STATE OF MICHIGAN

CANDICE S. MILLER, Secretary of State
MICHIGAN DEPARTMENT OF STATE
TREASURY BUILDING, LANSING, MICHIGAN 48918-9900

February 13, 1995

Mr. Robert S. LaBrant, Treasurer
Bingo Coalition for Charity-Not Politics
12411 Pine Ridge Drive
Perry, Michigan 48872

Dear Mr. LaBrant:

This is in response to your request for a declaratory ruling concerning the application of the Michigan Election Law, 1954 PA 116, as amended (the Law), to the processing of petitions submitted to the Secretary of State seeking a referendum on 1994 PA 118.

The specific question you raise is:

> Does Bureau of Elections staff in conducting a face check of submitted referendum petition sheets follow the precedent in Hamilton v. Secretary of State and OAG No. 4880, July 3, 1975 and not count those signatures that were collected by B.I.N.G.O. on or before November 8, 1994, the date of the last general election at which a Governor was elected, to determine whether there are sufficient signatures in number to equal at least five percent of the total vote cast for all candidates for Governor on November 8, 1994?

You submit a recitation of the facts with respect to the issues. Since you submitted your request there have been some changes in the facts resulting from the submission of a referendum petition on Senate Bill 3 which became 1994 PA 118. The following is a brief outline of the relevant facts:

1. Senate Bill 3 was signed by Governor Engler on May 12, 1994 and became 1994 PA 118.

2. The last general election at which the Governor was elected was held on November 8, 1994.

3. The Michigan Legislature adjourned sine die on December 29, 1994. The 90 day period for invoking referendum following the final adjournment of the 1994 legislative session in which 1994 PA 118 was enacted expires on March 29, 1995.

4. On January 31, 1995, a petition seeking to invoke a referendum on 1994 PA 118 was submitted to the Secretary of State.

5. A preliminary review of the petition disclosed that up to 85,441 signatures were collected before November 8, 1994 and a maximum of 157,238 signatures were secured after November 8, 1994.

Law

Michigan's Constitution sets forth the basic requirements governing the use of the power of referendum. Article 2 section 9 of the Constitution provides in part:

> "To invoke the initiative or referendum, petitions signed by a number of registered electors, not less than eight percent for initiative and five percent for referendum of the total vote cast for all candidates for governor at the last preceding general election at which a governor was elected shall be required."

The Michigan Constitution of 1908 included provisions with respect to initiative, referendum and constitutional amendment that in many respects paralleled the provisions of the current Constitution. In 1923 the Michigan Supreme Court issued a decision in a case involving the power of initiative and whether the intervention of a general election operates to kill the signatures gathered prior to the election. The decision in Hamilton v Secretary of State, 221 Mich 541; 191 NW 829 (1923), concluded that the constitutional provision using the vote for governor as the basis for determining the number of signatures establishes a period of time during which the petition is viable. The Court in its opinion said:

> "' . . . The vote for governor . . . fixes the basis for determining the number of legal voters necessary to *sign* an initiatory petition and start designated official action.' p 544 [Emphasis of the Court]
>
> 'This primary essential to any step at all fixes distinct periods within which initiary action may be instituted. A petition must start out for signatures under a definite basis for determining the necessary number of signatures and succeed or fail within the period such basis governs.'

* * *

'The identity of the petition was inseparably linked with the basis it sought to comply with, and as an initiatory petition it could not and did not survive the passing of such basis and then identify itself with a new basis wholly prospective in operation. It would be anomalous to say that a failure to comply with a former basis may constitute full compliance with a later basis. The Constitution plainly intends an expression of an existing sense of a designated percentage of the legal voters.' p 546"

In 1975 the Attorney General concluded that the gubernatorial election is the cutoff date for signatures on a petition to place a constitutional amendment on the ballot under Article 12 section 2 of the Constitution of 1963. OAG, 1975-76, No. 4880, p 111 (July 3, 1975), relied extensively on the Hamilton opinion. In his opinion the Attorney General summarized as follows:

"Thus, if a petition to amend the constitution lacked a sufficient number of signatures up to and including November 4, 1974, that amendatory petition died and no petition signatures procured prior to that date may be considered. However, petition signatures procured on or after November 5, 1974 are valid for the duration of the current gubernatorial term." p 113

Both the Hamilton case and the Attorney General Opinion cited above deal with the requirements for petitions that propose constitutional amendments. The petition in question seeks a referendum on legislation. Initiative and referendum are found in Article 2 section 9 of the Constitution. Initiation of constitutional amendments is found in Article 12 section 2 of the Constitution. However, although they are found in separate places in the Constitution each provision setting the number of signatures required has as a base the "total vote cast for all candidates for governor at the last preceding general election at which a governor was elected . . . ."

