MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

January 24, 1994

Mr. Patrick M. Poor
Advantage Communications, Inc.
PO Box 7178
Riverside, California 92513

Dear Mr. Poor:

You have requested a declaratory ruling concerning the applicability of the Campaign Finance Act (the Act), 1976 PA 388, as amended, to a fund raising event you are proposing to organize for the Michigan Republican Party (MRP) involving the marketing of long distance telephone service.

Advantage Communications, Inc. (ACI), is a corporation in the business of marketing long distance telephone service. One of the ways ACI markets these services is through an "Advantage Fund Raiser". Under this fund raising scheme a membership organization, such as the MRP, markets ACI's long distance telephone services to its members and receives a monthly commission based on the monthly paid billings of its members generated by the fund raising event. The member ACI consumer pays the same rates and receives the same service as a nonmember ACI consumer. The MRP would receive the same commission as any other membership organization which conducts an "Advantage Fund Raiser".

You ask whether this proposed transaction constitutes an ordinary business enterprise which is beyond the ambit of the Act, or constitutes a fund raising device to generate payments which would be contributions under the Act. In essence, you ask whether money paid to the MRP generated by this fund raising event would constitute a contribution under the Act. And if so, who would be the contributor?

Section 4(1) of the Act, MCLA 169.204, provides:

> "Sec. 4. (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."

In pursuance of its noncampaign functions, a political party may receive and expend funds which are not contributions or expenditures under the Act. An interpretive statement to Timothy Downs, dated October 12, 1982, stated, "[T]he use to which funds are to be put is the primary determinant of whether a payment to a committee is a contribution pursuant to section 4(1)."

According to an interpretive statement issued to James C. VanHeest on December 1, 1981, payments to a political party are presumed to be made for the purpose of influencing the nomination or election of a candidate, or the qualification, passage or defeat of a ballot question, unless the person making the payment clearly designates the payment as being for other than campaign purposes.

And as stated in an interpretive statement to Philip Van Dam, dated October 31, 1984:

> "A contribution to a political party which is clearly designated as being for other than campaign purposes is not a contribution under the Act. . ."

Consequently, a corporation would not violate the Act by making a payment to a political party which is clearly designated as being for other than campaign purposes. A copy of the Van Dam letter is enclosed.

Unless clearly designated as being for other than campaign purposes, a commission paid by ACI to the MRP is a "payment . . . made for the purpose of influencing the nomination or election of a candidate, or for the qualification, passage, or defeat of a ballot question" and is a contribution under the Act. Section 54(1) of the Act, MCLA 169.254, prohibits a corporation from making a contribution or expenditure, except for a ballot question. ACI is a corporation, and a contribution from ACI to the MRP is prohibited under section 54(1) of the Act.

Since your request did not include sufficient facts to form the basis of a declaratory ruling, this response is informational only and does not constitute a declaratory ruling.

Very truly yours,

Phillip T. Frangos
Deputy Secretary of State
State Services

enclosure

STATE OF MICHIGAN

FRANK J. KELLEY, ATTORNEY GENERAL

Opinion No. 6785

February 1, 1994

SCHOOL DISTRICTS:

Contributions to political candidates

CAMPAIGN FINANCE ACT:

Treatment of school district contributions to political candidates

CAMPAIGN FINANCE ACT:

Expenditures by school districts or universities to establish, administer, and solicit contributions to a separate segregated fund to be used for authorized committees

A school district lacks the statutory authority to provide an expense account to one of its employees that may be used for the purpose of making contributions to candidates for public office.

Contributions to candidates for public office by a school district employee from an expense account maintained by the school district for that purpose are attributable for purposes of contribution limits to both the employee and the school district under the Michigan Campaign Finance Act.

Neither school districts nor universities may pay for the establishment, administration, and solicitation of contributions to a separate segregated fund to be used for committees authorized under section 55 of the Michigan Campaign Finance Act.

Honorable Richard H. Austin

Secretary of State

Lansing, MI 48918

You have asked three questions relating to the Michigan Campaign Finance Act, 1976 PA 388, MCL 169.201 et seq; MSA 4.1703(1) et seq. Each question will be stated and addressed separately.

