MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

MUTUAL BUILDING
208 N. CAPITOL AVENUE

LANSING
MICHIGAN 48918

April 12, 1985

Neil J. Lehto
Stewart, O'Reilly, Lascoe & Rancilio, P.C.
Professional Village Plaza
40600 Van Dyke Avenue
Sterling Heights, Michigan 48078-4080

Dear Mr. Lehto:

This is in response to your request for an interpretive statement concerning the applicability of the Campaign Finance Act, 1976 PA 388, as amended, ("the Act") to the use of public access cablecasts by political candidates.

The city you represent exercises regulatory authority over a local cable television system. This city is now considering various aspects of the use of public access cablecasting facilities by political candidates. You inquire whether the identification requirement of the Act would apply to video tapes produced by political candidates and cablecast on a public access channel.

Section 47(2) of the Act (MCL 169.247) states:

> "(2) A radio or television paid advertisement having reference to an election, a candidate, or ballot question shall identify the sponsoring person as required by the federal communications commission, shall bear the name of the person paying for the advertisement, and shall be in compliance with the following:
> (a) If the radio or television paid advertisement relates to a candidate and is an independent expenditure, the advertisement shall contain the following disclaimer: 'Not authorized by any candidate'.
> (b) If the radio or television paid advertisement relates to a candidate and is not an independent expenditure but is paid for by a person other than the candidate to which it is related, the advertisement shall contain the following disclaimer: 'Authorized by _____.'
> (name of candidate or name of candidate committee)
> (Emphasis added.)

The condition precedent to application of the identification requirements of

section 47(2) of the Act is that the radio or television communication be a paid advertisement. You state that in your cable television system, "the use of public access video taping equipment and public access time is free". You also indicate that the cable television system provides no other services whatsoever in connection with the production or the cablecasting of the videotape. Upon further inquiry of the Department, you state that this service is available upon request to any resident or property owner within the cable system area.

Under these circumstances, the cablecast would not be a paid political advertisement and, therefore, the identification requirements of section 47(2) of the Act would not apply. You should be aware, however, that unequal access to political advertisement programming may violate other provisions of the Act and/or federal law.

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

Very truly yours,

Phillip T. Frangos
Director
Office of Hearings and Legislation

PTF/cw

1-85-CD

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

October 4, 1985

Robert S. LaBrant
Michigan State Chamber of Commerce
200 N. Washington Square
Lansing, MI 48933

Dear Mr. LaBrant:

This is in response to your request for a declaratory ruling concerning applicability of the Campaign Finance Act (the Act), 1976 PA 388, as amended, to the Michigan State Chamber of Commerce, a non-profit corporation, and its separate segregated fund, the State Chamber PAC. Specifically, you ask whether the corporation (hereinafter, the State Chamber) may use its treasury funds "to provide State Chamber PAC contributors of $200 or more with a lapel pin, featuring the State Chamber PAC's logo, at a cost . . . not to exceed $5.00 each."

Corporate involvement in Michigan elections is governed by sections 54 and 55 of the Act (MCL 169.254 and 169.255). Section 54 continues the longstanding prohibition against the use of corporate money in candidate elections but allows a corporation to make contributions or expenditures to support or oppose ballot questions. In addition, section 55 provides, in pertinent part:

> "Sec. 55. (1) A corporation or joint stock company formed under the laws of this or another state or foreign country may make an expenditure for the establishment and administration and solicitation of contributions to a separate segregated fund to be used for political purposes. A fund established under this section shall be limited to making contributions to, and expenditures on behalf of, candidate committees, ballot question committees, political party committees, and independent committees.
>
> * * * *
>
> (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 the members of the corporation who have policy making, managerial, professional, supervisory, or administrative nonclerical responsibilities."

It is your position that the cost of providing lapel pins to those persons solicited under subsection (3) is a fundraising expense permitted under this section and an October 26, 1983, declaratory ruling to Mr. James Barrett. In Barrett, the Department stated:

> "A corporation may pay for the cost of office space, phone, salaries, utilities, supplies, legal and accounting fees, fundraising and other expenses incurred in setting up and running a separate segregated fund established by the corporation."

Subsequently, however, the Department indicated in an October 4, 1984, interpretative statement issued to Mr. Jack Schick that section 55 does not allow a corporation to build its separate segregated fund by using corporate dollars to purchase entertainment, premiums or raffle prizes.

