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Office of Campaign and Political Finance

One Ashburton Place, Room 411

Boston, MA 02108

Advisory Opinion

August 22, 2005

AO-05-12

David W. Mason, Finance Director
The Committee to Elect Pat Jehlen
67 Dane Street
Somerville, MA 02143

Re: Campaign Expenditures and Contributions

Dear Mr. Mason:

This letter is in response to your letters dated July 30, 2005, both of which requested an advisory opinion.

QUESTION I

May the committee accept checks issued through contributors' banks' online bill pay services?

ANSWER

Yes. Checks issued through banks' online bill pay services to make campaign contributions would not violate the campaign finance law and regulations.

DISCUSSION

It is our understanding that online bill pay services allow customers to enter payments for bills, contributions, and other personal transactions through the website of their bank. The account holder may designate the payee and the amount. That amount is then debited directly from the account holder's account, a paper check is issued and sent automatically via mail to the payee. In some circumstances, banks contract with third-party companies to issue these checks on the bank's behalf.

M.G.L. c. 55, § 9 states that “[n]o individual, candidate or political committee . . . shall accept a contribution of money from any one person or political committee if the aggregate amount contributed in a calendar year exceeds \$50 except by a written instrument or by direct deposit in accordance with section 9A. For the purposes of the preceding sentence the term ‘written instrument’ shall mean a check on which the contributor is directly liable or which is written on a personal, escrow, trust, partnership, business or other account which represents or contains the contributor’s funds.”

When a contributor uses the online bill pay service to make contributions, the checks would not be issued by the contributor’s bank unless the funds are available in the contributor’s account to pay the amount of the check. Further, the purpose of Section 9 is, in part, to ensure a “paper trail” exists to document the source of the contribution. Where a bill pay service is used to make a contribution such a paper trail would exist. Although, strictly speaking, the bank is not writing the check on the contributor’s account, Section 9 would be complied with because it is the contributor’s bank and no third party is seen as making the contribution, nor are the funds being disguised since only the account holder may authorize these transactions and they are debited to the account holder’s personal bank account.

QUESTION II

Are money orders containing funds drawn directly from a campaign account, issued by the bank holding the campaign’s account, and signed by an official representative of the campaign, permissible for campaign expenditures for a non-depository (a candidate NOT required to appoint a depository in accordance with Section 19) candidate’s committee?

ANSWER

Yes. Money orders containing funds drawn directly from a campaign account, issued by that bank, and signed by an official representative of a non-depository candidate’s committee, may be used to make campaign expenditures and would not violate the campaign finance law.

DISCUSSION

It is our understanding that your committee ran out of pre-printed checks and, in order to pay for immediate expenses, specifically requested bank checks from Citizens Bank. The bank issued seven separate money orders to the committee. You used six money orders on July 1, 2005, and another money order on July 14, 2005. Further, these money orders contain campaign funds from the committee’s account and were used for valid campaign expenditures. Both the committee and Citizens Bank have maintained records of these transactions.

M.G.L. c. 55, § 9 states that “[n]o individual, candidate, political committee, or person acting on behalf of said individual, candidate, political committee shall make an expenditure for an amount exceeding \$50 except by check or by credit card . . .” Pursuant to the limitations on expenditures in Section 9, a check is not defined to exclude a money order, and therefore, a money order issued by the bank from the committee’s account could be considered a check and in this manner the expenditure would be consistent with the campaign finance law.

This opinion is based on the representations in your letter and is issued solely within the context of the Massachusetts campaign finance law.

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 black ink and is positioned to the left of a vertical line.

Michael J. Sullivan
Director

MJS/sh