

**MASSACHUSETTS  
DEMOCRATIC PARTY**



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FEDERAL  
ELECTION  
COMMISSION

93 AUG 31 PM 4:37

**Joan M. Menard**  
*Chair*

August 26, 1993

Chairman Scott E. Thomas  
Federal Election Commission  
999 E Street NW  
Washington, DC 20463

AOR 1993-17

93 AUG 30 11 6:33 AM

Re: Request for Advisory Opinion Relative to Method of Allocation  
for Shared Federal and Non-Federal Administrative Expenses

Dear Chairman Thomas,

In 1990 the Massachusetts Democratic Party asked for and participated in regional forums whereby political committees could receive further explanation of Federal Election Commission goals relative to reporting methods and raised concerns on issues of conflict perceived by these parties relative to the proposed regulations.

At that time, the officers, executive director and legal counsel of the Massachusetts Democratic Party repeatedly expressed both their concern with and difficulty in compliance with the 1990 regulations as fundraising allotments at the state and federal levels were at variance with the ballot composition method. As a result, the ability of the Massachusetts Democratic Party to raise funds versus how funds are spent in compliance with FEC regulations are in conflict with the Party's inherent ability to make business decisions in how to administer its programs.

On April 15, 1993 the Office of Campaign and Political Finance of the Commonwealth of Massachusetts issued a memorandum and Interpretative Bulletin (OCPF-IB-93-01, Relationship Between Federal Allocation Requirements and Massachusetts State Law). Exhibits A and B of OCPF-IB-93-01 result in a more restrictive ballot composition formula than that submitted by the Massachusetts Democratic Party on Schedule H1 in its mid-year FEC report of 7/31/93.

The Massachusetts Democratic Party calculates the federal/state allocation ratio to be 33/67 for the election cycle of 1993-1994.

Specifically, we count "1" point for Line 6 and "0" for Line 9 of Schedule H-1. Our reading of the "Instructions for Preparing the Method of Allocation Schedule H-1" and discussion with counsel is that the language regarding the counting of additional points is clearly optional at its face.

Our rationale for this count of non-federal points is four-fold:

(1) It is our opinion that these shared administrative expenses should more closely reflect the funding requirements of these expenditures, given that federal contribution limits are \$5,000 per annum and state contribution limits are \$1,000 per annum for individuals and multi-candidate committees;

(2) The use of the "may" in the "Instructions for Preparing the Method of Allocation Schedule H-1" indicates that this is clearly a discretionary option;

(3) The inclusion of an extra non-federal point for Line 9 pertains only to local committees and not to state party committees;

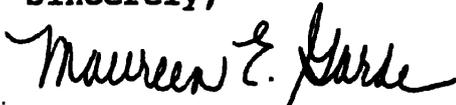
(4) It is our opinion that Line 9 should be "0" given the facts that the state party does not participate in any local elections and that these local elections are almost exclusively non-partisan in nature.

We respectfully seek an advisory opinion from the Federal Election Commission relative to our interpretation of the "Instructions for Preparing the Method of Allocation Schedule H-1".

Further, in light of the pre-emption of federal regulations to state regulations, we respectfully request your opinion whether the Massachusetts Democratic State Party may pay for all of its administrative costs out of its federal account with 100% federal dollars as we find that compliance with two detailed regulatory agencies to be impractical and administratively burdensome.

Thank you for your consideration of these matters.

Sincerely,



Maureen E. Garde  
Executive Director



THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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

MARY F. McTIGUE  
DIRECTOR

TO: State Party Committees  
Executive Director

FROM: Mary F. McTigue *MFMc*

DATE: April 15, 1993

SUBJECT: State Reporting Requirements Under Federal  
Allocation Regulations

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As you know, the Office of Campaign and Political Finance (OCPF) supported state party committee efforts to amend the Federal Election Commission (FEC) allocation regulations. This effort was undertaken in order to make it possible for Massachusetts' state party committees to comply with the FEC reporting requirements in a manner that was also consistent with state law requirements regarding depository accounts. Unfortunately, this effort was not entirely successful and, as a result, there continues to be a conflict in the reporting requirements of state and federal law.

During the past year OCPF has worked with each of the state party committees to develop a reporting mechanism that permits compliance with federal law and regulation and, at the same time, complies with the basic requirements of state law. We have appreciated your cooperation and assistance in this effort.

