



Commonwealth  
of Massachusetts

## *OCPF Online*

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### *Advisory Opinion*

June 28, 2000

AO-00-13

Representative Anthony P. Giglio  
State House - Room 172  
Boston, MA 02133-1020

Re: Clean Elections Law's Application to Mailing Birthday Cards to Legislator's Constituents

Dear Representative Giglio:

This letter is in response to your May 19, 2000 request for an advisory opinion regarding the application of the Clean Elections Law (the "CEL"), M.G.L. c. 55A, to the cost of mailing birthday cards to constituents. The sample card provided with your request has a picture of Medford's Isaac Royall House on the cover. Inside the card says, "Happy Birthday and Best Wishes." It is signed "Tony" and identifies you as "State Representative Anthony P. Giglio."

You have stated that you mail approximately 500 birthday cards each week to the constituents of your district. You use your political committee's bulk rate permit to mail the cards but you pay for the cost of the mailing personally. You are concerned that the CEL may penalize you or other elected officials who mail birthday cards to constituents. Specifically, you are concerned that the costs of such mailings will be included in the amount that a candidate may spend for his or her campaign under the CEL.

In connection with this matter you recently contacted the U.S. Postal Service, which explained to you that it does not consider birthday cards to be political mail. You ask this office to "make this determination as well."<sup>1</sup>

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<sup>1</sup> You were told by staff at the South Postal Annex in Boston that these mailings did not qualify as "political mail" under the U.S. Postal Domestic Mail Manual Section E670.4.2. Description of Political Mail. On May 4<sup>th</sup>, you wrote to Mr. John Ryan at the South Boston Annex of the United States Post Office asking for written confirmation that your weekly mailings of birthday cards do not qualify as political mail. In response to your letter, the Post Office's Manager of Business Mail Entry Andrew Williams responded on May 5<sup>th</sup> that, "Mailing birthday cards under your committee's permit number would not be considered political mail."

**Question:**

Is the cost of mailing birthday cards that you as a legislator pay for personally a political expenditure subject to the limits of the Clean Elections Law?

**Answer:**

No. If a legislator's political committee pays for the cost of such a mailing, however, the cost would be an expenditure and count toward the expenditure limit under the CEL.

**Discussion**

This is the first advisory opinion that OCPF has been asked to issue about the Clean Elections Law, which was approved by the voters on November 3, 1998 as Question 2 on the state ballot. It may be helpful therefore to highlight the CEL's application to a candidate for state representative before addressing your specific question.

***The Clean Election Law*** - The CEL establishes a voluntary system of public funding for candidates for state office, including candidates for state representative, who as "participants" agree to observe certain contribution<sup>2</sup> and expenditure limits that vary according to the office sought. A candidate for state representative, for example, who wishes to become a participant, must agree to limit expenditures during the candidate's two-year election cycle to \$30,000 (\$18,000 for the primary election campaign and \$12,000 for the general election campaign).

A state representative participant will receive \$7,500 in public funds when the participant becomes a "certified candidate" as defined by the CEL and an additional \$7,500 if the participant is opposed in the primary election. A state representative participant who wins the primary election will similarly receive either \$4,500 or \$9,000 in public funds for the general election campaign depending on whether that candidate is opposed.<sup>3</sup>

In addition to the public funds that a state representative participant may receive, he or she may raise an additional \$6,000 through "allowable contributions." An allowable contribution is a monetary contribution of no more than \$100 made to a participant by an individual or political committee during the election cycle. M.G.L. c. 55A, § 1. Such a participant may also receive \$3,000 in in-kind contributions during the election cycle. M.G.L. c. 55A, § 10.

The CEL provides that a participant shall not spend or obligate "any contributions or funds from any sources other than: allowable contributions received in accordance with and subject to section 9 . . . and clean election funds received pursuant to sections 7, 8 and 9." M.G.L. c. 55A, §. 2. In effect, a participant has only two monetary funding sources, allowable contributions and public

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<sup>2</sup> Although the amount of an "allowable contribution" is the same for any candidate, the limits for aggregate contributions, however, vary according to the office sought by a participant.

