



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

June 26, 2014

Matthew Davis
Witte Law Offices, P.L.L.C.
119 East Kalamazoo Street
Lansing, Michigan 48933

Dear Mr. Davis:

The Department of State (Department) has concluded its review of the complaint filed by your client, Stanley Grot, against Peter Lucido concerning an alleged violation of the Michigan Campaign Finance Act (MCFA or Act), 1976 PA 388, MCL 169.201 *et seq.* This letter concerns the disposition of Mr. Grot's complaint.

Mr. Grot alleged endorsements by corporations listed on Mr. Lucido's campaign website give rise to illegal corporate contributions to Mr. Lucido's candidate committee.

The MCFA prohibits a corporation from making a contribution to a committee other than a ballot question committee. MCL 169.254. A knowing violation of this section is a felony, punishable by a fine of not more than \$5,000 or imprisonment. MCL 169.254(4). Additionally, Michigan Administrative Rule 169.35 prohibits the treasurer of a committee, other than a ballot question committee, from accepting a contribution written on a check from a corporate account. A person who violates this provision may be subject to a civil fine of up to \$1,000.00 per violation plus triple the amount of each improper contribution. MCL 169.215(11), (15).

While the only exception to the prohibition on corporate contributions contained in the MCFA is for ballot question committees, a United States District Court for the Western District of Michigan held in an as-applied challenge to Michigan's prohibition on corporate contributions that if a political action committee does not coordinate the expenditure of its funds with a candidate, then the United States Supreme Court decision in *Citizens United*¹ forbids Michigan from denying a corporation from contributing to that committee. *Mich Chamber v Land*, 725 F Supp 2d 665 (2010). This ruling does not allow direct corporate contributions to candidate committees, and the prohibition in section 54 still applies to candidate committees.

Mr. Grot filed his complaint on February 27, 2014. Mr. Lucido filed his answer on March 20, 2014, and you filed a rebuttal statement on behalf of Mr. Grot on April 3, 2014.

As evidence, Mr. Grot provided a print out of Mr. Lucido's campaign website which lists several local businesses, including corporations, which have purportedly endorsed his candidacy.

¹ *Citizens United v FEC*, 558 US 310 (2010).

In his response to Mr. Grot's complaint, Mr. Lucido asserted that no corporation, regardless of whether it had endorsed his candidacy, provided any financial contribution to his election. Mr. Lucido further asserted that the "essence of a 'contribution' is the transfer of anything of 'ascertainable monetary value.'" He further stated that "no corporation has transferred anything of ascertainable monetary value for [his] election. This includes money or in-kind benefit."

The MCFA prohibits a corporation from making a contribution to a candidate committee. MCL 169.254. The Act defines a contribution, in pertinent part, as:

[A] payment, gift, subscription, assessment, expenditure, contract, payment for services, dues, advance, forbearance, loan, or donation of money or anything of ascertainable monetary value, or a transfer of anything of ascertainable monetary value to a person, made for the purpose of influencing the nomination or election of a candidate, for the qualification, passage, or defeat of a ballot question, or for the qualification of a new political party.

MCL 169.204(1). In your rebuttal statement, you contend that corporate endorsements do indeed have an ascertainable monetary value, namely the value of the corporation's "good will," and therefore fall under the definition of contribution contained in the Act.

However, the Attorney General issued the enclosed opinion (Attorney General Op. #7086), which addressed whether an endorsement constitutes a "contribution" within the meaning of the MCFA. The Opinion concerned casino licensees and other persons subject to section 7b of the Michigan Gaming Control and Revenue Act (1996 Initiated Law 1, MCL 432.201 *et seq.*), who like corporations are prohibited from making contributions to a candidate or candidate committee.² The Attorney General was asked whether casino licensees and other persons regulated under the Gaming Act were prohibited from endorsing a political candidate or allowing one's name to be used in campaign literature.

The Attorney General opined that because the Gaming Act does not define "contribution" and the Gaming Act and the MCFA are *in pari material* and must be read together, that the MCFA's definition of "contribution" must be applied to sections 7b(4) and (5) of the Gaming Act.

