

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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June 29, 2009
AO-09-07

Marc Elias, Esq.
Perkins Coie
607 Fourteenth Street N.W.
Washington, D.C. 20005

Re: John Kerry for Senate – E-Mail List

Dear Mr. Elias:

This letter is in response to your recent letter that requested an advisory opinion.

The John Kerry for Senate Committee (“The Committee”) is a federal political committee registered with the Federal Election Commission (“FEC”). You have stated that the Committee has developed an extensive list of supporters and their electronic mail addresses. This list comprises individuals who have subscribed to receive regular communications from Senator Kerry. These e-mail recipients are not required to contribute to the Committee or pay dues and they always have the option of unsubscribing.

The Committee would like to send e-mail endorsements of Massachusetts state or local candidates to the individuals on its mailing list. The Committee would incur no cost in sending the e-mails.

QUESTION: May the Committee send endorsements by e-mail to its list of supporters, treating this as a membership communication, without registering or filing campaign finance reports with OCPF?

ANSWER: No. Sending e-mails in this manner would be inconsistent with the campaign finance law and regulations.

DISCUSSION: An organization’s expenditures to support or oppose a Massachusetts candidate are generally “contributions” or “expenditures” subject to the reporting requirements and limitations of the Massachusetts campaign finance law, M.G.L. c. 55. Section 1 of the statute provides an exception, however, for “membership communications.” It states that “communications from a membership organization, not including a corporation subject to section eight, to its members and their families on any subject shall not be deemed to be a contribution or expenditure.” See M.G.L. c. 55, § 1.



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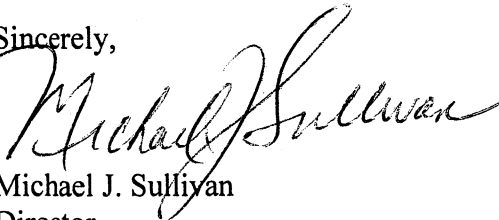
A membership organization is “any organization that identifies the individuals within the organization as members. Such organizations include, but are not limited to, clubs, unions and associations.” 970 CMR 2.02. The regulation states that “political committees” may not be considered membership organizations. This office has yet to consider, however, whether a federal political committee may be considered a membership organization for purposes of the regulation.

The campaign finance law prohibits the “transfer of funds or assets from any federal political committee” to any candidate or candidate committee organized in accordance with the Massachusetts campaign finance law. See M.G.L. c. 55, § 7, and IB-82-01, in which the office stated that a non-Massachusetts political committee must establish a separate Massachusetts committee and register with OCPF if it wishes to contribute to Massachusetts PACs or candidates. Although federal political committees are not generally considered “political committees” for most purposes of the Massachusetts campaign finance law, e.g. the limit on contributions that may be made by Massachusetts candidate committees to other political committees, the exemption for membership communications in Section 1 was not intended to include communications by federal political committees. If a federal committee could use its list of e-mail contacts in the manner contemplated by your question, this would lead to the use of a federal committee asset by state or local candidate committees, which would be inconsistent with Section 7.

We appreciate your interest in the campaign finance law. This opinion is based on the representations in your correspondence and in your conversations with OCPF staff, and is issued solely within the context of the Massachusetts campaign finance law.

Please do not hesitate to contact this office should you have additional questions about this or any other campaign finance matter.

Sincerely,



Michael J. Sullivan
Director

MJS/sh