Conclusion

In light of the case law and Attorney General's opinions previously cited, the same principles govern the validity of signatures for each type of petition. In counting signatures to ascertain whether the right of referendum has been invoked, the staff of the Department of State will count as valid only signatures gathered on or after November 8, 1994, the date of the last preceding general election at which a governor was elected. The total vote cast for governor will be the

basis for determining if five percent of the registered electors signed the petition. I have instructed the Bureau of Elections to begin processing the petition accordingly.

It is my understanding a legislator has requested that the Attorney General issue an opinion on this issue. I recognize that this Attorney General's opinion may conclude differently, and that the issue may also be reviewed by the courts.

The Department of State staff will proceed counting the signatures in a manner that will allow for review of my decision in this declaratory ruling without unnecessary delay, so that the sufficiency of the referendum petition can be determined in advance of the effective date of 1994 PA 118.

Sincerely,

Candice S. Miller

Candice S. Miller
Secretary of State

CSM:rlp

STATE OF MICHIGAN

CANDICE S. MILLER, Secretary of State
MICHIGAN DEPARTMENT OF STATE
TREASURY BUILDING, LANSING, MICHIGAN 48918-9900

April 3, 1995

Mr. Peter H. Ellsworth
Attorney at Law
Suite 200
215 South Washington Square
Lansing, Michigan 48933-1812

Dear Mr. Ellsworth:

This is in response to your request for a declaratory ruling concerning the applicability of the Michigan Campaign Finance Act (the Act), 1976 PA 388, as amended, to legal expenses incurred to determine when the power of referendum is properly invoked.

Specifically, on behalf of your clients, Auto Club Insurance Association (ACIA) and Farm Bureau Mutual Insurance Company (Farm Bureau Mutual), you asked:

> "Are the registration and reporting requirements of the Campaign Finance Act applicable where a person expends funds to secure a declaratory ruling and subsequent judicial review thereof concerning the effect of the filing of a referendum petition on existing regulatory laws if the person's purpose is other than to support or defeat the qualification of the question or to influence voters for or against the qualification, passage or defeat of the question?"

General Conclusions

In response to your question, the Department of State concludes:

> The registration and reporting provisions of the Campaign Finance Act do not require that contributions or expenditures regarding ballot questions be for the purpose of influencing or attempting to influence the voters.
>
> The purpose of the contributions or expenditures must be determined through the use of an objective standard: whether the payment directly influences or attempts to influence the qualification of a ballot question or an election regarding that

question. A payment does not meet this standard if its impact on the qualification of a ballot question or an election regarding that question is incidental.

The ballot question process includes several integral steps: the approval of the ballot petitions as to form, the circulation of the petitions, the filing of the petitions, the canvass to determine whether the petitions bear an adequate number of proper signatures, the decision of the Board of State Canvassers whether to certify the question, and the vote.

Legal expenses incurred to support or oppose a ballot question at any of the integral steps are expenditures under the Campaign Finance Act.

Other legal expenses are expenditures under the Campaign Finance Act only if they directly influence or attempt to influence the qualification of a ballot question or an election regarding that question.

Legal expenses incurred before a ballot question exists are not expenditures under the Campaign Finance Act.

Facts

On August 6, 1993, a no-fault insurance reform act (PA 143) was signed into law. It made significant changes in the Insurance Code, which, as you wrote, ". . . required a lengthy time to implement. Accordingly, certainty as to the effective date of these changes was imperative." PA 143 was scheduled to become effective on April 1, 1994.

On November 7, 1993, the Committee for Fairness and Accountability in Insurance Reform (FAIR) advised the Board of State Canvassers that the petition calling for a referendum on PA 143 was being circulated. Under Article 2, section 9 of the Michigan Constitution of 1963, if the power of the referendum were properly invoked PA 143 would not be effective until approved by the voters. However, as explained in your request:

"There [was] uncertainty as to when a referendum petition prevents an enacted law from becoming effective; is it merely upon the filing of the petition or is it upon filing and official action declaring the sufficiency of the petition (eg., does it contain a sufficient number of signatures of registered voters)? There [was] also uncertainty as to when certification as to the sufficiency of the petition must occur. This uncertainty [was] poised to wreak havoc on insurance companies, policyholders, accident victims, and the judicial system itself."