You contend Schick prohibits the State Chamber from purchasing lapel pins with money from its corporate treasury, and as such is inconsistent with the Barrett declaratory ruling. However, upon careful analysis, it appears your contention is invalid.

The specific question posed in Schick was whether a corporation could "underwrite an entire fundraising event" for the purpose of raising money for its separate segregated fund. Section 55 strictly limits the use of corporate dollars to three purposes: the establishment of a separate segregated fund, administration of the fund, and solicitation of contributions to the fund. Section 54 restricts corporate contributions and expenditures to ballot question issues. Therefore, a corporation may not make contributions to its separate segregated fund. If a corporation paid for the entire cost of a fundraising event, the corporation would in effect be making an indirect contribution to the fund. Mr. Schick was advised that such a result was not permitted under the Act.

Historically, corporate political participation has been absolutely prohibited. Although sections 54 and 55 made a change in that policy, they are narrowly drawn and strictly limit the use of corporate money in the electoral process. As noted previously, section 55 allows a corporation to make expenditures only for the establishment, administration or solicitation of contributions to a separate segregated fund. Thus, to preserve the integrity of candidate elections, the drafters of section 55 apparently intended to keep corporate dollars out of a separate segregated fund's treasury.

The Federal Election Commission has by rule specifically authorized a corporation to build its separate segregated fund by using "a raffle or other fundraising device which involves a prize, so long as state law permits and the prize is not disproportionately valuable." 11 CFR 114.5(b)(2). This rule goes on to create a presumption that corporate funds are not being exchanged for contributions to a separate segregated fund if the fundraising costs paid by the corporation do not exceed one-third of the money contributed at the fundraiser.

A similar rule has not been promulgated under the Michigan Act. However, the general principle expressed in 11 CFR 114.5(b)(2) is useful in responding to the question you raise. That is, if the cost of the lapel pins awarded to State Chamber PAC contributors is not "disproportionately valuable", there is little risk that paying for the lapel pins with State Chamber treasury funds will result in the exchange of corporate dollars for contributions to the separate segregated fund.

You indicate in your statement of facts that:

> Commencing January 1, 1985, the State Chamber intends to provide mementos, paid for with State Chamber treasury funds, to contributors to the State Chamber PAC.
>
> The State Chamber intends to provide State Chamber PAC contributors of $200 or more with a lapel pin, featuring the State Chamber PAC's logo, at a cost to the State Chamber not to exceed $5.00 each."

A lapel pin which costs $5.00 or less is not disproportionate in value to a $200 contribution. In these circumstances, purchasing the lapel pins with corporate dollars cannot result in trading corporate money for contributions to the separate segregated fund. Thus, in answer to your question, the Michigan State Chamber of Commerce may purchase lapel pins from its corporate treasury, at a cost not to exceed $5.00 each, to be given to persons who contribute $200 or more to the State Chamber PAC.

This response is a declaratory ruling concerning the specific facts and questions presented.

Very truly yours,

Richard H. Austin
Secretary of State

RHA/jep

2-85-CD

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

October 21, 1985

John Thodis
Industrial Michigan
P.O. Box 20163
Lansing, Michigan 48901

Dear Mr. Thodis:

This is in response to your request for a declaratory ruling concerning the applicability of the Campaign Finance Act (the Act), 1976 PA 388, as amended, to the Industrial Michigan Political Action Committee (IMPAC). Specifically, you ask whether IMPAC may solicit and accept contributions from political and independent committees which are separate segregated funds.

Section 55 of the Act (MCL 169.255) allows a corporation to establish a separate segregated fund to be used for political purposes. In OAG, 1977-1978, No. 5344, p 549 (July 20, 1978), the Attorney General stated that a separate segregated fund is required to register with the Department of State either as a political committee or as an independent committee. However, section 55 prohibits a separate segregated fund established by one corporation from making contributions to another corporation's separate segregated fund.

You indicate that IMPAC is registered as an independent committee but is not a separate segregated fund. The committee is not affiliated with a corporation but is "sponsored and encouraged" by Industrial Michigan, an unincorporated association. An independent committee which is not a separate segregated fund is not governed by the restrictions found in section 55. Therefore, in answer to your question, IMPAC may solicit and accept contributions from separate segregated funds which are registered as political or independent committees.

This response is a declaratory ruling concerning the specific facts and questions presented.

