



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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MARY F. McTIGUE
DIRECTOR

August 7, 1992
AO-92-15

Steven C. Roche, Chairman
Citizens for Joe Malone
2 University Office Park
51 Sawyer Road, Suite 150
Waltham, MA 02154

Re: Joint Expenditures

Dear Mr Roche:

This letter is in response to your May 6, 1992, letter in which you request an advisory opinion regarding the legality of three political committees jointly holding a non-fundraising reception.

You have stated that the respective committees for Governor William F. Weld, Lieutenant Governor Paul Cellucci, and Treasurer Joseph Malone, would like to sponsor jointly a reception at the Republican National Convention. The reception would be open to delegates and alternates to the convention, and other invited guests. You have also stated that each committee's candidate would receive equal credit for hosting the event. To avoid any transfer of funds between political committees you stated that each committee would pay their pro rata (1/3) share directly to the vendors.

The Supreme Judicial Court addressed the issue of joint expenditures in the fairly recent case of Weld for Governor v. Director of the Office of Campaign and Political Finance, 407 Mass. 761, 556 N.E.2d 21 (1990). The Weld Court held that the committees supporting candidates for Governor and Lieutenant Governor may jointly purchase "campaign buttons, bumper stickers, and signs bearing both candidates' names." Weld at 556 N.E. at 27. These purchases did "not constitute prohibited 'contributions' within the ban of G.L. c.55, s.6." Id.

M.G.L. c.55, s.6 prohibits, in relevant part, a

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constitutional candidate committee from contributing "to any other political committee or the campaign fund of any other candidate" The court based its analysis of section 6, in part, upon a distinction between "contributions" and "expenditures." This distinction focused upon the purpose for the expenditure. Specifically, the court stated:

If the expense is incurred primarily to promote the payor's candidacy, it is an "expenditure"; if made primarily to promote the candidacy of someone other than the payor, it is a "contribution". Weld, 556 N.E.2d at 26.

The SJC's ruling was limited to the question of joint expenditures between candidates for Governor and Lieutenant Governor, running as a team. However, it is this Office's opinion that the court's analysis, on both a statutory and Constitutional basis, is applicable to your situation.

In the case presented, where three political committees organized on behalf of constitutional officeholders jointly sponsor a reception, no in-kind contribution occurs if each committee expends funds primarily to support its candidate. The opportunity to host a reception at the Republican National Convention may provide significant visibility for each committee and their candidate in a manner which could reasonably relate to future campaigns for re-election or election to another office. While there may be some interest for each committee to expend funds in promoting all three individuals as a group, the primary purpose, if not the sole purpose, of the proposed joint expenditure appears to be to benefit each committee's candidate. Therefore the proposed joint expenditure would not be a contribution prohibited by M.G.L. c.55, s.6.

In Weld, the SJC also addressed several Constitutional issues which are implicated by your question. Although your question does not raise the same concerns for protecting a candidate's right to communicate directly with the voters through so-called "grassroots" material (bumper stickers, campaign buttons, etc.), First Amendment rights of free association are clearly implicated. As the Weld court noted, the only justified restriction upon the First Amendment is the compelling state "interest [of] preventing corruption or the appearance of corruption." Weld, 556 N.E.2d at 26. Conversely, where there is no corruption, nor the appearance of corruption, there is no compelling state interest. Weld, 556 N.E.2d at 26. In the scenario of three political committees jointly sponsoring this reception, the potential for corruption or the appearance of corruption is minimal. An interpretation of the statute which prohibited such conduct would be of dubious constitutionality. Therefore, such a joint expenditure is permissible.

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We do believe, however, that each committee should report by letter or otherwise certain information, in addition to the information presently required by statute or regulation, in order for each committee to provide full public disclosure.

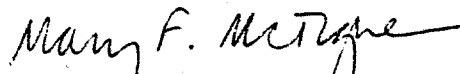
This information would include (1) the names of all political committees participating in a joint expenditure and (2) both the total expenditure paid by all committees as well as the specific percentage paid by each political committee.

If the above information is reported as noted, it is this Office's opinion that the proposed joint expenditure by the three political committees will comply with both the letter of the law, as interpreted by the Supreme Judicial Court, as well as the law's intent for adequate public disclosure of political committee activity.

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

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

Very truly yours,



Mary F. McTigue
Director

cc: Michael Paolini, Treasurer, CTE Weld
Joseph Luca, Treasurer, CTE Cellucci