

THE COMMONWEALTH OF MASSACHUSETTS  
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**INTERPRETIVE BULLETIN**

**Disclosure and Reporting of  
Contributions and Expenditures Related to  
Ballot Questions**

This interpretive bulletin defines when expenditures to influence a ballot question become subject to the campaign finance law and provides guidelines regarding the disclosure of expenditures made to promote or oppose a ballot question by ballot question committees, corporations, associations, organizations and other groups. For purposes of this bulletin, associations, organizations and other groups (including groups of two or more persons making expenditures to promote or oppose a ballot question) will be referred to collectively as "associations."

***Summary***

Ballot question committees, which raise funds and make expenditures to favor or oppose a ballot question, must disclose contributions, expenditures and liabilities with this office or the appropriate local election official. The campaign finance law requires disclosure of all expenditures made by corporations and associations to promote or oppose a ballot question, including certain expenditures made in anticipation that a question will appear on a ballot. In addition, corporations and associations which make expenditures, but do not raise funds specifically to favor or oppose a question, must report expenditures, liabilities and "promises to pay" for goods or services to this office or the appropriate local election official.

Disclosure reports are filed with OCPF for statewide or county ballot questions or advisory questions submitted to voters of a legislative district. Reports are filed with the local election official for local ballot questions.

M.G.L. c. 55, the campaign finance law, refers to ballot questions in a number of areas. Section 1 of M.G.L. c. 55, as amended by chapter 43 of the Acts of 1994, defines a "ballot question committee" as "a political committee which receives or expends money or other things of value for the purpose of favoring



or opposing the adoption or rejection of a specific question or questions submitted to the voters including, without limitation, a charter change, an initiative or referendum question or a constitutional amendment."

In addition, in its definitions of "contribution," "expenditure," and "political committee," section 1 refers to "the purpose of promoting or opposing a charter change, referendum question, constitutional amendment, or other question submitted to the voters . . ." Section 18 provides a reporting schedule of activity by political committees organized to "favor or oppose a question submitted to the voters." Also, section 22 requires reporting by corporations and associations for expenditures<sup>1</sup> "made to influence or affect the vote on any question submitted to the voters." Section 22A requires the filing of such reports by governmental entities that make such expenditures.<sup>2</sup>

If a corporation or association solicits or receives<sup>3</sup> any money or other thing of value for the purpose of promoting or opposing a question submitted to the voters, the corporation or association is functioning as a ballot question committee. As such, the corporation or association is subject to all the provisions of the campaign finance law as of the date of the solicitation or receipt of such money or other thing of value. Any corporation or association (or individual) which solicits or receives any money for the purposes of influencing a ballot question, or which holds itself out to the public as a political committee making expenditures to promote or oppose a ballot question, must organize with OCPF or the local clerk or election commission as a ballot question committee.

## **I. When do expenditures become subject to the campaign finance law?**

The campaign finance law requires disclosure of all expenditures made to promote or oppose a ballot question. See M.G.L. c. 55, sections 1 and 18. A corporation or association seeks to "promote or oppose" a ballot question when expenditures are made or liabilities incurred in an effort to influence the vote on a question.

Corporations and associations which make "promises to pay" must file a report disclosing such promises, even if the corporation or association has not yet made any expenditures. A promise to pay exists and must be reported if the corporation or association has (1) made an express or implied promise to make an expenditure, or (2) knows or reasonably should know that it will be responsible for paying for a good or service to support or oppose a ballot question. A liability exists and must be reported if the

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<sup>1</sup> Sections 22 and 22A require the reporting of any corporation or association, or any governmental unit, "which has given, paid, expended or contributed, or promised to give, pay, expend or contribute, any money or any valuable thing in order to influence or affect the vote on any question submitted to the voters . . ." The term "expenditure" is used in this bulletin to include all of the referenced payments, transfers, expenditures or contributions.

<sup>2</sup> The obligation in section 22A to disclose such expenditures does not, however, reflect an authorization allowing expenditures of public resources. See M-95-06, outlining the procedure that city and town clerks or election officials, and treasurers or financial officers of local or regional governmental units, should follow to comply with M.G.L. c. 55, s. 22A and IB-91-01, regarding the use of public resources to influence ballot questions.

<sup>3</sup> Where more than one person pools funds, "receipt" has occurred for the purposes of the campaign finance law, i.e., if a group of two or more persons pool funds or resources to promote or oppose a ballot question, they have formed a ballot question committee, and should file a statement of organization with OCPF or the local clerk or election commission and report receipt of the funds from each person who has made a contribution.

corporation or association has received a good or service which it has not paid for even if the corporation or association has not received a bill or invoice.<sup>4</sup> See M.G.L. c. 55, s. 22.

The office has consistently stated that "monies raised and spent in an effort to move forward [a question] which will influence the voters, such as a petition drive, are subject to the provisions of c. 55. It is not necessary that a question be legally certified as appearing on the ballot" for the activity to be considered subject to the campaign finance law. See AO-83-13. As noted in AO-84-05, a ballot question committee may make expenditures "in anticipation that a question will appear on a ballot." See also AO-89-32, AO-90-22 and AO-91-04.

Certain types of expenditures, which might be viewed as "moving forward" the ballot question process, are not necessarily subject to the reporting requirements of the campaign finance law. The following expenditures, if not made by a ballot question committee, do not have to be reported<sup>5</sup> because they are not made to influence the vote: (1) expenditures to support or challenge certification of a ballot question, see AO-95-44; (2) lobbying expenditures, see AO-93-25; (3) an expenditure to pay for a poll or other research which is designed to obtain information and opinions rather than to influence voters, see AO-97-22; and (4) expenditures to hire a consultant to draft legislation, even if there is a possibility that the legislation will be defeated and eventually become the subject of an initiative petition.

#### **A. State-wide elections.**

Funds raised or spent to promote or oppose a ballot question after certification of the question by the Attorney General, pursuant to Article 48 of the Amendments to the Constitution, would be subject to the provisions of M.G.L. c. 55. In addition, any expenditures made prior to certification which are made to promote or oppose a potential ballot question, are also subject to c. 55.

Although the Attorney General's certification of a question is a helpful reference point, it is not necessarily determinative. Contributions received and expenditures made by corporations or associations, months before certification may be subject to the disclosure provisions of M.G.L. c. 55, if the specific purpose of the financial activity is the promotion or opposition of a potential ballot question.

For example, if an association pools resources to send a mailing to voters specifically urging support of an anticipated ballot question, and seeking contributions to purchase advertisements supporting the question, the group would be required to organize a ballot question committee and report all funds contributed and all expenditures made.<sup>6</sup> On the other hand, if the same group raises funds and makes expenditures prior to certification for the limited purpose of challenging the Attorney General's

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<sup>4</sup> If an amount to become due has not been determined or is in dispute, the liability should be estimated or reported as "to be determined" or "in dispute."

<sup>5</sup> The listed expenditures may also be made by ballot question committees. If made by a ballot question committee, they must, however, be reported.

<sup>6</sup> An association which only makes expenditures, but does not raise funds, to influence a ballot question, is not required to organize as a ballot question committee. Such an association must, however, file a report, Form CPF 22 with this office (or Form CPF M22 with the local election official) disclosing all such expenditures.

certification of a ballot question, the group would not be required to register as a ballot question committee and would not have to report its receipts and expenditures. The latter expenditure is made to enforce certain legal rights, not to influence the vote on a ballot question. See AO-93-36.

## **B. Municipal elections.**

In municipal elections, particularly in towns, the provisions of the campaign finance laws are generally triggered once a question is "on the ballot." Once a determination is made by the appropriate municipal authority to place a question on the ballot, any expenditures made thereafter for the purpose of promoting or opposing the question are subject to the provisions of M.G.L. c. 55.<sup>7</sup>

Although the question of whether the selectmen or other authority has decided to put a matter on the ballot is a helpful reference point, like the certification of a question by the Attorney General in the state context, financial activity prior to the decision to place a question on the ballot may be subject to the campaign finance law. For example, if an association, e.g., a group of parents, raises funds to urge voters to support a potential question on a ballot regarding a school construction Proposition 2 ½ debt override question, such activity would be subject to the campaign finance law, even if the selectmen eventually decide not to place the question on the ballot. Therefore, the persons raising funds would be required to register as a ballot question committee and report all fundraising activity. In addition, if a group intends to raise funds or make expenditures in connection with an effort to collect signatures on a petition supporting the placing of a question on a municipal ballot, the group must register as a ballot question committee.

The goal of the campaign finance law is public disclosure of funds spent to influence elections. Therefore, OCPF suggests that a corporation or association intending to raise or spend funds on a public policy issue first consider whether the issue will likely be the subject of a ballot question in the future. If the group anticipates such a question, it would be advisable for the group to organize a ballot question committee.

## **II. Disclosure of expenditures made to promote or oppose a ballot question by ballot question committees, corporations and associations.**

While the campaign finance law provides that ballot question committees disclose both contributions and expenditures, it also mandates the disclosure of expenditures by corporations and associations made to favor, oppose or otherwise influence the vote on a question submitted to the voters. See sections 18 and 22 of M.G.L. c. 55.

