

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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September 17, 2008
AO-08-07

John Andrews, Esq.
Andrews & Updegraph, P.C.
70 Washington Street, Suite 212
Salem, MA 01970

Re: Sheriff Frank G. Cousins, Jr.

Dear Mr. Andrews:

This letter is in response to your recent request for guidance regarding the payment of legal expenses by your client, Sheriff Frank G. Cousins.

This is a follow-up to the Sheriff's initial request for an advisory opinion dated January 11, 2005, to which OCPF responded in an advisory opinion dated February 24, 2005 (AO-05-02). In that advisory opinion, OCPF stated that the Sheriff's political committee could pay the legal costs associated with an Ethics Commission investigation and also in connection with the filing of a defamation action.

You have now stated that after the issuance of the February 2005 advisory opinion, Sheriff Cousins was advised by the Ethics Commission that their investigation required no further action, and that matter was closed. You have also stated that the conduct that gave rise to the Sheriff's first request for an opinion, regarding members of the Essex County Correctional Officers Association ("ECCOA") making public verbal attacks against the Sheriff as a public official and political candidate, has continued, and that the ECCOA created a website that contains a chat room that has become "a forum of hatred directed toward Sheriff Cousins, his administration and supporters." You have provided examples of threatening and derogatory comments from the chat room.

The Sheriff has now filed an individual complaint against the ECCOA and several current or former members of ECCOA, at the Massachusetts Commission Against Discrimination ("MCAD"). The Complaint includes counts for racial discrimination and the creation of a hostile work environment at the Essex County Sheriff's Department. The MCAD has made a finding of probable cause, and a six month period of discovery has been scheduled from August 15, 2008 through February 15, 2009, at which time a hearing date will be scheduled.



QUESTIONS

You have asked (1) if the Sheriff's political committee ("the committee") may pay for legal expenses incurred in connection with the action before the MCAD, and (2) if the committee may be reimbursed for legal fees expended in the event legal fees are awarded by the MCAD.

RESPONSE

The committee may pay the legal costs described, and may also be reimbursed for legal fees expended in the event such fees are awarded by the MCAD.

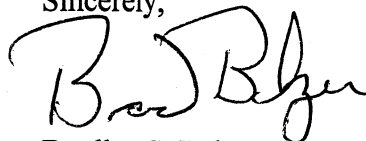
For the reasons described in AO-05-02, an expenditure to pay for legal costs incurred in the MCAD litigation would be consistent with 970 CMR2.06(6)(a)(3)(c), which permits expenditures made for administrative proceedings if the proceedings are a "necessary legal action to protect or further the interests of the political committee." As you have stated in your letter, it would appear that the essence of the MCAD litigation (like the defamation action reviewed in AO-05-02) is to address attacks on the candidate which, if left un rebutted, would directly impact his viability as a sitting public official and political candidate. Like the statements addressed in 2005, the statements alleged to have been made in the chat room impugn the Sheriff's integrity as a public official. Because the MCAD litigation concerns such statements, the legal costs incurred in the litigation may be paid by the committee.

In AO-05-02, we stated that the Sheriff's political committee could not retain any monetary damages awarded in a defamation action. Whether the committee may be reimbursed for legal fees expended in the event such fees are awarded by the MCAD, however, raises a different issue. Although the campaign finance law does not contemplate that committees may *raise* funds through litigation, the receipt of attorneys' fees already expended by the committee does not involve any enrichment, or net receipt, by the committee. It is also reasonable, and consistent with the purpose for awarding legal fees, that to the extent the committee paid the legal costs of such a proceeding and MCAD issues an award of legal fees, that the legal fees awarded may be used to reimburse the committee. If fees awarded exceed committee payments made, the excess amount must be given to a charitable or other entity or entities specified in the residual funds clause of M.G.L. c. 55, § 18.

This opinion is based solely on the statements in your letter and is limited to providing guidance within the scope of the campaign finance law. You may also wish to contact the State Ethics Commission to ensure compliance with the Massachusetts Conflict of Interest Law, M.G.L. c. 268A.

Please contact us if you have further questions on this matter.

Sincerely,



Bradley S. Balzer
Deputy Director