCPF's inquiries, the treasurer of the committee filed the necessary information.
- **05-31: Virender Gautam, Sandwich.** Did not comply (political fundraising by public employee); 7/15/05. A professor at Cape Cod Community College is a public employee and therefore violated Section 13 by serving as treasurer of the committee organized on behalf of Adam Chaprales, a candidate for selectman in Sandwich. When notified of the violation, Gautam resigned as treasurer and the committee refunded \$600 that had been received through the treasurer's solicitations.
- **05-22: Longmeadow Public Schools.** Did not comply (use of public resources for political purposes); 7/15/05. School staff members and the school's copying machine were involved in distributing a PTO newsletter that discussed a Proposition 2½ override. In addition, copies were mailed using the schools' bulk mail permit.
- **05-07: Scituate Public Schools.** Did not comply (use of public resources for political purposes); 7/15/05. School staff members and the school's copying machine were involved in distributing a School Council informational document relating to a Proposition 2½ override.

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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 are online at www.mass.gov/ocpf.

•AO-05-06: An organization that is not a ballot question committee may distribute materials describing alternative approaches to health care reform, and may lobby the legislature, sponsor debates or hold informational forums, or raise funds for those purposes. It may not, however, solicit or receive funds for the purpose of supporting or opposing a ballot question. In addition, the organization may not solicit or receive earmarked contributions. If a contributor encourages or suggests that funds given to the organization be subsequently transferred by the organization to a ballot question committee, the organization must inform the donor that earmarked donations are prohibited and the funds must either be refunded or deposited in the organization's general treasury. (Valvo).

•AO-05-07: This opinion responds to several questions relating to the extent to which a political party committee may use the Internet for fundraising. It states that, subject to qualifications described in the opinion: (1) credit card contributions to political committees may be processed by Internet companies such as Amazon and Paypal; (2) contributions may be received through Internet auctions, e.g., through the use of an auction on Ebay; and (3) individuals may make contributions using referral fees which they collect from Internet companies having links on their individual websites. The opinion also states, however, that Internet companies may not directly pay referral fees to the party committee. (Cohen).

•AO-05-08: If an organization receives funds from business or professional corporations, the organization may not, without violating section 8, make expenditures to support or oppose candidates. Therefore, an organization that wishes to contribute to candidates may not accept commission checks (2% on each premium paid by an enrolled member) from insurance companies, which provide dis-

counted home and auto insurance to members of the organization. (Mass. Organization of State Engineers and Scientists).

•AO-05-09: A political committee may not pay a salary to a candidate. To ensure compliance with Section 6, OCPF closely scrutinizes any arrangement between a political committee and the candidate on whose behalf the committee is organized if the arrangement would involve a financial gain by the candidate. A candidate is traditionally involved in campaign strategy and campaign appearances in support of his or her own campaign, even if not paid for such assistance. If a candidate could receive payment for services rendered to a committee, the committee would be paying for something it would have received anyway, and therefore payment to the candidate of a salary would be inconsistent with the basic purpose of Section 6. A federal regulation allowing the payment of salaries to federal candidates is not controlling in the context of the Massachusetts campaign finance law. (Fidelman).

Disposition Agreement

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OCPF also learned that Bretschneider received some contribution checks at his office in Nantucket Town Hall. This violated Section 14, which prohibits the solicitation or receipt of political contributions in a government building.

In the agreement, Bretschneider agreed to pay \$15,000 from his personal funds to the Commonwealth over the next two years. OCPF suspended the payment of half of that amount provided Bretschneider and the committee comply with the agreement and the campaign finance law through the next election in which his name appears on the ballot for a state or county office. (The next scheduled election for sheriff is in 2010.) Bretschneider also agreed that all future campaign finance activity by his committee will be made through his depository account.

Public Resolution Letters

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•05-30: Spencer Public Schools. Did not comply (use of public resources for political purposes); 7/18/05. A principal's news-

letter, mailed to parents at public expense, discussed the content of an override and urged parents to "be passionate with their support." Such advocacy was an improper use of public resources.

•05-32: Wakefield Public Schools. No further action (use of public resources for political purposes); 7/20/05. A school council may hold a meeting in a school building and invite a representative of a ballot question committee to make a presentation. The use of the school's website to post the committee's website address in the minutes of the meeting raised issues under the *Anderson* opinion, however, and should be avoided in the future.

•05-12: Michael Franco, Holyoke. Did

not comply (political fundraising by public employee); 7/21/05. A municipal candidate who is employed by the city's Department of Veterans' Services sent an e-mail message to at least 122 persons inviting recipients to a campaign kickoff fundraising event. In response, the candidate's committee received 21 contributions in the total amount of \$746. Even if the committee sent a later e-mail regarding the event, and even if those who contributed provided a statement indicating their intent was to contribute to the committee, these circumstances do not change the fact that Section 13 was violated and that the contributions received must be refunded.



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