### **A. Ballot question committees.**

#### **1. The following ballot question committees must file with OCPF:**

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<sup>7</sup> In addition, corporations and associations and cities, towns, and other governmental units must report expenditures made "to influence or affect the vote" on any question submitted to the voters. See M.G.L. c. 55, sections 22 and 22A, and M-95-06. Expenditures by governmental units for such purposes are generally inconsistent with the campaign finance law even though section 22A requires reporting of such expenditures. See Anderson v. City of Boston, 376 Mass. 178 (1978).

(a) committees organized to promote or oppose a question submitted to all the voters of the commonwealth at a state election;

(b) committees organized to promote or oppose advisory questions submitted to the voters of the commonwealth or a legislative district, pursuant to M.G.L. c. 53, s. 18 or M.G.L. c. 53, s. 19; and

(c) committees organized to promote or oppose a question submitted to the voters of a county.

Each of these committees must file a Statement of Organization (Form CPF 101BQ) with OCPF prior to raising or spending any funds. In addition, these committees must file Campaign Finance Reports (Form CPF 102BQ) as follows: (1) on the day of organization; (2) on or before the sixtieth day prior to the election complete as of the preceding fifth day; (3) on or before the fifth day and the twentieth day of each month complete as of the preceding first and fifteenth day of the month, until the election; (4) on the twentieth day of November following the election complete as of the preceding fifteenth day of the month; and (5) on the twentieth day of January of each year complete as of the thirty-first day of December of the prior year, if liabilities exist.

In future years, such committees must also file a year-end report which is due by January 20, complete as of December 31 of the prior year, for every year the committee is in existence, and a dissolution report upon the dissolution of the committee unless the committee has liabilities.<sup>8</sup>

**2. The following ballot question committees must file with local election officials (whether the question appears on a state or local ballot):**

(a) committees organized to promote or oppose a question submitted only to the voters of a particular city or town;

(b) committees organized to promote or oppose advisory questions submitted only to the voters of a particular city or town, pursuant to M.G.L. c. 53, s. 18A; and

(c) committees organized to promote or oppose a question submitted to the voters of a regional school district created pursuant to M.G.L. c. 71, s. 15, a regional fire district created pursuant to M.G.L. c. 48, s. 60, a regional water district created pursuant to M.G.L. c. 40, s. 38, or other regional district having a district clerk.

If a district does not have a district clerk, the committee should contact this office for guidance before initiating any campaign finance activity.

Each of these committees must file a Municipal Statement of Organization Form (Form CPF M101 BQ) with the city, town or district clerk or election commission prior to raising or spending any funds. In addition, these committees must file Municipal Campaign Finance Reports (Form CPF M102) as follows:

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<sup>8</sup> Ballot question committees may organize only to promote or oppose a specific, identifiable question or questions. Once the question or questions are adopted or rejected, such committees must dissolve. See AO-97-10.

(1) on or before the eighth day before the election complete through the eighteenth day prior to the election; (2) on the thirtieth day following the election, complete through the twentieth day following the election (for town elections and special elections in cities); (3) a year end report due by January 20 of each year complete through December 31, after a ballot question on the ballot in a regular city election or if liabilities exist; and (4) upon dissolution of the committee.<sup>9</sup>

## **B. Corporations and associations.**

Corporations, both business and non-profit, and associations are required to report "the amount or value of every gift, payment, expenditure or contribution or promise to give, pay, expend or contribute" to influence or affect ballot questions, pursuant to section 22 of M.G.L. c. 55. Corporations and associations comply with this requirement by filing Form CPF 22 or Form CPF M22 ("Report of Corporate or Association Treasurer") with this office or the local election official, depending on whether the question is on the state or local ballot.

### **1. The following corporations and associations must file with OCPF:**

- (a) corporations or associations promoting or opposing a question submitted to all the voters of the commonwealth at a state election;
- (b) corporations or associations promoting or opposing advisory questions submitted to the voters of the commonwealth or a legislative district, pursuant to M.G.L. c. 53, s. 18 or M.G.L. c. 53, s. 19; and
- (c) corporations or associations promoting or opposing a question submitted to the voters of a county.

Each corporation or association must file Form CPF 22 with OCPF as follows: (1) the sixtieth day prior to the election complete as of the preceding fifth day; (2) on or before the fifth day and the twentieth day of each month complete as of the preceding first and fifteenth day of the month, until the election; (3) the twentieth day of November following such election, complete as of the fifteenth day of the month; and (4) the twentieth day of January of each year, complete as of the thirty-first day of December of the prior year, until all declared liabilities of have been discharged.

### **2. The following corporations and associations must file with local election officials (whether the question appears on a state or local ballot):**

- (a) corporations or associations promoting or opposing a question submitted only to the voters of a particular city or town;
- (b) corporations or associations promoting or opposing advisory questions submitted only to the voters of a particular city or town, pursuant to M.G.L. c. 53, s. 18A; and

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<sup>9</sup> Ballot question committees may organize only to promote or oppose a specific, identifiable question or questions. Once the question or questions are adopted or rejected, such committees must dissolve. See AO-97-10.

(c) corporations or associations promoting or opposing a question submitted to the voters of a regional school district created pursuant to M.G.L. c. 71, s. 15, a regional fire district created pursuant to M.G.L. c. 48, s. 60, a regional water district created pursuant to M.G.L. c. 40, s. 38, or other regional district having a district clerk.

If a district does not have a district clerk or if a corporation or association makes expenditures to promote or oppose questions which will be submitted to the voters of more than one city or town, the corporation or association should contact this office for guidance before initiating any campaign finance activity

Form CPF M22 must be filed with the city, district or town clerk or election commission as follows: (1) on or before the eighth day before the election complete through the eighteenth day prior to the election; (2) on the thirtieth day following the election, complete through the twentieth day following the election (for town elections and special elections in cities); and (3) a year end report due by January 20 of each year, complete through December 31, after a ballot question on the ballot in a regular city election (or if a corporation or association makes expenditures after its most recent report or has remaining liabilities).

Form CPF 22 and CPF M22 provide for the listing of the amount or value of every expenditure or promise to pay, together with the date, purpose, and full name and address of the person or entity to whom it was made.

If a corporation or association raises funds for the purpose of influencing a ballot question, it must organize and report as a ballot question committee.

### **C. Ongoing Activities.**

Ongoing activities for which corporations and associations make expenditures may involve issues which become the subject matter of an initiative, or other, petition. In determining whether the campaign finance law applies to these expenditures, the office will look to whether the primary purpose of an expenditure is to influence the vote on a ballot question. This determination is made on very specific facts surrounding particular activities, taking into consideration such factors as the stated or perceived purpose, style, tenor and timing of the expenditures in question. If in doubt regarding whether a particular expenditure is reportable, the office would advise the committee to disclose the expenditure.

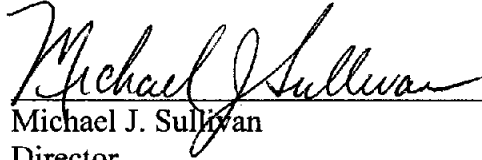
Expenditures for materials which refer to a question on the ballot and advocate a position on the question would necessarily trigger the reporting requirements described above. Activities which do not refer specifically to the ballot question may also be subject to the campaign finance law. For example, the commencement of activities just prior to an election concerning an issue which will appear as a ballot question may well compel the conclusion that the purpose of those activities is to influence the vote. Alternately, if an association, which has always made general expenditures relative to a particular issue now appearing as a ballot question, significantly increases its expenditures just prior to the election, the conclusion could be drawn that such a recent increase in expenditures is designed to influence the vote.

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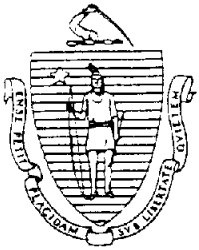
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Individuals, political committees, corporations and associations are encouraged to contact the office for additional information. The office will also issue advisory opinions on prospective activity upon written request describing specific facts and circumstances.

  
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Director





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**INTERPRETIVE BULLETIN**

**Extent to which Appointed and Elected Officials  
May Act or Speak  
in Support of or Opposition to  
Ballot Questions**

This office frequently is asked about the extent to which an appointed or elected official may utilize governmental resources<sup>1</sup> when speaking or acting in support of or opposition to a question submitted to the voters (hereinafter "ballot question.") As used in this memorandum, the term "appointed official" includes cabinet secretaries, commissioners, department heads as well as other persons appointed to major policy-making positions at the state, county and municipal level. The term "elected official" includes any person elected to public office by the voters of the commonwealth or any of its subdivisions or authorities.

**I. General Discussion**

In Anderson v. City of Boston, 376 Mass. 178 (1978), the Supreme Judicial Court concluded that the campaign finance law, M.G.L. c.55, was meant to be a comprehensive statute regulating all campaign finance matters including the use of governmental resources to support or oppose a ballot question. The court found that the lack of statutory provisions applicable to the use of governmental resources reflected the fact that "G.L. c. 55 [was] intended to reach all political fund raising and expenditures within the Commonwealth." Anderson, 376 Mass. at 186. In short, the Court said that what was not expressly authorized by statute was prohibited.<sup>2</sup>

In accordance with the Anderson decision, OCPF has consistently advised that governmental entities may not contribute or expend anything of value in support of or opposition to a ballot question. See IB-91-01 and advisory opinions cited therein. In addition, public resources may not be used to

<sup>1</sup> "Governmental resources" include staff time, paper, stationery, and other supplies; offices, meeting rooms and other facilities; copiers, computers, telephones, fax machines; and automobiles and other equipment purchased by the commonwealth or any of its subdivisions or authorities or maintained at their expense.

