



OCPF Reports

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From the Director

Changes online

In my last column, I noted that our Electronic Filing System was recently judged one of the nation's best campaign disclosure programs. Using it everyday, however, convinced me that there were still improvements that could be made to make the EFS more convenient for everyone.

After some brainstorming meetings with our own staff and the state's Information Technology Division, we have now "gone live" with improvements that should make your experience with our system even better.

Some of the changes are simple ones, such as the introduction of commas to make those larger numbers more understandable and the reformatting of online reports to promote greater readability. For example, contributor data in each report is now in a column format, allowing the reader to scan a greater amount of information in each screen shot.

Other changes are more significant, including a report log, an up-to-the minute record of recent filings. Instead of having to search by candidate or committee to see if a specific report has been filed recently, users will be able to click on the log to monitor reports that have recently been filed. Another feature allows a search by type of report, allowing the user to determine, for example, who has filed by the year-end deadline. Both of these logs are automatically updated as soon as a report is accepted by the system.

Searching for reports by the name of a filer has also gotten a lot easier. There's a pull-down menu of all e-filers

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Paperless filing starts with Jan. 20 reports

The year-end reporting deadline for all state and local candidates and committees is once again approaching, but there will be a different wrinkle to filing this January 20.

Candidates and committees who have been e-filing with OCPF are being notified that they will no longer be required to file a paper backup copy of their reports.

The electronic filing section of the campaign finance law required OCPF to require paper copies until the Electronic Filing System "meets all pertinent filing and disclosure requirements."

That threshold has been met -- and

exceeded -- with the growing success of the EFS since it went online in 2002.

Filers have encountered no major problems, and OCPF staff has worked with candidates and committees to iron out various wrinkles along the way.

Those e-filers who no longer need to submit paper copies are candidates for the six statewide offices, Governor's Council and the Legislature, as well as statewide ballot question

committees.

The other change in e-filing for 2004 is an expansion of the roster of e-filers, the

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OCPF revises guidance on ballot question activity by officials

OCPF has revised its interpretive bulletin dealing with the role of public officials in ballot questions, such as Proposition 2 1/2 overrides and debt exclusions.

The bulletin, IB-92-02, was updated to reflect recent office rulings and guidance given to officials. It is also the product of contact with municipal officials and of numerous seminars held by OCPF staff in communities across the Commonwealth.

Some activity concerning ballot questions is regulated by the Supreme Judicial Court's 1978 ruling in *Anderson v. City of Boston*. In that case, the court ruled that public funds may not be used to influence voters concerning a ballot question.

"We get many calls from both municipal officials and private citizens about this

issue, including such topics as providing information to voters and officials' involvement in the public dialogue," said OCPF Director Michael Sullivan. "There's a lot that officials can do and say, but there are also some things that are best left to private ballot question committees."

The bulletin covers such topics as public meetings, officials speaking to the media and municipal web sites. In addition to prohibited activities, such as town-wide mailings before an election, it also notes those activities that are allowable, such as public meetings and preparing information.

IB-92-02 and all other OCPF bulletins may be found in the Legal Guidance section of the office's web site, www.mass.gov/ocpf.

New e-filing thresholds for many state candidates and committees

M.G.L. Chapter 55, Section 18C requires candidates and committees to file campaign finance reports electronically if their receipts or expenditures exceed, or can be expected to exceed, certain statutory thresholds for their two- or four-year election cycles.

Here is a list of the various types of candidates and committees who either e-file now or will soon be required to do so:

Currently e-filing

Candidates for statewide office -- Governor, Lieutenant Governor, Attorney General, Treasurer, Secretary, Auditor. (E-file threshold for all offices: \$50,000).

Candidates for Governor's Council (E-file threshold: \$5,000).

Candidates for the House and Senate (E-file threshold: \$5,000).

Statewide ballot question committees (E-file threshold: \$25,000).

E-filing starting in 2004

Political action committees (E-file threshold: \$10,000).