In applying the MCFA's definition of "contribution" to the activities in question (particularly, endorsements of candidates and the allowance of one's name to be used in campaign literature), the Attorney General opined that "it is clear that political activities such as endorsing a political candidate, allowing one's name to be used in campaign literature, or serving as a member of a candidate committee do not violate section 7b of the Gaming Act so long as those services are provided 'without compensation.'" The Attorney General further stated that "***[s]uch activities do not constitute a 'contribution' as defined by section 4 of the Campaign Finance Act.***" (Emphasis added.)

Because the Attorney General has issued an opinion which states that candidate endorsements and allowing one's name to be used in campaign literature do not give rise to a contribution as defined in the

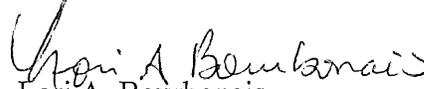
² Section 7b of the Michigan Gaming Control and Revenue Act (Gaming Act) prohibits certain people covered by the Gaming Act from making a contribution to a candidate or committee. MCL 432.207b(4), (5).

MCFA, the Department finds that the listing of corporate endorsements of Mr. Lucido on a website does not violate section 54 of the MCFA.

However, if a corporation expends funds to communicate or publicize its endorsement of a candidate, which is not alleged to have occurred here, then there may be reason to believe that a violation of section 54 of the Act would occur. The evidence submitted to the Department tends to suggest that Mr. Lucido listed these endorsements on his candidate website, which states that the website was paid for by his candidate committee. There is no evidence to the contrary, nor is there any evidence that any corporate monies have been expended to communicate or publicize any corporate endorsement of Mr. Lucido.

Based on the above, the Department finds that the evidence does not support a conclusion that Mr. Lucido received corporate contributions in contravention of the Act. As a result, Mr. Grot's complaint is dismissed. The Department's file in this matter has been closed and no further enforcement action will be taken.

Sincerely,



Lori A. Bourbonais

Bureau of Elections

Michigan Secretary of State

c: Peter Lucido

The following opinion is presented on-line for informational use only and does not replace the official version. (Mich Dept of Attorney General Web Site - www.ag.state.mi.us)

STATE OF MICHIGAN

JENNIFER M. GRANHOLM, ATTORNEY GENERAL

CAMPAIGN FINANCE ACT: Political activities by casino licensees and other persons

GAMING CONTROL AND REVENUE ACT: Political contributions by casino licensees and other persons

POLITICAL ACTIVITY:

Section 7b of the Michigan Gaming Control and Revenue Act does not prohibit casino licensees and other persons subject to that section from engaging in political activities on behalf of a political candidate or candidate committee. Such activities do not constitute a "contribution" as defined by section 4 of the Michigan Campaign Finance Act.

Section 7b of the Michigan Gaming Control and Revenue Act prohibits casino licensees and other persons subject to that section from making a non-monetary contribution to a political candidate or candidate committee that would constitute a "contribution" as defined by section 4 of the Michigan Campaign Finance Act.

Opinion No. 7086

August 10, 2001

Honorable Mark H. Schauer
State Representative
The Capitol
Lansing, Michigan 48909-7514

You have asked two questions concerning section 7b of the Michigan Gaming Control and Revenue Act (Gaming Act), 1996 Initiated Law, MCL 432.201 *et seq.* The Gaming Act implements and regulates casino gambling in Michigan. The title of the Gaming Act establishes its scope and provides, in part, as follows:

An act to provide for the licensing, regulation, and control of casino gaming operations, manufacturers and distributors of gaming devices and gaming related equipment and supplies, and persons who participate in gaming; . . . to restrict certain political contributions; to establish a code of ethics for certain persons involved in gaming; . . . [Emphasis added.]

Sections 7b(4) and (5)¹ of the Gaming Act restrict political contributions by licensees and persons holding an interest in a licensee or casino enterprise as follows:

(4) A licensee or person who has an interest in a licensee or casino enterprise, or the spouse, parent, child, or spouse of a child of a licensee or person who has an interest in a licensee or casino enterprise, shall not make a *contribution* to a candidate or a committee

* * *

(5) A licensee or person who has an interest in a licensee or casino enterprise, or the spouse, parent, child, or spouse of a child of a licensee or a person who has an interest in a licensee or casino enterprise, shall not make a *contribution* to a candidate or committee through a legal entity that is established, directed, or controlled by any of the persons described in this subsection [Emphasis added.]

