



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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

MARY F. McTIGUE
DIRECTOR

November 20, 1991
AO-91-22

Representative Jonathan L. Healy
State House
Room 33
Boston, MA 02133

Re: Legal Costs

Dear Representative Healy:

This letter is in response to your recent letter requesting an advisory opinion regarding the payment of certain legal expenses by your political committee.

You have stated that you are incurring certain legal expenses as a result of your legislative activities on behalf of the town of Plainfield. Specifically, these expenses stem from your involvement in a community matter and from setting up a meeting or meetings between certain state officials and Plainfield residents. Your involvement has resulted in your being named in a "Housing Discrimination Complaint" filed with the HUD's Office of Fair Housing and Urban Development (Case No. 01-91-0252-1). You have denied all allegations raised in the complaint.

You have asked if your political committee may pay for legal expenses which are being incurred by your having representation in this matter. If your political committee may not pay these expenses, you ask how you can legally raise funds to pay these expenses.

M.G.L. c.55 provides that a state representative's political committee:

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 or any other person's personal use . . . "

In the context of section 6 and regulations issued pursuant thereto, the phrase "personal use" is a term of art which includes any non-political use such as business, governmental, legislative, family and social use. See AO-91-06.

I have reviewed in detail your August 1, 1991, letter to HUD and based upon the information in that letter as well as your own assertions conclude that your actions were taken primarily in your capacity as a state legislator.¹ The answers to your two questions follow logically from this conclusion.

First, since your actions in this matter were primarily the result of your carrying out your responsibilities as a state legislator and not as a candidate, the payment of legal costs arising out of these actions would constitute payment for your "personal use."² Therefore, these expenses may not be paid for by your political committee without violating M.G.L. c.55, s.6. See also 970 CMR 2.06(6)(a).

Second, it also follows that since the payment of these legal costs are personal within the meaning of M.G.L. c.55, s.6, you have access to the same sources as any other person in your situation. For example, you may pay for the legal expenses yourself, borrow monies from family or friends or seek a loan from a financial institution. Also, if the legislature has appropriated funds to pay for legal expenses incurred by legislators while carrying out legislative responsibilities, such monies could also be used.

The only activity from which you must refrain is the use of your status as a candidate or your political committee to raise funds for these legal expenses through any type of fundraising event. M.G.L. c.55, s.1 provides, in pertinent part:

1. For example, in your August 1, 1991, letter to HUD you state on page 5, "In sum, my involvement in this situation arose from an entirely legitimate request from people whom I represent in the state legislature to facilitate a meeting . . ." Similarly, you conclude at the end of your letter that your actions "were taken in [y]our capacit[y] as . . . state representative for Plainfield . . ."

2. M.G.L. c.55, s.6 recognizes the fact that certain political expenditures may provide benefits which are political as well as personal. While your involvement in this matter involving your constituent may in certain aspects enhance your political future, it is clear from your assertions and description that the primary purpose of your activity and the resulting legal expenses concern your legislative responsibilities and, therefore, such legal costs are "personal" as that term is used in c.55.

Notwithstanding any other provisions of this chapter, any receipt or disbursement of any money or anything of value by an individual, or person acting on behalf of said individual, which is not otherwise a "contribution" or "expenditure" as defined in this section, resulting from any purchases from said individual, or any person acting on behalf of said individual, whether through the device of tickets, advertisements, or otherwise, for any fund-raising activity, including a testimonial held on behalf of said individual, regardless of the purpose of said activity, shall be deemed to be a "contribution" or "expenditure" if said individual . . . holds elective public office . . . at the time of said receipt or disbursement . . . (emphasis added).

The provisions of this section prevent you or your political committee from holding fundraising events to raise money for these legal costs. It does not prevent you as an individual from paying the money directly or seeking help from friends or family or obtaining a loan at a financial institution.³

This opinion has been rendered solely on the basis of the representations in your letters and solely on the basis of M.G.L. c.55.

Should you have any further questions regarding campaign finance matters, please do not hesitate to contact this Office.

Very truly yours,



Mary F. McTigue
Director

3. Since such gifts or loans would be for the purpose of paying a personal expense and not "for the purpose of influencing the nomination or election of a candidate," they would not be subject to M.G.L. c.55, including the reporting and contribution limitations set forth in sections 7 and 18. However, in some situations, questions may arise under M.G.L. c.268A, the conflict-of-interest law, and we recommend that you also review this matter with the State Ethics Commission.