<sup>2</sup> The Anderson court's holding is consistent with the requirements of M.G.L. c.55, s.7, which states, in pertinent part, that "[n]o person or combination of persons . . . shall in connection with any nomination or election receive money or its equivalent, expend or disburse or promise to expend or disburse the same, except as authorized by this chapter" (emphasis added).



distribute even admittedly objective information regarding a ballot question unless expressly authorized by state law. See Secretary of State and OCPF Joint Memorandum of March 1996.

Anderson, however, does permit appointed and elected officials to "act and speak," subject to certain limitations, in reference to ballot questions.<sup>3</sup> As the Anderson court noted with apparent approval:

At oral argument, the plaintiffs conceded that the mayor and persons in relevant policy-making positions in . . . government are free to act and speak out in support [of a ballot question]. *Id.* at 199 (emphasis added).

For example, appointed state, county and municipal officials have certain limited rights during work hours to act and speak out on issues which are also the subject of a ballot question. If appointed officials were prohibited from stating their positions regarding a ballot question related to their official responsibility, such a prohibition would unnecessarily (and probably unconstitutionally) restrain such officials from carrying out the duties of their offices. On the other hand, if appointed officials could utilize governmental resources, without limitation, to promote or oppose a ballot question, the fundamental prohibition set forth in Anderson would be meaningless. While the commonwealth's voters have the right to know an appointed official's position, the commonwealth's taxpayers also have the right to expect that their tax dollars will not be used for political purposes. The following parts of this interpretive bulletin provide more specific guidance for appointed and elected officials.

## II. Permissible Activity

In general, appointed officials may act or speak out about a ballot question in their official capacity during work hours if in doing so they are acting within the scope of their official responsibilities. Hence, an appointed official may respond to inquiries from other governmental agencies, the press or the public about the official's position on, or analysis of, a ballot question which concerns, for example, the official's agency's enabling legislation.

In some respects, the campaign finance law treats elected officials, whether or not such officials are compensated, differently than appointed officials. Elected officials may address or advocate any position on any matter of public policy, including the subject matter of a ballot question, and such speech or advocacy may take place during work hours. Like an appointed official, however, an elected official may not, as discussed below in more detail, use public resources to promote or oppose a ballot question.

### Examples of Permissible Activity:

A. An appointed official may respond to or direct staff to respond to questions from the press or the public about the official's position on a ballot question that is within the official's responsibilities. In contrast, an elected official can respond even if the ballot question is not within the official's area of responsibility. An appointed or elected official may also direct a staff member to respond in writing or at a public meeting or hearing.

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<sup>3</sup> The campaign finance law does not prohibit any appointed official from acting (other than in a fundraising capacity) or speaking in favor of or in opposition to a ballot question on an individual basis on their own time. The law's restrictions apply when such officials seek to use governmental resources to promote or oppose or otherwise influence a ballot question.

B. An elected or appointed official may assign staff-members, or governmental units under the official's authority, to analyze a ballot question's impact on agency operations. Such a request is appropriate when the purpose is to analyze objectively the impact that passage or defeat of the ballot question may have on the agency's ability to carry out its responsibilities. The official may not conduct a study primarily to aid the proponents or opponents of a ballot question. Importantly, even if the study is a public record, it may not be disseminated to voters or a class of voters at public expense absent express statutory authorization. See Anderson, at 195. However, if the study is a public record, it may be distributed by individuals or political committees, at private cost, if such distribution is disclosed in accordance with the campaign finance law.

C. An elected official may speak at a meeting regarding a ballot question, even if the question is not within the official's area of responsibility.

### III. Prohibited Activity

Actions by elected or appointed officials acting in their official capacity which involve the use of governmental resources are generally prohibited if taken, directly or indirectly, for primarily political reasons, e.g. to promote or oppose a ballot question. In these situations, the official is no longer acting in a manner consistent with his or her official responsibilities. Rather, the official is using governmental resources primarily as an advocate for or against a ballot question.

#### Examples of Prohibited Activity:

A. An appointed or elected official may not ask his staff speech writer to write a speech to be delivered at a political rally in support of or opposition to a ballot question.<sup>4</sup> An appointed official could write and give such a speech on his own time using his own private resources while an elected official could give such a speech at any time provided it is not prepared at public expense.

B. An appointed official may not appear at a campaign function to promote or oppose a ballot question during working hours. The appointed official may attend the event during non-working hours. An elected official, however, may attend such an event at any time.

C. An appointed or elected official may not mail or distribute, at public expense, information containing the official's position on a ballot question or the agency's analysis, whether the analysis is advocative or objective, of a ballot question to voters or a class of voters such as the residents of a particular city or town. See Joint Memorandum referenced above.

In these examples, the use of governmental resources (e.g. staff time, postage, etc.) by appointed or elected officials would violate campaign finance law because public funds would be used to promote or oppose a ballot question. While such officials may undertake certain actions in their official capacity or as private citizens, neither an official nor any other public employee may use public funds or resources to promote, oppose or otherwise influence a ballot question. See also AO-92-32 (town manager may draft a statement regarding ballot question during work hours); AO-94-11 (public school

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<sup>4</sup> M.G.L. c. 55, s. 16 provides, in pertinent part, that "[n]o person in the public service shall, for that reason, be under obligation . . . to render any political service . . ." Therefore, the official's speech writer also may not be compelled to write the speech during non-working hours.

teachers may not campaign for a ballot question during work hours); and AO-95-33 (selectmen may discuss ballot question at meetings, respond to inaccurate or misleading statements and post a statement on town hall bulletin board).

#### IV. Enforcement

Even though the campaign finance law prohibits the use of public funds to influence or affect the vote on a ballot question, it nonetheless requires the reporting of such expenditures. The statute requires the treasurer or other chief fiscal officer of a governmental unit making such an expenditure regarding a state ballot question to report "the amount or value of every gift, payment, expenditure or contribution . . ." to the director, and in the case of a city or town ballot question to report, to the city or town clerk. See M.G.L. c. 55, s. 22A.

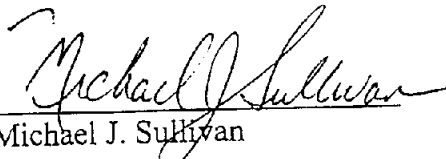
Section 22A grants to the director, or if expenditures are made to influence a municipal ballot question, the city or town clerk, the power to "order restitution of public funds which have been adjudicated to have been spent contrary to law by public officials." See M-95-06.

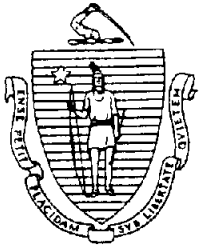
#### V. Conflict of Interest Issues

Activities of appointed and elected public officials acting or speaking in favor of or opposition to ballot questions may raise issues relating to the conflict of interest law, M.G.L. c. 268A, which is enforced by the State Ethics Commission. See Commission Advisory No. 4 and Conflict of Interest Opinion EC-COI-92-5. The Ethics Commission has stated that a municipal official may be a member of a ballot question committee and may speak in favor of or in opposition to a ballot question. The Commission has advised, however, that such an official may not speak "*on behalf of and/or as the representative of*" a ballot question committee before a municipal board or in a forum sponsored by a municipality. In addition, an official should publicly disclose any relationship "that gives the reasonable basis for the impression that any person or entity can improperly influence" the official in the performance of his duties. If you have questions regarding c. 268A, you should contact the State Ethics Commission at 727-0060.

**This bulletin provides general guidance. To ensure compliance with the campaign finance law we strongly encourage appointed and elected officials to contact this office if in doubt regarding the scope of permissible involvement in ballot question campaigns.**

If you have any questions or need further information regarding this interpretive bulletin or any other campaign finance matter please call OCPF at 1-800-462-OCPF or 617-727-8352.

  
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Director



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**INTERPRETIVE BULLETIN**

**The Application of the Campaign Finance Law  
to the Use of Governmental Resources  
for Political Purposes**

The Office of Campaign and Political Finance (OCPF) periodically issues interpretive bulletins regarding various aspects of M.G.L. c. 55, the Massachusetts campaign finance law. This bulletin provides general guidance and answers certain frequently asked questions regarding the use of governmental resources for political purposes.

Related interpretive bulletins and memoranda which may be of interest -- and which may be obtained from OCPF -- include: IB-90-02 (Disclosure and Reporting of Contributions and Expenditures Related to Ballot Questions), IB-92-01 (The Application of the Campaign Finance Laws to Public Employees and Political Solicitation), IB-92-02 (Extent to which Policy-Making Officials May Act or Speak in Support of or Opposition to Ballot Questions), IB-95-02 (Political Activity of Ballot Question Committees and Civic Organizations' Involvement in Ballot Question Campaigns), IB-95-03 (Use of Public Resources by Elected Officials to Communicate with Constituents or Respond to Criticism), and M-95-06 (Disclosure of expenditures of public resources required under M.G.L. c. 55, § 22A).

