

OCPF Reports

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From the Director New and improved

When an inventor or manufacturer rolls out a new version of its product, the unveiling is usually accompanied by marketing hoopla, such as news of improvements and updates and a declaration that the product is "better than ever."

While we're not in the marketing business here at OCPF, we are very pleased with the reception that Reporter 4, the latest version of our record keeping and reporting software, has received. The new Reporter contains many improvements on the previous version, both for public disclosure and analysis purposes.

During our beta testing phase a few months ago, we enlisted the help of a few dozen committees that agreed to use the new software for tracking their data and even filing reports. The testers made a pretty seamless transition from Reporter 3, and gave us positive input on the new features and upgrades.

Those new features were the product of feedback we had received in recent years about the two previous versions of our software that have been combined into Reporter 4. The

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New Reporter 4 software is unveiled for use

OCPF's reporting software, for years available in two separate versions, has been unified into one model for use by all candidates and political committees.

Reporter 4 was recently unveiled and is available for download from OCPF's website, www.mass.gov/ocpf.

Reporter 4 succeeds Depository Reporter, used by statewide and county candidates, and Reporter 3, which was used by candidates and committees in the non-depository system, such as legislative candidates.

While the two previous software

versions were similar, they were not combined because of varying reporting schedules and methods. Reporter 4, however, accommodates both reporting systems and provides users with a uniform, more convenient package.

While OCPF is encouraging users to upgrade to Reporter 4, they are not required to stop using Reporter 3. That

version is still viable for use, including e-filing. Users should move up to Reporter 4 sometime in the future, however, to get all the benefits of the new software.

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**New bulletin
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Newly signed law allows contributions by debit card

A bill recently signed into law now allows contributors to use their debit cards when giving to candidates and political committees in Massachusetts.

Gov. Romney signed Senate 2340 on June 28. The measure, now Chapter 132 of the Acts of 2006, adds debit cards to the law that already allowed contributions by credit card.

Debit cards are often indistinguishable from credit cards because they carry the logo of a credit card company and are treated the same way during a transaction. During a debit card transaction, however, funds are withdrawn directly from a consumer's

bank account, whereas a credit card purchase is initially paid by a credit card company and billed to the cardholder for later payment.

OCPF is revising its regulations and memorandum M-04-01, "Contributions to Political Committees by Credit Card," to reflect the change in the law.

In the meantime, debit card contributions are to be treated the same way credit card transactions have been: a committee should report the gross amount designated by a contributor, not the net amount that is paid after any fees withheld by the vendor handling the transaction for the committee.

Public financing: Limits set in four of the six statewide races

Candidates for statewide office recently filed statements with OCPF stating whether they agree to observe statutory campaign spending limits.

Accepting the voluntary limitations makes candidates eligible to receive partial public funding of their campaigns, subject to the availability of funds. The program, which is funded by a \$1 income tax checkoff, funds gubernatorial candidates first, with any remaining money spilling over to the races for the other statewide offices.

In the race for governor, Democrats Deval Patrick and Thomas Reilly agreed to spending limits. Their opponent in the primary, Christopher Gabrieli, did not, but was required to subsequently state an anticipated cap on his primary spending. Gabrieli set a self-imposed ceiling of \$15.36 million, resulting in the increase of Patrick's and Reilly's limit from \$1.5 million to Gabrieli's figure.

Patrick and Reilly subsequently filed the required documentation of qualifying private contributions and have each received \$403,422 for use in their primary campaigns. (The public financing fund, which contains a little more than \$1.6 million, is divided evenly for the primary and the general elections.) They would normally be entitled to \$750,000 each, but the amounts raised from the checkoff have never been enough to fully fund the financing program.

The sole Republican candidate for governor, Lt. Gov. Kerry Healey, declined to participate in the program. Because she is unopposed in the primary, she did not have to set a self-imposed spending cap. She would have to do so for the general election, however, if she and her running mate are opposed by at least one candidate team that has agreed to limits.

Candidate's commitments to observe spending limits are binding for both the primary and general election campaigns.

