

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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August 13, 2009
AO-09-09

Daniel B. Winslow, Esq.
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470 Atlantic Avenue, Suite 500
Boston, MA 02210

Re: Raising funds for possible state legislative campaign

Dear Mr. Winslow:

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

You have stated that a current municipal official has a municipal campaign committee account. The official files with the town clerk rather than OCPF. He is considering whether or not to seek state legislative office.

Before starting any campaign for state legislative office, the individual would like to contact supporters and friends to see if he can raise at least \$100,000, which he believes would be the minimum amount necessary to be a viable candidate for the state legislature. His outreach to friends and supporters would include verbal and written solicitations to the effect that he has worked on a number of issues of public importance as a municipal official and would like to continue working on these issues as a state legislator. He might say that he thinks he could do a better job for his constituents if he is a state legislator, and that if he is able to raise \$100,000 he will seek such office. He would deposit funds raised into his municipal committee account and not announce his candidacy for state office unless and until he receives \$100,000. At that point, he would file a change of purpose form and begin reporting directly to OCPF.

QUESTIONS

- (1) May the official raise money in the manner described without first transferring his account to OCPF?
- (2) If money is raised for the possible state candidacy, but the individual ultimately decides not to seek state office, may the money that he raised be used for campaigns for local office?



RESPONSE

The official may not raise money in the manner described, because the official would be indicating an interest in using the contributions for a possible state campaign. The official would therefore be considered a candidate for state office and would have to file a change of purpose and transfer his committee to OCPF *prior* to raising the funds.

If funds are raised for a possible state legislative campaign, and the individual decides to not seek state office, the money that was raised to promote the individual's state candidacy may instead be used for the individual's campaigns for local office.

DISCUSSION

An individual is a "candidate" for state legislative office when the person has "received a contribution or made an expenditure, or has given his consent for any other person or committee to receive a contribution or make an expenditure for the purpose of influencing his nomination or election to such office, whether or not the specific public office for which he will seek nomination or election is known at the time the contribution is received or the expenditure is made..." M.G.L. c. 55, § 1.

This office has advised that a person may be considered a "candidate" even before the specific office sought is determined. See AO-93-12, in which the office stated that an individual who had a political committee organized on his behalf is presumably a candidate. A person could be considered a candidate for state legislative office prior to his actually committing himself to run for such office. As noted in AO-93-12, a determination regarding whether an individual is a "candidate" as that term is defined by the campaign finance law must be based on a review of all relevant facts.

In determining whether a candidate must file with the Office of Campaign and Political Finance rather than the local election official, a principal factor is whether the candidate has made public statements indicating an interest in using contributions for a possible state campaign. Where a candidate who is "testing the waters" for a possible campaign for state office has made such statements in connection with the candidate's fundraising efforts, this generally indicates that the candidate must file campaign finance reports with OCPF rather than the local election official. See M.G.L. c. 55, §§ 18 and 24. Candidates for state office have more comprehensive disclosure requirements than candidates for municipal office. Reports for state candidates are filed electronically and are posted on the Internet. In addition, beginning in 2011, candidates for the state legislature will be required to file two reports in odd-numbered years. To allow a candidate to raise money for a state legislative race while filing with the candidate's local election official would subvert these important enhanced disclosure mechanisms designed for candidates for the state legislature.

A candidate may have only one committee organized on his behalf. See M.G.L. c. 55, § 5. Therefore, a candidate who has a committee that is currently filing locally, who wishes to raise money for the expressed purpose of determining whether to seek state legislative office, must transfer the committee from the local to the state level. This involves filing a change of purpose form with OCPF (and filing a copy with the local election official), and also filing campaign finance

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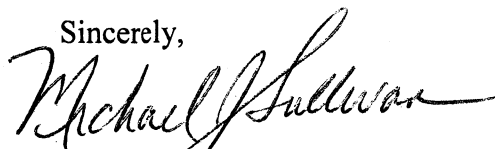
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reports with OCPF. See M-95-07 (Procedure to Transfer a Candidate's Political Committee from the Municipal Level to the State Level). Once the candidate transfers the committee account to OCPF, campaign finance reports will need to be filed electronically with OCPF. If the candidate subsequently decides not to seek state office, the committee's filing requirements will be transferred back to the local level, and any funds that were raised in connection with a possible state candidacy may be used for local campaigns. See M-95-08 (Procedure to Transfer a Candidate's Political Committee from the State Level to the Municipal Level).

Please note that this opinion is issued solely within the context of the campaign finance law and is based on the representations made in your letter and phone conversations with OCPF staff. I encourage you to contact us again if you have further questions.

Sincerely,

A handwritten signature in black ink that reads "Michael J. Sullivan". The signature is written in a cursive style with a large, sweeping initial "M".

Michael J. Sullivan
Director