



Dennis J. Duffin  
Director

AO-11  
*The Commonwealth of Massachusetts*

*Office of  
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James Roosevelt, Jr., Esquire  
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100 Federal Street  
Boston, MA 02108

Dear Mr. Roosevelt:

This letter is in response to your request for an advisory opinion relative to the application of G.L. c. 55, the campaign finance law, to certain activities of the Democratic State Committee. Specifically, you have asked whether there are any limitations on contributions to a legal fund to defend litigation with respect to candidate access to the primary ballot. The correct response to this inquiry necessitates the following analysis.

You have stated that the Massachusetts Democratic State Committee proposes to establish a special legal expense fund to be maintained apart from any other Party funds. No funds would be expended to initiate legal action to remove an identified candidate from the ballot. You further state that expenditures would be made only to defray the legal costs of defending legal actions brought by candidates against the Party.

The Democratic State Committee is a political committee duly organized with this office in accordance with G.L. c. 55. As such, it receives contributions and makes expenditures for the purpose of influencing the nomination or election of candidates for public office. It is also the state committee of a political party as provided for in Section 1 of Chapter 52. As such, it is subject to and guided by the Charter of the Democratic Party of the Commonwealth of Massachusetts. It is the provisions of this Charter which this legal fund in question is apparently designed to defend.

The question that you have presented requires an analysis of the two issues, which I will deal with in this order:

1. Would funds given for the above-described purpose be "contributions" under the campaign finance law.

2. Notwithstanding the answer to Question #1 are there any other limitations on funds to be used for this activity.

G.L. c. 55 defines a contribution, in relevant part, as "a contribution of money or anything of value to an individual, candidate, political committee, or person on behalf of said individual, candidate or political committee, for the purpose of influencing the nomination or election of said individual or candidate..." In my opinion, funds given and received for litigation expenses relative to defending provisions of the Charter of the Democratic Party of the Commonwealth are not for the purpose of influencing any individual's nomination or election to public office. The General Laws provide that state committees are unique and different from other political committees. While a state committee functions in part as a multi-candidate committee, it also plays a vital role in the administration of the public election process. In my opinion, funds received for a legal defense fund as described herein involve those funds of a state committee relative to this second role. These monies would not be used for the purpose of influencing the nomination or election of any individual to public office, and are therefore not contributions as that term is defined in G.L. c. 55.

Funds received for the purposes described here will nevertheless be subject to certain limitations. Section 8 of Chapter 55 clearly provides, in relevant part, that

"No corporation carrying on the business of a bank, trust, surety, indemnity, safe deposit, insurance, railroad, street railway, telegraph, telephone, gas, electric light, heat, power, canal, aqueduct, or water company, no company having the right to take land by eminent domain or to exercise franchises in public ways, granted by the commonwealth or by any county, city or town, no trustee or trustees owning or holding the majority of the stock of such a corporation, no business corporation incorporated under the laws of or doing business in the commonwealth and no officer or agent acting in behalf of any corporation mentioned in this section, shall directly or indirectly give, pay, expend or contribute, or promise to give, pay, expend or contribute, any money or other valuable thing for the purpose of aiding, promoting or preventing the nomination or election of any person to public office, or aiding, promoting or antagonizing the interest of any political party..."


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This strictly prohibits any corporate participation in activities which would further the interest of a political party, and therefore prohibits such corporate involvement in the activities contemplated by you. No corporate entity described in this section of the law may contribute to this legal defense fund, or expend funds in any other way for this purpose. Furthermore, the law clearly states that "No person or persons...shall solicit or receive from such corporation or such holders of stock any gift, payment, expenditure, contribution or promise to give, pay, expend or contribute for any such purpose." This language clearly imposes liability on the receiver of any such corporate monies as well.

You are also advised that political committees organized in accordance with G.L. c. 55 could not contribute to the legal fund as described above. Political committees organized on behalf of statewide candidates may only make expenditures for reasonable and necessary expenses directly related to the campaign of the candidate, subject to certain prohibitions. All other political committees may make expenditures which will enhance the political future of the candidate or principle for which the political committee was organized, subject to certain prohibitions. In my opinion, expenditures by political committees to your legal fund would not satisfy the requirements of the law, and are therefore prohibited.

This opinion has been rendered solely on the basis of facts and representations made by you.

Very truly yours,

  
Dennis J. Duffin  
Director

DJD/rep