Two other races saw candidates submit spending cap figures because they are opposed by public financing participants:

In the race for *Lieutenant Governor*, Democrat Deborah Goldberg set a spending limit of \$4 million, which is now the limit for primary opponents Timothy Murray and Andrea Silbert. Republican Reed Hillman did not agree to limits.

In the race for *Secretary*, Democrat William Galvin set a limit of \$2.9 million for himself and primary challenger John Bonifaz, who agreed to limits.

The other races, the limits for the primary and the decisions of the candidates were:

Attorney General (\$625,000): Agreed to limits -- Martha Coakley (D); Larry Frisoli (R).

Treasurer (\$375,000): Did not

Candidate and committee lookup: Users can look up addresses and CPF numbers of OCPF-registered candidates and committees when entering contributions or expenditures.

Expanded help: A comprehensive help file for each function to answer common questions and problems.

Bank reconciliation: A tool for all users to reconcile Reporter data with

Sullivan retained as OCPF director

Michael Sullivan has been appointed to a third six-year term as director of OCPF.

Sullivan was unanimously reappointed in June by the bipartisan commission that selects the director under M.G.L. Chapter 55, Section 3. Commission members are Secretary of the Commonwealth William F. Galvin, who serves as chairman; John F. O'Brien, Dean of the New England School of Law and the designee of the governor; Philip W. Johnston, chairman of the Democratic State Committee; and Darrel W. Crate, chairman of the Republican State Committee.

Sullivan is the fifth director in the 33-year history of the independent agency and the first to serve more than one term. Prior to his initial appointment in 1994, he was city clerk in Newburyport for more than seven years.

agree -- Timothy Cahill (D).

Auditor (\$375,000): Did not agree - Joseph DeNucci (D).

Unenrolled candidates, who do not participate in the party primaries, do not need to disclose their plans regarding public financing until Aug. 29, when they file their nomination papers with the Elections Division of the Secretary of the Commonwealth.

their bank statements.

Multi-committee capability: Users can store data for more than one committee without having to reload the software.

As always, OCPF staff is ready to help Reporter users with any questions or problems they might have. Call the office at (617) 727-8352 or (800) 462-OCPF (6273).

Reporter 4

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Other new features of Reporter 4 include:

Improved navigation: Instead of navigating through many separate screens, users can access functions by using a single menu toolbar at the top of every screen.

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

•06-17: Vote Yes For Bedford's Future.

Did not comply (failure to disclose campaign finance activity in a timely manner); 05/12/06. A municipal ballot question committee did not file a timely statement of organization. In addition, it did not file a pre-election report. The post-election report, however, apparently disclosed all campaign finance activity.

•06-24: Tracey White; Paul Munchbach; and John Bethoney, Dedham.

No further action (failure to disclose campaign finance activity in a timely manner); 05/15/06. There was no prohibited corporate contribution where the president of a corporation personally owned a bulk mail permit that he allowed candidates to use. The candidates were required, however, to disclose an in-kind contribution from that person in the

amount of the savings or the value of the bulk mail permit.

•05-85: Vote Yes Committee, Dedham, and Hebrew Senior Life, Boston.

Did not comply (failure to disclose campaign finance activity in a timely manner); 05/16/06. The Vote Yes Committee failed to file timely reports concerning a ballot question in Dedham. The reports also failed to disclose in-kind contributions from Hebrew Senior Life. Hebrew Senior Life failed to file a CPF Form 22 disclosing its expenditures concerning the ballot questions until OCPF requested that they file. To resolve the matter, a payment of \$5,500 was made to the Commonwealth.

•06-23: Cohasset Public Schools.

Did not comply (use of public resources to distribute information to voters); 05/25/06. A school superintendent used public resources to distribute a letter to parents of students that supported overrides on the ballot in the town election. After asking for guidance regarding the taking of remedial action, the Superintendent provided restitution in the amount of \$378 to the town and filed a form CPF 22A disclosing the expenditure of public funds.

•06-18: Sherborn School Committee.

