



Commonwealth
of Massachusetts

OCPF Online

www.mass.gov/ocpf

Office of Campaign and Political Finance

One Ashburton Place, Room 411

Boston, MA 02108

Advisory Opinion

February 24, 2005

AO-05-02

Sheriff Frank G. Cousins, Jr.
65 Bromfield Street
Newburyport, MA 01950

Re: Payment of legal expenses

Dear Sheriff Cousins:

This letter is in response to your January 11, 2005 letter requesting an advisory opinion regarding the payment of legal expenses. The expenses relate to defending against a complaint filed with the State Ethics Commission and a possible defamation action that you might file.

You have stated that reports have recently been published alleging that, in your capacity as Sheriff of Essex County, you had county inmates perform work on your residence without compensation. It is further alleged that Essex County Correctional Officers transported the inmates to your home under the guise of community service.

As a result of these reports, letters were sent to both Governor Romney and Attorney General Reilly requesting further investigation.

It is your understanding that the Office of the Attorney General has referred this matter to the State Ethics Commission. As a result, you have retained counsel to commence a defense of the Ethics Commission investigation and to explore the filing of a defamation action against the individuals who published the allegations.

QUESTIONS

- (1) May your committee make an expenditure to pay for legal expenses in connection with an Ethics Commission investigation?
- (2) May your committee make an expenditure to pay for legal expenses in connection with a defamation action that you might file?

ANSWERS

Yes, for both questions. You should note, however, that if the committee pays the legal costs associated with filing a defamation action, neither you nor your committee may retain any monetary damages that are awarded. Such funds would need to be donated to a charitable or other entity specified in the residual funds clause.

DISCUSSION

Your political committee may make expenditures only “for the enhancement of the political future of the candidate . . . so long as such expenditure is not primarily for the candidate's or any other person's personal use . . .” See M.G.L. c. 55, § 6.

Regulations issued by this office pursuant to Section 6 prohibit expenditures relating to civil suits or administrative proceedings, with certain exceptions. Specifically, 970 CMR 2.06(6)(a)(3)(c) exempts “any expenses relative to civil suits or administrative proceedings, except that this provision shall not apply to . . . expenses relative to necessary legal action to protect or further the interests of the political committee.”

This office has advised that a candidate's committee may, in accordance with the regulation, generally make expenditures in connection with State Ethics Commission investigations that relate to the performance of a candidate's responsibilities as a public official. See, e.g., AO-99-12 and AO-94-25. As we noted in AO-94-25:

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.

By calling into question the official's reputation and integrity, an Ethics Commission investigation would be inextricably related to your political future and defending the action is a “necessary legal action to protect or further the interests” of your political committee. The committee may therefore properly make expenditures for legal services provided in connection with such investigation.

In addition, the office has determined that under 970 CMR 2.06(6)(a)(3)(c) a candidate's committee may pay the legal costs associated with defraying the costs of a defamation action brought by the candidate, if the committee's interest in pursuing the legal action is primarily a concern about the effect of the underlying alleged defamatory comments on the candidate's political future. See AO-85-16, in which the office stated:

A political committee may not expend funds on behalf of its candidate on this type of legal action if the primary purpose of the action is personal vindication for the candidate. In order for a political committee to incur such legal expenses, either the context in which the defamation arose must be related to one's campaign for public office, such as issues emanating from campaign literature or appearances, or, the substance of the defamatory words must be directly related to one's political future, such as words which impugn on one's integrity as a public official.

It would appear that the allegations that in your capacity as Sheriff of Essex County that you had county inmates perform work on your residence without compensation, and that the inmates were transported to your home by Correctional Officers under the guise of community service, would satisfy this standard: the statements impugn your integrity as a public official.

Because of the clear prohibition in Section 6 on the use of political committee funds to benefit a candidate or any other individual in a personal manner, any monetary damages that might be awarded in a legal action funded by your political committee may not accrue to your personal benefit.

In addition, your political committee may not retain any monetary damages awarded. The campaign finance law is "comprehensive legislation" regulating campaign fundraising activity in Massachusetts. If a method of raising funds is not apparent or implied in the statute, the method is generally not allowable. See Anderson v. the City of Boston, 376 Mass. 178, 186 (1978) and M.G.L. c. 55, § 7, which specifies that no "person or combination of persons. . . shall in connection with any nomination or election receive money or its equivalent, . . . except as authorized by this chapter." See AO-97-02, stating that a political committee may not retain proceeds of a winning raffle ticket. Similarly, the campaign finance law does not contemplate a political committee's receipt of proceeds from a defamation action, and any monetary damages must be donated to a charitable or other entity in a manner consistent with the residual funds clause in Section 18.

This opinion is issued on the basis of your letter and solely within the context of the campaign finance law. I encourage you to contact us in the future if you have further questions regarding any aspect of the campaign finance law.

Sincerely,

/s/

Bradley S. Balzer

Deputy Director