



THE COMMONWEALTH OF MASSACHUSETTS
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MICHAEL J. SULLIVAN
DIRECTOR

June 24, 1996

AO-96-20

Senator Richard Moore
P.O. Box 496
Uxbridge, MA 01596

Re: Joint fundraising

Dear Senator Moore:

This letter is in response to your April 26, 1996 request for an advisory opinion regarding your participation in a joint fundraiser with Congressman Richard Neal.

You have stated that you and Congressman Neal would like to sponsor a chicken barbecue fundraiser on Sunday, July 28, 1996. The event will be organized by your respective campaign committees, and you expect to charge ten dollars per person to cover the costs of the meal, band, and printing. You do not anticipate raising a large amount for your campaigns, and you have described the event as primarily an opportunity to involve and meet a number of area residents. You expect to share the expenses and revenues equally.

Based upon your letter and additional information provided to OCPF staff, I understand that your committee will share all expenses and receipts with Congressman Neal's committee on a 50-50 basis. In addition, I understand that Congressman Neal's committee will serve as the "fundraising representative"¹ (whose responsibilities are similar to those of the "joint fundraising agent" described in OCPF's regulations) responsible for filing reports with the FEC in accordance with federal law.

Discussion

This office is in the process of revising its regulations to define the reporting, recordkeeping and other obligations of candidates and political committees participating in joint fundraising activities. See proposed 970 CMR 2.12.² I have enclosed a copy of the relevant draft regulations, for reference.

¹ In this opinion, the Neal Committee, to the extent it serves in that capacity, is referred to as "the fundraising representative."

² The draft regulations, which have been revised based on input received at two public hearings and which will be issued shortly, are referred to in this opinion by citation to the expected final regulations.

The regulations govern joint fundraising between or among Massachusetts candidates, candidate committees and political party committees. The regulations do not address the situation described in your letter, i.e., the procedure to be used when a political committee organized to support a state legislative candidate participates in a joint fundraiser with a committee which is within the jurisdiction of the Federal Election Commission (FEC). Similarly, the advisory opinions previously issued by this office which relate to joint fundraising do not answer your questions.

Although your committee is responsible for complying with Massachusetts law and applicable OCPF regulations, Congressman Neal's committee is organized under federal law and is therefore subject to federal regulations, in particular, 11 CFR 102.17 (a copy is enclosed, for information). Unlike 970 CMR 2.12, federal regulations not only regulate joint fundraising activities involving federal candidates but also regulate such activities between federal candidates and state candidate committees (defined in the federal regulations as "unregistered organizations").

Your committee's fundamental responsibility is to comply with the recordkeeping and reporting requirements of M.G.L. c. 55, sections 2, 5 and 18, to ensure complete and accurate disclosure of its campaign finance activity. Your committee must also comply with other applicable provisions of the campaign finance law, even if it is participating in a joint fundraising activity with a federal committee. These provisions, as applied to your committee, are not preempted by FEC regulations. Federal election law preempts state law only with respect to federal candidates. Massachusetts law and applicable OCPF regulations, however, apply to your committee.

As an initial matter, I note that both state and federal regulations specify the extent to which your committee may advance funds to meet initial expenses of the event. Since the allocation formula you are using is 50-50, and each participating committee will pay 1/2 of start-up expenses, the allocation formula complies with OCPF regulations. See 970 CMR 2.12(2)(b)1. See also 11 CFR 102.17(b)(3), which states that, with certain exceptions specified in the regulation, "the amount of funds advanced by each participant for fundraising costs shall be in proportion to the allocation formula agreed upon" by the participating committees.

You have asked several questions, each of which I will answer separately.

1. If someone pays for their ticket(s) by check, to whom would the check be made out? Should we ask such donors to provide two checks, one for half the amount made payable to the Neal Committee and one payable to the Moore committee or should we split the checks evenly and only record as donors, those deposited with the respective committees?

If you wish to minimize the administrative tasks involved in participating in a joint fund raising event, your committee should ask contributors donating by check to make one check payable to the fundraising representative. A contributor may, however, designate a contribution for a particular participant or participants and checks may be made payable to either participating committee. In addition, contributors may, if they choose, provide two checks, each payable to a different participant.

In accordance with our understanding of FEC regulations, all contributions received by your committee in connection with the joint fundraising event should be signed over to the fundraising representative. As fundraising representative, the Neal committee is responsible for paying fundraising costs from gross proceeds and from funds advanced by participants, and is also responsible for disbursing net proceeds to each participant. See 11 CFR 102.17(b)(2). The fundraising representative must establish a separate, segregated account to receive contributions prior to receipt of any contributions. See 11 CFR 102.17(c)(3). The establishment of this account is consistent with OCPF regulations. See 970 CMR 2.12(1)(e).