Did not comply (use of public resources to distribute information to voters); 05/25/06. A school committee used the Pine Hill School's server and e-mail list to send an e-mail advocating for passage of an override. Public resources, namely the school server, the e-mail list and the time of the school staff, were used to distribute the document.

•06-14: Harvard Public Schools.

Did not comply (use of public resources to distribute information to voters); 05/26/06. An elementary school council used the school's copier and toner to reproduce a letter advocating for the passage of an override. Public resources, namely the school photocopier and the paid time of the school staff, were used to distribute the document.

•06-20: Swansea Water District.

Did not comply (use of public resources to distribute information to voters); 05/26/06. District commissioners violated the campaign finance law by using district funds to distribute a letter advocating a

vote against a ballot question. The commissioners took appropriate remedial action, however, by personally providing restitution in the amount of \$2,136 to the district. In addition, the district treasurer filed Form 22A disclosing the use of public funds.

•06-33: Georgetown Public Schools.

No reason to believe (use of public resources to influence a ballot question committee); 05/26/06. A school district did not violate the campaign finance law when it used its website to post a flyer endorsing a ballot question.

•06-33: Citizens for Quality Education, Georgetown.

No reason to believe (ballot question committee organization); 05/26/06. A ballot question committee complied with Section 5 when it filed a statement of organization before raising and spending funds.

•06-22: Medway Federation of Teachers.

Did not comply (use of public resources to distribute information to voters); 06/08/06. A teachers union used the school's copier to reproduce a pro-override memo, which was distributed to members. While the union provided its own paper, the use of the copier did not comply with the campaign finance law.

•05-51: Frederick Kalisz, New Bedford.

Did not comply (Expenditure of campaign funds for personal use); 06/09/06. A candidate received reimbursements from his committee for auto and life insurance expenditures made by the candidate. The candidate repaid the amount received for life insurance. In a memo of understanding entered into between the candidate and OCPF, the candidate agreed that payment of life insurance using campaign funds is not permitted. In addition, the candidate reimbursed the committee \$2,921.95, mostly representing excess auto reimbursements that had been made by the committee in a manner inconsistent with

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Recent cases

From Page 3

M-97-02. In addition, the committee agreed to pay \$3,000 to the Commonwealth, with \$1,500 suspended pending compliance with the agreement.

• **06-36: Northbridge Public Schools.**

Did not comply (use of public resources to distribute information to voters); 06/27/06. A school superintendent used public resources to distribute a letter to parents of students that supported an anticipated override. The letter was distributed to school children to be brought home in backpacks. The superintendent was advised that future use of public resources may require restitution in accordance with Section 22A.

• **06-43: Lexington High School Parent Teacher Student Association.**

Did not comply (use of public resources to distribute information to voters); 06/27/06. A parent teacher organization used public resources to distribute a 20-page newsletter to parents, two and one-half pages of which discussed an override. The PTO used the school copier, paper and bulk mail permit to mail the newsletter. The PTO agreed to pay the town \$300, the approximate value of the resources used, and to file a Form M22 disclosing the use of public funds.

• **06-31: Ailaine Zautner, Sharon.** Did not comply (solicitation and receipt of contributions by public employee and solicitation and receipt in building occupied for municipal purposes); 06/27/06. A public employee's use of school's

computer to solicit and receive contributions, including the solicitation of other public employees while at their places of work, did not comply with the campaign finance law.

• **06-19: Norwell Taxpayers Alliance.** No further action (disclosure of expenditures relating to a ballot question); 6/28/06. An organization did not raise money to oppose a municipal ballot question but did make an expenditure to support a ballot question committee. Accordingly, the organization was required to file a Form CPF M22, to reflect its expenditures, with the Town Clerk.

• **06-26: Wrentham Public Schools.** Did not comply (use of public resources to influence voters); 6/28/06. A school department newsletter advocated for the passage of an override. Public resources used in the preparation and distribution included the photocopier and paper, as well as the time of school staff. The superintendent was advised that future use of public resources may require restitution in accordance with Section 22A.