**I. The Anderson decision**

In Anderson v. City of Boston, 376 Mass. 178, 187, 380 N.E.2d 628 (1978), appeal dismissed, 439 U.S. 1069 (1979), the Supreme Judicial Court examined the campaign finance law. The Court concluded that the City of Boston could not use public funds to set up an office "for the purpose of collecting and disseminating information about the impact" of a ballot question. The court stated that **the campaign finance law is "comprehensive legislation" which "preempt[s] any right which a municipality might otherwise have to appropriate funds for the purpose of influencing" the outcome of a ballot question.** 376 Mass. at 185-186 (emphasis added).

The court noted that the absence of any provision allowing governmental resources to be used for such purposes was significant. 376 Mass. 186-188. In particular, the court pointed to section 22A of the statute which requires the treasurer of any city, town or "other governmental unit" which makes a contribution or expenditure or promise to make a contribution or expenditure "in order to influence or



affect the vote” on a question submitted to the voters to file a report disclosing the expenditure or promise. Section 22A specifies that “[n]othing contained herein shall be construed as authorizing the expenditures of public monies for political purposes” (emphasis added).

In addition, other sections of the statute, in particular sections 13 through 17 (which prohibit political fundraising by public employees and by anyone in public buildings and also prohibit coercion of public employees and of persons doing business with the commonwealth), “demonstrate a general legislative intent to keep political fund raising and disbursing out of the hands of nonelective public employees and out of city and town halls.” 376 Mass. at 187. See also section 7 of the statute that provides that no person may, in connection with a nomination or election “receive money or its equivalent, expend or disburse or promise to expend or disburse the same, **except as authorized by this chapter . . .**” M.G.L. c. 55, § 7 (emphasis added).

After analyzing the applicability of the campaign finance law to the case, the court concluded that:

[T]he Legislature may decide, as it has, that fairness in the election process is best achieved by a direction that political subdivisions of the State maintain a “hands off” policy. It may further decide that the State government and its various subdivisions should not use public funds to instruct the people, the ultimate authority, how they should vote. . .

376 Mass. at 194-195.

## **II. Frequently Asked Questions**

### **A. Which “governmental agencies” are within the scope of Anderson?**

The analysis in Anderson applies to the commonwealth and its “political subdivisions” which use taxpayer or rate payer funds. 376 Mass. at 193. Political subdivisions of the commonwealth include county, regional, and town and city governments. State authorities, e.g., Massachusetts Port Authority and the Massachusetts Turnpike Authority, and state institutions of higher education, are also subject to the restrictions articulated in the case. See § 179 of ch. 655 of the Acts of 1989. In addition, the Anderson decision applies to municipal utilities that rely on fees paid by ratepayers. See AO-95-42. Finally, non-profit organizations, which are supported by state tax revenues, may not use such revenues to support or oppose a candidate or a ballot question. See AO-95-41 and AO-96-25.

### **B. What are “governmental resources?”**

“Governmental resources” include anything that is paid for by taxpayers, e.g., personnel, paper, stationery and other supplies; offices, meeting rooms and other facilities; copiers, computers, telephones, fax machines; automobiles and other equipment purchased or maintained by the government. A bulk mail permit is also considered a governmental resource. In addition, a state, county or municipal seal is a governmental resource even if reproduced at private expense.

Even the occasional, minor use of governmental resources for a political purpose is inconsistent with state law and should be avoided.

### **C. What are "political purposes?"**

Chapter 55 was enacted to regulate "election financing." Anderson, 376 Mass. at 185 (emphasis added). The prohibition on the use of governmental resources for political purposes applies to all expenditures made to promote or oppose a ballot question or candidate. The prohibition, however, does not extend to expenditures made to discuss policy issues (e.g., the need for new schools) which currently are not but may at some **undetermined** future point become the subject of a ballot question.

In addition, the prohibition does not apply "in connection to . . . issues which are debated in an open forum such as a town meeting." See AO-93-07. Similarly, the statute does not regulate expenditures of public funds made for the purpose of lobbying a legislative body or for other purposes which are not designed to influence voters; e.g., challenging the Attorney General's certification of an initiative petition. See AO-93-36.

### **D. May public resources be used to distribute any information to voters?**

#### **1. May information be distributed to voters commenting on the merits of a ballot question if the information does not advocate a particular vote?**

No. Governmental resources may not be used by any person, whether public employee or private citizen, to copy and distribute material to promote or oppose a ballot question ("advocacy" material).

In addition, even if voter information commenting on the substance of a ballot question is intended to be objective and factual ("informational" material), it may not be produced or distributed using public funds. The Secretary of the Commonwealth's Election Division has noted in a joint memorandum issued with OCPF in March 1996 that the Home Rule Amendment of the Massachusetts Constitution prohibits municipalities from producing such informational material without legislative authority.

Only four municipalities have authority to distribute informational material: Newton (ch. 274 of the Acts of 1987), Cambridge (ch. 630 of the Acts of 1989), Sudbury (ch. 180 of the Acts of 1996), and Burlington (ch. 89 of the Acts of 1998). In addition, there is at least one other exception that we are aware of: M.G.L. c. 43B, § 11, relating to information which may be distributed by a charter commission.

#### **2. When does an expenditure to send out material regarding a matter which may become a ballot question become subject to the campaign finance law?**

Once a question has been placed "on the ballot," governmental resources may not be used to distribute informational or advocacy material regarding the ballot question absent specific statutory authority.

A statewide ballot question has been placed "on the ballot" once the question is certified by the Attorney General. In municipal elections, particularly in towns, the provisions of the campaign finance law are generally triggered once a determination is made by the appropriate municipal authority, i.e., the board of selectmen, city council or mayor, to place the question on the ballot. See IB-90-02.

Funds spent prior to a question being "on the ballot" may also be subject to campaign finance law, however, if the funds have been spent to influence the outcome of a potential question. Id. For example, public funds may not be used to prepare materials to be distributed to voters if the materials urge voters to vote "yes" or "no" on an anticipated override ballot question. On the other hand, material which describes

an issue that may or may not at some future time be on the ballot is not subject to the campaign finance law if the material does not reference, or advocate a particular vote in, an anticipated election.

**3. Is an expenditure made primarily to influence town meeting subject to the campaign finance law?**

No. The campaign finance law does not regulate expenditures made **primarily**<sup>1</sup> to affect the deliberations on a warrant article at town meeting (or a matter before any other deliberative body, e.g., a school committee or city council). See AO-94-37.

Municipal officials may distribute information regarding a warrant article to residents prior to a town meeting, if such distribution is consistent with their official responsibilities and does not specifically advocate for or against a ballot question. The campaign finance law does not prohibit the distribution of material primarily relating to a town meeting warrant article even if it may incidentally influence the vote on a ballot question. To avoid confusion regarding the purpose of materials prepared in connection with a town meeting, municipal officials should ensure that such materials refer **only** to the upcoming town meeting and do not refer to a scheduled or anticipated ballot question or election.

A report summarizing a warrant article pending before town meeting which urges support of the article but **also** urges a vote in or **otherwise makes reference to** a subsequent town election should be prepared and distributed with private funds. Such a report is **presumptively** distributed to influence the election. Expenditures made to distribute such a report must be disclosed by a duly organized ballot question committee or by an existing association, corporation or other organization in accordance with M.G.L. c. 55. Governmental resources should **not** be used for such distribution.

**4. A town meeting is scheduled to discuss funding for a proposed school building project. A town meeting warrant article requests an appropriation for the project, which is contingent on approval by the voters of the town at a town election pursuant to Proposition 2 1/2. May the school committee or school building committee use governmental resources to distribute a flyer to residents describing the reasons why the building project is needed and urging support of the warrant article?**

Yes, if the information in the flyer **primarily** seeks to influence consideration of the town meeting warrant article. The use of public funds to distribute such a flyer in connection with a town meeting would be inconsistent with chapter 55, however, if the question previously has been placed on the ballot by the selectman prior to distribution and the flyer includes a reference to the election or advocates a vote on the ballot question.

Even if a question has not yet been placed on the ballot a flyer should not be distributed using public resources if it advocates a particular vote in the anticipated election or otherwise refers to such an election. A flyer advocates a vote if it uses language such as "vote for" or "support," together with "election," "ballot question" or similar words or phrases.

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<sup>1</sup>The office previously advised that "the campaign finance law does not regulate expenditures made **solely** to affect the deliberations on a warrant article at town meeting." The office advised therefore that once a question is placed on the ballot, public resources may not be used to distribute information to town meeting members regarding a warrant article which relates to the same issue which will be considered in an election. As a result of Proposition 2 1/2, however, municipalities frequently have town meeting and, either shortly before or after the town meeting, an election on the same issue. OCPF has concluded that Anderson should not be read to require the stringent standard previously articulated by this office.



There may be some circumstances where the mere mention of an election in such a flyer would not violate the campaign finance law. To avoid confusion regarding the purpose of a flyer, however, a flyer prepared for town meeting should not reference an election.

**5. If the facts are the same as given in Question 5, may the town's finance committee use governmental resources to distribute a booklet containing its report and recommendations on the warrant articles?**

Yes, if the recommendations are limited in scope to the warrant articles and the content of the booklet would reasonably be seen as primarily providing information in connection with town meeting, not the election. In order to clarify that the finance committee's recommendations are issued in connection with the town meeting, the booklet should not reference a scheduled or anticipated election on an override unless the committee is expressly required to do so by state law.

