



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

ONE ASHBURTON PLACE, ROOM 411
BOSTON, MASSACHUSETTS 02108
(617) 727-8352
(800) 462-OCPP

MARY F. MCTIGUE
DIRECTOR

May 6, 1991
AO-91-06

The Honorable Henri S. Rauschenbach
State House
Room 413F
Boston, MA 02133

Re: Purchase of Fax Machine

Dear Senator Rauschenbach:

This letter is in response to your letter requesting an advisory opinion. I apologize for the delay in my response.

You have stated that you would like to purchase a fax machine using campaign funds. I assume that this expenditure would be paid directly by your political committee. The machine would be located in your State House office and would be used for both campaign and Senate business. You have asked if the campaign finance law permits you to use such campaign funds to pay for the fax machine.

M.G.L. c.55, s.6 provides, in pertinent part, that political committees such as yours:

may receive, pay and expend money or other things of value for the enhancement of the political future of the candidate . . . , for which the committee was organized so long as such expenditure is not primarily for the candidate's personal use . . .

Therefore, in order for a political committee to purchase a fax machine or any item, the primary purpose of the expenditure must be political in nature and for the enhancement of a candidate's political future.

In numerous advisory opinions, this Office has considered the purchase of various items by a political committee that were to be kept and used at a legislator's State House office.

Whether a particular expenditure was permitted turned upon the nature of the use of the item in question. For example, in AO-86-02 this Office concluded that a political committee could purchase a computer that would be kept at the State House for maintaining records of constituency calls and services for use in later campaigns since such a use was primarily political. In AO-87-05A, however, this Office concluded that a political committee could not purchase a set of the general laws since the primary purpose was to aid the candidate in performing his responsibilities as a state representative.

This Office's regulations also provide at 970 C.M.R. 2.05(2)(h)(1) and 2.06(3) for expenditures similar to those specifically mentioned in the regulations. The regulations permit:

[r]easonable and necessary expenses in connection with the operation of a campaign office or offices, including:
[t]elephones . . . and copying machines . . .

Since fax machines combine the capacities of copying machines and telephones, they are, in the opinion of this Office, similar to such equipment. Therefore, an expenditure for a fax machine is, subject to appropriate use, permissible under the regulations.

The difficulty posed by your questions lies in the fact that the fax machine's use would be both political and non-political and, therefore, personal. I note that the term "personal use" as employed in the context of M.G.L. c.55, s.6 is a term of art which includes any non-political use such as business, governmental, legislative, family and social. Since you do not indicate which use would be the primary use, I can provide only general guidance.

If the fax machine's use is primarily (more than 50%) political (to communicate with campaign staff located in another office or to distribute campaign speeches), it may be purchased by a political committee. Any non-political use of the fax machine would have to be reimbursed at fair market value. However, if the fax machine will be used for governmental or other non-political business on more than an incidental basis (more than 10 percent), the political committee may pay only a pro rata share of the cost of the fax machine as well as a pro rata share of the costs associated with its repair and maintenance. The pro rata share must reflect the overall use of the fax machine and records must be kept to validate the political committee's allocation.

If the fax machine's use is primarily (more than 50%) governmental (to respond more quickly to constituent requests for written information or to forward drafts of legislation to interested persons for comment) then it may not be purchased by

a political committee. The fax machine could be used for political purposes provided that any such use is reimbursed by the candidate's committee at its fair market value.

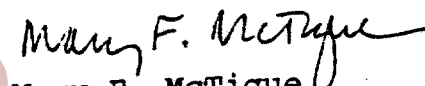
Please note that the fax machine may not be used for political fund raising purposes while it remains in a legislator's office or any other public building (see M.G.L. c.55, s.14). In addition, no public employee, other than an election official, may operate the fax machine for any fund raising purposes in any location (see M.G.L. c.55, s.13) and no public employee may, while on the public payroll, utilize the fax machine for political purposes.

Finally, at such time that your committee is dissolved, the fax machine, if purchased entirely or partially with committee funds, must be disposed of in accordance with the provisions for dissolution contained in M.G.L. c.55, s.18.

This opinion has been rendered solely on the basis of the representations made in your letter.

Please do not hesitate to contact this Office should you have additional questions.

Very truly yours,


Mary F. McTigue
Director