Very truly yours,

Richard H. Austin
Secretary of State

RHA/cw

2-85-CI

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

October 22, 1985

Richard D. McLellan
Dykema, Gossett, Spencer, Goodnow & Trigg
800 Michigan National Tower
Lansing, Michigan 48933

Dear Mr. McLellan:

This is in response to your request for an interpretation concerning the applicability of the Campaign Finance Act ("the Act"), 1976 PA 388, as amended, to the campaign finance activities of a certain nonprofit corporation.

Specifically, you inquire whether a nonprofit corporation organized for political purposes, which is registered as an independent committee, should report its receipts and expenditures pursuant to the Act.

Your inquiry implies that the corporation which you describe is, in fact, a corporation "formed for political purposes" as that term is used in sections 54(2) and (3) of the Act (MCL 169.254). The classification of the corporation is central to the question. Under the provisions of section 54(1) of the Act, a corporation is prohibited from making a contribution or expenditure or providing personal services, unless it qualifies for an exception pursuant to section 54(2) or (3) or operates within the provisions of section 55 of the Act (MCL 169.255). This response will consider whether the corporation you describe comes within any of the exceptions of section 54.

Section 54(2) prohibits a person acting for a corporation from making a contribution or expenditure or providing personal service, but excepts a corporation "formed for political purposes" from its prohibition. Section 54(3) prohibits a corporation from making a contribution or expenditure or providing personal services in excess of $40,000.00 to each ballot question committee, but again corporations "formed for political purposes" are excepted from these prohibitions.

The corrupt practices act, 1913 PA 109, was the progenitor of the present Campaign Finance Act. Section 14 of the corrupt practices act (1 Comp. Laws 1915, §3841) provided as follows:

"No . . . corporation, except corporations formed for political pur-

> poses, shall pay, give or lend . . . any money . . . to any candidate or to any political committee, for the payment of any election expenses . . . . "

Section 14 of the corrupt practices act was reenacted as section 919 of the Michigan election law, 1954 PA 116, §919; 1970 CL 168.919, which was eventually replaced by section 54 of the Act. It must be noted that each of these provisions prohibited corporate involvement in election financing, but provided an exception for "corporations formed for political purposes."

The corresponding federal election law governing corporate campaign contributions is 2 USC §441b(a) which has evolutionary roots similar to that of section 54 of the Act, but does not explicitly provide an exception for "corporations formed for political purposes."

> "The Federal Election Campaign Act of 1971 . . . makes it 'unlawful . . . for any corporation . . . to make a contribution or expenditure in connection with' certain federal elections, 2 U.S.C. §441b(a)." FEC v National Right to Work Committee, 103 S Ct 552, 554, fn 1 (1982).

Also in this case, the US Supreme Court summarized the development of federal regulation of corporate campaign contributions. In 1907,

> "[C]ongress first made financial contributions to federal candidates by corporations illegal by enacting the Tillman Act, 34 Stat. 864 (1907). * * * The Federal Corrupt Practices Act, passed in 1925, extended the prohibition against corporate contributions to include 'anything of value' . . .". Supra, p 560.

These provisions were later codified in the Federal Election Campaign Act of 1971, 86 Stat 3, as amended, specifically 2 USC §441b(a).

Both Michigan election law (section 55(1) of the Act) and federal election law (2 USC §441b(b)(2)(c)) provide for corporate participation in elections by the establishment, administration and solicitation of contributions to a separate segregated fund to be used for political purposes.

18 USC §610 was a criminal statute which prohibited corporations from making contributions or expenditures in connection with certain federal elections. This statute was repealed and replaced by 2 USC §441b which retained the prohibition in essentially identical language. In Cort v Ash, 422 US 66 (1974), the US Supreme Court discussed the purpose of 18 USC §610,

> "Thus, the legislation was primarily concerned with corporations as a source of aggregated wealth and therefore of possible corrupting influence . . .". Supra, p 82.

A secondary concern was to protect shareholders from having corporate funds used

to support political candidates to whom they may be opposed. Cort v Ash, supra and FEC v National Right to Work Committee, supra.

In FEC v National Right to Work Committee, the US Supreme Court stated:

> "Speaking of corporate involvement in electoral politics, we recently said:
>
> 'The overriding concern behind the enactment of statutes such as the Federal Corrupt Practices Act was the problem of corruption of elected representatives through the creation of political debts.' First National Bank of Boston v Bellotti, 435 US 765, 788, fn 26 (1978)". Supra, p 559.