State and local party committees (E-file threshold: \$10,000).

Candidates and committees that e-file are no longer required to file paper backup copies of their reports.

Expenditure information for some other candidates, especially those seeking county office or citywide office in Boston, Cambridge, Lowell, Springfield or Worcester, may be online as well. That is because those reports may be e-filed by their individual banks along with the reports of mandatory e-filers.

Candidates for those county and citywide offices, however, are not required to e-file in 2004.

Section 18C allows OCPF to require any other categories of candidates or committees to e-file starting in 2005.

Phone help, seminars scheduled

With candidates and committees gearing up to file their year-end reports, OCPF has scheduled seminars to review the reports and the electronic filing procedure.

•Boston, Tuesday, Jan. 6

McCormack Building, 1 Ashburton Place, 21st Floor, Room 3, 2-4 p.m.

•Boston, Monday, Jan. 12

McCormack Building, 1 Ashburton Place, 21st Floor, Room 2, 2-4 p.m.

•Natick, Tuesday, Jan. 13

Town Hall, 13 East Central St., Selectman's Room, 2nd Floor, 6:30-8:30 p.m.

OCPF will also offer help over the phone over the weekend preceding the filing date, Saturday, Sunday and Monday, Jan. 17-19.

The call-in hours are 10 a.m.-4 p.m. on Saturday, 11 a.m.-4 p.m. on Sunday, and 9-5 p.m. on Monday.

The office numbers are (617) 727-8352 and (800) 462-OCPF.

E-file: Reports are now paperless

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second stage of the phase-in called for in the law.

Starting in January, political action committees and state party committees that raise or spend more than \$10,000 in an election cycle must e-file. The first PAC report that must be e-filed is due on Sept. 7; before that, however, PACs have the option of e-filing their year-end 2003 reports with no paper requirement.

The state committees for the four authorized parties (Democratic, Republican, Libertarian, Green) will be expected to

e-file starting in January. The e-file requirement also applies to local (ward, town, city) party committees, but the vast majority of such committees do not meet the \$10,000 threshold for e-filing.

The new e-filers also will not be required to file paper copies of their reports.

Candidates and committees that do not reach the statutory threshold for e-filing are not required to submit their reports electronically. However, if such candidates and committees opt to e-file, they will not be required to submit paper

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for easier navigation. The wildcard search feature has also been expanded to help users find a report even if they aren't sure of the spelling of -- or simply misspell -- a filer's name.

Your suggestions concerning the EFS have been helpful and I continue to look for your input as we try to constantly improve it. Recently, our staff also met with a representative of the Campaign Disclosure Project (the group that did the original survey) to review the changes and discuss further ways to enhance the system. Look for more tweaks in the future.

While on the subject of the EFS and its popularity, the most recent statistics show almost 15,000 visits to our website during the month of November. Approximately 75,000 pages were viewed and the average amount of time spent per viewer was 4½ minutes. Surprisingly, Saturday was the busiest day for our site, while Sunday was a close second.

* * *

In other developments, the U.S. Supreme Court recently released its decision on the constitutionality of the Bipartisan Campaign Reform Act (BCRA), also known as McCain-Feingold. Our legal staff is reviewing the decision upholding most of the law and talking to other campaign finance experts around the country to determine its impact at the state and local levels.

Best wishes for the holidays and for a happy and healthy 2004 from all of us at OCPF.

Mike Sullivan
Director

reports to OCPF.

OCPF recently upgraded the Reporter software to include the electronic signature component now needed for e-filing. If you are unsure whether your version of Reporter is the most current one, click on the "Miscellaneous" section on the Reporter main menu, then click on "Maintenance" for the Updates icon.

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.

Disposition Agreement

James Kelly, Boston (6/23/03)

OCPF entered into a disposition agreement with Boston District 2 City Councilor Kelly regarding violations of the campaign finance law from 2000 to 2003. The violations by Kelly and his committee, The Friends of Jim Kelly, were in the following areas:

Committee vehicle: Kelly made reimbursements totaling \$1,126 to the committee for personal use of a car leased by the committee. OCPF concluded that Kelly used the vehicle to some further extent for his personal use without reimbursing the committee due to insufficient documentation of the vehicle's use.