Your first question asks whether section 7b of the Gaming Act prohibits casino licensees and other persons subject to that section from engaging in political activities on behalf of a political candidate or candidate committee.

Information supplied with your request suggests a concern that the prohibition against making a "contribution," as that term is used

in sections 7b(4) and (5) of the Gaming Act, may prohibit casino licensees and other persons subject to those sections from engaging in political activities such as endorsing a political candidate, allowing their names to be used in campaign literature, or serving as officers for a candidate's campaign committee.²

The Gaming Act does not define the term "contribution." Section 4 of the Michigan Campaign Finance Act (Campaign Finance Act), 1976 PA 388, MCL 169.201 *et seq*, however, defines the term "contribution" as follows:

(1) "Contribution" means a payment, gift, subscription, assessment, expenditure, contract, payment for services, dues, advance, forbearance, loan, or donation of money or anything of ascertainable monetary value, or a transfer of anything of ascertainable monetary value to a person, made for the purpose of influencing the nomination or election of a candidate, or for the qualification, passage, or defeat of a ballot question.

(2) Contribution includes the full purchase price of tickets or payment of an attendance fee for events such as dinners, luncheons, rallies, testimonials, and other fund-raising events; an individual's own money or property other than the individual's homestead used on behalf of that individual's candidacy; the granting of discounts or rebates not available to the general public; or the granting of discounts or rebates by broadcast media and newspapers not extended on an equal basis to all candidates for the same office; and the endorsing or guaranteeing of a loan for the amount the endorser or guarantor is liable.

(3) Contribution does not include any of the following:

(a) Volunteer personal services provided without compensation, or payments of costs incurred of less than \$500.00 in a calendar year by an individual for personal travel expenses if the costs are voluntarily incurred without any understanding or agreement that the costs shall be, directly or indirectly, repaid.

(b) Food and beverages, not to exceed \$100.00 in value during a calendar year, which are donated by an individual and for which reimbursement is not given.

(c) An offer or tender of a contribution if expressly and unconditionally rejected, returned, or refunded in whole or in part within 30 business days after receipt.

The Campaign Finance Act regulates the financing of and restricts contributions to political campaigns. It was enacted "to ensure the integrity of Michigan's political campaigns and offices, thereby protecting the interest of the public at large, individual citizens, and candidates for political office." Senate Legislative Analysis, SB 1570, December 17, 1976. Section 7b of the Gaming Act also restricts political contributions and, like the Campaign Finance Act, strives to protect and preserve the integrity of Michigan's political process. In OAG, 1997-1998, No 7002, pp 206, 209 (December 17, 1998), the Attorney General concluded that the political contribution limitations contained in section 7b of the Gaming Act further the State's compelling interest in preventing corruption and the appearance of corruption in the political process.

The text of section 7b of the Gaming Act demonstrates that Act's close relationship to the Campaign Finance Act. As used in section 7b of the Gaming Act, the terms "candidate," "committee," "candidate committee," "political party committee," "independent committee," and "ballot question committee" are all defined by reference to the Campaign Finance Act. The legislative history of the various amendments to the Gaming Act also evidences this relationship. Section 7b was among several amendments to the Gaming Act passed by the Legislature as 1997 PA 69. The amendments were enacted on the same day as 1997 PA 71, MCL 169.230, an amendment to the Campaign Finance Act prohibiting a committee from accepting a contribution from a person prohibited from making a contribution under section 7b of the Gaming Act. This amendment to the Campaign Finance Act was tie-barred to the amendments to the Gaming Act.³

Statutes that relate to the same person or thing, or to the same class of persons or things, or which share a common purpose are *in pari materia* and must be read together as constituting one system of law. *People v Webb*, 458 Mich 265, 274; 580 NW 2d 884 (1998). The rule is especially applicable where, as here, the statutory provisions in question were passed in the same legislative session and simultaneously approved by the Governor. *Reed v Secretary of State*, 327 Mich 108, 113; 41 NW 2d 491 (1950). Statutes that are *in pari materia* must be construed uniformly and consistently to achieve the intent of the Legislature. *Palmer v State Land Office Bd*, 304 Mich 628, 636-637; 8 NW 2d 664 (1943). The object of the *in pari materia* rule is to give effect to the legislative purpose as found in harmonious statutes on the same subject. *Webb, supra*, at 274. In deciding whether to apply this rule, courts often examine legislative history to "ascertain the uniform and consistent purpose of the legislature." *Palmer, supra*, at 636-637.