Furthermore, the court stated:

> "In order to prevent both actual and apparent corruption, Congress aimed a part of its regulatory scheme at corporations. The statute reflects a legislative judgment that the special characteristics of the corporate structure require particularly careful regulation . * * * While §441b restricts the solicitation of corporations . . . without great financial resources, as well as those more fortunately situated, we accept Congress's judgment that it is the potential for such influence that demands regulation." Supra, p 560.

In 1976, the Michigan Supreme Court had occasion to discuss the purpose of Michigan's historic prohibition against corporate contributions in connection with state elections. The Court stated:

> "Corporations have been prohibited from contributing to electoral campaigns in Michigan since 1913, the year in which the corrupt practices act passed. The legislative intent in prohibiting financial involvement of corporations in the elective process was to prevent the use of corporate funds to impose undue influence upon elections.* * * The possibility of misuse of corporate assets by persons acting on behalf of uninformed or unwilling shareholders and the attempts at influence or importunity which might be exerted upon a successfully elected candidate by a contributing corporation represent abuse which the passage of the corupt practices act sought to eliminate." Advisory Opinion 1975 PA 227, 396 Mich 465, 491 (1976).

Since both Michigan and federal law have similar purposes for prohibiting corporate campaign contributions, it is appropriate to consider federal regulations and opinions of the Federal Election Commission (the "FEC").

In 1975, the FEC issued an advisory opinion concerning 18 USC §610, now 2 USC §441b. An issue addressed in this opinion was stated as follows:

> "[W]hether a political committee is prohibited by 18 USC 610 from accepting a contribuiton from a VFW Post which is incorporated." AO 1975-16, 40 FR 36242 (8/13/75).

The Commission responded:

> "The prohibitions in 610 apply, with limited exception, to contributions or expenditures by nonprofit corporations just as they apply to contributions or expenditures made by profit-making corporations. If a nonprofit corporation is created expressly and exclusively to engage in political activities, however, and has incorporated for liability purposes only, the general prohibitions in 610 will not apply to that corporation. That type of corporation is essentially a political committee and may contribute its assets to federal candidates the same as unincorporated political committees." AO 1975-16, supra. (Empasis added).

Subsequently, the FEC promulgated rule 114.12(a), 11 CFR §114.12(a), which reiterates precisely the interpretation of AO 1975-16. The rule states:

> "(a) An organization may incorporate and not be subject to the provisions of this Part if the organization incorporates for liability purposes only, and if the organization is a political committee as defined in 11 CFR 100.5."

In an Informational Letter to Terry F. Lenzner dated September 2, 1976, the FEC responded to an inquiry,

> "[w]hether the Council For a Livable World (the "Council"), a registered political committee, may incorporate for liability purposes only and continue to make contributions to candidates for Federal office without violating 2 U.S.C. §441b."

The FEC answered as follows:

> "The Commission has recently given approval to proposed regulations. Section 114.12(a) of those regulations is directly relevant to your question.
>
> * * *
>
> Obviously, any contributions to or by the Council is subject to the requirements of the Federal Election Campaign Act of 1971, as amended (the "Act"), including the limits of 2 U.S.C. §441a and Part 110 of the Commission's proposed regulations. Furthermore, this conclusion is premised on the assumption that all receipts and disbursements relating to all the Council's varied activities will be regarded as though they were contributions and expenditures under the Act. The exemption referred to in §114.12(a) is available only where the orga-

> nization is in its entirety, a "political committee." 2 U.S.C. §431(d). The Council, may, of course, incorporate and conduct its political committee functions as a separate segregated fund under 2 U.S.C. §441b and Part 114 of the proposed regulations." (Emphasis added).

Careful consideration reveals that the effect on corporate involvement in the electoral process is substantially similar under both Michigan and federal law. Federal law has allowed by FEC interpretation and promulgation of 11 CFR §114.12(a) what Michigan, historically, has allowed by statute, which is an exception for corporations formed for political purposes. Both Michigan and federal law require that two conditions be met for the exception to apply: (1) the organization must be incorporated for liability purposes only, and (2) the organization must be created solely to engage in political activities, that is, the organization must be in its entirety a political committee.

Similar to federal law, any contributions to or by a corporation formed for political purposes is subject to the requirements of the Act. Moreover, all receipts and disbursements relating to the activities of a coporation formed for political purposes will be regarded as contributions and expenditures under the Act.