As background to your first question, you advise that a school district employs a person to serve as director of federal and state relations. You further advise that:

> "In addition to his salary, [the director] has an officeholder's account and/or expense allowance for incidental expenses related to his position with the district. He may utilize the account in any manner he chooses. This expense account, however, is not reimbursed by the district and [the director] pays taxes on the amount. The

> school district does not reimburse [the director] for any political contributions made by him or pay [the director] an additional salary for that purpose."

Campaign finance records reveal that the director has used the expense account moneys to make contributions to candidates for public office in amounts in excess of $17,000.00 for the four-year period ending in 1990.

Your first question may be stated as follows:

> May a school district provide an expense account to one of its employees that may be used for the purpose of making contributions to candidates for public office?

School districts have only such powers as the Legislature confers upon them by statute either expressly or by reasonably necessary implication. Senghas v L'Anse Creuse Public Schools, 368 Mich 557, 560; 118 NW2d 975 (1962).

The Legislature has authorized the board of education of a school district to "pay the actual and necessary expenses incurred by its ... employees in the discharge of official duties or in the performance of functions authorized by the board." MCL 380.1254; MSA 15.41254. However, school districts have neither expressed nor implied statutory authority to expend public funds to support candidates for public office or to advocate a particular vote on school millage or bond ballot proposals. OAG, 1965-1966, No 4291, p 1, (January 4, 1965); OAG, 1987-1988, No 6423, pp 33, 35 (February 24, 1987); OAG, 1987-1988, No 6531, p 367 (August 8, 1988); OAG, 1991-1992, No 6710, pp 125, 127 (February 13, 1992); OAG, 1993-1994, No 6763, p ____ (August 4, 1993); Phillips v Maurer, 67 NY2d 672; 499 NYS2d 675; 490 NE2d 542, 543 (1986); Anderson v Boston, 376 Mass 178; 380 NE2d 628, 632 (1978); Stanson v Mott, 17 Cal3d 206; 130 CalRptr 697; 551 P2d 1, 3 (1976).

Here, the director pays taxes on the money in the expense account. Nevertheless, as noted above, the contributions from the expense account are for "expenses related to his position with the district." Thus, clearly the school district is making its funds available for contribution to candidates for public office and the director is expending school district funds for that purpose as part of his employment. These are not personal campaign contributions made by a school district employee with the employee's after-tax income.

It is my opinion, therefore, in answer to your first question, that a school district lacks the statutory authority to provide an expense account to one of its employees that may be used for the purpose of making contributions to candidates for public office.

Your second question may be stated as follows:

> To whom are the contributions of the school district employee attributable for purposes of contribution limits under the Michigan Campaign Finance Act?

The answer to your first question concluded that a school district lacks the statutory authority to provide an expense account to one of its employees that may be used for the purpose of making contributions to candidates for public office. Nevertheless, the contributions have been made so you have asked to whom the contributions should be attributed under the Michigan Campaign Finance Act.

Section 31 of the Michigan Campaign Finance Act, MCL 169.231; MSA 4.1703(31), provides:

> A contribution which is controlled by, or made at the direction of, another person, including a parent organization, subsidiary, division, committee, department, branch, or local unit of a person, shall be reported by the person making the contribution, and shall be regarded as a contribution attributable to both persons for purposes of contribution limits.

A statute should be construed to effectuate its purpose. Wyandotte Savings Bank v State Banking Comm'r, 347 Mich 33, 40-41; 78 NW2d 612 (1956). Section 31 of the Michigan Campaign Finance Act is clearly designed to promote full disclosure of the source of campaign contributions and to implement the limits on those contributions. Here, the director made the contributions from expense account funds provided to him for that purpose by his employer, the school district. In that context, the contributions are attributable to both the director and the school district for purposes of contribution

limits. This construction of the statute furthers the legislative purpose of full disclosure of campaign contributions, including contributions by governmental units that lack the authority to make the contributions.

It is my opinion, therefore, in answer to your second question, that contributions to candidates for public office by a school district employee from an expense account maintained by the school district for that purpose are attributable for purposes of contribution limits to both the employee and the school district under the Michigan Campaign Finance Act.

Your third question may be stated as follows:

> May a school district or a university pay for the establishment, administration, and solicitation of contributions to a separate segregated fund to be used for committees authorized under section 55 of the Michigan Campaign Finance Act?