• **06-41: Christy Mihos 2006 Committee, Boston.** A public employee was one of several listed sponsors of a fundraising event for a gubernatorial candidate. The ban on indirect fundraising by public employees in Section 13 includes being a co-sponsor of an event. As a remedial action, the committee decided not to collect contributions at the event and later refunded \$2,200 that had been collected in response to the solicitation.

Devens property. It discusses the extent to which public officials may distribute information by mail or e-mail in response to requests for such information; the including of information on public websites; the providing of information regarding how persons may receive information from government agencies; and the extent to which public officials may hold press conferences or write letters to the editor regarding a ballot question. (Smith, Devens' Counsel)

From the Director

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outreach culminated in a survey of users we conducted last year, in which respondents told us what they liked — and didn't like — about the software and made suggestions for changes.

Until now, e-filers used one of two different versions of the software — Reporter 3 or Depository Reporter — depending on the type of candidate or committee. Reporter 4 combines those versions for the first time, eliminating confusion and allowing us to focus on a single software program.

In addition to the basic functions, such as inputting receipts and expenditures and filing reports, the software helps with other key concepts such as helping committees reconcile bank statements and allowing them to mark contributions by source, such as a certain fundraising event. It also searches OCPF online for updates whenever it is turned on, making improvements easier.

Overall, Reporter 4 is an impressive piece of work, developed by our staff with the help of our users. So forgive us if we go right ahead and say it's better than ever. We think you'll agree.

**Mike Sullivan
Director**

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-06-06:** This opinion discusses actions that may be taken by public officials relating to ballot questions on the disposition of the former Fort

OCPF study: Mayoral candidates spent record \$6.2 million in 2005

Candidates for mayor in the November 2005 city elections spent a total of \$6.2 million last year, according to a recent study released by OCPF. That figure is the highest ever recorded since OCPF first issued a mayoral study after the 1997 elections.

The study tracked activity by the 71 candidates on the November election ballots in 38 cities. According to the study, the candidates raised a total of \$5,778,781 and spent a total of \$6,209,404 in 2005. The fundraising aggregate is also the highest ever recorded by OCPF. The previous highs were \$4.5 million raised and \$5.8 million spent, both in 2001.

The median amounts raised and spent in 2005 were \$30,021 and \$27,621, respectively. Both figures were short of the record medians of \$32,644 and \$33,040, both from 2001.

A total of 14 candidates spent more than \$100,000 in their campaigns. The top spender in 2005 was Boston Mayor Thomas Menino, who reported expenditures of just under \$1.7 million. Menino has topped the spending list each time he has been featured in such a study, in 1997 and

2001. His 2005 figure, however, is an all-time individual record. Mayor Menino has been the top spending mayoral candidate statewide each of the last three times he has run: in 1997, 2001 and 2005.

Boston was also the city with the highest spending, as Menino and challenger Maura Hennigan spent a total of \$2,830,361. Boston has had the highest spending the last three times it held a mayoral election. Rounding out the top five in spending in 2005 were New Bedford, Fall River, Salem and Springfield.

The average amount spent per vote by a candidate in 2005 was \$14.18, an increase of 29 percent over two years before and the highest such figure ever noted in an OCPF mayoral study.

The candidate who spent the higher amount won in 21 of the 29 contested races in 2005, or 72 percent of the time. Seventeen of last year's top spenders were incumbents.

The study, which includes aggregate figures for each candidate, is online at OCPF's website and may be found at www.mass.gov/ocpf/mayors05.pdf.

Candidate, committee lists are updated

OCPF has updated its printed list of all candidates and committees registered with the office, included those who organized after filing nomination papers with the Secretary of the Commonwealth in May and June.

OCPF records reflect all open committees, even those who candidates are not on the ballot this year or do not currently hold office.

To download the list in PDF for-

mat, go to the office website at www.mass.gov/ocpf and click on the Candidates and Committees tab.

There you can find pdf images of lists of candidates, political action commit-

2006 filing deadlines for legislative candidates and PACS

Candidates for the state Senate and House of Representatives, political action committees and people's committees file three reports this year:

- **Pre-Primary** report, due on **Monday, Sept. 11**, covering the period through Sept. 1.