**6. May governmental resources be used to distribute a flyer which does not advocate for a particular position on, or present factual information about, a ballot question or a candidate or candidates, but simply informs people about the time, date and place of a municipal election and urges them to vote?**

Yes.

**7. If the flyer referred to above in question 6 may be distributed using governmental resources, may the flyer contain a brief title describing the ballot question or the text of the ballot question?**

Yes, but extreme care should be taken to avoid the appearance of advocacy. A brief, neutral title identifying the ballot question may be used. For example, the title "school expansion project" would be appropriate. On the other hand, titles which would not be appropriate include "ballot question relating to need for school expansion," or "ballot question addressing school overcrowding problem."

**8. How can a school building committee or other public official or group distribute information to voters regarding the substance of a ballot question if governmental resources cannot be used for that purpose?**

Both advocacy and informational materials may be distributed to voters if public resources are not used for that purpose. For example, a ballot question committee or parent teacher organization could create and distribute a flyer promoting a school project.

A school building committee could not use governmental resources to develop advocacy or informational material primarily for use by a ballot question committee or parent teacher organization (PTO) seeking to influence voters. A school building committee could, however, produce a summary or other document in accordance with its official responsibilities. See IB-92-02. A PTO or ballot question committee could then use private funds to copy and distribute the document. The PTO or ballot question committee would, however, have to report the expenditures in accordance with the campaign finance law's requirements.

**9. Would the prohibition apply to the distribution of copies of a summary or other document, e.g., an architect's report on a proposed new school building, distributed at a public meeting or hearing of the public body regarding an override issue before the election?**

No. Governmental resources could be used to produce and distribute a reasonable quantity of the documents at the meeting or hearing if the documents do not advocate a particular vote in an anticipated election or otherwise refer to such an election. In meetings or hearings conducted by a public body, materials prepared by or for the body may be distributed to persons in attendance where such materials are designed to facilitate discussion or where the materials otherwise relate to the agenda of the meeting. Generally, such public documents may not be reproduced using public funds if they are to be distributed at a meeting sponsored or organized by a private group such as a PTO or ballot question committee.

**10. An architectural firm has been asked by a school building committee to develop a flyer informing voters of the issues relating to a Proposition 2 1/2 ballot question. The question has been placed on the ballot by the town's board of selectmen. May public funds be used to pay the firm if the flyer is to be distributed after town meeting but before an election?**

No. A ballot question committee or private group such as a PTO may, however, pay the architect for the preparation of the flyer. Alternatively, the firm may provide its services free of charge to the municipality. If provided free of charge, the firm must report its expenditure on a Report of Ballot Question Expenditures By Corporation or Association – Municipal Form (Form CPF M22). See IB-90-02. If made to a ballot question committee, the committee must report the receipt of an in-kind contribution from the architectural firm, even though the firm also reports its expenditure on a Form CPF M22.

The above limitations do not apply where a firm provides information, e.g., plans and specifications, in the normal course of business to a school building committee or other public body, if the information is not primarily designed to be distributed to voters.

The information could also be distributed to town meeting members, or residents in a town having an open town meeting, before town meeting, if it primarily seeks to influence consideration of the town meeting warrant article. As previously noted, the information should not reference the election.

#### **E. What can public employees do and say about a ballot question?**

Policy-making officials may act or speak out in their official capacity and during work hours if in doing so they are acting within the scope of their official responsibilities. See IB-92-02.

In order to carry out their official duties, policy-making officials must be able to respond to public inquiries or understand the implications of a ballot question within their area of responsibility. Therefore, they may issue press releases, or prepare factual analyses and other information regarding the subject matter of a ballot question if the subject matter is within their jurisdiction.

Such information, assuming it has **not** been prepared for the purpose of influencing the vote, may be distributed to staff and relevant public officials. In addition, to the extent that such material is a public record, it must be provided to members of the public upon request. The information in turn may be distributed to voters by any person or group at that person's or group's expense without violating the campaign finance law if the person or group complies with the law's reporting and disclosure requirements.

Public employees who are not policy-making officials should not devote time during their workdays to speak or act on behalf of a ballot question. Public school teachers should not ask children to take

literature regarding the substance of a ballot question home from school to give to parents. See AO-94-11.

As previously noted, non-elected public employees are subject to the prohibition on political fundraising. In addition, political fundraising is not allowed in buildings occupied for governmental purposes. See M.G.L. c. 55, § 13-17 and IB-92-01.

**F. Can a group organized to support or oppose a ballot question use a room within a public building not to raise funds, but for a meeting or hearing?**

Yes, if “equal access” is given to each side. In Anderson, the court stated that “the city’s use of telephones and printed materials provided by public funds, and its use of facilities paid for by public funds, would be improper, at least unless each side were given equal representation and access.” 376 Mass. at 200. “Equal access” means that proponents and opponents who request and obtain space for a meeting or hearing must be provided space on the same terms and conditions. “Equal access” does not mean, however, that proponents or opponents must be invited to attend a particular event or be asked to speak at an event. See AO-90-02.

OCPF has also advised that proponents and opponents may be offered the use of certain public services if each side is provided the same opportunity. See AO-88-27 (city may offer mailing labels to candidates if all candidates are given same opportunity and purchase price reflected city’s cost), AO-89-28 (candidates may use city council chamber to announce campaign if all candidates are given same opportunity and reimburse city for out-of-pocket costs) and AO-92-28 (a political rally can be held in a public park if equal access is assured).

**III. Privately-funded political committees and other permissible activities**

Government officials, public employees or anyone else who wishes to oppose or promote a ballot question may undertake such activity using privately-donated funds which are not raised or solicited by public employees.

A separate ballot question committee should first be established with the clerk of the municipality or with OCPF. This committee may then be used to raise and expend funds to promote or oppose the ballot question. Public employees may not solicit or receive any contribution on behalf of the committee, although they may make contributions and participate in activities of the committee which do not involve fundraising.

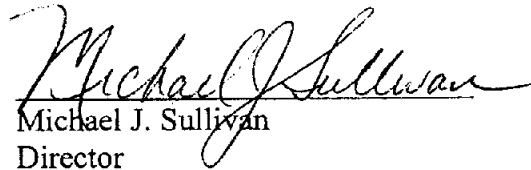
A group may not solicit or receive contributions to support or oppose a ballot question until it organizes as a ballot question committee. Where two or more persons “pool” their money to support or oppose a question, e.g., to pay for an advertisement, the persons should first register as a ballot question committee. Such groups are subject to all the reporting and disclosure provisions of M.G.L. c. 55.

Groups such as parent-teacher organizations and local teachers’ unions, which do not raise funds specifically to influence the vote on a ballot question, may make expenditures from existing funds to support or oppose a ballot question, and may make contributions to a ballot question committee. See IB-88-01 “The Applicability of the Campaign Finance Law to Organizations Other Than Political Committees.” Such contributions or expenditures should be disclosed on forms filed with either the local election official or OCPF. See IB-90-02.

**IV. Expenditures of Governmental Resources - Remedies**

The treasurer of any city, town or other governmental unit which has made expenditures or used public resources to influence or affect the vote on any question submitted to the voters must file a report disclosing such activity. See M.G.L. c. 55, § 22A and M-95-06. Restitution of funds adjudicated to have been spent contrary to law may be required. In addition, any officer of a governmental unit violating either s. 7 or § 22A is subject to criminal penalties.

Finally, any ten persons may file suit to restrain illegal use of public funds at the local level by filing a ten taxpayer suit. See M.G.L. c. 40, § 53. It was a ten taxpayer suit that led to the Anderson decision. At the state level, any 24 taxpayers can file a similar suit. See M.G.L. c. 29, § 63 (for suits at the state level).

  
Michael J. Sullivan  
Director



# ANNUAL CAMPAIGN CONTRIBUTION LIMITS

OFFICE OF CAMPAIGN AND POLITICAL FINANCE

COMMONWEALTH OF MASSACHUSETTS

<b>TO:</b> → → → →						
<b>FROM:</b> ↓ ↓ ↓ ↓	<i>Candidate/ candidate committee</i>	<i>Political action committee (PAC)<sup>1</sup></i>	<i>People's committee<sup>2</sup></i>	<i>State party committee</i>	<i>Ward/town/ city party committee</i>	<i>Ballot question committee</i>
<i>Individual<sup>3</sup></i>	\$500	\$500	\$123	\$5,000 <sup>4</sup>	\$5,000 <sup>4</sup>	No limit
<i>Lobbyist<sup>5</sup></i>	\$200	\$200	\$123	\$200 <sup>4</sup>	\$200 <sup>4</sup>	No limit
<i>Statewide candidate committee<sup>6</sup></i>	0	0	0	\$100 <sup>7</sup>	\$100 <sup>7</sup>	0
<i>County, legislative, municipal or other candidate/candidate committee</i>	\$100 <sup>8</sup>	No limit <sup>9</sup>	0	No limit <sup>9</sup>	No limit <sup>9</sup>	No limit <sup>9</sup>
<i>Political action committee (PAC)</i>	\$500 <sup>10</sup>	\$500	0	\$5,000 <sup>4</sup>	\$5,000 <sup>4</sup>	No limit <sup>10</sup>
<i>People's committee</i>	\$500	\$500	0	\$5,000 <sup>4</sup>	\$5,000 <sup>4</sup>	No limit <sup>10</sup>
<i>State party committee</i>	\$3,000 <sup>11</sup>	\$500	0	----	\$5,000	No limit <sup>10</sup>
<i>Ward/town/city party committee</i>	\$1,000 <sup>11</sup>	\$500	0	\$5,000 <sup>12</sup>	\$5,000 <sup>12</sup>	No limit <sup>10</sup>
<i>Ballot question committee</i>	0	0	0	0	0	No limit <sup>13</sup>

**ALL LIMITS ARE FOR A CALENDAR YEAR**

*See next page for explanatory notes*

## NOTES

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<sup>1</sup> **PACs:** PACs must be organized with OCPF under M.G.L. Chapter 55 before they may contribute to Massachusetts candidates or committees.

