

THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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MICHAEL J. SULLIVAN  
DIRECTOR

December 20, 1994  
AO-94-42

Daniel B. Winslow, Esq.  
Sherin and Lodgen  
100 Summer Street  
Boston, MA 02110

Re: Receipt of Funds for Recount Legal Services

Dear Mr. Winslow:

This letter is in response to your November 23, 1994 request for an advisory opinion regarding your client's receipt of funds to pay for legal services incurred in connection with a recount petition.

You have been asked to provide legal services to an unofficial winner of a State Representative election in connection with a recount filed by the unsuccessful challenger. The recount will be conducted pursuant to M.G.L. c. 54, s. 135, et seq. Your client did not petition for the recount, but would like to have counsel represent his interests during the recount procedure, in accordance with M.G.L. c. 54, s. 135.

You have asked if money collected by your client to pay for legal services arising from the recount would be considered "contributions" within the meaning of M.G.L. c. 55, s. 1. You have also asked, if funds received for this purpose are not considered "contributions," whether your client would be subject to any dollar limitations on what he may collect from individuals. Your client does not plan to solicit or accept corporate funds to pay for the legal services.

For the reasons which follow, any donation accepted to pay for the described services would be considered a contribution to your client's political committee. As such, it would be subject to the limits and reporting requirements specified in M.G.L. c. 55, the campaign finance law.

Section 1 of chapter 55 defines "contribution," in relevant part, as follows:

. . . a contribution of money or anything of value to an individual [or] candidate . . . for the purpose of

influencing the nomination or election of said individual  
or candidate . . . .

You contend that the word "influence" is not applicable since "the recount procedure is entirely historical to determine the 'intent of the voter' with respect to any contested ballot," and you contend that funds used to pay for legal services in connection with the recount are not funds given for the purpose of "influencing" a nomination or election.

This office has consistently advised, however, that section 1 encompasses contributions given to a candidate's committee after an election, where such contributions are intended to enhance the political future (i.e., future nominations or elections) of the candidate.

M.G.L. c. 55, s. 6 states, in pertinent part, 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 . . . . (emphasis added).

Generally, where funds are given to a legislative candidate to be used for a purpose which is consistent with section 6, a "contribution" within the meaning of c. 55 is deemed to have taken place.<sup>1</sup> Compare AO-91-13 and AO-91-29 (copies enclosed).

In AO-91-13, the office advised that a separate fund could not be established by a candidate for the purpose of raising funds to pay legal expenses which could be paid by the candidate's political committee pursuant to M.G.L. c. 55, s. 6. The expenses at issue, legal fees to pay for defense against alleged violations of law arising solely from the candidate's activities during his campaign, were within the range of expenses permitted by section 6.

In contrast, in AO-91-29, we advised a candidate that his political committee could not solicit and receive funds to pay for the candidate's personal expenses, including (a) support of the candidate's family, (b) legal defense of claims against the

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<sup>1</sup> This opinion is limited to the facts stated in your letter. The receipt of funds given for multiple purposes, including a purpose consistent with section 6, may not give rise to the receipt of a "contribution." For example, a legislator's receipt of funds from the commonwealth to pay expenses incurred in opening a district office, or to pay expenses in connection with other legislative or constituent services, would not be deemed a receipt of a "contribution" even though the legislator's committee could make such expenditures in the absence of the legislator's acceptance of funds provided from the commonwealth. See AO-94-19.


candidate personally, and (c) the elimination of the candidate's personal obligations to private clients. Since the expenditures could not be paid in accordance with M.G.L. c. 55, s. 6 by the committee, a separate mechanism to raise the funds was appropriate.

Expenditures related to the purchase of legal services arising from a recount must be considered political, as opposed to personal, expenses. The regulations issued by this office, which define the permissible scope of expenditures by political committees, state that political committees may make expenditures relating to "expenses which have arisen solely as a result of one's interest in being a candidate for public office, such as expenses involved in proceedings before the State Ballot Law Commission" and "expenses relative to necessary legal action to protect or further the interests of the political committee." See 970 CMR 2.06(a)(3). Numerous expenditures consistent with M.G.L. c. 55, s. 6 may be made by political committees after an election, e.g., repayment of debts incurred prior to the election, or satisfaction of debts incurred in closing a campaign office. Similarly, contributions made in connection with the expenditures can be made after the relevant election, but must be reported by the committee.

Therefore, if a candidate raises funds for the purpose of purchasing legal services arising from a recount, it is covered by M.G.L. c. 55 and must be disclosed as such on the candidate's campaign finance reports.

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.

Sincerely,

  
Michael J. Sullivan  
Director

MJS/cp  
Enclosures