In order to resolve these issues, ACIA and Farm Bureau Mutual sought the advice of legal counsel, who developed a strategy designed to obtain a rapid, definitive answer. The first step was to seek a declaratory ruling from the Insurance Commissioner, which could then be used as a vehicle for seeking a declaratory judgment from a court of competent jurisdiction.

On December 22, 1993, the Commissioner issued his ruling. Although in his view the power of referendum was not properly invoked until the Board of State Canvassers determined the sufficiency of the petition, he was "constrained" as a state officer to follow an Informal Letter Opinion of the Attorney General that reached the opposite conclusion. He therefore ruled that the mere filing of the petition was sufficient to prevent PA 143 from taking effect.

In early January of 1994, ACIA and Farm Bureau Mutual filed an appeal of the declaratory ruling with the Eaton County Circuit Court.

At approximately the same time, they also asked the Governor to send an Executive Message to the Michigan Supreme Court requesting that Court to intervene and expeditiously resolve the legal issues. The Governor sent that message, stressing the importance of knowing with certainty which insurance laws were in effect on a particular date. On February 3, 1994, the Supreme Court declined the Governor's request.

On February 25, 1994, the Eaton County Circuit Court overturned the Insurance Commissioner's ruling, holding that he did not have the authority to interpret constitutional principles. The Circuit Court did not address the impact of FAIR's petition on the effective date of PA 143.

On or about March 1, 1994, ACIA and Farm Bureau Mutual filed an emergency appeal with the Michigan Court of Appeals.

On March 23, 1994, FAIR filed its petition with the State Board of Canvassers.

On March 31, 1994, the Court of Appeals reversed the Eaton County Circuit Court, ruling that the Insurance Commissioner did have the authority to address constitutional issues. However, on the merits, the Court of Appeals agreed with the official position of the Insurance Commissioner and the Attorney General.

On March 31, 1994, counsel for ACIA and Farm Bureau Mutual appeared before the Board of State Canvassers and sought rapid resolution of the question of the petition's impact on the effective date of PA 143. Counsel explained to the Board that the questions had to be answered by the courts, and suggested that quick completion of the canvass might help produce those answers.

On April 8, 1994, ACIA and Farm Bureau Mutual filed an expedited application for leave to appeal with the Michigan Supreme Court. On May 27, 1994, the Supreme Court denied the application for leave to appeal, and the Court of Appeals ruling became the final decision on the merits.

The activities which are the subject of this declaratory ruling request were never directed at the voters. Rather, they were directed at the Insurance Commissioner, the Governor, the Board of State Canvassers and the courts. Further, ACIA's Chief Executive Officer directed his subordinates "to do nothing to impede efforts to place the question on the ballot."

Discussion

The registration and reporting requirements of the Campaign Finance Act are triggered when a person becomes a "committee" as defined in section 3(4) of the Act (MCL 169.203(4)). This section states, in pertinent part (emphasis added):

> "'Committee' means a person who receives contributions or makes expenditures for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate, or the qualification, passage or defeat of a ballot question, if contributions received total $500.00 or more in a calendar year or expenditures made total $500.00 or more in a calendar year."

You argue that "for ACIA and Farm Bureau Mutual to be 'committees' there must be a determination that the expenditures were made 'for the purpose of influencing or attempting to influence the action of the voters for or against . . . the qualification, passage or defeat of a ballot question . . .'." (Emphasis in original.)

Your argument ignores the comma and the word "or" after the word "candidate". As discussed below, in some instances whether a question qualifies for the ballot may not turn on any action by the voters.

As it applies to your question, the Department of State concludes that the appropriate excerpt of the first sentence of section 3(4) is:

> "'Committee' means a person who receives contributions or makes expenditures for the purpose of influencing or attempting to influence . . . the qualification, passage, or defeat of a ballot question, if the contributions received total $500.00 or more in a calendar year or expenditures made total $500.00 or more in a calendar year."