<sup>2</sup> **People's Committee:** After six months in existence, a PAC that has received contributions from individuals of \$123 or less per year and contributed to five or more candidates may request a change in its status to that of a people's committee. The maximum contribution from and individual to a people's committee is adjusted biennially by OCPF. The \$123 figure is in effect for 2002 and 2003.

<sup>3</sup> **Contributions by Individuals:** The maximum aggregate contribution to all state, county and local candidates by an individual may not exceed \$12,500 per year. Individuals under 18 years of age have an aggregate contribution limit of \$25 per year. There is no limit on how much a candidate may contribute to his or her own campaign, though the maximum amount that certain candidates may loan varies by the office sought. Contact OCPF for limits on loans from candidates to their own campaigns.

<sup>4</sup> **Contributions to Party Committees:** The maximum annual aggregate contribution that may be made by an individual, lobbyist, PAC, people's committee or party committee to all committees of any one party, including those on the state and local level, is \$5,000.

<sup>5</sup> **Lobbyists** ("executive agents" or "legislative agents") are also subject to the \$12,500 limit on aggregate annual contributions placed on individual contributors.

<sup>6</sup> **Statewide candidates** include those running for or holding the office of governor, lieutenant governor, attorney general, treasurer/receiver general, auditor and secretary of the commonwealth.

<sup>7</sup> **Contributions to Party Committees:** The maximum annual aggregate contribution a statewide candidate committee may make to all party committees (state and local) is \$1,500.

<sup>8</sup> **Contributions from a non-statewide candidate's committee to all candidate committees** are limited to an aggregate of \$1,500 annually. Contributions from a candidate's personal funds are subject to the \$500 individual limit, not the \$100 committee limit.

<sup>9</sup> **Contributions from a non-statewide candidate committee to a PAC, party committee or ballot question committee** are not limited but may be made only for "the enhancement of the political future of the candidate."

<sup>10</sup> **Contributions from a PAC, people's committee or party committee to a ballot question committee** are not subject to limitation but must be consistent with the principle for which the contributing committee was organized.

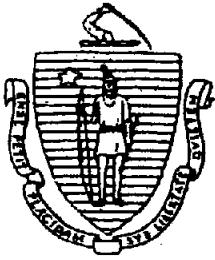
<sup>11</sup> **Party contributions to candidates:** These limits apply to monetary contributions only. There is no limit on in-kind contributions by party committees to candidates.

<sup>12</sup> **A local party committee may contribute** up to an aggregate of \$5,000 in a calendar year to all ward, town, city and state committees of the same political party.

<sup>13</sup> **Contributions among ballot question committees:** A ballot question committee may contribute to another ballot question committee without limitation, provided such contributions are "consistent with the purpose for which [the contributing committee] was organized."

**For further information contact:**

*Office of Campaign and Political Finance  
One Ashburton Place, Room 411  
Boston, MA 02108  
(617) 727-8352  
(800) 462-OCPF  
Website: [www.state.ma.us/OCPF](http://www.state.ma.us/OCPF)*



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M-89-02

Issued: September 1989

Revised: February 11, 2002

**TO:** Interested persons  
**FROM:** Michael J. Sullivan, Director  
**SUBJECT:** Federal and state tax issues for political committees

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Political committees in Massachusetts, especially those that are newly organized, should be aware of certain issues relating to tax liability and registration that are summarized below. This memorandum is intended to provide basic information only; those requiring further information or clarification should contact the Internal Revenue Service or the Massachusetts Department of Revenue.

### I. Federal ID Number

According to federal tax laws and regulations, a political committee should obtain a separate federal tax identification number in order to open a bank account. Candidates and treasurers should not use their own social security numbers for this purpose. To obtain a federal tax ID number for a political committee, a committee must file **Form SS 4** with the Internal Revenue Service. This form may be picked up at any IRS office, ordered by calling the IRS at the number below or downloaded from the agency's web site at [www.irs.gov](http://www.irs.gov).

Political committees may request a federal ID number by mail, fax or phone:

(A) Mail/Fax - Committees may mail or fax the completed Form SS 4 to the IRS at the address or number referenced in the instructions for the form itself, **OR**

(B) Phone - Committees may also request a federal ID number by calling the IRS Customer Service Center toll free at (866) 816-2065.

### II. Tax Returns

Political committees may be required to file federal and/or state tax returns and report any interest income received from bank accounts or any other interest-bearing funds. For information regarding a political committee's tax liability, if any, or to obtain copies of the appropriate tax forms, candidates and treasurers should contact the IRS and/or the Massachusetts Department of Revenue at the numbers or web sites listed below. The current tax return form numbers are listed next to the numbers.



**Internal Revenue Service**

**(800) 829-1040**

**Form 1120POL**

**Web site: *www.irs.gov***

**Mass. Department of Revenue**

**(617) 887-6367**

**Form 3M**

**(800) 392-6089**

**Web site: *www.state.ma.us/dor***

### **III. Section 527 Organizations**

Public Law 106-230, which was signed into law on July 1, 2000, and amended section 527 of the Internal Revenue Code, created new reporting requirements for various political organizations, including many political committees organized with OCPF or local election officials.

A section 527 "political organization" is defined as a "party, committee, association, fund or other organization organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures, or both, for an exempt function." An "exempt function" means, in part, "influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any federal, state, or local public office or office in a political organization . . ."

Section 527 requires that **all** candidate committees, party committees, PACs and people's committees, except ballot question committees<sup>1</sup>, notify the IRS, by filing Form 8871 electronically and in writing, unless a committee "reasonably expects its annual gross receipts to always be less than \$25,000."<sup>2</sup> Existing committees should file Form 8871 with the IRS immediately. New committees must notify the IRS within 24 hours of their organization.

In addition, PACs and people's committees that reasonably anticipate gross receipts of \$25,000 or more must file with the IRS Form 8872, which is a periodic disclosure report, either monthly or quarterly in a federal election year. **State and local candidate committees and political party committees are not required to file Form 8872.** Finally, all political committees that receive interest income or that actually receive \$25,000 or more in total contributions and other receipts must also file Form 1120-POL and Form 990 with the IRS.

For further information about Section 527, see the relevant section of the IRS web site at <http://www.irs.gov> or call IRS Customer Service toll-free at (877) 829-5500 (8:30 a.m. to 9:30 p.m.).

<sup>1</sup> According to the IRS, ballot question committees generally are not Section 527 organizations since their primary activity is not intended to influence a candidate's appointment, election, nomination or election.

<sup>2</sup> Political committees reporting to the Federal Election Commission and tax-exempt organizations described in section 501(c) of the IRS Code are also exempted from notifying the IRS under section 527. These exemptions, however, do not apply to Massachusetts state and local political committees.





**Form CPF M 101 BQ: STATEMENT OF ORGANIZATION  
BALLOT QUESTION COMMITTEE  
MUNICIPAL FORM  
Office of Campaign and Political Finance**

Commonwealth  
of Massachusetts

File with:  
City or Town Clerk or Election Commission

Please print or type all information, except signatures

NOTICE IS HEREBY GIVEN in accordance with the provisions of General Laws, Chapter 55, as amended, of the organization of a ballot question committee as follows:

1. Name: (see note 1) \_\_\_\_\_  
\_\_\_\_\_
2. Mailing Address: \_\_\_\_\_  
\_\_\_\_\_
3. Purpose: (see note 2) \_\_\_\_\_  
\_\_\_\_\_
- 3a. Specific issues and interests: \_\_\_\_\_  
\_\_\_\_\_
4. Topic of question: \_\_\_\_\_
5. Officers:
 

	Name	Residential Address	Zip	Question no., if known	Tel. No.
Chairman:	_____	_____	_____	_____	_____
Treasurer:	_____	_____	_____	_____	_____
Other officer:	_____	_____	_____	_____	_____
Other officer:	_____	_____	_____	_____	_____

Attach additional page, if necessary, with other officers and finance committee, if any

The chairman and treasurer of a political committee should be aware that provisions of M.G.L. c. 55 specify that each treasurer of a political committee shall keep and preserve detailed accounts, vouchers and receipts for a period of six years from the date of the relevant election. Chapter 55 also specifies that no expenditures shall be made for, or on behalf of, a political committee without the authorization of the chairman or treasurer, or their designated agents; and, that all funds of a political committee shall be kept separate from any personal funds of any officers, members or associates of such committee.

