

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING



4-89-CI

LANSING

MICHIGAN 48918

August 24, 1989

Thelma Castillo
4958 Heather Drive
Building 6-109
Dearborn, Michigan 48126

Dear Ms. Castillo:

This is in response to your request for an interpretive statement regarding the applicability of the Campaign Finance Act (the Act), 1976 PA 388, as amended, to the solicitation of attorneys by a separate segregated fund. Specifically, you state:

"A hypothetical profitable law firm corporation has established a separate segregated fund to be used for political purposes. The law firm understands that [Michigan's law] allows officers, directors and employees whom (sic) have policy making, managerial, supervisory or administrative responsibilities to contribute to the fund. However, the law firm requests an interpretive statement regarding the meaning of 'professional responsibilities.' Does the word 'professional' allow all the attorneys in the law firm to contribute to this separate segregated fund or does it only allow the partners to contribute to this separate segregated fund?"

Pursuant to rule 6 of the administrative rules promulgated to implement the Act, 1979 AC R169.201, et seq, the Secretary of State may issue a declaratory ruling as to the applicability of the Act to an actual state of facts. If the facts, though actual, are lacking in specificity the Department will issue an interpretive statement in lieu of a ruling. The Department is unable to issue a specific response to a hypothetical question. However, the following general discussion is offered for your benefit.

Thelma Castillo
August 24, 1989
Page 2

The solicitation of contributions to the separate segregated fund of a profit corporation is governed by section 55(2) of the Act (MCL 169.255). This section provides:

"Sec. 55. (2) Contributions for a fund established by a corporation or joint stock company under this section may be solicited from any of the following persons or their spouses:

"(a) Stockholders of the corporation.

"(b) Officers and directors of the corporation.

"(c) Employees of the corporation who have policy making, managerial, professional, supervisory, or administrative nonclerical responsibilities."

You ask whether attorneys who are not partners in the hypothetical law firm are employees of the corporation having "professional responsibilities" who may be solicited pursuant to section 55(2)(c).

The term "professional responsibilities" is not defined anywhere in the Act. However, it appears this provision includes the responsibilities of persons who are licensed members of the legal profession. Therefore, an attorney employed by an incorporated law firm to engage in the practice of law is an employee who has professional responsibilities within the meaning of section 55(2)(c). As such, the attorney may be solicited for contributions to the corporation's separate segregated fund.

If construed in this manner, the Michigan Act is consistent with regulations promulgated to implement the Federal Election Campaign Act. Under federal law, a separate segregated fund established by a corporation is prohibited from soliciting contributions from any person other than its stockholders and their families and its executive or administrative personnel and their families. "Executive or administrative personnel" is defined in 11 CFR § 114.1(c), which states in pertinent part:

"(c) 'Executive or administrative personnel' means individuals employed by a corporation or labor organization who are paid on a salary rather than hourly basis and who have policymaking, managerial, professional, or supervisory responsibilities.

"(1) This definition includes:

"(i) the individuals who run the corporation's business such as officers, other executives, and plant, division and section managers; and

Thelma Castillo
August 24, 1989
Page 3

"(ii) individuals following the
recognized professions, such as lawyers
and engineers."

This response is informational only and does not constitute a declaratory ruling. It should also be noted that your request for an interpretive statement was received prior to the enactment of 1989 PA 95 and was therefore not subject to the notice and written comment provisions of the amendatory act.

Very truly yours,



Phillip T. Frangos, Director
Office of Hearings and Legislation
517/373-8141

PTF:rlp