This conclusion is supported by the language of section 2(2) of the Act (MCL 169.202(2)), which defines the term "ballot question committee" as follows:

> "Sec. 2. (2) 'Ballot question committee' means a committee acting in support of, or in opposition to, the qualification, passage, or defeat of a ballot question but which does not receive contributions or make expenditures or contributions for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate."

Further, section 2(1) of the Act (MCL 169.202(1)) defines the term "ballot question" as follows:

> "Sec. 2. (1) 'Ballot question' means a question which is submitted or which is intended to be submitted to a popular vote at an election whether or not it qualifies for the ballot."

Sections 2(1) and 2(2) do not require that there be an attempt to influence the voters.

You cite an interpretive statement issued to Nina F. Collins (3-83-CI) on June 13, 1983, for the proposition that an expenditure must be made for the purpose of influencing voters to determine that ballot committee registration is required. That argument misreads the Collins interpretive statement. Collins concluded that an objective standard must be applied to determine the purpose of an expenditure, and that donated billboard space was an expenditure because it was used to influence voters. It did not, however, conclude that a ballot question committee must be formed only if expenditures are made to influence voters.

The Department of State previously indicated, in an interpretive statement issued to Mr. David M. Savu (1-83-CI) on March 4, 1983, that the Act's registration requirements apply even if an expenditure was not made for the purpose of influencing voters.

You also submit that there were no "expenditures" under the Act because your client's expenses were not incurred for the purpose of influencing the voters.

Section 6(1) of the Act (MCL 169.206(1)) defines "expenditure". It provides (emphasis added):

> "Sec. 6. (1) 'Expenditure' means a payment, donation, loan, or promise of payment of money or anything of ascertainable monetary value for goods, materials, services, or facilities in assistance of, or in opposition to, the nomination or election or a candidate, <u>or the qualification</u>, passage, or defeat <u>of a ballot question</u>."

A payment may assist the qualification of a ballot question even if it is not made to influence the action of the voters. For example, payments made to respond to challenges regarding the sufficiency of petition signatures filed with the Board of State Canvassers are in assistance of a ballot question's qualification, even though the response is not directed at voters.

In light of the above, the Act must be construed to mean that a person is a "ballot question committee" if, in a calendar year, the person receives contributions or makes expenditures totalling $500.00 or more for the purpose of influencing or attempting to influence the qualification of a ballot question or an election regarding that question. The Act does not require the contribution or expenditure to be for the purpose of influencing or attempting to influence the voters. Further, the purpose of the contribution or expenditure must be determined through the use of an objective standard: whether the payment directly influences or attempts to influence the qualification of a ballot question or an election regarding that question. A payment does not meet this standard if its impact on the qualification of a ballot question or an election regarding that question is incidental.

Legal expenses

In response to your request, written comments were submitted by Robert S. LaBrant, Vice President, Political Affairs and General Counsel, Michigan Chamber of Commerce. Mr. LaBrant suggests that legal expenses incurred for the purpose of seeking judicial review of a declaratory ruling are not "expenditures" under the Campaign Finance Act. However, the payment of an expense incurred for a subjective purpose that is unrelated to the financing of elections is within the Act's purview if the payment directly affects or influences either the placement of a name or question on the ballot or the outcome of an election. In such cases, the payment is clearly "in assistance of, or in opposition to the nomination or election of a candidate, or the qualification, passage, or defeat of a ballot question."

The ballot question process comprises a number of integral steps. Activities at any of those steps could influence whether the question even reaches the ballot or how the voters will respond. The steps include the approval of the ballot petitions as to form, the circulation of the petitions, the filing of the petitions, the canvass to determine whether the petitions bear an adequate number of proper signatures, the decision of the Board of State Canvassers whether to certify the question, and, if so, the vote. Legal expenses incurred to support or oppose a ballot question at any of the integral steps are expenditures under the Act.

Legal expenses incurred outside that process are expenditures under the Act if they directly influence or attempt to influence the qualification of a ballot question or the outcome of an election regarding that question.

Application

ACIA and Farm Bureau Mutual incurred legal fees to determine whether PA 143 would take effect on April 1, 1994. Legal expenses were incurred to secure a declaratory ruling from the Insurance Commissioner, to appeal that ruling through the judicial system, and for a March 31, 1994 appearance by counsel before the Board of State Canvassers. The dispositive issue in each forum was the point at which the power of referendum was properly invoked.