OCPF regulations state that where contributions are allocated on a "pro rata" basis contributors must be informed prior to making a contribution that the contribution is to each participating committee, in equal shares. 970 CMR 2.12(2)(c)1a. Therefore, contributors should be advised that unless a contributor explicitly indicates, in writing, that a contribution should be allocated otherwise, that half of the gross amount of the contributor's contribution will be attributed to your committee, and the other half of the gross amount of the contribution will be attributed to the Neal committee. This requirement is also consistent with federal regulations. See 11 CFR 102.17(c)(2), regarding the "fundraising notice" which must be included in solicitations. You should be aware that OCPF regulations require the proceeds of a joint fundraising event to be distributed to participating committees within 30 days of the event.

2. Should the bills for catering, entertainment and printing be billed to each committee in half the amount of the total so that the allocation of expenses can be made?

No. The fundraising representative is responsible for paying, from the separate segregated account, all costs incurred in connection with a joint fundraising event. See 11 CFR 102.17(b)(2) and 970 CMR 2.12(1)(d). Therefore, all bills should be delivered, for payment, to the fundraising representative. Given your agreement with the Neal committee that all expenses should be shared on a 50-50 basis, the fundraising representative is responsible for paying expenses on a 50-50 basis.

3. Should we report (or have in our committee records) the complete list of donors even though we are splitting the revenues, and should our donors be listed as donating \$5.00

to each committee (half the price of the ticket) even though the actual donation for the event was \$10.00?

You have agreed to share expenses and revenues equally. Therefore, if each ticket costs \$10.00, each person buying a ticket would be considered, absent instructions to the contrary, to have made a contribution of \$5.00 to your committee.

The federal regulations define the fundraising representative's recordkeeping and reporting requirements. See 11 CFR 102.17(c)(4) and (8) and 11 CFR 104.3. Your committee should obtain copies of all records kept by the fundraising representative and also copies of all reports filed by the representative with the FEC. The records must be kept for six years from the date of the relevant election. The reports filed by the fundraising representative should be copied, attached to the campaign finance reports (Form CPF 102ND) filed for the reporting period during which the distribution of proceeds is made. Alternatively, you may, if you wish, file the copies of the report with this office at the same time the report is filed with the FEC.

In addition to providing this office with copies of the report filed with the FEC, you should also report the following information to this office (to the extent the information is not included in the report filed with the FEC): (1) the date of the event; (2) the "start-up" amount paid to the fundraising representative by your committee; (3) the name and address of each contributor, regardless of the amount contributed; (4) the dates of each contribution; (5) the amount contributed by each contributor; (6) the attribution method used and the amount attributable to each sponsoring committee; (7) the occupation and employer of each contributor making a contribution if your committee would receive, in connection with the event, \$200 or more; (8) a listing of all in-kind contributions received by the fundraising representative, reflecting the date received, the contributor, the residential address of the contributor, the occupation and employer of the contributor (if the value of the contribution, together with any other contribution received from the contributor, would result in your committee receiving \$200 or more), and a description of the contribution and its total value); (9) the full name and address of each person to whom an expenditure is made by the fundraising representative, the amount, date and purpose of each expenditure, and a total of all such expenditures, whether from funds received from the committees or from proceeds of the event; (9) the date proceeds are distributed; and (10) the share of proceeds received by your committee (which figure will also appear as a receipt in your committee's campaign finance report). See 970 CMR 2.12(3).

4. Are there any other issues which need to be considered provided we both agree to observe the regulations which apply to the other such as not receiving corporate contributions?

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Even though the report reflecting all contributions and expenditures in connection with the event is to be prepared by the fundraising representative, your committee has certain responsibilities in connection with the report that are imposed by Massachusetts law. In particular, your committee must review and verify the accuracy of the report. In addition, to the extent your committee receives any corporate contributions, or any contributions which are otherwise not consistent with M.G.L. c. 55, such contributions must be refunded to the extent they are not consistent with Massachusetts law. See M.G.L. c. 55, ss. 7 and 8; 970 CMR 2.12(3)(e)-(g).

Although we have reviewed this opinion with the FEC's legal office and believe it accurately reflects federal law, the guidance provided in 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. We understand that Congressman Neal's committee has contacted the FEC for guidance.

We recognize the difficulty involved in complying with both federal and state campaign finance laws and appreciate your effort in contacting this office for guidance. Please do not hesitate to contact us again should you have additional questions about this or any other campaign finance matter.

Sincerely,



Michael J. Sullivan
Director

MJS/cp
Enclosures