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By Electronic Mail and Facsimile

Thomasenia P. Duncan, Esquire
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

RE: MUR 6216

Dear Attorney Duncan:

On November 30, 2009, the Martha Coakley Committee (the "Coakley Committee"), the state political committee organized on behalf of Attorney General Martha Coakley in accordance with Massachusetts General Laws c. 55, the state campaign finance law, received notification from the Federal Election Commission of a Complaint previously filed with the Commission. The Notice was addressed to Carol Noble, the former Treasurer of the Coakley Committee. Please be advised that the current Treasurer of the Coakley Committee is Anne Gentile.

This Notice relates to a Complaint filed on October 2, 2009 by the Massachusetts Republican Party. The Martha Coakley for Senate Committee and its Treasurer, Nathaniel Stinnett were previously notified of the filing of this Complaint. On November 2, 2009, the Martha Coakley for Senate Committee and Mr. Stinnett submitted its Response to the Complaint to the FEC. We understand that the Coakley Committee (the state committee) has now been formally notified of this same Complaint. As I indicated in my November 2nd Response, it is indeed unfortunate that the Massachusetts Republican Party has attempted on more than one occasion to use state and federal agencies in a misguided effort to gain political leverage. We understand that because the Complaint met certain technical requirements, the FEC was required by law to notify the Respondents of its receipt by the FEC.

The Republican Complaint alleges that the Coakley Committee was expending funds to test the waters for a federal election, namely the United States Senate race that the Attorney General embarked on at the beginning of September. That assertion is false. The expenditures made by the Coakley Committee were made in furtherance of her activities as a candidate for state office, consistent with all applicable provisions of the Massachusetts campaign finance law.

Testing the waters for federal office, or exploratory, expenditures are those made "to determine whether an individual should become a candidate. . ." 11 CFR100.131. "Before deciding to campaign for federal office, an individual may first want to 'test the waters' – that is, explore the feasibility of becoming a candidate. For example, the individual may want to travel around the state or district to see if there is sufficient support for his candidacy." Campaign Guide for Congressional Candidates, January 2009, Federal Election Commission. None of the expenditures in question were being used for testing the waters activities as that term is used in Regulations, Guides and Advisory Opinions issued by the Federal Election Commission.

The Coakley Committee was not making these expenditures to test the waters, and these expenditures were made prior to the time she decided to become a federal candidate. Indeed, these expenditures covered a period of time when no vacancy even existed for which she might run. She was not, at that time, "an individual who seeks nomination for election, or election, to federal office . . . ." 2 U.S.C s. 431(2). This matter is clearly distinguishable from those matters where the Commission has concluded that an individual was a federal candidate. For example, unlike the facts set forth in FEC Advisory Opinion 2006-22, the Attorney General's website at that time did not remotely suggest she was a candidate for federal office. She had not made any media buys related to federal activity. She was not soliciting precinct captains or other such supporters. She was not attacking possible opponents. In short, she was not a candidate for federal office at that time.

Even individuals subject to FECA, because they are clearly candidates for federal office, enjoy a safe harbor from the application of the federal law when their activities are related to their state office. "Specifically, the restrictions of 2 U.S.C. 441i (e) (1) do not apply to any federal candidate or officeholder who is also a candidate for a state or local office so long as the solicitation, receipt or spending of funds: (1) is solely in connection with his state or local campaign; (2) refers only to him as a state or local candidate . . . and (3) is permitted under state law." 2 U.S.C. 441i (e) (2); 11 CFR 300.63; FEC Advisory Opinion 2005-12.

The expenditures made by The Coakley Committee were consistent with all provisions of the Massachusetts campaign finance law, as would be expected of a Massachusetts statewide officeholder. "Such constitutional candidate committees may pay and expend money or other things of value for reasonable and necessary expenses directly related to the campaign of the candidate on whose behalf the committee is organized, provided that such expenditures are not primarily for the candidate's or any other person's personal use, and subject to any other prohibitions and limitations contained in M.G.L. c. 55 and 970 C.M.R. 2.00." 970 C.M.R. 2.05(2). "Reasonable and necessary expenses means those expenses which are not extreme or excessive and which are integral and central to the political campaign *for that public office* (emphasis supplied)." 970 C.M.R. 2.02.

The Complainant in this matter, the Massachusetts Republican Party, acknowledges that the Massachusetts Office of Campaign & Political Finance, which administers and enforces M.G.L. c. 55, the state campaign finance law, "cited A.G. Coakley's compliance with state election laws." The expenditures in question are appropriate expenditures under the state campaign finance law because they are reasonable and necessary as well as integral and central to her campaign for Attorney General, the constitutional office which she holds.

The activities of The Martha Coakley Committee at that time were still within the framework of her Massachusetts public office and the relevant state campaign finance law. The activities did not trigger the application of the test the waters doctrine, or the registration and reporting requirements of FECA. Absent some evidence that an expenditure by a candidate's political committee is related to some other public office, it is reasonable to presume that such an expenditure is related to the elected public office which the individual currently holds.

Once it became clear that Attorney General Coakley was to be a candidate for federal office, she established a federal political committee, the Martha Coakley for Senate Committee. The payment by the federal committee to the state committee for assets which were transferred to the Coakley for Senate Committee ensured full compliance by all parties with 2 U.S.C. 100.52(d) and 11 CFR 110.3(d).

The activities of the Coakley Committee, established under state law, has at all times complied with the provisions of M.G.L. c. 55, the Commonwealth's campaign finance law. Further, it has not been used in any manner for activities related to Attorney General Coakley's federal candidacy. For the reasons stated above, the Coakley Committee and its Treasurer, Anne Gentile, respectfully request that the Commission find No Reason to Believe that the Complaint sets forth a possible violation of the Federal Election Campaign Act, and accordingly, terminate the matter.

Very truly yours,

Cheryl M. Cronin

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