The court pleadings and other documents submitted by ACIA and Farm Bureau Mutual clearly demonstrate that the legal expenses incurred prior to the March 31, 1994 Board of State Canvassers hearing were made to resolve the uncertainty regarding the effective date of PA 143. These expenses were outside the ordinary process of qualifying for the ballot and did not directly influence or attempt to influence the placement of a question on the ballot or an election regarding that question. Consequently, these expenses were not expenditures and did not trigger the Act's registration requirements.

FAIR's petition was filed on March 23, 1994. The Board of State Canvassers met on March 31, 1994. At that meeting, legal counsel for ACIA and Farm Bureau Mutual urged the Board to quickly complete the canvass in the hope rapid completion would resolve the legal questions involving the referendum. The position taken by ACIA and Farm Bureau Mutual before the Board of State Canvassers, and subsequently the Supreme Court, was consistent from the time they filed the original declaratory ruling request with the Insurance Commissioner.

ACIA and Farm Bureau Mutual were impelled by circumstances beyond their control to indicate to the Board of State of Canvassers on March 31, 1994 and to the Supreme Court on April 8, 1994 that the power of referendum was not properly invoked, and that PA 143 should take effect as scheduled. However, the impact that argument might have had on the qualification of the referendum was incidental to the consistent position of ACIA and Farm Bureau Mutual that certainty regarding the effective date of PA 143 was essential to avoid chaos in the insurance industry. Consequently, these expenses were not expenditures and did not trigger the Act's registration requirements.

Specific Conclusions

In light of the above, the activities of ACIA and Farm Bureau Mutual do not meet the tests set out in this declaratory ruling.

The legal expenses incurred to secure a declaratory ruling from the Insurance Commissioner, to appeal that ruling through the judicial system and counsel's March 31, 1994 appearance before the State Board of Canvassers were not expenditures subject to the registration and reporting

requirements of the Act. Those activities did not directly influence or attempt to influence the qualification of the ballot question regarding PA 143 or an election regarding that question.

This response is a declaratory ruling concerning the applicability of the Michigan Campaign Finance Act to the unique facts and questions presented.

Sincerely,

Candice S. Miller

Candice S. Miller
Secretary of State

CSM:rlp

1-95-CI

STATE OF MICHIGAN

CANDICE S. MILLER, Secretary of State
MICHIGAN DEPARTMENT OF STATE
TREASURY BUILDING, LANSING, MICHIGAN 48918-9900

May 10, 1995

The Honorable Curtis Hertel
Democratic Leader
Michigan House of Representatives
State Capitol Building
Lansing, Michigan 48913

Dear Representative Hertel:

This is in response to your inquiry regarding the purchase of fundraiser tickets under the Michigan Campaign Finance Act (the Act), 1976 PA 388, as amended. Your inquiry has been treated as a request for an interpretive statement because it requires an interpretation of an amendatory act, 1994 PA 411, that will affect all candidate committees.

Although not expressly stated, you essentially ask whether a candidate committee may purchase fundraiser tickets or make contributions to other types of committees in excess of the $100.00 limitation imposed upon fundraiser tickets that are purchased as incidental expenses.

The Department of State concludes:

> If an officeholder's candidate committee pays for a ticket to a fundraiser sponsored by a candidate committee, independent committee, political party committee, or a political committee and the ticket purchase is an incidental expense, the payment may not exceed $100.00 per committee in any calendar year.
>
> If a candidate committee purchases a fundraiser ticket or makes a contribution to an independent committee, political party committee, or a political committee for the purpose of assisting the candidate's nomination or election, the $100.00 limit does not apply. However, the ticket purchase or contribution must tangibly benefit the candidate's nomination or election.
>
> A candidate committee may purchase a ticket to another candidate committee's fundraiser as an incidental expense but is otherwise prohibited from contributing to another candidate committee. The ticket purchase may not exceed $100.00 per committee in a calendar year.

Discussion

I am informed that under my predecessor's administration, the Act was construed to mean that all campaign expenditures must be made from an officeholder's candidate committee. "Expenditure" is defined in section 6 of the Act to include any payment in assistance of the nomination or election of a candidate. As explained below, this would include the purchase of tickets to fundraisers held by other types of committees. However, until recently a candidate committee could not be used to purchase a ticket to another candidate's fundraiser.