Based upon this past experience and after consultation with FEC's Office of the General Counsel regarding the federal aspects of this bulletin including the pre-emption issue, OCPF has issued the attached Interpretative Bulletin, OCPF-IB-93-01. If you have any questions regarding federal law please feel free to contact Susan Propper, Assistant General Counsel of the Office of the General Counsel at the FEC. For your information, I have also enclosed a copy of FEC's Record entitled "Revised Supplement on Allocation."

If you have any questions regarding the implementation of this bulletin or the requirements of state law relative to a state party committee, please contact OCPF's Director of Auditing, Brad Balzer. Thank you for your continued cooperation.



THE COMMONWEALTH OF MASSACHUSETTS  
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MARY F. MCTIGUE  
DIRECTOR

OC PF-IB-93-01  
Issued: April 15, 1993

INTERPRETATIVE BULLETIN

**Relationship Between Federal Allocation  
Requirements and Massachusetts State Law**

This interpretative bulletin is being issued in order to provide guidance and direction to state party committees which maintain both a federal and state account in view of changes to the Federal Election Commission (FEC) allocation regulations.

I. **Background** - Prior to the 1990 changes and 1992 amendments to the FEC's allocation regulations (11 CFR Part 106 et seq.), state party committees which maintained federal and state accounts were required to pay for state related expenses directly out of their depository account in accordance with the requirements of M.G.L. c.55, ss.7 and 19.

Changes in the federal allocation regulations, however, have created a conflict between state and federal law and regulation for expenses relative to activities that jointly benefit both federal and state candidates and elections. Specifically, federal regulations now require that a state party committee pay the entire amount of a so-called allocable or joint expenses from its federal account. The committees may (but are not required by federal regulation) reimburse the federal account for the state share of the joint activity based upon specific allocation formulas by transferring funds from the state account to the federal account. See 11 CFR Part 106.5(g)(1)(i). In the alternative, state party committees may set up a separate allocation account and transfer funds from the federal and state account into that account. See 11 CFR Part 106.5(g)(1)(ii).

In Massachusetts, the two existing state party committees pay for joint activities out of the federal account. However, whether state funds are transferred to an allocation account or transferred to the federal account, the federal regulation prevents the state party committees from complying with certain requirements of M.G.L. c.55 as noted below.

II. **Massachusetts Law** - The fundamental purpose of the Massachusetts campaign finance law, M.G.L. c.55, is "to provide for public disclosure of political contributions and expenditures, and the regulations of said contributions and expenditures" (emphasis added). See St. 1975, c.151.

In addition, Chapter 55 is viewed as a comprehensive law which the Supreme Judicial Court has interpreted reaches "all political fund raising and expenditures within the Commonwealth." See Anderson v. City of Boston 376 Mass. 178 (1978).

More specifically, M.G.L. c.55, s.7 states, in part, that:

A political committee may receive money or its equivalent, or expend or disburse or promise to expend or disburse the same for the purposes of aiding or promoting the success or defeat of a candidate at a primary or election or a political party . . . , and of other purpose expressly authorized by this chapter subject, however, to the provisions thereof.

In addition, M.G.L. c.55, s.19 requires that all payments by state party committees be made (1) only from funds on deposit in the depository account, (2) on specially formatted checks drawn on such depository and (3) payable to a named payee. In addition, section 7 has a complementary requirement that each payee certify the performance or delivery of any service or good.

Reading the statute as a whole, it is OCPF's opinion that state party committees are required to pay for and to report all state election activity<sup>1</sup> financed by the state party committee through the depository account system. Therefore, activity which is solely state election activity must be paid for entirely from the state party depository account directly to the person or persons providing the services or goods.

In addition, the state party's state regulated committee must also pay the full amount of the state share permitted by federal regulation for any state election activity which is part of joint or allocable election activity from funds in the state party committee's state depository account.<sup>2</sup> In order to comply with the requirements of federal law, OCPF recognizes that the state party will have to pay for the joint activity from its federal account and then transfer the full proportionate state share to the federal account. However, the state party's state regulated committee must still provide public disclosure to OCPF.

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1. For the purposes of this interpretative bulletin, a reference to the state election activity shall, unless the context otherwise requires, also include county and municipal election activity.

2. OCPF recognizes that Federal law and regulation regarding federal payment procedures and reporting in connection with a federal account preempts state law. However, in OCPF's opinion, federal law does not preempt state law in this instance where the federal law merely permits payment of a state's share of a joint state/federal expense while state law mandates such payment.

