

Action Handle Reply

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April 12, 2013

The Honorable Ruth Johnson
Secretary of State
Bureau of Elections
Richard H. Austin Building
1st Floor
430 W. Allegan
Lansing, Michigan 48918

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RUTH JOHNSON
SECRETARY OF STATE

Dear Secretary Johnson:

Our office represents individuals, candidates, committees and entities that participate in the political process in Michigan and throughout the United States. We write to you to seek a declaratory ruling or interpretive statement under the Michigan Campaign Finance Act (the MCFA), 1976 PA 388, as amended, MCL 169.201 *et seq.*

The Supreme Court of the United States' decision in *Citizens United v. Federal Election Commission*, 130 S.Ct. 876, 175 L Ed 2d 753 (2010), directly impacted the MCFA. By overruling its decision in *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652 (1990), the Supreme Court declared that section 54(1) of the MCFA was unconstitutional to the extent that it prohibited independent expenditures by corporations, labor organizations or domestic dependent sovereigns. Accordingly, corporations, labor organizations, or domestic dependent sovereigns may use their treasury funds for independent expenditures on behalf of state or local candidates. There is neither limitation on the amount of money that can be spent nor any restriction on the time frame for independent expenditures.

In *MI Chamber of Commerce et al v. Land*, 2010 US Dist LEXIS 751866 (WD MI, 2010), the court authorized corporations, labor organizations, or domestic dependent sovereigns to make contributions to political committees that are organized exclusively for the purpose of making independent expenditures that are not in any way directly or indirectly "coordinated" with any candidate, candidate committee, political party, or political party committee. The Department of State has issued guidance on the registration and reporting requirements for Michigan "Super PACs". (See http://www.michigan.gov/sos/0,1607,7-127-1633_8723_15274-230880--,00.html (visited on April 8, 2013)). That guidance does not address the participation by state or local candidates in fundraising events for Michigan Super PACs that would not otherwise amount to "coordinated" activity.

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In April 2010, the Federal Election Commission (FEC) adopted revised regulations covering “participation by Federal candidates and officeholders at fundraising events in connection with an election for Federal office . . . at which funds outside the amount limitations and source prohibitions of the [Federal Election Campaign] Act or Levin funds are solicited.” 11 CFR 300.64(a). Under the revised regulations, a Federal candidate or officeholder may “[a]ttend, speak at, or be a featured guest” at such a fundraising event. 11 CFR 300.64(b)(1). In the course of participating in such an event, however, a Federal candidate or officeholder may not solicit any funds that are not “subject to the limitations, prohibitions, and reporting requirements of the Act.” Rather, a Federal candidate or officeholder who solicits funds at such an event must limit any solicitation “to funds that comply with the amount limitations and source prohibitions of the Act.” 11 CFR 300.64(b)(2). The FEC since made clear that such activity by Federal officeholders and candidates specifically on behalf of Super PACs was consistent with the Act. *See* FEC AO 2011-12.

The Federal regulation governing participation by Federal candidates may not be controlling under the MCFA, but the Department of State may nevertheless view it as persuasive authority. Accordingly, please provide guidance on the following questions under the MCFA:

1. May a Michigan state or local candidate or officeholder attend, speak at, or be a featured guest at a Michigan Super PAC fundraising event?;
2. May a Michigan state or local candidate or officeholder solicit any funds that are subject to the limitations, prohibitions, and reporting requirements of the MCFA on behalf of a Michigan Super PAC?;
3. May a Michigan state or local candidate or officeholder solicit any funds that are not subject to the limitations, prohibitions, and reporting requirements of the MCFA on behalf of a Michigan Super PAC?; and
4. Are there any additional restrictions or prohibitions on a state or local candidate or officeholder when participating in activities for a Michigan Super PAC?

Please do not hesitate to contact us should you have any questions regarding this request.

Sincerely,



Elliot S. Berke

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