



OCPF Reports

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Commonwealth of Massachusetts

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From the Director

Start of a cycle

March 31, 2001. It's an important date. According to the Clean Elections Law, that's the start of the 2002 election cycle for statewide, legislative, and governor's council candidates. The new law provides for public financing for candidates for the above offices, provided that a candidate chooses to abide by the parameters of the new law.

Some candidates have publicly made it clear that they plan to participate in the program. Others are equally certain that they will not take part. But if the phone calls that I have been receiving are any indication, it would seem that most candidates are simply uncertain right now and are waiting to make a decision. Complicating the decision making process is the speculation as to what changes to the law may be made.

During the last few months, the office has been in accelerated education mode, readying for implementation. We have held seven seminars about the law throughout the state, answered countless phone calls and met with many concerned candidates, and posted our Clean Election Law explainer for each office on our web site. The explainers are in two versions, one for participants and one for nonparticipants. All of this is part of our effort to help candidates understand the law and make an informed decision about whether to participate or not.

Regardless of whether a candidate plans to participate or not, he or she must be mindful of their campaign activity. For example, those who wish to participate must be careful to raise

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Clean Elections program gets under way for 2002

The Clean Elections law officially took effect on Saturday, March 31, more than two years after it was approved by voters in the 1998 state election.

The Clean Elections law provides public funds to candidates who agree to observe statutory spending limits in the entire election cycle. The limits range from \$3.2 million for gubernatorial candidates to \$32,400 for those running for state representative.

March 31 was the start of the 2002 election cycle for the purposes of the Clean Elections law. The cycle runs until 30 days after the general election, or Dec. 5, 2002.

Candidates were under no obligation to declare any intention to take part in the program by March 31. However, as of that date, any candidate interested in participating in the program later in the cycle

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NOTICE

As this issue of OCPF Reports was going to press, a bill that would make several technical changes in the Clean Elections law was under consideration by the Legislature. The measure, House 2688, had not been taken up for action as of March 31.

Passage of the bill would change some of the details of the Clean Elections program contained in this issue. For the latest on the program, contact OCPF or check our web site at www.state.ma.us/ocpf. Information on House 2688 may be obtained on the General Court's web site at <http://www.state.ma.us/legis/legis.htm>.

Statewide candidates' reports now available on OCPF's web site

Disclosure reports filed by candidates for statewide office in Massachusetts are now available on the Internet.

Images of reports filed on behalf of incumbents and announced candidates for all six constitutional offices -- governor, lieutenant governor, attorney general, treasurer, secretary, and auditor -- have been posted on OCPF Online, the office's web site.

OCPF's web site may be accessed at www.state.ma.us/ocpf. The direct link to the statewide images main page is [http://www.state.ma.us/ocpf/images/](http://www.state.ma.us/ocpf/images/swimages.htm)

[swimages.htm](http://www.state.ma.us/ocpf/images/swimages.htm).

The posted reports begin with the January 2001 filings. Reports covering any previous periods are available in hard copy at OCPF.

Statewide candidates are in the depository system, under which reports of receipts and expenditures are filed monthly on the fifth of each month, and, in the second half of an election year, twice a month. Reports will be posted within a few days of receipt.

OCPF Online already has images of

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Clean Elections: Cycle starts

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should observe certain provisions of the law. These provisions include:

- A prohibition against using funds raised in another election cycle. For example, a candidate with \$20,000 on hand March 30 would not be able to spend any of that money as of the next day without jeopardizing his eligibility for Clean Elections. The funds may be left in a bank account but may be used to pay liabilities incurred before March 31, including the 2000 election (for example, past loans or bills incurred in March).
- The establishment of a new bank account for all receipts and expenditures during the election cycle.
- A cap on campaign contributions of \$100 per individual per election cycle. An individual giving \$100 to a participating Clean Elections candidate would not be able to give more to that candidate until the day after the end of the election cycle, Dec. 6, 2002.
- A pledge to observe the statutory expenditure limits, which vary according to the office sought and may be raised or lowered depending on a candidate's opposition.

OCPF advises any candidate who is considering participating to establish a separate account and follow the guidelines above while deliberating, so as to keep open the option of participating. Any candidate who applies for certification as a participant will have to demonstrate that he has followed the program's guidelines since March 31.

Qualifying contributions

A candidate must file a formal declaration of an intention to participate in Clean Elections before raising the qualifying contributions necessary to become eligible for public funds.

Qualifying contributions must come from registered voters in a candidate's home district or, in the case of a statewide candidate, voters in the Commonwealth. These contributions must be at least \$5 and no more than \$100 and be given during the qualifying period and must be accompanied by a form signed by the contributor. The qualifying period for statewide candidates begins Aug. 1, 2001, and ends on June 4, 2002; the qualifying period for legislative and Governor's Council candidates starts Jan. 1, 2002, and ends May 28, 2002.

The number of qualifying contributions required for certification ranges from 6,000 for gubernatorial candidates to 200 for those running for the House.

Certified candidates receive half of the allotment of public funds for the primary after being certified. A second identical amount is released, after the deadline for filing nomination papers, to those who are opposed in the primary. General election funds are released after the primary.

