STATE OF MICHIGAN
TERRI LYNN LAND, SECRETARY OF STATE
DEPARTMENT OF STATE
LANSING

February 17, 2006

Mr. Robert S. LaBrant
Michigan Chamber of Commerce
600 South Walnut Street
Lansing, Michigan 48933-2200

Dear Mr. LaBrant:

In correspondence dated November 16, 2005, you submitted a request to the Department of State (Department), asking it to issue a declaratory ruling or interpretive statement pursuant to the Michigan Campaign Finance Act (MCFA or Act), *MCL §169.201 et seq.*, regarding corporate expenditures made for the benefit of a labor organization's separate segregated fund.

Subsequently, the Department received written commentary from Mr. Andrew Nickelhoff, dated December 9, 2005, suggesting that you are not entitled to receive a declaratory ruling or interpretive statement on this subject. Mr. Nickelhoff correctly notes that the Administrative Procedures Act of 1969 (APA), *MCL §24.201 et seq.*, and the administrative rules promulgated pursuant to the MCFA, *R 169.1 et seq.*, provide that only an "interested person" may submit a request for a declaratory ruling. *See MCL §24.263, R 169.6.* Yet, both the enactment of MCL §24.263[1] and adoption of R 169.6[2] preceded passage of MCL §169.215(2)[3], which compels the Department to issue a declaratory ruling if a person provides a "reasonably complete statement of facts". *MCL §169.215(2).*

In 2001, MCL §169.215(2) was amended[4] to require the Department to issue an interpretive statement if it refuses to issue a declaratory ruling. The 2001 amendment was designed to require the Department to publish an interpretive statement, "providing an informational response to the question presented", as a substitute for a declaratory ruling. *Id.* Significantly, the Act does not require the author of an interpretive statement request to be an "interested person".

For these reasons the Department finds that your request for additional guidance on the legality of corporate expenditures for collection of contributions to a labor organization's separate segregated fund is proper. As your correspondence did not include a statement of facts sufficient to form the basis of a declaratory ruling, the Department denies that portion of your request and instead offers the following as an interpretive statement.

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[1] 1969 Public Act 306, Eff. July 1, 1970.
[2] 1954 ACS 91, Eff. May 3, 1977.
[3] 1989 Public Act 95, Eff. June 21, 1989.
[4] 2001 Public Act 250, Eff. March 22, 2002.

Question 1

A) Please confirm that all expenses incident to a corporation's "costs associated with collecting and delivering contributions" to a labor organization's separate segregated fund includes the cost of "using corporate time, property, or other resources".

In an Interpretive Statement issued to Margaret Ayres, dated April 14, 1993, the Department concluded that a corporate officer is prohibited from distributing campaign literature provided by a candidate committee while "using corporate time, property or other resources," as such activity constitutes an expenditure within the meaning of the MCFA. Likewise, the Department recently wrote that the term "expenditure" also encompasses costs incurred in the collection and delivery of contributions resulting from the operation of an automatic payroll deduction plan. *See Interpretive Statement issued to Robert LaBrant (November 14, 2005).* Your characterization of the Department's position, therefore, is correct.

B) Please further confirm that such expenses include the corporation's cost to implement, operate and supervise a payroll deduction system, which include, but are not limited to the following:

1. *The cost of all materials, property or other resources for the solicitation of contributions to the labor organization's separate segregated fund.*
2. *The cost of all corporate employees and agents (salary, benefits, etc.) for that portion of such corporate employee's or agent's time incident to the implementation, operation, or supervision of a payroll deduction plan.*
3. *All costs incurred by the corporation to confirm the corporation's and labor organization's compliance with all rules relating to a payroll deduction plan, including but not limited to, any accounting or legal expenses.*
4. *The cost of any other corporate resources utilized incident to a payroll deduction plan.*

The Act clearly contemplates that a corporation may incur administrative costs incident to, and make expenditures for, the creation and continuing operation of a separate segregated fund. *MCL §169.255(1).* For example, the Department has indicated that "[a] corporation may pay for the cost of office space, phones, salaries, utilities, supplies, legal and accounting fees, fundraising and other expenses incurred in setting up and running a separate segregated fund established by the corporation." *See Declaratory Ruling issued to James Barrett (October 26, 1983).*

Further, the Act authorizes a corporation to establish an automatic payroll deduction plan for a separate segregated fund established under MCL 169.255(1) for the purpose of collecting contributions, if the individual contributor provides his or her written consent for the deduction on an annual basis. *MCL §169.255(6).* Thus, a corporate employer is authorized to (1) incur expenses in connection with the collection of contributions for a separate segregated fund, and (2) operate a payroll deduction plan for the purpose of collecting those contributions. *MCL §§169.255(1), (6).* It follows that a corporation may incur similar costs to those identified above in connection with the administration of a payroll deduction system for the collection of contributions to a labor organization's separate segregated fund. *See Declaratory Ruling issued to James Barrett (October 26, 1983).* The Department's position concerning the nature and scope of expenses that may be incurred by a corporation in the formation and maintenance of a

separate segregated fund, and the subsequent administration of a payroll deduction plan for the collection of contributions to that fund, remains unchanged.

Question 2

Please confirm that there must be an actual reimbursement from the labor organization to the corporation for all "costs associated with collecting and delivering contributions" to benefit a payroll deduction plan for the solicitation of contributions to the labor organization's separate segregated fund.