"A corporation formed for political purposes" is not defined in the Act. However in OAG, 1967-1968, No 4605, p 190 (March 1, 1968), the Attorney General was asked to determine whether the Greater Grand Rapids Chamber of Commerce was a corporation formed for political purposes under section 919 of the Michigan election law, as it then existed. The opinion stated:

> "While it may be conceded that the policies and the administration of the government may affect the commercial interests of a locality, it does not follow that an association of businessmen in the form of a chamber of commerce to promote and protect those interests, is organized for political purposes." supra, p 191

The purposes of a corporation are not determined merely from a review of its articles of incorporation. The Wisconsin Supreme Court, in the leading case of State v Joe Must Go Club of Wisconsin, 270 Wis 108; 70 NW2d 681, 684 (1955), stated:

> "[T]he powers and purposes of a corporation cannot be determined entirely by its declaration thereof in its articles of incorporation and by-laws, but consideration must be given to the manner in which it is conducted . . .".

You state in your letter that:

> "The Articles of Incorporation for the corporation provide, in part, as follows:

'The purposes for which the corporation is organized are as follows:

* * *

3. To operate as a corporation formed for political purposes, as provided in Act No. 388 of the Public Acts of 1976, and to make contributions and expenditures for political purposes, to engage in political and election campaign activities, and to use assets of the corporation for such political purposes. . . .'"

In order to be deemed a corporation "formed for political purposes," it is not sufficient for a corporation to merely declare such in its articles of incorporation or through its by-laws. Consideration must be given to the manner in which the corporate enterprise is conducted. Importantly, your letter states that the above-quoted article of incorporation is the third article, clearly indicating a multi-purpose corporation. In order to be deemed a corporation "formed for political purposes" under the Act, such corporation must be formed solely for political purposes and must be incorporated for liability purposes only, as shown not only by its articles of incorporation or by-laws, but also by the manner in which the corporate enterprise is conducted.

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

Very truly yours,

Phillip T. Frangos
Director
Office of Hearings and Legislation

PTF/cw

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

November 1, 1985

Kenneth C. Sparks
Bauckham, Reed, Lang,
Schaefer & Travis, P.C.
132 W. South Street
Kalamazoo, Michigan 49007

Dear Mr. Sparks:

This is in response to your inquiry concerning applicability of the Campaign Finance Act (the Act), 1976 PA 388, as amended, to a fundraising raffle sponsored by the Michigan Townships Association (the Association).

Specifically, you indicate the Association is a non-profit corporation which has organized a separate segregated fund pursuant to section 55 of the Act (MCL 169.255). You ask whether the Association may pay the costs of administering and publicizing a raffle where "the proceeds from the raffle will go directly to [the Association's] separate segregated fund, the Michigan Townships Association-Political Action Committee (MTA-PAC)."

As noted, section 55 allows a corporation to form a separate segregated fund to be used for political purposes. However, pursuant to section 55(1), the corporation is limited to making expenditures "for establishment and administration and solicitation of contributions" to the fund. It is clear that payment of costs associated with a raffle are not establishment or administration expenses. Therefore, a corporation may underwrite a raffle held for the benefit of its separate segregated fund only if the underwritten costs are expenditures for the solicitation of contributions to the fund.

In the attached interpretive statement to Mr. Jack Schick, dated October 4, 1984, the Department indicated that "[t]he purchase of entertainment, premiums and raffle prizes is not included in the ordinary meaning of the term solicitation." Moreover, the Department noted that interpreting the Act to allow corporate payment of "entertainment, premiums or raffle prizes as solicitation expenses would permit the corporation to make indirect contributions of corporate funds to the separate segregated fund." Given the historic limitation on corporate participation in Michigan elections and the specific prohibitions found in sections 54 and 55 of the Act, the Department concluded that a cor-

poration may not underwrite a fundraising event for the benefit of its separate segregated fund.

This analysis is directly applicable to the question you raise. Thus, for the reasons stated in Schick, the Michigan Townships Association is prohibited from conducting a fundraising raffle where the proceeds from the raffle will go to the Association's separate segregated fund.

If no corporate funds are utilized to purchase prizes or spent for other expenses of the fundraising raffle, the event may be held. It should be reiterated that only persons who may be solicited pursuant to section 55 of the Act (MCL 169.255) are permitted to purchase raffle tickets or otherwise participate in fundraisers conducted by the separate segregated fund.

This response is informational only and does not constitute a declaratory ruling because none is requested.

Very truly yours,

Phillip T. Frangos
Director
Office of Hearings and Legislation

PTF/cw

Attachment