



THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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MICHAEL J. SULLIVAN  
DIRECTOR

February 29, 1996  
AO-96-07

Senator W. Paul White  
43 Boutwell Street  
Dorchester, MA 02122

Re: Contributions from Legislative or Executive Agents

Dear Senator White:

This letter is in response to your January 22, 1996 request for an advisory opinion regarding the application of M.G.L. c. 55, s. 7A(b), which limits contributions by legislative or executive agents to candidates and political committees (other than ballot question committees) to \$200 in any one calendar year.

You have stated that your political committee received a \$500 contribution on June 7, 1995 from a person who was not a registered legislative agent when the contribution was made. It has come to your attention that on June 23, 1995, after making the contribution, the contributor registered as a legislative agent.

You have asked for an application of the statute to these circumstances.

Discussion.

Chapter 43 of the Acts of 1994, effective January 1, 1995 (the Act), made significant changes to M.G.L. c. 55, the campaign finance law. In particular, the Act added section 7A(b) to chapter 55, which provides as follows:

Notwithstanding any other provision of this chapter, the aggregate of all contributions by a legislative or executive agent for the benefit of any one candidate and such candidate's committee shall not exceed the sum of two hundred dollars in any one calendar year. Notwithstanding any other provision of this chapter, the aggregate of all contributions by a legislative or executive agent to any other political committee, other than a ballot question committee, shall not exceed the sum of two hundred dollars in any one calendar year.

To be responsive to your concern regarding the application of this section, we should consider three questions: (1) when does a person become subject to the \$200 limitation, i.e., is a person who acts as a legislative agent prior to registering in accordance with M.G.L. c. 3 subject to the limitation?; (2) when a person makes a contribution and then, during the same calendar year becomes a legislative agent, by registering or by taking the actions specified in section 39 of chapter 3, do contributions made by that person before becoming a legislative agent count against the \$200 limitation?; and (3) what should be done by a candidate who receives a contribution exceeding the \$200 limitation?

**1. When does a person become subject to the \$200 limitation in section 7A(b)?**

A person becomes a legislative or executive agent either by registering as such with the Secretary of the Commonwealth, in accordance with M.G.L. c. 3, sections 40 and 41, or by taking the actions specified in section 39.

M.G.L. c. 55, s. 7A(b) applies only to contributions made to candidates or political committees other than ballot question committees by a person who is a "legislative or executive agent." Other persons are subject to the \$500 limitation in section 7A(a) rather than the \$200 limitation in 7A(b).

The terms "legislative agent" and "executive agent" are defined in M.G.L. c. 3, s. 39 and made applicable to the campaign finance law by M.G.L. c. 55, s. 1. Section 39 provides that a person is a legislative or executive agent when the person, for compensation and "as part of his regular and usual employment and not simply incidental thereto," "does any act to promote, oppose or influence legislation, . . ." or "to influence the decision of any employee of the executive branch or an authority . . ." Therefore, section 39 does not require a person to be registered prior to meeting the definition of, and subject to the limitations on, a legislative or executive agent.

**2. When a person makes a contribution and then, during the same calendar year becomes a legislative agent, by registering or by acting in accordance with section 39 of chapter 3, do contributions previously made by that person count against the \$200 limitation?**

No. Contributions made prior to registering or acting as a legislative or executive agent are not subject to the \$200 limitation.

For example, if a person contributes \$300 to a candidate or PAC prior to registering or acting in accordance with section 39 of chapter 3 as a legislative or executive agent, that person may contribute up to an additional \$200 to that candidate or PAC after becoming a legislative or executive agent. Such a person contributing \$400 to a candidate or PAC

Senator W. Paul White  
February 29, 1996  
Page 3

prior to becoming a legislative or executive agent, however, may only contribute an additional \$100 to that candidate or PAC after becoming a legislative or executive agent, since \$500 is the maximum any individual may contribute.

**3. What should be done by a candidate who receives a contribution from a legislative or executive agent which exceeds the \$200 limitation?**

OCPF regulations require treasurers and candidates to exercise their best efforts to ensure that the receipt of a contribution complies with law. Contributions determined to be inconsistent with s. 7A(b) must be returned or refunded as soon as possible after receipt. See 970 CMR 1.04(8).

Based on the information in your letter, we assume that the contributor you have referred to was not registered or acting as a legislative or executive agent at the time the \$500 contribution was made. Therefore, the entire contribution may be kept by the candidate.

If the contributor was, by virtue of his actions, a legislative agent when the contribution was made, \$300 of the contribution must be returned. If you are unsure of when the contributor became a legislative agent as defined in section 39, you should contact the contributor to determine the contributor's status at the time the contribution was made.

This opinion is solely in the context of M.G.L. c. 55 and is based only on the representations made in your letter and the assumptions stated herein. Should you have additional questions, please do not hesitate to contact this office.

Sincerely,



Michael J. Sullivan  
Director

MJS/cp

cc: Mary Schwind, Acting Supervisor of Public Records