**III. Allocation Method -** The state party committee must use the appropriate method and ratio to allocate costs between the party's state and federal accounts as required by federal law and regulation. See 11 CFR 106.5. For state party committees, these methods include the funds received ratio relative to fund raising activities, the time or space ratio relative to media communication and ballot composition ratio relative to generic voter drives and overhead expenses.

The ballot composition ratio is calculated on Federal Form H1. For the 1993-94 election cycle, the ballot composition ratio provides for a 75/25 percent state/federal allocation (See Exhibit "A") unless the extra non-federal point permitted by federal law is added to the ratio (See Exhibit "B"). Federal law requires this form to be filed with the FEC and must, in accordance with this bulletin, also be filed with OCPF. In computing the non-federal offices expected on the ballot at the next state elections care should be taken to reflect accurately those state, county and municipal offices that will, in fact, appear the relevant election ballot. Failure to compute the ballot composition ratio correctly will effect the federal and state share for these expenditures and the required costs that must be underwritten by each party's state regulated account in order to comply with the requirements of M.G.L. c.55 and this interpretative bulletin.

**IV. Implementation -** In order to resolve the reporting conflict between federal and state law and to provide for appropriate and uniform public disclosure at the state level, each state party committee must comply with the following:

**A.** Financial activity undertaken solely for the purpose of supporting or opposing state, county or municipal candidates in Massachusetts must be deposited and disbursed through the state party's depository account.

**B.** Each state party committee must pay the full state share permitted under federal regulation of any joint or allocable state/federal expense by transferring the state share from the state depository account to its federal account in a manner consistent with the requirements of federal law and regulation including the so-called 70 day time period.

**C.** Each state party committee must file monthly by the fifth of each month a report setting forth the names and addresses of any payee paid from the federal account for joint or allocable expenses, the amount of the total payment, the amount of the state's proportionate share, the allocation formula used to determine the state's share, and the purposes for which the money was paid. In filing the report required by M.G.L. c.55, s.19 as implemented by this interpretative bulletin, the state party committees may use the same or a similar format that it uses to report activity to the FEC such as Schedule H4 or any other format approved in advance by OCPF.

**D.** All reports beginning with the report due on or before June 5, 1993 for the period ending May 31, 1993 shall comply with the requirements set forth herein.

**METHOD OF ALLOCATION FOR SHARED FEDERAL  
AND NON-FEDERAL ADMINISTRATIVE EXPENSES  
AND GENERIC VOTER DRIVE COSTS**

NAME OF COMMITTEE

*Massachusetts State Party Committee*

**NATIONAL PARTY COMMITTEES**

FIXED FEDERAL PERCENTAGE (CHECK THE APPROPRIATE LINE AND ENTER % IN BOX TO RIGHT) \_\_\_\_\_ %  
 PRESIDENTIAL YEAR (65%)  
 ALL OTHER YEARS (60%)

**HOUSE AND SENATE PARTY CAMPAIGN COMMITTEES**

MINIMUM FEDERAL PERCENTAGE (65%) (IF CHECKED, ENTER 65% IN BOX TO RIGHT) \_\_\_\_\_ %  
 OR  
 FUNDS EXPENDED:  
 • ESTIMATED DIRECT CANDIDATE SUPPORT — FEDERAL \_\_\_\_\_ %  
 • ESTIMATED DIRECT CANDIDATE SUPPORT — NON-FEDERAL \_\_\_\_\_ %  
 ADJUSTMENTS TO FUNDS EXPENDED:  
 ACTUAL DIRECT CANDIDATE SUPPORT — FEDERAL \$ \_\_\_\_\_ %  
 ACTUAL DIRECT CANDIDATE SUPPORT — NON-FEDERAL \$ \_\_\_\_\_

NOTE: FUNDS EXPENDED MUST BE USED IF THE FEDERAL PROPORTION IS GREATER THAN 65% IN ANY YEAR.