I hereby accept the office of Chairman of the above-named committee.  
SIGNED UNDER THE PENALTIES OF PERJURY:

\_\_\_\_\_  
Chairman's signature Date

I hereby accept the office of treasurer of the above-named committee. I understand that I am subject to certain duties and liabilities under M.G.L. c. 55, including the timely filing of campaign finance reports. I am aware that an appointed public employee may not serve as treasurer of a ballot question committee.  
SIGNED UNDER THE PENALTIES OF PERJURY:

\_\_\_\_\_  
Treasurer's signature Date

## NOTES FOR COMPLETING THIS FORM

**NOTE 1.** M.G.L. c. 55, s. 5 requires that the full name of a political committee:

- (i) include the full words represented by any abbreviations, initials or acronyms in the name;
- (ii) clearly identify the economic or other special interest, if identifiable, of a majority of its contributors or organizers;
- (iii) if a majority of its contributors or organizers share a common employer that identifies the employer;
- (iv) if the committee is organized, financed, controlled or maintained by an individual, the name or phrase identifies said individual;

**NOTE 2.** M.G.L. c. 55, s. 5 requires that the statement of purpose for which a political committee is organized include a list of specific issues in which the committee takes an interest, and a list of specific interests, including but not limited to business, charitable, educational, or other interests represented by the committee, or by a significant proportion of its officers, members or donors.

### SELECTED EXTRACTS FROM M.G.L. C. 55.

Section 1 defines ballot question committee: "Ballot question committee", a political committee which receives or expends money or other things of value for the purpose of favoring or opposing the adoption or rejection of a specific question or questions submitted to the voters including, without limitation, a charter change, an initiative or referendum question or a constitutional amendment.

Section 3 requires the director to "assess a civil penalty for any [late filed] report ... of ten dollars per day...[up to \$2,500]....the civil penalty shall be assessed against the treasurer of the [ballot question] committee...."

Section 5 outlines statements of organization of political committees: Each political committee shall organize by filing with the director or, if organized for the purpose of a city or town election only, with the city or town clerk, a statement of organization.

The statement of organization shall include: (1) the full name of the political committee ... which, if not organized on behalf of a candidate, shall include the full words represented by any abbreviations, initials or acronyms in said name; ... (2) the address of the political committee; (3) a statement of the purpose for which the political committee is organized which shall include,...., a list of specific issues in which the committee takes an interest, and a list of specific interests, including but not limited to business, charitable, educational, or other interests represented by the committee, or by a significant proportion of its officers, members or donors; (4) the name and residential address of the chairman and the treasurer; (5) the name, residential address, and position of other principal officers, including officers and members of the finance committee, if any....

Any change in information previously submitted in a statement of organization shall be reported to the director, or if organized for the purpose of a city or town election only, to the city or town clerk, within ten days following the change.

Each political committee shall have a treasurer who shall qualify for his office by filing a written acceptance thereof with the director, or if organized for the purpose of a city or town election only, with the city or town clerk. Said treasurer shall remain subject to all the duties and liabilities imposed by this chapter until his written resignation of the office is received or his successor's written acceptance is filed as aforesaid. No person acting under the authority of, or on behalf of, any political committee shall receive any money or anything of value, or expend or disburse the same, or incur expenses while it has no treasurer qualified as aforesaid....

Each treasurer of a political committee shall keep and preserve detailed accounts, vouchers and receipts as prescribed for a candidate by the provisions of section two. Each treasurer of a political committee shall keep said records for a period of six years following the date of the relevant election. ...

No expenditure shall be made for, or on behalf of, a political committee without the authorization of the chairman or treasurer, or their designated agents.

All funds of a political committee shall be kept separate from any personal funds of officers, members or associates of such committee.

Section 5B. (a) Every political committee, other than a political party committee or a candidate's committee, shall name and identify itself in its organizational statement pursuant to section five by using a name or phrase that:

- (i) clearly identifies the economic or other special interest, if identifiable, of a majority of its contributors; and
  - (ii) if a majority of its contributors share a common employer, that identifies the employer.
- (b) If the economic or other special interest or common employer are not identifiable under subsection (a), every such political committee shall name and identify itself in its organizational statement using a name or phrase:
- (i) that clearly identifies the economic or other special interest, if identifiable, of a majority of its organizers; and
  - (ii) if a majority of its organizers share a common employer, that identifies the employer; and
  - (iii) if the committee is organized, financed, controlled or maintained by an individual, that identifies said individual.
- (c) No political committee shall use any name other than the name included in its organizational statement.



Commonwealth of Massachusetts

Form CPF M 102: Campaign Finance Report
Municipal Form
Office of Campaign and Political Finance

File with:
City or Town Clerk or Election Commission

Please print or type all information, except signatures.

Fill in dates: Reporting Period Beginning Ending

Type of report: (Check one)
8th day preceding preliminary
8th day preceding election
30 day after election
year-end report
dissolution

Full Name of Candidate (if applicable)

Office Sought and District

Residential Address

Tel. No. (optional)

Committee Name

Name of Committee Treasurer

Committee Mailing Address

Tel. No. (optional)

SUMMARY BALANCE INFORMATION:

Line 1: Ending balance from previous report
Line 2: Total receipts this period (page 2, line 11)
Line 3: Subtotal (line 1 plus line 2)
Line 4: Total expenditures this period (page 3, line 14)
Line 5: Ending balance (line 3 minus line 4)
Line 6: Total in-kind contributions this period (page 4)
Line 7: Total (all) outstanding liabilities (page 4)
Line 8: Name of bank(s) used

Affidavit of Committee Treasurer:

I certify that I have examined this report including attached schedules and it is, to the best of my knowledge and belief, a true and complete statement of all campaign finance activity, including all contributions, loans, receipts, expenditures, disbursements, in-kind contributions and liabilities for this reporting period and represents the campaign finance activity of all persons acting under the authority or on behalf of this committee in accordance with the requirements of M.G.L. c. 55.

Signed under the penalties of perjury:

Treasurer's signature (in ink)

Date

FOR CANDIDATE FILINGS ONLY: (CANDIDATE MUST SIGN BELOW)

Affidavit of Candidate: (check 1 box only)

Candidate with Committee and no activity independent of the committee

I certify that I have examined this report including attached schedules and it is, to the best of my knowledge and belief, a true and complete statement of all campaign finance activity, of all persons acting under the authority or on behalf of this committee in accordance with the requirements of M.G.L. c. 55. I have not received any contributions, incurred any liabilities nor made any expenditures on my behalf during this reporting period.

Candidate without Committee OR Candidate with independent activity filing separate report

I certify that I have examined this report including attached schedules and it is, to the best of my knowledge and belief, a true and complete statement of all campaign finance activity, including contributions, loans, receipts, expenditures, disbursements, in-kind contributions and liabilities for this reporting period and represents the campaign finance activity of all persons acting under the authority or on behalf of this committee in accordance with the requirements of M.G.L. c. 55.

Signed under the penalties of perjury:

Candidate signature (in ink)

Date

## SCHEDULE A: RECEIPTS

*M.G.L. c. 55 requires that the name and residential address be reported, in alphabetical order, for all receipts over \$50 in a calendar year. Committees must keep detailed accounts and records of all receipts, but need only itemize those receipts over \$50. In addition, the occupation and employer must be reported for all persons who contribute \$200 or more in a calendar year.*

This page may be copied if additional pages are required to report all receipts. Please include your committee name and a page number on each page.

Date Received	Name and Residential Address (alphabetical listing required)	Amount	Occupation & Employer (for contributions of \$200 or more)
Line 9: Total receipts in excess of \$50 (or listed above)			
Line 10: Total receipts \$50 and under* (not listed above)			
<b>Line 11: TOTAL RECEIPTS IN THE PERIOD</b>			

Enter on page 1, line 2

\* If you have itemized receipts of \$50 and under include them in line 9. Line 10 should include only those receipts not itemized above.

**SCHEDULE B: EXPENDITURES**

*M.G.L. c. 55 requires committees to list, in alphabetical order, all expenditures over \$50 in a reporting period. Committees must keep detailed accounts and records of all expenditures, but need only itemize those over \$50. Expenditures \$50 and under may be added together, from committee records, and reported on line 13.*

This page may be copied if additional pages are required to report all expenditures. Please include your committee name and a page number on each page.

Date Paid	To Whom Paid (alphabetical listing)	Address	Purpose of Expenditure	Amount	
Line 12: Expenditures over \$50					
Line 13: Expenditures \$50 and under*					
Line 14: TOTAL EXPENDITURES					

Enter on page 1, line 4

\*If you have itemized expenditures of \$50 and under, include them in line 12. Line 13 should include only those expenditures not itemized above.

### SCHEDULE C: "IN-KIND" CONTRIBUTIONS

Please itemize contributors who have made in-kind contributions of more than \$50. In-kind contributions \$50 and under may be added together from the committee's records and included in line 16.

Date Received	From Whom Received*	Residential Address	Description of Contribution	Value
<b>Line 15: In-kind over \$50</b>				
<b>Line 16: In-kind \$50 and under</b>				
<b>Line 17: Total In-kind</b>				

Enter on page 1, line 6

\* If an in-kind contribution is received from a person who contributes more than \$50 in a calendar year, you must report the name and address of the contributor; in addition, if the contribution is \$200 or more, you must also report the contributor's occupation and employer.

