



STATE OF MICHIGAN
RUTH JOHNSON, SECRETARY OF STATE
DEPARTMENT OF STATE
LANSING

March 23, 2015

Eric E. Doster
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2145 Commons Parkway
Okemos, Michigan 48864

Dear Mr. Doster:

The Michigan Department of State (Department) acknowledges receipt of your letter dated January 13, 2015, requesting the issuance of a declaratory ruling or interpretive statement regarding the Department's interpretation of the Michigan Campaign Finance Act (MCFA or Act), 1976 PA 388, MCL 169.201 *et seq.*, as it applies to a nonprofit corporation's solicitation of contributions to a separate segregated fund (SSF). A copy of your request was published on the Department's website beginning January 15, 2015. No public comments were filed in relation to your request.

The MCFA and Administrative Procedures Act (APA), 1969 PA 306, MCL 24.201 *et seq.*, require the Department to issue a declaratory ruling if an interested person submits a written request that contains a reasonably complete statement of facts and presents a question of law. MCL 24.263, 169.215(2). If the Department declines to issue a declaratory ruling, it must instead offer an interpretive statement "providing an informational response to the question presented [.]” MCL 169.215(2). As the factual statement provided in your letter is insufficient to form the basis of a declaratory ruling, the Department issues this interpretive statement in response to your request.

The MCFA authorizes a nonprofit corporation¹ to establish an SSF “to be used for political purposes [.]” including making contributions to and expenditures for candidate committees, ballot question committees, political party committees, political and independent committees, and SSFs established by other entities. MCL 169.255(1). Additionally, a nonprofit corporation may make expenditures for costs incurred in establishing, administering, and soliciting contributions for its own SSF, and such expenditures are excluded from the ordinary disclosure requirements of the MCFA. *Id.*, MCL 169.206(2)(c) (“Expenditure does not include ... [a]n

¹ Other types of legal entities are similarly permitted to establish SSFs and make expenditures for the establishment, administration and solicitation of contributions for SSFs, including for-profit corporations, joint stock companies, domestic dependent sovereigns, and labor organizations. MCL 169.255(1). As your request was limited in scope to nonprofit corporations, this response refers exclusively to nonprofit corporations.

expenditure for the establishment, administration, or solicitation of contributions to a separate segregated fund if that expenditure was made by the person who established the separate segregated fund as authorized under section 55.”). Aside from expenditures made for these administrative costs, a nonprofit corporation is prohibited from making a contribution or expenditure to its SSF. MCL 169.254(1).

With respect to the solicitation of contributions, the MCFA requires that contributions to SSFs be obtained voluntarily, without the threat or use of coercion, physical force, or adverse consequences affecting one’s employment, membership status, or finances. MCL 169.255(6). Contributions collected on an automatic basis such as through the operation of a payroll deduction plan require the contributor’s affirmative written consent, given once each calendar year. *Id.*, Mich Admin Code R 169.39c, 39d. Although the Department has promulgated an administrative rule governing the precise wording of an affirmative consent statement, Mich Admin Code R 169.39d, it has not adopted standard language by which a contributor must acknowledge in writing that his or her contribution is given voluntarily.

Additionally, the MCFA requires that contributions remitted to a nonprofit corporation’s SSF be obtained exclusively from the following persons or their spouses: individual members of the nonprofit corporation, stockholders or members of the nonprofit corporation’s members, officers or directors of the nonprofit corporation’s members, or employees of the nonprofit corporation’s members who have policymaking, managerial, professional, supervisory, or administrative non-clerical duties. MCL 169.255(3). A nonprofit corporation’s SSF may also receive a contribution from another SSF. MCL 169.255(1).

According to your letter your client, a nonprofit corporation, intends to include a solicitation for contributions to its own SSF or “issues fund”² as one component of its annual membership dues invoice. The membership dues invoice will be sent only to those persons who are eligible to make contributions to the nonprofit corporation’s SSF under MCL 169.255(3). The nonprofit corporation intends to increase its annual membership dues and in your words, “intend[s] to offer members a choice of allocating *this dues increase amount* to” its SSF or the issues fund. (Emphasis added). This statement, coupled with the fact that the sample invoices provided with your letter do not instruct members to remit separate checks for membership dues and contributions to the SSF, merit further discussion.

It is important to bear in mind that a nonprofit corporation is barred from using its general treasury funds to make a contribution or expenditure to an SSF, other than for costs incurred in establishing, administering, and soliciting contributions to the SSF. MCL 169.254(1), 169.255(1). The Department has repeatedly explained that a corporation’s general treasury funds cannot be used to make contributions to an SSF. See, e.g., Declaratory Ruling to Peter McNenly (August 4, 1987)³ (“It must be emphasized, however, that transfers to MEA-PAC must be made from earmarked contributions and not from MEA’s membership dues or general treasury funds. Any transfer of MEA funds to MEA-PAC would result in a violation of section 54 of the

² Your letter correctly notes that an “issues fund” is not subject to MCFA regulation, so long as its purpose is limited to “advocat[ing] for policies beneficial to members, not to elect or defeat candidates for public office[.]” and it does not receive contributions or make expenditures as those terms are defined in MCL 169.204 and 169.206.

³ Available at http://www.michigan.gov/documents/sos/McNenly_1987_428998_7.pdf.

