

## MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN

SECRETARY OF STATE

STATE TREASURY BUILDING



LANSING

MICHIGAN 48918

August 4, 1987

Ms. Camille Cleveland  
 Elias Brothers Restaurants, Inc.  
 4199 Marcy  
 Warren, Michigan 48091-1799

Dear Ms. Cleveland:

This is in response to your request for an interpretive statement concerning the applicability of the Campaign Finance Act (the Act), 1976 PA 388, as amended, to certain corporate activity. Specifically, you ask whether a nonprofit corporation, consisting of a group of corporations, may form a committee for the purpose of supporting or opposing candidates and ballot questions. You also inquire whether each corporate member would be required to establish its own separate segregated fund for the purpose of contributing to the committee established by the nonprofit corporation.

Corporate involvement in election financing is governed by sections 54 and 55 of the Act, MCLA 169.254 and 169.255.

Section 54(1) of the Act prohibits a corporation from making expenditures or contributions under the Act, but excepts from the this general prohibition the following:

- (1) Loans made in the ordinary course of business [section 54(1)].
- (2) Corporations formed for political puposes [section 54(2)].
- (3) Contributions to a ballot question committee [section 54(3)].  
 Section 54(3) of the Act limits corporate contributions to \$40,000.00 for each ballot question committee; however, this provision was ruled unconstitutional by the Federal District Court in Michigan Chamber of Commerce v Secretary of State, 637 F Supp 1192 (ED Mich, 1986). This case is currently on appeal.
- (4) Unlimited independent expenditures for the qualification, passage or defeat of a ballot question [section 54(4)]. A corporation making an independent expenditure under section 54(4) of the Act, will be considered a ballot question committee.

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Section 55(1) of the Act permits a corporation, profit or nonprofit, to make an expenditure for the establishment, administration and solicitation of contributions to, and expenditures on behalf of, candidate committees, ballot question committees, political party committees and independent committees.

However, contributions to a corporation's separate segregated fund may be solicited only from certain persons. The category of persons eligible to contribute to a corporation's separate segregated fund is dependent upon the corporation's classification as a profit or nonprofit corporation.

Contributions to the separate segregated fund of a profit corporation are controlled by section 55(2) of the Act, which provides:

"(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."

Contributions to the separate segregated fund of a nonprofit corporation are controlled by section 55(3) of the Act, which provides:

"(3) Contributions for a fund established under this section by a corporation which is nonprofit may be solicited from any of the following persons or their spouses:  
(a) Members of the corporation who are individuals.  
(b) Stockholders of members of the corporation.  
(c) Officers or directors of members of the corporation.  
(d) Employees of members of the corporation who have policy making, managerial, professional, supervisory, or administrative nonclerical responsibilities."

In the case of a separate segregated fund established by a nonprofit corporation, solicitations permitted by section 55(3) are in addition to those permitted by section 55(2). See Interpretive Statement issued to Mr. Roland T. Baumann II on November 2, 1978.

The Attorney General ruled in OAG, 1977-1978, No 5344, p 549 (July 20, 1978), that a separate segregated fund established by one corporation may not contribute to a separate segregated fund established by another corporation. This opinion also ruled that a corporation may establish only one separate segregated fund. These limitations apply to both profit and nonprofit corporations.

In an Interpretive Statement issued to Mr. William E. Hazel, Jr., on August 1, 1978, the Department stated:

"Section 55 does not permit a corporation to make disbursements or contributions for the establishment, administration or solicitation of contributions for a political action committee formed by another corporation.

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Further, in an Interpretive Statement issued to Mr. Thomas J. Grzywacz on August 21, 1979, the Department stated:

"[O]nly a nonprofit corporation may receive contributions from 'members' of the corporation. Moreover, these 'members' must be individuals or their spouses. The 'members' may not be corporations."

Section 3(4) of the Act, MCLA 169.203(4), provides:

"(4) 'Committee' means a person who receives contributions or makes expenditures for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate, or the qualification, passage, or defeat of a ballot question, if contributions received total \$200.00 or more in a calendar year or expenditures made total \$200.00 or more in a calendar year. An individual, other than a candidate, shall not constitute a committee."

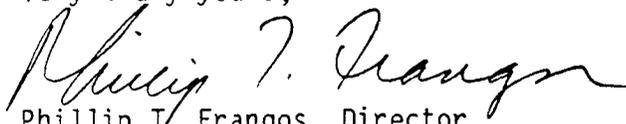
A separate segregated fund which meets the criteria of section 3(4) of the Act is a committee. A corporation may have only one committee, and that committee must be its separate segregated fund.

Therefore, a nonprofit corporation, consisting of a group of corporations, may establish a separate segregated fund for the purpose of supporting or opposing candidates and ballot questions. However, the member corporations may not contribute to the fund, since section 55(3) only allows contributions from members who are individuals.

In answer to your second question, it follows from the foregoing that the separate segregated fund of a corporate member of the nonprofit corporation is prohibited from contributing to the committee established by the nonprofit corporation.

This response is informational only and does not constitute a declaratory ruling.

Very truly yours,



Phillip T. Frangos, Director  
Office of Hearings and Legislation