### SCHEDULE D: LIABILITIES

*M.G.L. c. 55 requires committees to report ALL liabilities which have been reported previously and are still outstanding, as well as those liabilities incurred during this reporting period.*

Date Incurred	To Whom Due	Address	Purpose	Amount
<b>Line 18: OUTSTANDING LIABILITIES (ALL)</b>				

Enter on page 1, line 7

# INSTRUCTIONS FOR COMPLETING CAMPAIGN FINANCE REPORTS FOR USE WITH FORM CPF M 102

## PAGE ONE:

### (1) REPORT DATES

A campaign finance report must indicate the beginning date and ending date of the report period. Dates must be completed for the report to be accepted. Also, check off reason for filing report (i.e., 8th day preceding election).

### (2) CANDIDATE/COMMITTEE INFORMATION

Fill in the appropriate information in the candidate and/or the committee boxes.

### (3) SUMMARY ACTIVITY (Lines 1-7)

- (a) Lines 1-5 of your campaign finance report are on a cash basis reporting system.
- (b) Lines 1-7 must be completed for a report to be accepted. They reflect ending balance from previous report, (line 1) total receipts for the reporting period, (line 2) and total expenditures for the reporting period (line 4) for the period as well as total money available as of the last day of the reporting period (line 5).
- (c) ENDING BALANCE, line 5, should be:
  - line 1 (beginning balance)
  - line 2 (total receipts this report)
  - line 3 (line 1 + line 2)
  - line 4 (total expenditures this report)
  - line 5 (line 3 - line 4) cash available
- (d) Line 5 can NOT be a negative figure since this is a cash reporting system (unless the campaign has an overdrawn checking account).
- (e) The candidate and/or treasurer should reconcile the most recent bank statement with the campaign finance report to ensure the accuracy of the reported balances.
- (f) Total in-kind contributions (line 6) are carried forward from Schedule C.
- (g) Total liabilities (line 7) are carried forward from Schedule D.
- (h) Total liabilities (line 7) must be cumulative, and reflect all debts of the committee outstanding as of the last day of the reporting period, not just debts incurred during the current period.

### (4) SIGNATURES

- (a) Reports will not be accepted unless they contain original signatures of the treasurer (if a committee report) and the candidate in ink.
- (b) A candidate should always sign the box on the bottom of the form and check off the affidavit which is applicable to his/her situation. If the candidate has a committee and no expenditures were made independent of the committee by the candidate he/she should check off the top affidavit. If the candidate has made expenditures independent of the committee, the candidate must file a separate report disclosing the independent activity and check off the bottom affidavit on the report of the candidate's independent campaign activity.
- (c) For committee reports the treasurer must sign the affidavit for the committee treasurer in the box just above the box for the candidate.
- (d) If the candidate does not have a committee, he/she files a candidates report, checks off the bottom affidavit, and signs the report.

## PAGE TWO:

### SCHEDULE A (RECEIPTS)

- (1) The report must itemize, alphabetically, the names and residential addresses of any receipt in excess of \$50 for the reporting period. These are totaled on line 9. Receipts of \$50 or less should be totaled from the committee's records, and disclosed in the aggregate on line 10. Lines 9 and 10 should be added, and the total shown on line 11. Total receipts (line 11) should be carried forward to page one, line 2.
- (2) If an individual's contribution is \$ 200 or more (or his contributions total \$ 200 or more in a calendar year), you must also report the contributor's employer and occupation. If you have sent the required letter requesting missing emp./occ. information and have not received a response at the time of filing indicate "letter sent" and the date of the letter.
- (3) A loan should be reported as a receipt under the name of the individual who is making the loan; you should indicate that it is a loan by writing "loan" in the space next to the amount.
- (4) Contributions from the candidate, including loans, must be reported as receipts.
- (5) Political Action Committee (PAC) contributions must be reported under the name of the PAC

(including CPF ID#) and not the name of the individual who signed or presented the check. PACs must be registered under M.G.L. c. 55 to contribute to Massachusetts candidates. (Registered PACs and their CPF ID numbers are available from OCPF.)

(6) Contributions from trusts, foundations, associations or other organizations must be disclosed under the organization's name along with the names and addresses of its principal officers.

(7) Contributions must be reported as of the date received, not the date they were deposited.

(8) Individual contributions made through non-incorporated businesses should be reported as an individual "doing business as," i.e. John Smith D/B/A Smith's Market. Committees should verify, prior to accepting such contributions, that such business is not incorporated.

(9) Schedule A must reflect all receipts of money during the reporting period including refunds from vendors or others and interest earnings.

#### **PAGE THREE:**

#### **SCHEDULE B (EXPENDITURES)**

(1) The report must itemize, alphabetically, all expenditures of more than \$50 for the reporting period. These are totaled on line 12. Expenditures of \$50 or less should be totaled from the committee's records, and disclosed in the aggregate line 13. Lines 12 and 13 should be aggregated, and the total shown on line 14. Total expenditures (line 14) should be carried forward to page one, line 4.

(2) For individuals who are reimbursed more than \$50 for expenditures made on behalf of the committee, an itemization of reimbursements, form R 1, must be completed to disclose the name, address, purpose and amount for each expenditure made on the committee's behalf.

(3) The stated purpose of each expenditure listed should convey detailed information about the political purpose of the expenditure.

(4) Schedule B must reflect all payments made by the committee including bank service charges and contributions to other committees, even if returned.

(5) If the committee holds a credit card, it must file form CPF M9 and copies of the credit card statements disclosing committee credit card activity. (NB. The credit card number is not required) If reimbursing an individual for charges made on a personal credit card, make payment to the individual and file form R 1 itemizing the reimbursement.

#### **PAGE FOUR:**

#### **SCHEDULE C (IN-KIND CONTRIBUTIONS)**

(1) The committee must report contributors who have contributed things of value (in-kind contributions) that exceed \$50 by indicating their name, address and a description of what was contributed. In-kind contributions of \$50 or less are aggregated on line 20. If the contribution is \$200 or more, the occupation and employer of the contributor is also required.

(2) Things of value that are NOT included as in-kind contributions are personal services, ordinary hospitality and incidental expenses in rendering a personal service.

#### **SCHEDULE D (LIABILITIES)**

(1) Schedule D is a cumulative schedule of ALL debts as of the last day of the reporting period. It includes:

- (a) Any unpaid bills that the committee has on hand.
- (b) All obligations for goods or services that have been provided to the committee that remain unpaid at the time of the report.
- (c) All outstanding loans from a candidate or others.

(2) Debts should be carried from one report to the next unless such debt has been paid or forgiven during the reporting period. If debt is forgiven, it should be listed as an in-kind contribution on Schedule C and a copy of the letter of forgiveness should be filed with the report.

#### **FORMAT FOR COMPUTER GENERATED REPORTS**

All computer generated report formats must be approved by the local election official prior to submission (other than OCPF's reporting software).

If you have any questions, or require further information, please call your election commission, city or town clerk, or the Office of Campaign and Political Finance.

9/99



OFFICE OF CAMPAIGN AND POLITICAL FINANCE

M.G.L. CHAPTER 55, SECTION 18  
RESIDUAL FUNDS CLAUSE

In addition, the report required to be filed on or before the twentieth day of January shall contain a statement detailing the intended or actual disposition of any residual funds. Such residual funds shall not be converted to the personal use of the candidate or any other person except as provided in this paragraph. Such residual funds shall be donated to:

(i) the Local Aid Fund established under the provisions of section two D of chapter twenty-nine or the Categorical Grants Fund established under the provisions of section two N of chapter twenty-nine, whichever is in effect;

(ii) an entity which is subject to chapter sixty-seven or section eight of chapter twelve; provided, however, that the candidate, treasurer or any official of the political committee shall not be related by consanguinity or affinity to any trustee, officer, principal or beneficiary of said entity either at the time of the gift or within ten years from the date of such gift; provided, further, that no entity may employ as a trustee, officer, principal or beneficiary any person related by consanguinity or affinity to the candidate, treasurer or any official of the political committee either at the time of the gift or within ten years from the date of such gift;

(iii) a scholarship fund; provided, however, that the candidate, treasurer or any official of the political committee shall not participate in the selection of the beneficiary of any scholarship awarded from such fund; and, provided further, the beneficiary of any scholarship awarded from such fund shall not be related by consanguinity or affinity to the candidate, treasurer or any official of the political committee; or

(iv) the general fund of any city or town in the commonwealth.

The director may petition the supreme judicial court for the dissolution of a political committee, if (i) such political committee fails to comply for two consecutive years with provisions of this section requiring the filing of reports of contributions received and expenditures made; (ii) the candidate on whose behalf such political committee has been organized has died; or (iii) such political committee was organized for the purpose of favoring or opposing the adoption or rejection of a question submitted to the voters and there has been a final determination made as to the adoption or rejection of such question.

By such petition, the director may request the court to authorize the administration of any funds held by such political committee in accordance with the provisions of this section regarding residual funds. The court, after notice by mail or otherwise as it may order, may dissolve such political committee. The director may include more than one political committee in a single application.

Violation of any provision of this section shall be punished by imprisonment for not more than one year, or by a fine of not more than one thousand dollars, or both.