Nonparticipants

Candidates who decide not to participate in Clean Elections may still receive contributions from individuals up to \$500 per year and their aggregate expenditures are not limited. If a nonparticipant is opposed by a participant, the nonparticipant must report any expenditures that exceed the Clean Elections law's limit. Such excess expenditures would trigger the release of additional public funds to the participant.

See Page 3 for definitions of some of the key terms used above. Further information on the Clean Elections program, including applicable limits and the amount of public funds that may be distributed, is available from OCPF's web site at www.state.ma.us/ocpf.

Online: Statewide reports added

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reports filed by all candidates for the Legislature in 2000, as well as reports from state ballot question committees for the 2000 election.

OCPF Director Michael Sullivan called the posting of statewide reports a significant step toward greater disclosure of

activity. The response to the posting of legislative and ballot question reports last year was very positive, Sullivan said.

The posting of images of the reports in ".pdf" format is not the final step in web disclosure. Starting next year, candidate reports will be filed electronically as well as on paper, with information filed to be made available on the Web that same day.

From the Director

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money in increments of no more than \$100 from an individual or political committee during an election cycle, not per year. They must also limit the total amount of public funds that they can raise in private contributions.

Nonparticipants, on the other hand, should know that any expenditure that they make from March 31 forward will count toward their relevant expenditure limit. Should their expenditure total exceed the expenditure limit for that office during either the primary or general election period, matching public funds would be triggered to any participating opponent for that race. Please note that these are simplified examples; we strongly advise that you review the explainers on our web site or call our office for further information.

The Clean Elections Law is a complicated statute, with various nuances and scenarios. As always, we welcome your questions and want to work with you to help you understand and comply with the new law.

* * *

In office news, there have been four additions to the OCPF staff in recent months. Barbara Petersen is our new staff attorney. She comes to us from New Jersey, where she worked in the trial and appellate divisions of the Bergen County Prosecutor's Office. Two new report analysts have joined the staff. Susan Dempsey previously worked for the Division of Employment and Training of the Commonwealth as a research analyst. Hugh Huleatt has worked in finance in several companies in the private sector. Robin Turner joins us a part-time administrative assistant while she finishes work toward her Masters in Public Administration degree at Suffolk University.

**Mike Sullivan
Director**

Recent Cases and Rulings

OCPF audits all campaign finance reports and reviews all complaints alleging violations of the campaign finance law. These audits and reviews may result in enforcement actions or rulings such as public resolution letters, disposition agreements or referral to the Office of the Attorney General for further action.

A public resolution letter may be issued in instances where the office found "no reason to believe" a violation occurred; where "no further action" or investigation is warranted; or where a subject did not comply with the law but, in OCPF's view, the case may be settled in an informal fashion with an educational letter or a requirement that some corrective action be taken. It is important to note that a public resolution letter does not necessarily imply any wrongdoing on the part of a subject and does not require agreement by a subject.

A disposition agreement is a voluntary written agreement entered into between the subject of a review and OCPF, in which the subject agrees to take certain specific actions.

OCPF does not comment on any matter under review, nor does the office confirm or deny that it

has received a specific complaint. The identity of any complainant is kept confidential. Public resolution letters and disposition agreements are matters of public record once cases are concluded.

Public Resolution Letters

■00-78: **Mendon-Upton Regional School District.** No further action (use of public resources for political purposes); 12/17/00. Distribution of letter supporting a ballot question that was signed by a superintendent of schools did not involve improper use of public resources because the letter was paid for by a parent teacher organization (PTO). Use of district letterhead and town seal created confusion as to the funding of the letter; use of the seal is not advised. PTO also reported the expenditure to the town clerk.

■00-79: **Stephen P. Crosby, Secretary of Administration and Finance, Commonwealth of Massachusetts, Boston.** Did not

comply (use of public resources for political purposes); 12/28/00. An appointed public employee used public resources to distribute information supporting a ballot question to an assortment of business and municipal leaders, including a copy of a recent speech and a letter urging support of the question. Crosby paid \$433 to the Commonwealth as reimbursement for stationery, postage, staff time and overhead used to send the letters.

■00-88: **Evelyn Chesky, Holyoke.** Did not comply (solicitation or receipt of political contributions in building occupied for state purposes); 1/26/01. Candidate did not comply with section 14 when she solicited legislators in the State House for contributions to reduce campaign debt. As a result of OCPF's review, she agreed to make a charitable contribution from her committee of \$250.

Advisories/Guidance

OCPF issues written advisory opinions on prospective activities. Each opinion summarized below also notes the OCPF file number and the requesting party. Copies of any advisory opinion are available from OCPF and online at www.state.ma.us/ocpf. The following advisory opinions were issued from Nov. 17, 2000, through Feb. 15, 2001.

■00-19: The campaign finance law would not prohibit a board of selectmen from endorsing a political candidate by taking a

vote at a board meeting and then notifying candidate of the endorsement in the ordinary course of business. (Brown).