In section 55 of the Michigan Campaign Finance Act, MCL 169.255; MSA 4.1703(55), the Legislature has authorized profit and nonprofit corporations and joint stock companies to contribute corporate funds for the establishment, administration, and solicitation of contributions to a separate segregated fund to be used for committees. The Legislature has not authorized school districts or universities to make payments of public money for these purposes under section 55 of the Michigan Campaign Finance Act.

It is my opinion, therefore, in answer to your third question, that neither school districts nor universities may pay for the establishment, administration, and solicitation of contributions to a separate segregated fund to be used for committees authorized under section 55 of the Michigan Campaign Finance Act.

Frank J. Kelley

Attorney General

1-94-CD

RICHARD H. AUSTIN
SECRETARY OF STATE

MICHIGAN
DEPARTMENT
OF STATE
LANSING, MICHIGAN 48918

April 25, 1994

Mr. Robert S. LaBrant
Vice President and General Counsel
Michigan Chamber of Commerce
600 S. Walnut Street
Lansing, Michigan 48933-2200

Dear Mr. LaBrant:

This is in response to your request for a declaratory ruling under the Michigan Campaign Finance Act (the Act) 1976 PA 388, as amended. You ask what amount a committee which makes an in-kind contribution of the results of a poll to a candidate committee must report in its triennial report.

Specifically your question states:

> "Will the Michigan Chamber of Commerce Political Action Committee be correct in reporting a $270.00 in-kind contribution made to the Mike Rogers for State Senate Committee for providing the candidate committee with the polling results on March 1, 1994 for a survey which was done between November 3-5, 1994 [sic] when it files its tri-annual campaign statement by April 25, 1994?"

The $270.00 figure is based upon the application of a rule promulgated by the Federal Election Commission for committees that report under the Federal Election Campaign Act. The rule assumes that after a period of time the value of polling results declines. You point out that this devaluation results from the fact that a poll is a snapshot of voter attitudes that may change rapidly in a short period of time.

As indicated in your letter, the Department of State has looked for guidance to the Advisory Opinions and regulations of the Federal Election Commission to respond to requests that have no direct answer in the Act or its rules. Although neither the Act nor the rules specifically address the issue of the valuation of an in-kind contribution of poll results there is a rule that establishes the principles to be used. R 169.34 provides:

> "Rule 34. The value of an in-kind contribution is the amount which could usually be received in the open market for goods and services. The value of an in-kind contribution which is loaned or permitted to be used is the fair market rental value of the item or services. A committee which is charged less than the fair market value or fair rental value of an item or services shall report the difference between the amount charged and the fair market value or fair rental value as an in-kind contribution."

In applying the provisions of the rule a determination must be made with respect to the fair market value of the goods or services contributed. For most in-kind contributions there are regular transactions in same or similar items that establish a market value that is easily determined. In the case at hand the difficulty is that there is no widespread market in poll results.

The federal rule that you attached to your request is one source that can be used in determining the value of poll results. However, there may be other methods that a contributor could apply.

Since the committee appears to be utilizing a reasonable method for valuing the in-kind contribution of the poll results described in your letter, the Department agrees with the valuation that you have proposed to report.

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

Sincerely,

Richard H. Austin

STATE OF MICHIGAN

FRANK J. KELLEY, ATTORNEY GENERAL

Opinion No. 6807

June 23, 1994

CORPORATIONS:

Ban on corporate political contributions or expenditures in elections for state office

LIMITED LIABILITY COMPANIES:

Ban on corporate political contributions or expenditures in elections for state office

MICHIGAN CAMPAIGN FINANCE ACT:

Ban on corporate political contributions or expenditures in elections for state office

The prohibition on corporations making contributions or expenditures in elections for state office in section 54(1) of the Michigan Campaign Finance Act does not apply to limited liability companies formed under the Michigan Limited Liability Company Act.

Contributions or expenditures to a candidate from a limited liability company may be attributed to individual members of the company.

A limited liability company that has a corporation as a member may not make contributions or expenditures in elections for state office with funds derived from the corporate member.