**SEPARATE SEGREGATED FUNDS AND NON-CONNECTED COMMITTEES**

FUNDS EXPENDED:  
 • ESTIMATED DIRECT CANDIDATE SUPPORT — FEDERAL \_\_\_\_\_ %  
 • ESTIMATED DIRECT CANDIDATE SUPPORT — NON-FEDERAL \_\_\_\_\_ %  
 ADJUSTMENTS TO FUNDS EXPENDED:  
 ACTUAL DIRECT CANDIDATE SUPPORT — FEDERAL \$ \_\_\_\_\_ %  
 ACTUAL DIRECT CANDIDATE SUPPORT — NON-FEDERAL \$ \_\_\_\_\_

**STATE AND LOCAL PARTY COMMITTEES**

**BALLOT COMPOSITION**

CHECK ALL OFFICES APPEARING ON THE NEXT GENERAL ELECTION BALLOT:

	NUMBER OF POINTS
1. PRESIDENT _____ <input type="checkbox"/> (1 POINT)	
2. U.S. SENATE _____ <input type="checkbox"/> (1 POINT)	1
3. U.S. CONGRESS _____ <input type="checkbox"/> (1 POINT)	1
4. SUBTOTAL — FEDERAL (ADD 1, 2, AND 3)	2
5. GOVERNOR _____ <input type="checkbox"/> (1 POINT)	1
6. OTHER STATEWIDE OFFICE(S) _____ <input type="checkbox"/> (1 OR 2 POINTS)	2
7. STATE SENATE _____ <input type="checkbox"/> (1 POINT)	1
8. STATE REPRESENTATIVE _____ <input type="checkbox"/> (1 POINT)	1
9. LOCAL CANDIDATES _____ <input type="checkbox"/> (1 OR 2 POINTS)	1
10. SUBTOTAL — NON-FEDERAL (ADD 5,6,7,8, AND 9)	6
11. TOTAL POINTS (LINE 4 PLUS LINE 10)	8

FEDERAL ALLOCATION - LINE 4 DIVIDED BY LINE 11 \_\_\_\_\_ *25%*

**METHOD OF ALLOCATION FOR SHARED FEDERAL  
AND NON-FEDERAL ADMINISTRATIVE EXPENSES  
AND GENERIC VOTER DRIVE COSTS**

NAME OF COMMITTEE

*Massachusetts State Party Committee*

**NATIONAL PARTY COMMITTEES**

FIXED FEDERAL PERCENTAGE (CHECK THE APPROPRIATE LINE AND ENTER % IN BOX TO RIGHT) \_\_\_\_\_ %  
 PRESIDENTIAL YEAR (69%)  
 ALL OTHER YEARS (60%)

**HOUSE AND SENATE PARTY CAMPAIGN COMMITTEES**

MINIMUM FEDERAL PERCENTAGE (65%) (IF CHECKED, ENTER 65% IN BOX TO RIGHT) \_\_\_\_\_ %  
 OR  
 FUNDS EXPENDED:  
 • ESTIMATED DIRECT CANDIDATE SUPPORT — FEDERAL \_\_\_\_\_ %  
 • ESTIMATED DIRECT CANDIDATE SUPPORT — NON-FEDERAL \_\_\_\_\_ %  
 ADJUSTMENTS TO FUNDS EXPENDED:  
 ACTUAL DIRECT CANDIDATE SUPPORT — FEDERAL \$ \_\_\_\_\_ %  
 ACTUAL DIRECT CANDIDATE SUPPORT — NON-FEDERAL \$ \_\_\_\_\_

NOTE: FUNDS EXPENDED MUST BE USED IF THE FEDERAL PROPORTION IS GREATER THAN 65% IN ANY YEAR.

**SEPARATE SEGREGATED FUNDS AND NON-CONNECTED COMMITTEES**

FUNDS EXPENDED:  
 • ESTIMATED DIRECT CANDIDATE SUPPORT — FEDERAL \_\_\_\_\_ %  
 • ESTIMATED DIRECT CANDIDATE SUPPORT — NON-FEDERAL \_\_\_\_\_ %  
 ADJUSTMENTS TO FUNDS EXPENDED:  
 ACTUAL DIRECT CANDIDATE SUPPORT — FEDERAL \$ \_\_\_\_\_ %  
 ACTUAL DIRECT CANDIDATE SUPPORT — NON-FEDERAL \$ \_\_\_\_\_

**STATE AND LOCAL PARTY COMMITTEES**

**BALLOT COMPOSITION**

CHECK ALL OFFICES APPEARING ON THE NEXT GENERAL ELECTION BALLOT:

	NUMBER OF POINTS
1. PRESIDENT _____ <input type="checkbox"/> (1 POINT)	
2. U.S. SENATE _____ <input type="checkbox"/> (1 POINT)	1
3. U.S. CONGRESS _____ <input type="checkbox"/> (1 POINT)	1
4. SUBTOTAL — FEDERAL (ADD 1, 2, AND 3)	2
5. GOVERNOR _____ <input type="checkbox"/> (1 POINT)	1
6. OTHER STATEWIDE OFFICE(S) _____ <input type="checkbox"/> (1 OR 2 POINTS)	2
7. STATE SENATE _____ <input type="checkbox"/> (1 POINT)	1
8. STATE REPRESENTATIVE _____ <input type="checkbox"/> (1 POINT)	1
9. LOCAL CANDIDATES _____ <input type="checkbox"/> (1 OR 2 POINTS)	1
<i>9(2) Extra Non-Federal Point</i>	1
10. SUBTOTAL — NON-FEDERAL (ADD 5, 6, 7, 8, AND 9)	7
11. TOTAL POINTS (LINE 4 PLUS LINE 10)	9

FEDERAL ALLOCATION = LINE 4 DIVIDED BY LINE 11 \_\_\_\_\_ *22* %

**METHOD OF ALLOCATION FOR SHARED FEDERAL  
AND NON-FEDERAL ADMINISTRATIVE EXPENSES  
AND GENERIC VOTER DRIVE COSTS**

NAME OF COMMITTEE

Massachusetts Democratic State Committee -- Federal Funds Account

**NATIONAL PARTY COMMITTEES**

FIXED FEDERAL PERCENTAGE (CHECK THE APPROPRIATE LINE AND ENTER % IN BOX TO RIGHT) .....  %  
 PRESIDENTIAL YEAR (65%)  
 ALL OTHER YEARS (60%)

**HOUSE AND SENATE PARTY CAMPAIGN COMMITTEES**

MINIMUM FEDERAL PERCENTAGE (65%) (IF CHECKED, ENTER 65% IN BOX TO RIGHT) .....  %  
 OR  
 FUNDS EXPENDED:  
 • ESTIMATED DIRECT CANDIDATE SUPPORT — FEDERAL .....  %  
 • ESTIMATED DIRECT CANDIDATE SUPPORT — NON-FEDERAL .....  %  
 ADJUSTMENTS TO FUNDS EXPENDED:  
 ACTUAL DIRECT CANDIDATE SUPPORT — FEDERAL ..... \$  .....  %  
 ACTUAL DIRECT CANDIDATE SUPPORT — NON-FEDERAL ..... \$

NOTE: FUNDS EXPENDED MUST BE USED IF THE FEDERAL PROPORTION IS GREATER THAN 65% IN ANY YEAR.

**SEPARATE SEGREGATED FUNDS AND NON-CONNECTED COMMITTEES**

FUNDS EXPENDED:  
 • ESTIMATED DIRECT CANDIDATE SUPPORT — FEDERAL .....  %  
 • ESTIMATED DIRECT CANDIDATE SUPPORT — NON-FEDERAL .....  %  
 ADJUSTMENTS TO FUNDS EXPENDED:  
 ACTUAL DIRECT CANDIDATE SUPPORT — FEDERAL ..... \$  .....  %  
 ACTUAL DIRECT CANDIDATE SUPPORT — NON-FEDERAL ..... \$

**STATE AND LOCAL PARTY COMMITTEES**

**BALLOT COMPOSITION**

CHECK ALL OFFICES APPEARING ON THE NEXT GENERAL ELECTION BALLOT:

	NUMBER OF POINTS
1. PRESIDENT ..... <input type="checkbox"/> (1 POINT) .....	
2. U.S. SENATE ..... <input type="checkbox"/> (1 POINT) .....	1
3. U.S. CONGRESS ..... <input type="checkbox"/> (1 POINT) .....	1
4. SUBTOTAL — FEDERAL (ADD 1, 2, AND 3) .....	2
5. GOVERNOR ..... <input type="checkbox"/> (1 POINT) .....	1
6. OTHER STATEWIDE OFFICE(S) ..... <input type="checkbox"/> (1 OR 2 POINTS) .....	1
7. STATE SENATE ..... <input type="checkbox"/> (1 POINT) .....	1
8. STATE REPRESENTATIVE ..... <input type="checkbox"/> (1 POINT) .....	1
9. LOCAL CANDIDATES ..... <input type="checkbox"/> (1 OR 2 POINTS) .....	
10. SUBTOTAL — NON-FEDERAL (ADD 5,6,7,8, AND 9) .....	4
11. TOTAL POINTS (LINE 4 PLUS LINE 10) .....	6

FEDERAL ALLOCATION = LINE 4 DIVIDED BY LINE 11 .....  33 %