Prior to the enactment of 1994 PA 411, an officeholder was authorized to establish and maintain an officeholder expense fund (OEF) to be used for expenses incidental to office. The OEF could not be used to make an expenditure to assist the officeholder's reelection.

In 1981, the propriety of using either a candidate committee or an OEF to purchase political party fundraiser tickets was specifically addressed in an interpretive statement issued to Senator James DeSana. The interpretive statement concluded:

> . . . the purchase of a ticket to a political party fundraiser is often traditionally associated with or necessitated by, and therefore incidental to, the holding of public office. Consequently, an officeholder may charge his or her officeholder expense fund for the purchase of a political party fund raising ticket. However, if the ticket is purchased for the purpose of influencing the officeholder's renomination or reelection, the expenditure must be made from the officeholder's candidate committee account.

Thus, at least since 1981 it has been the Department's consistent position that campaign expenditures include the purchase of fundraiser tickets if the purchase is made to assist the candidacy of the officeholder purchasing the ticket. Indeed, if a ticket was purchased so that the officeholder could attend a fundraiser and solicit support from those in attendance, the ticket purchase met the definition of "expenditure" and had to be made from the candidate committee. It could not be made from the officeholder's OEF.

The authority to purchase political party fundraiser tickets from an OEF was subsequently embraced in administrative rules promulgated by the Department of State. Specifically, rule 62(1)(j) defined the term "expense incidental to office" as used in section 49 of the Act to include the purchase of tickets to fundraisers held by other types of committees - including candidate committees - for use by the officeholder and his or her family and staff. The rule defining incidental expenses in no way affected the Act's definition of "expenditure." Therefore,

officeholders continued to purchase fundraiser tickets from their candidate committee accounts when the ticket purchased was campaign related, as required by the Act.

1994 PA 411 amended the Act by establishing a single account for both campaign expenditures and incidental office expenses. This was accomplished by eliminating OEFs and authorizing the candidate committee to pay for incidental expenses. "Incidental expense" was defined by incorporating the administrative rule promulgated by the Department, with some minor revisions. One such revision changed the limit on fundraiser tickets from the size of the officeholder's family and staff to $100.00 per committee per year. Again, however, the amendatory act did nothing to alter the test for determining whether a payment from a candidate committee is an expenditure made to assist the nomination or election of the officeholder.

As a consequence, an officeholder may purchase a political party fundraiser ticket from his or her candidate committee if the ticket is acquired as an expense incidental to office. If the ticket purchase is considered to be an incidental expense, the $100.00 limitation established in section 9(1)(i) would apply.

On the other hand, if the ticket is purchased for the purpose of assisting the officeholder's nomination or election, the payment meets the Act's definition of expenditure. In this circumstance, the $100.00 limit does not apply except with respect to tickets purchased for another candidate's fundraiser. The limitation on candidate committee fundraiser tickets exists as an exception to the prohibition against candidate to candidate contributions. Specifically, section 44(2) now states:

> A candidate committee shall not make a contribution to or an independent expenditure on behalf of another candidate committee. This subsection does not prohibit the purchase of tickets to another candidate committee's fundraising event that does not exceed $100.00 per candidate committee in any calendar year.

While your inquiry specifically addresses the purchase of political party fundraiser tickets, the same logic would apply to the purchase of tickets to fundraisers sponsored by independent or political committees. Therefore, fundraiser tickets are subject to the $100.00 limit if purchased as an expense incidental to office.

This is not to suggest that there is no restriction on ticket purchases or direct contributions made to political party, independent, political or ballot question committees. As explained by Elections Director Christopher Thomas in an informational letter to Representative Shirley Johnson, dated October 1, 1990:

> An expenditure by a candidate committee to an independent committee, whether as a direct donation or a purchase of a fundraiser ticket, may only be made if it influences the nomination or election of the candidate whose committee makes the expenditure. Therefore, the candidate and the candidate committee treasurer must be able to specifically substantiate how an expenditure to an independent committee furthers the nomination or election of the candidate.
>
> * * * * * * *
>
> Whether it is proper to make an expenditure to an independent committee will depend exclusively on an identifiable, tangible benefit that furthers your reelection.

You take exception to the Department's longstanding construction of the Act, suggesting that the purchase of political party fundraiser tickets may only be considered an incidental expense. If construed in this manner, a candidate who is not an officeholder would be prevented from purchasing <u>any</u> fundraiser tickets because, as a non-incumbent, the candidate does not incur expenses incidental to office.