Excess and corporate contributions: The Committee received \$2,325 in contributions from individuals above the \$500 statutory limit, \$290 in prohibited corporate contributions, \$500 in a prohibited contribution from a federal PAC and money order contributions in excess of the \$50 annual limit.

Reimbursements: A total of \$21,148 in committee reimbursements to Kelly were originally not supported by the required documentation. One itemized reimbursement of \$106 was primarily a personal expenditure.

Other issues noted in the agreement included: 1) the committee's failure to seek or disclose the required information regarding the employer or occupation from most persons contributing \$200 or more; 2) inaccurate reporting of some

expenditures and contributions, including those of \$50 or less; and 3) several substantial math errors that resulted in inaccurate reporting of receipts, expenditures and the committee's cash balance.

To resolve the matter, Kelly made personal payments totaling \$3,500: \$2,500 to his committee as reimbursement for the personal use of the committee vehicle and the restaurant expenditure, and \$1,000 to the Commonwealth in the nature of a civil forfeiture. The Committee also made a payment of \$7,500 to charitable entities, part of which was intended to represent the disgorging of the approximate amounts of the improper contributions noted above. The Committee also agreed to take several other steps, including keeping accurate vehicle logs, retaining a certified public accountant and filing additional, quarterly reports with OCPF through June 2005. OCPF agreed not to refer the matter to the Attorney General for further action.

Public Resolution Letters

•03-35: Wenham Town Hall and Police Station Building Committee. No Further Action (disclosure of ballot question activity); 10/29/03. A town building committee should have organized a ballot question committee prior to sending out a flyer advocating passage of a building project at a Town Meeting and election. The flyer was privately paid for by members, so no public funds were used. The committee filed the appropriate disclosure reports after being contacted by OCPF.

•03-42: Alderman Jane Lavender, Melrose. Did Not Comply (political fundraising by a public employee); 11/7/03. A municipal candidate who was a public employee did not comply with M.G.L. c. 55, s. 13 by having a fundraising event in her home. The public resolution letter required her to refund approximately \$900 received at the event, or alternatively, to make charitable payments in that amount.

•03-44: Rep. Martin Walsh, Dorchester. Did Not Comply (excess PAC contributions); 12/10/03. A candidate committee's receipt of \$14,190 in contributions from PACs in 2002 and its failure to promptly refund these excess contributions did not comply with M.G.L. c. 55, s. 6A, which limits such contributions to House candidates to an aggregate amount of \$7500 per calendar year, and 970 CMR 1.04(8), the campaign finance regulation regarding the return of such contributions. As the result of this review, the Committee issued refunds to the relevant PACs, and informed

OCPF that it has implemented new procedures and accounting measures to ensure compliance with the law in the future.

•02-108: Rep. James Eldridge, Acton. Did Not Comply (failure to report required information and keep accurate records); 12/15/03. Candidate committee failed to provide required information on its 2002 campaign finance reports and to maintain adequate accounts of campaign receipts and expenditures. After being contacted by OCPF, the committee filed amended reports to provide disclosure of required information.

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-03-05: Under the circumstances presented, the general counsel of a state agency will continue to be "employed for compensation" by the state, and therefore subject to M.G.L. c. 55, s. 13, after her resignation because she intended to work part-time, on an hourly basis, for the agency on certain cases. (Clark).

AO-03-06: Subject to equal access, candidates and committees may post political notices, including invitations to political fundraisers, on a municipal website that is set up to permit groups and individuals to create a notice on any personal computer and then submit it to the webmaster for posting. Because approved notices are automatically generated and posted on the website, the process does not constitute improper political fundraising activity by an appointed public employee. In addition, Section 14 is not implicated by the use of the service because the process does not involve a political solicitation in an office occupied for a governmental purpose. (D'Amico).