■01-01: This advisory opinion request was submitted by an organization comprised of two separate non-profit corporations having segregated accounts. One non-profit was a 501(c)(3) corporation ("an education fund") involved in voter registration, education and turnout work. The other non-profit was a 501(c)(4)

organization, described as an "action fund," that made expenditures to support or oppose candidates. The opinion noted that the 501(c)(3) corporation could receive public funds to support its work. The 501(c)(4) "action fund" could make expenditures to support or oppose candidates, political parties or ballot questions, in accordance with IB-88-01. (Neighbor to Neighbor).

Clean Elections definitions to remember

◆ **Allowable contribution:** A monetary contribution to a participant from an individual or political committee that does not exceed a total of \$100 in an election cycle. The private money a candidate raises is made up of allowable contributions.

◆ **Declaration of Intent:** Form CPF CE 1, in which a candidate agrees to abide by the requirements set forth for a Clean Elections participant for the entire election cycle. This form may be filed with OCPF anytime from the start of the election cycle through the day nomination papers are due in 2002, but must be filed before the candidate collects any qualifying contributions.

◆ **Election cycle:** The period during which the Clean Elections contribution and spending limits apply. The election cycle for the 2002 election started on March 31, 2001, and runs through 30 days after the general election, or Dec. 5, 2002.

◆ **Qualifying contributions:** A type of allowable contribution that is made during the Qualifying Period and is at least \$5 and no more than \$100. A qualifying contribution must be made by a registered voter in the district in which a candidate is seeking election. A candidate must obtain a certain number of qualifying contributions, which varies by the office sought, in order to receive public funds.

◆ **Qualifying Period:** The period in which qualifying contributions may be raised. For candidates for statewide office, this period starts on Aug. 1, 2001, and runs through June 4, 2002. For legislative and Governor's Council candidates, the period starts on Jan. 1, 2002, and runs through May 28, 2002.

◆ **Excess expenditure report:** A non-participant who is opposed by a participant must notify OCPF if he exceeds the Clean Elections expenditure limit for that office by filing this report. The participant is not required to limit his spending, but his participating opponent is eligible to receive additional public funds.

Three OCPF bills are filed for 2001-2002 legislative session

The Legislature is considering three bills filed by OCPF for the current session.

The bills were refiled from the last session, when they did not win final approval.

One bill, House 2685, allows communities to distribute information to voters concerning upcoming ballot questions.

The second, House 2684, concerns money order contributions by local party committees.

The third bill, House 2688, makes technical changes in the Clean Elections Law, M.G.L. Chapter 55A.

Voter information

The Supreme Judicial Court ruled in *Anderson v. City of Boston* in 1978 that public resources may not be used for political campaign purposes. Communities are barred from distributing at public expense any information to voters once a question, such as a Proposition 2 ½ override or debt exclusion, is placed on the ballot.

House 2685, which has received the support of the Massachusetts city and town clerks' associations, would allow communities to distribute voters' guides containing a neutral description of a question, its impact and brief pro- and con-statements. The measure is a local option bill, meaning a community may choose whether to implement such a system.

Local party committees

House 2684 would allow local party

committees that do not have checking accounts to still make political contributions of over \$50 in a calendar year. The law now prohibits contributions to candidates or committees that exceed that amount unless they are by check or credit card.

This requirement poses a problem for some ward, town and city committees that do not have checking accounts and therefore may not legally make contributions of more than \$50 to candidates and PACs.

Clean Elections Law

House 2688 proposes several amendments to the law designed to eliminate possible wrinkles in the administration of the law. No policy matters, such as contribution and expenditure limits and the aggregate amount of public funds a participant may receive, are addressed in the measure.

The bill was co-sponsored by more than 40 legislators and received support at a hearing of the Joint Committee on Election Laws on Feb. 26. The committee had not acted on the bill by March 31.

The other two OCPF bills, House 2684 and 2685, were scheduled for a hearing by the committee on April 9.

Further information about any of the bills is available from OCPF. Information on these and all bills may be obtained at www.state.ma.us/legis/legis.htm.

Ask OCPF

Q. How does the Clean Elections Law affect political action committees?

A. Because they do not participate in the Clean Elections program, PACs are not eligible to receive public funds and are not required to limit expenditures the way participants are. PACs may contribute to participants, but may only give up to \$100 per candidate for the entire election cycle.

PACs may also make in-kind contributions of up to \$500 per candidate in the election cycle, over and above a monetary contribution. A candidate who is not a participant in the program may receive PAC contributions under the guidelines of campaign finance law, which allow PAC contributions of up to \$500 per candidate in a calendar year.

Q. How much may I put into my own campaign if I am a Clean Elections participant?

A. Contributions to a participant from any individual -- even the candidate himself -- are limited to \$100 in an election cycle. (A nonparticipant may still contribute an unlimited amount to his own campaign.) A candidate may use personal funds to set up a Clean Elections participant election account, but only in an amount that does not exceed \$100. A loan is considered a contribution, so the \$100 limit applies whether the money is given or loaned.

Ask OCPF is a regular feature in which we answer frequently asked questions. Contact OCPF to suggest a question for a future edition.

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