This response is an interpretive statement and does not constitute a declaratory ruling because a ruling was not requested.

Sincerely,

Candice S. Miller

Candice S. Miller
Secretary of State

STATE OF MICHIGAN

CANDICE S. MILLER, Secretary of State
MICHIGAN DEPARTMENT OF STATE
TREASURY BUILDING, LANSING, MICHIGAN 48918-9900

May 25, 1995

Mr. Greg James
Natural Law Party of Michigan
957 Lakeside Drive S.E.
East Grand Rapids, Michigan 49506

Dear Mr. James:

This is in response to your inquiry concerning the application of the Michigan Campaign Finance Act (the Act), 1976 PA 388, as amended, to donations made to political parties. Specifically, you ask if a political party committee may use corporate donations to pay for activities undertaken to secure ballot access for a new political party.

The Department of State concludes:

> The Act does not apply to the circulation of qualifying petitions for a new political party.
>
> Donations made to assist a new political party in qualifying for the ballot are not contributions or expenditures as defined in the Act. Therefore, a political party committee may accept and use corporate funds to pay for costs incurred in securing ballot access.

Discussion

The qualification of new political parties is governed by section 685 of the Michigan Election Law, 1954 PA 116, as amended. A new political party may qualify and have the names of its candidates placed on the ballot by submitting petitions to form a new party. The petitions must be signed by registered voters "equal to not less than 1% of the total number of votes cast for all candidates for governor at the last election in which a governor was elected." Further, at least 100 registered voters in each of at least half the state's congressional districts must sign the petition.

You ask whether corporate donations may be used to pay expenses associated with circulating the petitions. You specifically mention telephone and coordinating expenses; fundraising costs; and payments made to persons hired to collect petition signatures.

Section 54 of the Campaign Finance Act prohibits a corporation from participating in the nomination or election of a candidate. As a consequence, a corporation may not make contributions or expenditures to influence the nomination or election of a candidate. A corporation may, however, make contributions and expenditures in ballot question elections.

"Contribution" and "expenditure" are defined, respectively, in sections 4 and 6 of the Act to include the payment or transfer of anything of ascertainable monetary value "in assistance of, or in opposition to, the nomination or election of a candidate, or the qualification, passage, or defeat of a ballot question." One could reasonably argue that political party qualification expenses at least indirectly assist the nomination or election of candidates. However, when read in conjunction with other provisions, it is clear that political party qualification expenses are not subject to the Act's regulation.

In particular, section 3(1) defines "candidate" to include an individual who files a fee, an affidavit of incumbency, or a nominating petition for elective office. Therefore, the process by which a specific candidate becomes eligible to secure a place on the ballot triggers the Act's application. If a candidate circulates nominating petitions, corporate money may not be used to pay petition circulators or defray other expenses associated with the petition process. Similarly, corporate funds may not be used to pay the candidate's filing fee.

The Act also applies to the process by which a ballot question qualifies for a place on the ballot. As noted previously, "contribution" and "expenditure" both include payments made for the qualification of a ballot question. In this instance, a corporation is permitted to underwrite the costs of circulating petitions because the prohibition against corporate participation extends only to candidate elections.

By contrast, the Act is silent with respect to the qualification of a new political party. This omission indicates that the Act does not apply to the circulation of political party qualifying petitions. It follows that donations made to assist in the qualification process are not contributions or expenditures as defined in sections 4 and 6.

In answer to your question, a political party committee may accept and use corporate funds to pay for costs incurred in securing ballot access. These costs would include wages for individuals circulating petitions; telephone charges; fundraising expenses; and other costs associated with the qualification effort. Corporate funds may not, however, be commingled with non-corporate funds and used to assist the nomination or election of a candidate.

This response is an interpretive statement and does not constitute a declaratory ruling because a ruling was not requested.

Sincerely,

Candice S. Miller

Candice S. Miller
Secretary of State

3-95-CI

STATE OF MICHIGAN

CANDICE S. MILLER, Secretary of State
MICHIGAN DEPARTMENT OF STATE
LANSING, MICHIGAN 48918

November 13, 1995

Mr. J. Blair Richardson, Jr.
Counsel for Aristotle Industries
205 Pennsylvania Avenue, SE
Washington, DC 20003

Dear Mr. Richardson:

This is in response to your request for a declaratory ruling or an interpretive statement concerning the applicability of the Michigan Campaign Finance Act (the MCFA), 1976 PA 388, as amended, to the resale of reformatted or reprocessed contributor information obtained from campaign finance statements or reports filed with the Secretary of State.