AO-03-07: This opinion addresses expenditures by a candidate committee where the candidate is leaving office, including expenditures for charitable and political contributions, and gifts to staff and supporters. While many of the expenditures contemplated conformed to Section 6 and the relevant regulations, the committee may not provide staff members with monetary gifts or payments for past services, or to supplement their present income. A monetary payment should only be made to a staff member for work actually done and where the commonwealth is not otherwise paying for the service. A committee making payments to a staff member for professional services must keep detailed records. (Jacques).

Campaign finance filing dates for 2004

All candidates and committees registered with OCPF are expected to file their 2003 year-end reports with the office by Tuesday, Jan. 20. The filing dates for 2004 activity vary by the type of candidate or committee:

Depository filers

(Statewide, county and Governor's Council candidates, state party committees, candidates for mayor and councilor-at-large in Boston, Cambridge, Lowell, Springfield and Worcester)

Reports are filed by their depository banks by the 5th of each month, covering the previous month. For candidates on the ballot in November, additional reports covering the first half of the months are on the 20th of each month from July through December.

Year-end reports summarizing activity throughout the year are filed by the candidates and committees each Jan. 20.

Non-Depository filers

(Legislative candidates and committees, political action committees, people's

committees, local party committees)

Because this is a state election year, three reports are due.

Pre-Primary report due Tuesday, Sept. 7 (the regular due date of Monday, Sept. 6 is Labor Day).

Pre-Election report due Monday, Oct. 25.

Year-end report due Thursday, Jan. 20, 2004.

Ballot question committees

The first regular reporting date for state ballot question committees is 60 days before the November election (Friday, Sept. 3). The committees file thereafter on the 5th and 20th of each month through the end of December. Committees that have not yet disbanded also file year-end reports on Jan. 20, 2004. A ballot question committee must dissolve after the relevant election, but must first settle all liabilities and dispose of any residual funds before shutting down.

In towns, local ballot question committees file reports eight days before and 30 days after the election. Check with your

local election official for more information.

Some of the above candidates and committees will file their campaign finance reports electronically. For a rundown of e-filers, see Page 2.

Municipal candidates

Candidates in *town* elections in the spring file reports eight days before and 30 days after the election. Incumbents and those with continuing balances or open committees will also file a year-end report on Jan. 20, 2004.

Regular (November) *city* elections are held in odd-numbered years, so only one report is generally required from city candidates, including incumbents and those who ended 2003 with open committees or campaign funds or liabilities.

Candidates should check with the city or town clerk or election commission for further information.

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The filing schedule for 2004 is also available online at www.mass.gov/ocpf.schedule04.htm.

Interpretive Bulletins

OCPF recently updated and revised the following Interpretive Bulletins. Copies of all IBs are available from OCPF and online at www.mass.gov/ocpf.

IB-82-02, "The Applicability of the Massachusetts Campaign Finance Law to Unregistered Political Groups and Non-Massachusetts Political Committees"

IB-88-01, "The Applicability of the Campaign Finance Law to Groups That Do Not Engage in Political Fundraising"

IB-90-02, "Disclosure and Reporting of Contributions and Expenditures Related to Ballot Questions"

IB-92-02, "Activities of Public Officials in Support of or Opposition to Ballot Questions."

Campaign guides updated to reflect changes in the law

OCPF has updated many of its campaign finance guides to reflect changes in the law in 2003.

New versions of the guides for depository candidates and General Court candidates are now available online and are also included in OCPF candidate packets.

The depository and General Court guides reflect the new threshold for electronic filing (\$50,000 in activity for statewide candidates and \$5,000 for House,

Senate and Governor's Council candidates) that was implemented last summer. The new guides also delete references to the Clean Elections Law, which was repealed at the same time.

The PAC and local party guides also reflect the electronic filing requirement.

The guides may be found at www.mass.gov/ocpf. Click on the tab for "Campaign Finance Guides" or "Campaign Finance Kits."



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