<sup>3</sup> These amounts may be increased if an opposing non-participant spends more than the relevant expenditure limit set forth in the CEL. For example, if an opposing non-participant spends more than \$18,000 during the primary election campaign, a participant will receive additional or "matching" public funds dollar for dollar up to twice the statutory expenditure limit, i.e. a participant may receive up to \$36,000 public funds for the primary election campaign.

monies, both of which are limited. Therefore, any expenditure by a participant's political committee will reduce the funds that a participant has available for other campaign goods or services. Similarly, any expenditure by a non-participant's political committee will count in calculating whether the non-participant's expenses have exceeded the relevant CEL primary or general election expenditure limit. See M.G.L. c. 55A, § 11.

***The Cost of Birthday Cards*** – The CEL defines the term “expenditure,” in relevant part, by reference to its definition in the campaign finance law, M.G.L. c. 55, which provides that an expenditure is any “expenditure of money, or anything of value, by an individual, candidate, or political committee, or a person acting on behalf of said individual, candidate, or political committee, for the purpose of influencing the nomination or election of said individual or candidate . . .” M.G.L. c. 55, § 1. The Supreme Judicial Court has emphasized, “In defining the terms ‘[e]xpenditure’ and ‘[c]ontribution,’ the Legislature in § 1 of G.L. c. 55 has made reference to a purpose-based distinction.” Therefore, if “the expense is incurred *primarily* to promote the payor’s candidacy, it is an ‘expenditure’ . . .” See *Weld v. OCPF*, 407 Mass. 761, 771 (1990). In the office’s shorthand phrase, if an expense is “primarily political,” it is an “expenditure.” For example, the purchase of campaign bumper stickers that proclaim *Vote for Smith* is an expenditure because it is primarily political. Even if a candidate pays for bumper stickers personally, the candidate’s personal expenses would be an expenditure and therefore subject to the CEL’s expenditures limits.

The office recognizes, however, that certain activities, while they may have a political benefit to a legislator, may also be considered as governmental rather than political. See M.G.L. c. 55, § 6 and 970 CMR 2.15(1)(b), which provides that a political committee may make expenditures for the “reasonable and necessary costs associated with carrying out the customary or official duties or responsibilities of a legislator . . .” See also AO-97-06 (creation of internet home page), AO-94-16 (purchase of computer), AO-93-18 (distribution of newsletter) and AO-93-13 (mailing of planning board information). Similarly, communications honoring or remembering a constituent’s birthday with a card that does not expressly advocate the election or defeat of a candidate or solicit contributions is not necessarily “political.” A legislator may use personal funds to make such expenses.

Therefore, a legislator, whether a participant or a non-participant, may personally pay for the cost of mailing constituent birthday cards personally or use the legislator’s expense allowance that is received pursuant to M.G.L. c. 3, § 9B. If a legislator uses personal or section 9B funds, the expense would **not** be subject to the expenditure limits established by the CEL nor subject to the reporting requirements of M.G.L. c. 55, § 18. Alternatively, the legislator’s political committee may pay for cost of mailing such birthday cards if the committee determines that the activity meets the relevant expenditure standard.<sup>4</sup> If campaign funds were used, the expense would be an expenditure subject to the CEL’s expenditure limits and chapter 55’s reporting requirements.

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<sup>4</sup>The CEL provides that a participant may make expenditures only for “reasonable and necessary expenses directly related to the campaign of such participant and shall not make any expenditures that is primarily for the participant’s or any other person’s personal use.” M.G.L. c. 55A, § 12. (Non-participants are governed by the standards set forth in chapter 55 which depend upon the office sought. See M.G.L. c. 55, §. 6.) The office has not yet promulgated regulations implementing the CEL’s expenditure standard. This standard is identical, however, to the standard applicable to statewide candidates in chapter 55. OCPF Regulations implementing chapter 55’s standard authorizes costs for mailing campaign literature and campaign business and other similar expenditures and, as noted above, for constituent services. See 970 CMR 2.05(2) and 970 CMR 2.15. An expenditure for mailing birthday cards to constituents is consistent with either of these provisions.

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June 28, 2000

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This opinion is issued within the context of the Massachusetts Campaign Finance Law and the Clean Elections Law and is provided solely on the basis of representations in your letter. Please contact us if you have further questions about this letter or any other issue regarding the application of chapters 55 or 55A.

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

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