



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

ONE ASHBURTON PLACE, ROOM [REDACTED] 411
BOSTON, MASSACHUSETTS 02108
(617) 727-8352
(800) 462-OCPF

MARY F. MCTIGUE
DIRECTOR

May 15, 1991
AO-91-08

Robert J. Garvey, Sheriff
Hampshire County Sheriff's Office
P.O. Box 7000
Northampton, MA 01061-7000

Dear Mr. Garvey:

This letter is in response to your request for an advisory opinion.

You have stated that you serve in the capacity of Sheriff of Hampshire County. In early 1989 the State Ethics Commission (the "Commission") commenced an investigation surrounding a number of complaints brought to them by a former employee. The investigation took approximately 14 months. At the conclusion of the investigation, the Commission dismissed all but two complaints. On those two, they issued an advisory opinion.

You have further stated that all of these charges and the entire investigation were based on the discharge of your duties as a public official.

You have inquired whether the legal expenses which you have incurred as a result of the investigation may be paid by your political committee.

Section 6 of M.G.L. c.55 states, in pertinent part:

[A] political committee, duly organized, 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 . . .

The regulations promulgated pursuant to section 6 of M.G.L. c.55 prohibit the payment of expenses relative to civil suits or administrative proceedings with certain exceptions. Specifically, 970 C.M.R. 2.06(6)(a)(3)(c) excepts "expenses relative to necessary legal action to protect or further the interests of the political committee."

This Office has previously permitted a candidate's committee to make expenditures in connection with certain civil actions (See AO-85-16 and AO-90-21). These situations involved expenditures by a candidate's committee in connection with defamation actions by or against a candidate arising out of a campaign. In contrast, the Commission's investigation in this case arises out of your performance of your responsibilities as a public official. However, the question posed by the regulations is whether the expenses of the administrative proceeding are "necessary" and designed "to protect or further the interests of the political committee."

Although the investigation focused on your governmental responsibilities, such an investigation affects an elected official in many ways beyond the scope of his or her performance in a governmental position. Clearly, the fundamental issues of integrity and reputation are immediately called into question by a Commission investigation. The elected official usually must respond to such issues in the public forum while also responding to the specific requests of the Commission. A successful public response to the investigation, or equally an unsuccessful response, would certainly have a significant impact on the election campaign of a candidate. In addition, a candidate is not in a proactive position seeking such an investigation but responding to a Commission initiated inquiry. For the above reasons, a candidate's political committee may conclude that expenses connected with such an investigation are "necessary" or designed "to protect or further the interests of the political committee."

Like a defamation action, a Commission investigation raises questions regarding the candidate's reputation and respect in the community, matters which this Office has previously concluded are "central to the issue of one's political future" (See AO-85-16). Therefore, a Commission investigation is inextricably linked as a means to protect or further the interests of the political committee. I note that such a connection is much less likely to exist in other types of civil suits or administrative hearings such as a civil action for breach of contract relative to the purchase of the candidate's residence, an action in tort for negligence arising out of an automobile accident or an IRS investigation. While any publicity from such actions may, of course, affect the candidate's future, the actions are intrinsically personal. They are also actions that any private citizen might face.

This opinion is limited to expenses relative to a Commission investigation and adjudicatory proceeding for a non-constitutional candidate. M.G.L. Chapter 55 provides for different standards or tests which must be met for any expenditure. I would also note that the payment of any fine

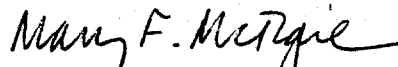
incurred as a result of a Commission proceeding would not be a permissible expense. While the committee has an interest in defending a candidate's good name, it has no interest in paying the candidate's fines (See AO-82-24). Finally, this opinion is limited to expenses for an administrative proceeding before the Commission and does not address expenses for criminal prosecution under the Conflict of Interest law, M.G.L. c. 268A.

For the reasons set forth above, it is the opinion of this Office that expenditures by your political committee to reimburse you for legal expenses arising from the investigation described above would be permitted under section 6 of M.G.L. c.55 and the pertinent regulations.

This opinion is based solely on the representations made in your letter and has been rendered solely in the context of M.G.L. c.55.

Please do not hesitate to contact the Office if you have any additional questions.

Very truly yours,



Mary F. McTigue
Director

MFM/wp