Act [;]”) and Interpretive Statement to Thomas Grzywacz (August 21, 1979).⁴ In addition, the MCFA requires that “[c]ontributions received by a committee shall not be commingled with other funds of an agent of the committee or of any other person.” MCL 169.221(12). Under this provision, the nonprofit corporation’s general treasury funds cannot be commingled with funds belonging to the SSF.⁵ Thus, to the extent that your request might be construed as suggesting that membership dues paid to the nonprofit corporation will be transferred to the SSF or commingled with contributions to the SSF, a violation of the MCFA may result.⁶

With this context, the Department addresses the questions posed in your letter:

1. *“Does the Act regulate the content of a membership dues invoice submitted by a nonprofit corporation to its members which contains, in part, a solicitation of contributions to the separate segregated fund by the nonprofit corporation?”*
2. *“On the membership dues invoice, must the words ‘optional’ or ‘voluntary’ appear with the requested solicitation of contributions to a separate segregated fund?”*
3. *“With respect to offering members a choice of allocating a dues increase amount to the [SSF] or an ‘issues fund’ of the nonprofit corporation as exemplified in Sample No. 10 [of the request],^[7] does this choice of allocation violate the prohibition on coercion or the reverse checkoff method pursuant to section 55(6) of the Act or any other provision of the Act?”*

⁴ Available at http://www.michigan.gov/documents/sos/Grzywacz_1979_429603_7.pdf.

⁵ See the Department’s publication, “Independent Expenditures by Corporations, Unions, and Domestic Dependent Sovereigns,” available at http://www.michigan.gov/documents/sos/Independent_Expenditures_by_Corporations_445707_7.pdf (“Can the corporate, union, or tribal treasury funds be commingled with the Separate Segregated Fund of the corporation, labor union, or tribe? No. Treasury funds cannot be commingled with funds that are distributed to candidate committees, independent committees, political committees (other than those that exclusively make independent expenditures), political party committees, or House or Senate political party caucus committees.”)

⁶ The MCFA does not require a nonprofit corporation to segregate its general treasury funds from funds belonging to an “Issues Fund” whose conduct does not include the receipt of contributions or making of expenditures within the meaning of MCL 169.204 and 169.206, and thus falls outside of the ambit of the MCFA.

⁷ Sample Membership Dues Invoice No. 10, provided as an attachment to your request, reads in pertinent part:

“2015 Local Association Dues - \$100.00
2015 State Association Dues – \$50.00
2015 National Association Dues – \$25.00
Subtotal - \$175.00
2015 Dues Increase
PAC Contribution or Issues Fund Contribution (circle choice) - \$25.00
Total - \$200.00

... Please note that this invoice reflects an increase in annual membership dues of \$25.00. Please determine (by circling either ‘PAC’ or ‘Issues Fund’) whether the amount of this dues increase shall be used as a PAC contribution or a contribution to the Issues Fund of the State Association. In the event that a member does not choose to allocate the dues increase to either the PAC or the Issues Fund, the dues increase shall automatically be allocated to the Issues Fund...”

4. *“Are the examples of membership dues invoices attached to this request consistent or compliant with the Act’s requirements? If one or more of these examples of membership dues invoices are not compliant with the Act’s requirements, please explain the basis for your determination.”*

Neither the Act nor any administrative rules promulgated pursuant to the Act require that a solicitation of contributions to a SSF contain specific words or phrases to indicate that the contribution is given voluntarily and devoid of any threat or use of coercion, physical force, or adverse employment, membership, or financial consequences. Instead, the determination of whether a contribution was obtained in violation of MCL 169.255(6) under the threat or use of coercive tactics, physical force, or to the detriment of one’s employment, membership status, or financial condition will be made on a case-by-case basis in view of the particular facts and circumstances. Although not mandated by law, the inclusion of such words as “voluntary” or “optional” as part of the solicitation might be viewed as one piece of evidence that tends to suggest that a contribution was freely given.

While your request seemingly focuses on whether the proposed membership dues invoices constitute a prohibited reverse checkoff system or amount to coercion in violation of MCL 169.255(6), the more salient inquiry is whether membership dues paid to a nonprofit corporation can be allocated to an SSF, as you appear to suggest in Question 3.

The nonprofit corporation is a distinct legal entity from its SSF, and funds belonging to the SSF must be kept separately from the nonprofit corporation’s general treasury funds. A nonprofit corporation is prohibited from making a contribution to or expenditure for a SSF, except for costs incurred in the establishment, administration, and solicitation of contributions to the SSF. MCL 169.254(1), 169.255(1). The authorized sources of contributions to a nonprofit corporation’s SSF are limited to other SSFs or the persons and spouses of persons identified in MCL 169.255(3), and do not include the general treasury funds of the nonprofit corporation. For these reasons, any commingling of the nonprofit corporation’s membership dues or other general treasury funds and contributions to the SSF is prohibited. MCL 169.221(12). In short, dues paid to a nonprofit corporation and contributions made to its SSF are distinct. To the extent that your request implies that a contribution to an SSF represents a “dues increase,”⁸ a violation of the MCFA could occur if a member selects the “PAC Contribution” option, and the nonprofit corporation deposits the amount representing the “PAC Contribution” into its general treasury account for subsequent transfer from that account to the SSF.

To ensure that nonprofit corporations whose membership dues invoices include a solicitation of contributions to a SSF comply with the source restrictions and anti-commingling provision of the MCFA, invoices should include an instruction advising members to remit separate checks for membership dues and SSF contributions.

⁸ See excerpt of Sample Membership Invoice No. 10 in fn. 7 (“...whether the amount of this dues increase shall be used as a PAC contribution ...”).

Eric E. Doster
March 23, 2015
[DRAFT]

The foregoing constitutes an interpretive statement with respect to the questions presented in your January 13, 2015 request.

Sincerely,