- **Pre-Election** report, due on **Monday, Oct. 30**, covering the period through Oct. 20.

- **Year-End** report, due on **Monday, Jan. 22, 2007**, covering the period through Dec. 31.


All legislative candidates with receipts or expenditures of more than \$5,000 in the two-year election cycle must file electronically. PACs and people's committees must e-file if their receipts or expenditures exceed \$10,000 in the two-year cycle.

Candidates who do not reach that threshold may still e-file, using either OCPF's free software or the online Web Reporter tool.

The 2006 filing schedule for all candidates and committees, including candidates for statewide and county office, is online at www.mass.gov/ocpf.

tees and ballot question committees.

For information on more recently organized committees, click on the online database to access a continually updated list of committees.



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"Issue ads" addressed in newest OCPF bulletin

OCPF has issued new guidance for political campaigns, organizations and the public regarding various types of "advocacy" in advertisements concerning political candidates.

Interpretive Bulletin IB-06-01, "Express Advocacy and Issue Advocacy," was released in early July.

To solicit as much input as possible, OCPF released a preliminary version of the bulletin to encourage interested parties to review it and submit feedback.

The bulletin reflects the impact of federal court rulings concerning the different types of advocacy and their application to state standards for regulation and disclosure.

The applicability of state law to an expenditure for a communication depends on such factors as its specific message, whether and how it refers to a candidate, and whether it is coordinated with a candidate.

According to the bulletin, advocacy falls into two categories:

Express advocacy conveys a clear message of support of or opposition to a clearly identified candidate, using words such as "vote for" or "reject" or similar images.

Such ads are subject to the disclosure provisions of the campaign finance law and, in some cases, may be considered contributions that are subject to certain limits, if they are done in coordination with a candidate's campaign.

For example, an ad produced by a group that requests a vote in favor of a candidate and is undertaken after consultation with the candidate or the candidate's committee, such as suggestions for content or placement, is an in-kind contribution, subject to statutory limits and disclosure.

If the same ad is done without any consultation with a candidate, it is an independent expenditure and is not limited because it is not a contribution.

Such an expenditure, however, must be disclosed pursuant to M.G.L. Chapter 55, Section 18A.

Issue advocacy is more ambiguous in its applicability to an election, though in some cases it may be regulated.

While issue advocacy ads might refer to a candidate, they do not call for some action at the polls, such as the election or defeat of the candidate. These ads usually call attention to a particular issue and note a candidate's position on it, omitting the "magic words" found in express advocacy.

Federal law now regulates certain issue ads. Broadcast ads that refer to a federal candidate and air within 60 days of an election may be considered "electioneering communications," and are covered by federal disclosure provisions.

There is no corresponding provision for electioneering communications in Massachusetts law, meaning such ads are not regulated.

The bulletin makes clear, however, that issue advocacy should not cross the line into campaign activity on behalf of a candidate. An ad may refer to a candidate's position on an issue, for example, but it may not go on to urge action at the polls, thereby becoming express advocacy.

Despite the greater latitude allowed issue ads under state law, the bulletin advises that any such ads that are coordinated with a campaign may be regulated. For example, if a group generates an issue ad concerning a candidate and engages in substantial discussion or negotiation with the candidate or the candidate's campaign regarding the ad's content, timing or placement, it could be considered a contribution to the candidate, subject to limitation and disclosure.

The distinction between express and issue advocacy is also important because of the limitations on corporate expenditures in the campaign finance

law. Corporate funds may not be used for express advocacy, such as an ad supporting or opposing the election of a candidate.

There is no restriction, however, on corporate funds being used for issue advocacy, provided it is not coordinated with a candidate's campaign. Such communications should be carefully scrutinized, however, to ensure compliance with OCPF's guidance.

OCPF urges any group or candidates unsure about the applicability of IB-06-01 to contact the office before making any payment for communications that may be considered to involve express advocacy or coordinated issue advocacy.

A copy of IB-06-01 may be downloaded from the Legal Guidance section of the office website, www.mass.gov/ocpf. The section also contains all current bulletins, memoranda and advisory opinions issued by the office.

To contact OCPF:

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