

THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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August 5, 1994  
AO-94-27

MARY F. McTIGUE  
DIRECTOR

Representative Douglas W. Stoddart  
Goguen, McLaughlin & Stoddart, P.C.  
2 Pleasant Street  
South Natick, MA 01760

Re: Joint fundraising

Dear Representative Stoddart:

This letter is in response to your June 2, 1994 request for an advisory opinion regarding your participation in a joint fundraiser with another representative.

You have stated that you and another state representative are contemplating a fundraiser to raise funds for both of your campaigns. You intend inviting a constitutional officer to speak at the fundraiser. You have indicated that your committees would each pay for 1/2 of the fees incurred in renting the hall by making payments directly to the hall. Your political committees would separately pay your respective share of invitations, mailings, food and drink. You have asked if the fundraiser would be permitted under the campaign finance law.<sup>1</sup> For the reasons which follow, I believe that the joint fundraising activity which you have described does not violate the Massachusetts campaign finance law.

The campaign finance law prohibits a political committee organized on behalf of one candidate for the Legislature from contributing more than \$100 in a calendar year to a political committee organized on behalf of another candidate. M.G.L. c. 55, s. 6, second paragraph. The campaign finance law defines the term "contribution" broadly to include a "transfer of money or anything of value between political committees" given for the purpose of influencing the nomination or election of a candidate. See M.G.L. c. 55, s. 1. In 1988 this office advised a candidate that section 6 prohibits joint fundraising activities since such activities would necessarily involve sharing of expenses, and "there can be no assurance that one committee would not benefit [i.e., receive a "contribution"] from the other committee in an amount exceeding the \$100 permitted by M.G.L. c. 55, s. 6." See AO-88-02.

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<sup>1</sup> You have not asked for advice relating to the receipt of contributions made in connection with the fundraiser. I assume, however, that each contributor's checks will be made out solely to one committee and not to a joint entity, i.e., the funds received will not be intermingled and later allocated between you and the other candidate hosting the event.

Subsequent decisions by the Supreme Judicial Court and the federal courts, as well as recent changes to the campaign finance law, require reconsideration of this conclusion. In particular, in Weld for Governor v. Director of OCPF, 407 Mass. 761 (1990), the Supreme Judicial Court stated that not all transfers between political committees should be considered "contributions" and that candidates for governor and lieutenant governor could make certain joint purchases. The court stated that a transfer is a "contribution" only if it is made for the purpose of influencing the nomination or election of the recipient. 407 Mass. at 771. The court also stated that it was "reluctant . . . to construct an interpretation of a statute so as to ban activity bespeaking no appearance of corruption." 407 Mass. at 770.<sup>2</sup> The Weld decision follows Buckley v. Valeo, 424 U.S. 1 (1976), in which the Supreme Court "observed that the First Amendment rights of speech and association have their 'fullest and most urgent application precisely to the conduct of campaigns for political office'" Weld, 407 Mass. at 769 (citing Buckley and other federal cases).

Although the holding of the Weld case was limited to candidates for governor and lieutenant governor running as a team, this office has concluded that the analysis applied in that case is applicable to other joint expenditures. See AO-92-15, in which the office concluded that three committees could jointly sponsor a non-fundraising reception at a national party convention, provided the primary purpose of each committee's expenditure was to support its candidate.

In addition, campaign finance legislation recently enacted in Massachusetts suggests that section 6 should not be read as a prohibition of joint campaign expenditures. The legislation suggests that such expenditures, if "bona fide," are permissible. See Section 29 of Chapter 43 of the Acts of 1994.<sup>3</sup>

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<sup>2</sup> The court also considered the statute and regulations applicable to federal campaigns. The Federal Election Campaign Act of 1971 (FECA), and the regulations issued pursuant to that statute, provide for joint fundraising by candidate committees. See 14 U.S.C. s. 441a(a)(5)(A), 14 U.S.C. s. 432(e)(3)(A)(ii), and 11 CFR 102.17.

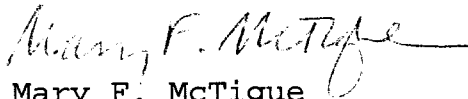
<sup>3</sup> Section 29 of the legislation, which generally addresses attribution of contributions "made through an intermediary or conduit," states that the section does not prohibit "a bona fide joint fund-raising effort" by: "(i) two or more state or local committees of a political party acting on their own behalf; or (ii) a special committee formed by one or more candidates and one or more state and local committees of a political party on their own behalf; or (2)[sic] a fund-raising effort for the benefit of a candidate that is conducted by another candidate acting in his individual capacity." The absence of a reference to bona fide joint fundraising efforts by two candidate committees cannot reasonably be read as a prohibition of such joint fundraising, if the fundraising is consistent with the campaign finance law.

In conclusion, the joint fundraising activity described in your letter does not violate the campaign finance law. None of the described facts suggests that the event would be anything other than a bona fide joint fundraising event. Each committee will pay for 1/2 of the fees incurred in renting the hall by making payments directly to the hall. Each committee will separately pay its respective share of invitations, mailings, food and drink. There is no suggestion under these facts that the fundraiser will be used to avoid the restrictions on contributions between political committees contained in M.G.L. c. 55, s. 6.

Each committee participating in a joint fundraising event must, however, comply with the record keeping and reporting requirements of M.G.L. c. 55, sections 2 and 18, and all other applicable provisions of the campaign finance law. In addition, each committee participating in the joint fundraising activity must disclose, in writing (1) the names of all political committees participating in the joint expenditure, and (2) the total expenditure paid by all committees as well as the specific percentage paid by each political committee.

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

MFM/cp