The Department recently concluded that a corporation is permitted to make expenditures while operating a payroll deduction system for the benefit of a labor organization's separate segregated fund, so long as the corporation is compensated for the "costs associated with collecting and delivering contributions" to the fund. *See Interpretive Statement issued to Robert LaBrant (November 14, 2005).* It stands to reason that an otherwise illegal corporate expenditure is expunged by reimbursement, as no transfer of value occurs. *Id.* This reimbursement principle is in harmony with other provisions of the Act. *See MCL §§169.204(3)(c), 169.230(2)(b).* Moreover, the MCFA prohibits the forgiveness of repayment by a labor organization, as this would constitute a prohibited corporate contribution within the meaning of the Act. *MCL §§169.204(1), 169.254(1).* Accordingly, the Department affirms that a corporation must obtain reimbursement for the actual costs it incurs in administering a payroll deduction plan that collects contributions to a labor organization's separate segregated fund.

Question 3

Please confirm that the reimbursement requested by the corporation is prima facie evidence of all of the corporation's "costs associated with collecting and delivering contributions" to benefit a payroll deduction plan for the solicitation of contributions to the labor organization's separate segregated fund.

In an Interpretive Statement issued to Kathleen Corkin Boyle, dated June 15, 2001, the Department stated that the burden of proving whether the value assigned to the goods or services provided in association with the solicitation of contributions is legitimate rests with the corporation. Given a corporation's obligation to accurately appraise the value of the resources it utilizes in connection with the operation of a payroll deduction system, and its unique knowledge of the worth of those assets, its request for reimbursement will be construed by the Department as a complete and accurate representation of the expenses it incurs in administering the system.

Question 4

Please confirm that if the labor organization refuses, for any reason, to reimburse the corporation in a timely manner for expenses incident to a payroll deduction plan for the solicitation of contributions to the labor organization's separate segregated fund, that the corporation must discontinue making any additional expenses to benefit the separate segregated fund in order to avoid violation of Section 54 of the Act.

With limited exceptions, the MCFA generally prohibits a corporation from making a contribution or expenditure. *MCL §§169.254, 169.255.* Thus, failure to obtain prompt and full

reimbursement of a corporate expenditure may result in a contribution in the form of a forbearance, a violation of the Act. *MCL §169.204(1), Department of State v Michigan Education Association, 251 Mich App 110 (2002).* Existing law provides that a person who knowingly violates the provision that prohibits a corporation from making contributions or expenditures is guilty of a felony criminal offense. *MCL §169.254(4).* To avoid a violation, the Act requires a corporation that does not receive prompt reimbursement for the full amount of its expenditure to suspend that portion of its payroll deduction plan that operates for the benefit of a labor union's separate segregated fund.

Question 5

What is a reasonable time frame in which a labor organization must reimburse a corporation for such expenses? Is thirty days a reasonable time frame for reimbursement?

In 2001, the Department advised that a corporation is permitted to make an expenditure for an Internet hyperlink to a website sponsored by a candidate or ballot question committee,[5] provided that the corporation receives timely reimbursement for the full amount of its expenditure. *See Interpretive Statement issued to Kathleen Corkin Boyle (June 15, 2001).* Timeliness depends on the nature of the corporation's regular business operations. *Id.*

In the Department's view, a corporation that offers the goods or services furnished in the ordinary course of its business must receive payment under the same terms and conditions that apply to other customers. *Id.* A corporation that acts outside of the scope of its normal business operations is required to obtain reimbursement prior to performing the service, if the expenditure constitutes a contribution within the meaning of the Act. *Id.* In determining whether the requirement for promptness has been satisfied, the Department will evaluate whether a labor union remitted payment within a commercially reasonable time.

Conclusion

A corporation is authorized to make an expenditure for administrative costs incurred in the operation of a payroll deduction plan on behalf of a labor organization's separate segregated fund, provided that the corporation receives timely, complete reimbursement for the actual amount of its expenditure. Methods for calculating corporate costs incurred in the collection of contributions for a labor union's separate segregated fund and the time limit for repayment depend on the nature of the corporation's business. A labor organization's failure to remit timely payment for the expenditure of corporate assets must result in the suspension of the payroll deduction plan.

Unlike federal law, nothing in the MCFA compels a corporation that operates a payroll deduction plan for contributions to its own separate segregated fund to offer the same opportunity to a labor organization. *See 11 CFR §114.5.* However, a corporation that voluntarily elects to finance the administrative expenses of a labor organization's separate

[5] In an Interpretive Statement issued to David Murley, dated October 31, 2005, the Department indicated that it will presume that a public body has made a prohibited expenditure if the public body creates hyperlinks to Internet websites of a single candidate, slate of candidates, or one side of a ballot question. In other words, the activation of hyperlinks that exclusively advocate for or against the election of a candidate or one side of a ballot question constitutes an expenditure.

segregated fund assumes an affirmative duty to comply with the MCFA by making an accurate calculation of its costs and obtaining full reimbursement of its expenses in a timely manner.

As noted above, your correspondence did not include a statement of facts sufficient to form the basis of a declaratory ruling. Accordingly, the Department offers the foregoing as an interpretive statement.

Sincerely,

Brian DeBano
Chief of Staff / Chief Operating Officer