Section 7b of the Gaming Act and section 4 of the Campaign Finance Act are *in pari materia* and must, therefore, be read together. Both acts share a common purpose and subject matter -- the regulation of political contributions and the protection of Michigan's political process. Reading them together promotes the uniform and consistent regulation of casino-related political contributions. The Legislature, on the same day, amended both acts and also enacted the Casino Interest Registration Act as a comprehensive

plan regulating casino-related political contributions. Application of the Campaign Finance Act's definition of "contribution" to sections 7b(4) and (5) of the Gaming Act serves to harmonize both acts and is consistent with the intent of the Legislature. A contrary conclusion would lead to the absurd result that a contribution made under section 7b of the Gaming Act would have a different meaning than a contribution *accepted* by a committee under the Campaign Finance Act.

In applying the Campaign Finance Act's definition of "contribution" to sections 7b(4) and (5) of the Gaming Act, it is clear that political activities such as endorsing a political candidate, allowing one's name to be used in campaign literature, or serving as a member of a candidate committee do not violate section 7b of the Gaming Act so long as those services are provided "without compensation." Campaign Finance Act, section 4(3)(a).

It is my opinion, therefore, in answer to your first question, that section 7b of the Michigan Gaming Control and Revenue Act does not prohibit casino licensees and other persons subject to that section from engaging in political activities on behalf of a political candidate or candidate committee. Such activities do not constitute a "contribution" as defined by section 4 of the Campaign Finance Act.

Your second question asks whether section 7b of the Michigan Gaming Control and Revenue Act prohibits casino licensees and other persons subject to that section from making a non-monetary contribution to a political candidate or candidate committee.

Information supplied with your request describes such non-monetary contributions as the provision of goods or services, making loans, or making facilities available to a political candidate or candidate committee.

In answering your first question, it was concluded that the definition of "contribution" as provided in section 4 of the Campaign Finance Act must be applied to sections 7b(4) and (5) of the Gaming Act. Applying this conclusion, it is clear that any non-monetary contribution that falls within the definition of "contribution" contained in section 4 of the Campaign Finance Act is prohibited. This includes the provision of goods or services that have an ascertainable monetary value (subject to specific statutory exemptions), making loans, or, under certain circumstances, making facilities available to a political candidate or candidate committee.

It is my opinion, therefore, in answer to your second question, that section 7b of the Michigan Gaming Control and Revenue Act prohibits casino licensees and other persons subject to that section from making a non-monetary contribution to a political candidate or candidate committee that would constitute a "contribution" as defined by section 4 of the Michigan Campaign Finance Act.

JENNIFER M.GRANHOLM
Attorney General

¹OAG, 1997-1998, No 7002, pp 206, 210 (December 17, 1998), concluded that sections 7b(4) and (5) of the Gaming Act, to the extent they prohibit political contributions by the spouse, parent, child, or spouse of a child of certain casino-related licensees or interest holders, violate the free speech provisions of the First Amendment to the United States Constitution and are, therefore, unconstitutional.

² Section 4d(14) of the Gaming Act expressly prohibits members of the Michigan Gaming Control Board and certain gaming regulators from engaging in "political activity" or "politically related activity." Section 4d(28)(b) defines both terms. Section 4d does not apply to the class of persons identified in section 7b and is not addressed in this analysis.

³Section 1 of 1997 PA 71 states that: "This amendatory act does not take effect unless Senate Bill No. 569 of the 89th Legislature is enacted into law." SB 569 was enacted as 1997 PA 69. 1997 PA 71 and 1997 PA 69 were approved and filed with the Secretary of State on the same day. 1997 Journal of the Senate 1351, 1352.