



Commonwealth
of Massachusetts

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Office of Campaign and Political Finance
One Ashburton Place, Room 411
Boston, MA 02108

Advisory Opinion

August 14, 2007
AO-07-08

Kelly O'Bryan, Political Director
NARAL Pro-Choice Massachusetts
41 Winter Street, Suite 65
Boston, MA 02108

Re: Contributions by a lobbying organization and its PAC to state and local candidates

Dear Ms. O'Bryan:

This letter is in response to your recent request for an advisory opinion.

You have stated that NARAL Pro-Choice Massachusetts (NARAL) is a statewide political organization formed under Section 501(c)(4) of the Internal Revenue Code. The organization, which is registered as a lobbying organization with the Secretary of the Commonwealth, is exploring the possibility of making monetary contributions to pro-choice candidates in state and local elections. The organization also has a political action committee that you state has not been very active in recent years.

Currently, NARAL makes in-kind contributions to endorsed candidates through staff time, mailings and phone banks. The organization would like to start making monetary contributions to endorsed candidates as well, and to that end, has asked several questions about how these contributions may be made.

QUESTIONS

1. May NARAL or the PAC make contributions directly to a candidate, ask members to send a check directly to a candidate, or host a house party for a candidate as long as an agent of the campaign is there to collect the checks? If so, are there any limitations?

Answer: Yes. Each of these options is allowed under the campaign finance law, subject to the limitations and disclosure requirements that apply to all contributions. For the reasons discussed below, contributions made in the manner described would not involve "contributions made through an intermediary or conduit" subject to the "bundling" provisions of Section 10A.

2. Is it acceptable for NARAL to send an email or letter to its members asking them to send a check to the candidate with a message that “NARAL Pro-Choice Massachusetts sent me?”

Answer: Yes, but only if none of the contributions exceed \$140. If any of the contributions exceed \$140, they all would be subject to the “bundling” provisions in Section 10A.

3. May a person employed by NARAL Pro-Choice Massachusetts, who is not a registered lobbyist, hand-deliver checks to a candidate?

Answer: Yes, but as with the previous question, all of the contributions that would be delivered would be subject to Section 10A if any of them exceed \$140.

DISCUSSION

Your questions relate to Section 10A of the campaign finance law, which regulates certain “contributions made through an intermediary or conduit,” or so-called “bundled contributions.”

An “intermediary or conduit” is defined to include (1) political action committees and their officers, employees or agents, (2) legislative and executive agents and lobbying organizations and their officers, employees or agents acting on behalf of the agent or organization, and (3) persons responsible for delivering “pooled” contributions from corporate employees or officers. See M.G.L. c. 55, § 10A (b)(1)-(3). Such persons and organizations are defined in OCPF’s regulations as “regulated intermediaries.” See 9790 CMR 1.07(2). The restrictions relating to bundled contributions do not apply unless each of the bundled contributions is more than \$140.¹

Contributions made through regulated intermediaries are within the scope of the statute if they are either (1) “delivered, whether in person or by mail [by the regulated intermediary], to a particular candidate or such candidate’s authorized committee or agent” or (2) made “in a manner that identifies in writing the person who arranged the making of the contributions.” See M.G.L. c. 55, § 10A(c)(1)(i) and (c)(1)(ii).

If contributions are made through a regulated intermediary, the contributions are treated as being made not only by the original source of the contribution but also by the intermediary. In addition, if contributions are made through a regulated intermediary, the intermediary must file a report regarding the contributions to this office and the recipient of the contributions.

The actions described in your first question do not involve “bundling” subject to Section 10A. Contributions from a PAC or lobbying organization’s general fund (as opposed to contributions from members that are delivered by the PAC or organization) are not subject to the bundling provisions. See 970 CMR 1.07(3)(c). In addition, regarding a lobbying organization or PAC holding a fundraiser for a candidate, the office has stated that if persons who attend such an event give their contributions directly to the candidate or an agent of the candidate’s committee who is present at the event, the bundling provisions would not be applicable. See AO-95-20. Finally, merely asking members to contribute directly to candidates does not involve the “arranging” for the making of contributions that would require application of the bundling provisions. See AO-95-06 (stating that “arranging” that contributions be made involves more than merely soliciting contributions, “for example, if a legislative

¹ The figure is indexed for inflation every other year, and will next be indexed no later than December 31, 2007. See M.G.L. c. 55, 10A(g).

agent not only solicits a contribution but actually instructs the contributors to identify, with a note on their contribution checks, the legislative agent as the person responsible for arranging the contribution, the agent would be subject to the provisions of Section 10A”).²

In contrast, however, your second and third questions involve situations where the bundling provisions would be applicable if at least one of the contributions is greater than \$140. If contributions are sent to candidates with attached messages saying that “NARAL Pro-Choice Massachusetts sent me,” such contributions would be subject to the bundling provisions if at least one of the contributions is in an amount exceeding \$140 because the contributions would be made in a manner “that identifies in writing the person who arranged the making of the contributions.” M.G.L. c 55, § 10A(c)(1)(ii). The contributions would be accompanied by a writing that would identify the person³, i.e., NARAL, that arranged the making of the contributions. See AO-95-20.

Finally, if a person employed by NARAL who is not a registered lobbyist hand-delivers checks to a candidate, the bundling provisions would apply if at least one of the contributions is over \$140 because delivery of contributions by an agent of a lobbying organization (even if the person is not a registered legislative or executive agent) is covered by the statute. See M.G.L. c. 55, § 10A(c)(1)(i). Contributions “through an intermediary or conduit” include *either* contributions delivered by the regulated intermediary, or contributions made in a manner that identifies in writing the person who arranged the making of the contributions. See 970 CMR 1.07(3)(a). Where a lobbying organization, or person who is employed by or is an agent of a lobbying organization, delivers contributions to a candidate, the activity may be regulated, even if the person who handles the delivery for the organization is not registered as a legislative or executive agent.

This opinion is solely within the context of the campaign finance law and is provided on the basis of representations in your letters and conversation with OCPF staff.

Please contact us if you have further questions regarding the campaign finance law.

Sincerely,



Michael J. Sullivan
Director

² Contributions raised in these ways are subject to all of the limitations of the campaign finance law, e.g., the contributions may not be from business corporations, and individuals may contribute no more than \$500 during a calendar year.

³ The term “person” includes NARAL. See M.G.L. c. 4, § 7, clause 23, stating that unless a contrary intention clearly appears in a statute, the term “person” in a statute “shall include corporations, societies, associates and partnerships.”