A limited liability company that has a corporation as a member may make contributions or expenditures in elections for state office with segregated funds derived from the non-corporate members of the limited liability company.

Honorable Richard H. Austin

Secretary of State

Treasury Building

Lansing, Michigan

You have asked several questions regarding the ability of limited liability companies formed under the Michigan Limited Liability Company Act (LLCA), 1993 PA 23, MCL 450.4101 et seq; MSA 21.198(4101) et seq, to make political contributions. Your first question is whether the prohibition on corporate contributions or expenditures in elections for state office in section 54(1) of the Michigan Campaign Finance Act (CFA), 1976 PA 388, MCL 169.254(1); MSA 4.1703(54)(1), applies to limited liability companies formed under the LLCA.

The LLCA authorizes a new form of organization for conducting business. In a limited liability company the members of the company, like the shareholders of a corporation, are not personally liable for the debts of the organization. See section 501(2) of the LLCA. But section 204(2)(b) and (2)(c)(ii) requires a limited liability company to distinguish itself from a corporation in its name. Unlike a corporation, a limited liability company does not have an unlimited duration. See sections 203(1)(e) and 801 of the LLCA. Finally, the LLCA is designed so that limited liability companies will be treated like partnerships rather than corporations for federal income tax purposes. House Legislative Analysis, HB4023, May 26, 1993.

In Austin v Michigan Chamber of Commerce, 494 US 652; 110 SCt 1391; 108 LEd2d 652 (1990), on remand 937 F2d 608 (1991), the United States Supreme Court upheld the constitutionality of the section 54(1) prohibition on corporate contributions or expenditures in elections for state office. In reaching that result, the Court made it clear that the section 54(1) prohibition on corporate contributions did not apply to "unincorporated associations." Austin, supra, at 666.

Section 102(2)(i) of the LLCA defines a "limited liability company" as "an entity that is an unincorporated association having 2 or more members and is formed under this act." (Emphasis added.) Based on this statutory definition, it is clear that a limited liability company is not a corporation subject to the prohibitions on campaign contributions in section 54 (1) of the Michigan Campaign Finance Act.

It is my opinion, therefore, that the prohibition on corporations making contributions or expenditures in elections for state office in section 54(1) of the Michigan Campaign Finance Act does not apply to limited liability companies formed under the Michigan Limited Liability Company Act.

Your second question is whether contributions or expenditures to a candidate from a limited liability company may be attributed to individual members of the company. There is currently no specific statutory or administrative rule covering how political contributions of a limited liability company account must be attributed.

The main purpose of the LLCA is to provide a form of business organization in which the limited liability company's members are not personally liable for the company's debts while securing the same federal tax treatment as partnerships. House Legislative Analysis, HB4023, May 26, 1993. If properly structured, a limited liability company will be treated as a pass-through entity for federal income tax purposes. See Rev.Rul. 88-76, 1988-2 CB 360. Pass-through entities are not subject to federal income tax at the entity level, unlike corporations.

Your department has addressed this issue, in the context of partnerships, in 1982 AACS, R 169.35a, which provides:

> (1) A contribution drawn on a partnership account shall be attributed to the partners as individuals, and not to the partnership, if the contribution is accompanied by a written statement containing the name and address of each contributing partner and the amount of each partner's contribution. The statement shall include the occupation, employer, and principal place of business of each individual who is a member of the partnership and contributed $200.01 or more for that election.
>
> (2) A committee which receives a written statement attributing a partnership contribution to the partners as individuals shall report the contribution as if the committee had received a separate contribution from each individual. [Emphasis added.]

Rule 169.35a recognizes that, in Michigan, a partnership is a distinct legal entity separate from the individual partners. Employment Security Comm v Crane, 334 Mich 411, 416; 54 NW2d 616 (1952). Contributions drawn on a partnership account are attributed to partners as individuals if they are accompanied by written statements containing the names and addresses of the contributing partners and the amounts of their contributions. Individual partners are not required to form a committee pursuant to MCL 169.203(4); MSA 4.1703(3)4), even if their contributions exceed $500.00.

