



THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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MICHAEL J. SULLIVAN  
DIRECTOR

January 14, 1997  
AO-97-02

Thomas R. Kiley, Esq.  
Cosgrove, Eisenberg and Kiley, P.C.  
One International Place - Suite 1820  
Boston, MA 02110-2600

Re: Expenditure of campaign funds to pay for state recount  
litigation in connection with federal election

Dear Mr. Kiley:

This letter is in response to your December 26, 1996  
request for an advisory opinion.

Question:

May the state political committee organized on behalf of a  
candidate who seeks federal office pay legal fees incurred in a  
civil action seeking a declaration that the candidate won a  
federal election?

Answer:

Yes, if such payment is consistent with federal law.

Facts:

You state that you are the treasurer of the committee  
organized under G.L. c. 55, s. 5 on behalf of former District  
Attorney William F. Delahunt. You are also the treasurer of  
the Delahunt for Congress Committee. Your question concerns  
the obligations incurred in connection with the successful  
state recount litigation conducted this past fall on behalf of  
Congressman Delahunt during his campaign for federal office.  
You wish to pay those obligations from state rather than  
federal campaign funds.

In accordance with informal guidance received from staff  
of the Federal Election Commission (FEC) the Delahunt for  
Congress Committee established a "recount account," separate  
from the candidate's existing state and federal campaign  
accounts, to receive funds to pay for recount expenses. Funds  
raised for such purposes are not considered "contributions"  
under federal law, but are subject to certain restrictions  
specified in the federal regulations. See 11 CFR 100.7(b)(20).

When the recount proceedings were over, all campaign related contributions and expenditures were once again made through the candidate's federal account. Invoices have now been received for legal services incurred during the recount which were not submitted during the recount period. There are currently insufficient funds in the federal campaign account or recount account to pay for these services.

You have contacted staff of the Federal Election Commission with regard to relevant federal regulations, and you now have asked if funds in the candidate's state account may be used consistent with state law to pay these recount-related bills.

Discussion:

The campaign finance law states that political committees organized on behalf of candidates for non-constitutional offices may make expenditures "for the enhancement of the political future of the candidate . . . provided however, that the director shall establish reasonable rules and regulations concerning such expenditures. . . ." (emphasis added). See M.G.L. c. 55, s. 6.

The office has promulgated regulations at 970 CMR 2.06(6)3 which authorize expenditures for various legal expenses. In particular, the regulations authorize (a) expenses which have arisen solely as a result of one's interest in being a candidate for public office such as proceedings before the state ballot law commission, (b) expenses where liability stems solely from a person's legal performance of duties as a candidate, and (c) expenses relative to necessary legal action to protect or further the interests of the political committee. See 970 CMR 2.06(6)3 a. - c. In addition, 970 CMR 2.06(3) authorizes political committees to make expenditures "which are similar to [expenditures authorized by 970 CMR (6)3. a. - c.] and not inconsistent with 970 CMR 2.00, M.G.L. c. 55 or any other law . . . ."

We recently advised a city councilor's political committee that it could pay legal expenses incurred in connection with litigation regarding the certification of the candidate as the vice chair of the Worcester City Council. In the litigation, the candidate contended that she should have been certified as vice chair under the city's charter since she was elected city councilor and received the highest number of votes as mayor (other than the incumbent mayor). The votes at issue were cast as write-in votes and did not affect her election to the city council, but only whether she should be certified as vice chair. We concluded that expenditures for the litigation complied with the law's requirement that expenditures must enhance a candidate's political future. In applying the office's regulations, we noted that "there is little else that is as fundamental to your interest as a candidate and an office holder than your election to the office or position to which you believe you are entitled." See AO-96-18.

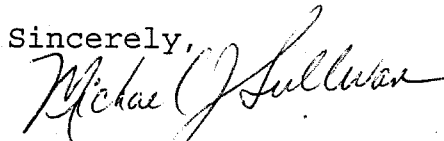
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Similarly, assuming that the expenditure of funds to pay for Congressman Delahunt's recount related costs would be consistent with federal law, it is this office's opinion that funds in the candidate's state committee may be used for that purpose.

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,

A handwritten signature in cursive script that reads "Michael J. Sullivan". The signature is written in dark ink and is positioned above the typed name.

Michael J. Sullivan  
Director

MJS/cp