The same reasoning underlying Rule 169.35a may be applied to an entity organized under the LLCA. Under section 304 of the LLCA, a limited liability company is similar to a partnership in that a member is entitled to receive distributions from the company before the member's withdrawal and before dissolution. The member, subject to any restrictions in the company's operating agreement and other limitations in the LLCA, may reach his or her draw or share. The individual members are separate and distinct from the limited liability company similar to a partner in a partnership. See section 102(2)(i) and (1) of the LLCA. Accordingly, like a partnership, contributions from a limited liability company may be

attributable to individual members if the contributions are accompanied by written statements containing the names and addresses of the contributing members and the amounts of their contributions.

It is my opinion, therefore, that contributions or expenditures to a candidate from a limited liability company may be attributed to individual members of the company.

Your third question is whether a limited liability company that has a corporation as a member may make contributions or expenditures in elections for state office with funds derived from the corporate member. Under section 102(2)(i)(1) and (o) of the LLCA, a corporation may be a member of a limited liability company. However, there is no language in the LLCA that suggests that the Legislature, in passing that statute, intended to relax the ban on corporate contributions and expenditures in elections for state office found in section 54(1) of the CFA.

The courts have consistently upheld the power of the Michigan Legislature to prohibit corporate contributions or expenditures in elections for state office to preserve the integrity of the elective process. In People v Gansley, 191 Mich 357, 376; 158 NW 195 (1916), the Court stated:

> It is probable that the legislature had in mind the fact that it is matter of history that corporations have in many instances used their funds (acting through and by their officers) to influence elections, and that body believed that such practice was an abuse and menace to good government, which it sought to remedy by this legislation. The record, in our opinion, is a justification for the legislation complained of.
>
> It was for the legislature to say, in the exercise of the police power, whether such use of corporate funds opened the door to corruption and tended to destroy safeguards sought to be placed around elections to "protect the purity of the ballot."

More recently, in Advisory Opinion on the Constitutionality of 1975 PA 227 (Questions 2-10), 396 Mich 465, 492; 242 NW2d 3 (1976), four Justices of the Michigan Supreme Court stated:

> 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. Large aggregations of capital controlled by a few persons could have a significant impact upon the nomination or election of a candidate. 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 abuses which the passage of the corrupt practices act sought to eliminate. [Footnote omitted.]

In Austin, supra, 494 US, at 659-660, the Supreme Court majority ruled:

> [M]ichigan's regulation aims at a different type of corruption in the political arena: the corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form and that have little or no correlation to the public's support for the corporation's political ideas. See supra, at 658-659, 108 LEd2d, at 691. The Act does not attempt "to equalize the relative influence of speakers on elections," rather, it ensures that expenditures reflect actual public support for the political ideas espoused by corporations. We emphasize that the mere fact that corporations may accumulate large amounts of wealth is not the justification for Sec. 54; rather, the unique state conferred corporate structure that facilitates the amassing of large treasuries warrants the limit on independent expenditures. Corporate wealth can unfairly influence elections when it is deployed in the form of independent expenditures, just as it can when it assumes the guise of political contributions. We therefore hold that the State has articulated a sufficiently compelling rationale to support its restriction on independent expenditures by corporations. [Citations omitted.]

If corporations could contribute to candidates for state office indirectly through limited liability companies, it would render the prohibition on corporate contributions in section 54(1) of the CFA meaningless. The legislative intention in passing the LLCA was to authorize a new form of business entity for liability and tax purposes, not to eliminate the ban on corporate contributions in elections for state office.

It is my opinion, therefore, that a limited liability company that has a corporation as a member may not make

contributions or expenditures in elections for state office with funds derived from the corporate member.

Your fourth question is whether a limited liability company that has a corporation as a member may make contributions or expenditures in elections for state office with funds derived from the non-corporate members of the limited liability company. There is no prohibition on contributions or expenditures in elections for state office by the non-corporate members. Thus, the limited liability company may make contributions and expenditures in elections for state office with segregated funds derived from the non-corporate members. Given the prohibition on corporate contributions, the limited liability company may not make contributions or expenditures in elections for state office unless it segregates its funds so the contributions are made only with funds derived from the non-corporate members.

It is my opinion, therefore, that a limited liability company that has a corporation as a member may make contributions or expenditures in elections for state office with segregated funds derived from the non-corporate members of the limited liability company.

Frank J. Kelley

Attorney General