You ask whether section 16(3) of the MCFA prohibits a for-profit corporation from selling contributor information it obtains from campaign finance reports or statements filed with the Secretary of State under the MCFA, if purchasers use the contributor information for noncommercial purposes.

General Conclusion

- A for-profit corporation may not use contributor information obtained from statements or reports required to be filed with the Secretary of State under the MCFA to solicit individual contributors for any commercial purpose.

- A for-profit corporation may not use contributor information obtained from statements or reports required to be filed with the Secretary of State under the MCFA for the purpose of publishing and reselling the contributor information, whether in its original format or in a reprocessed format, to a person who uses, or intends to use, the information to solicit individual contributors for any commercial purpose.

- A corporation may publish and sell contributor information obtained from reports filed with the Secretary of State under the MCFA to a person who uses, or intends to use, the information to solicit individual contributors for campaign contributions or for other than commercial purposes.

Facts

Aristotle Industries (Aristotle) is a for-profit corporation that collects, assembles, publishes, and markets publicly available voter and election-related information, primarily to candidates, elected officials, and political organizations for political use. Aristotle processes or formats the data so it can be used more easily by the customer. Aristotle intends to include in its publications contributor information obtained from campaign statements and reports required to be filed with the Secretary of State under the Act.

The contracts under which Aristotle sells this processed contributor information notify the purchasers that the contributor information may be used only for lawful, noncommercial purposes. The contracts also require the purchasers to warrant and represent that the contributor information will be used lawfully, and provide for penalties and forfeiture of the product for any breach of representations.

Discussion

A fundamental purpose of the MCFA was the disclosure of campaign contributions and contributors. The disclosure provisions were intended to: (1) inform the public of the source of campaign money and its expenditure by candidates and committees, (2) deter corruption and avoid the appearance of corruption by publicly disclosing large contributions, and (3) provide information for the detection of violations of campaign contribution limitations. *Advisory Opinion on Constitutionality of 1975 PA 227*, 396 Mich 465 (1976).

Subsections 16(1) and (3) of the MCFA, as amended by 1992 PA 188, provide:

> "Sec. 16. (1) A filing official shall make a statement or report required to be filed under this act available for public inspection and reproduction . . .
>
> * * * * *
>
> "(3) A statement open to the public under this act shall not be used for any commercial purpose." (Emphasis added.)

Provisions of the MCFA which superficially appear to limit or hinder public disclosure of campaign contributions and contributors must be reconciled with this overarching goal. It is in this light that the term "commercial purpose", as used in subsection 16(3) of the MCFA must be examined for meaning.

The term "commercial purpose" is not defined in the MCFA. However, this provision is similar in language and purpose to section 311(a)(4) of the Federal Election Campaign Act of 1971 (the FECA), 2 USC 438(a)(4), which prohibits individual contributor information copied from federal

campaign reports or statements from being used for "soliciting contributions or for commercial purposes".

In Federal Election Commission v Political Contributions Data, Inc, 943 F2d 190 (CA 2, 1991), the court interpreted the term "commercial purposes" as used in 2 USC 438(a)(4):

> "When we look to the legislative history of the §438(a)(4) prohibition, we find that Senator Bellmon, in proposing the amendment, was concerned with the possibility that contributors would have their personal lives interrupted by unwanted solicitations. The purpose of this restriction, he said, was 'to protect the privacy of' campaign contributors by insulating them, as best as possible, from 'all kinds of solicitations'.
>
> "These remarks seem to offer the best guidance for interpreting §438(a)(4)'s prohibitions; they clearly indicate that the overarching goal of the prohibition was to protect campaign contributors for 'all kinds' of unwanted solicitations. Without the 'commercial purposes' prohibition, the only solicitations at which the statute would be aimed would be solicitations for contributions. Since those prohibitions extend to 'the purpose of soliciting contributions' and 'commercial purposes', we read the latter prohibition to encompass only those commercial purposes that could make contributors 'prime prospects for *all kinds of solicitations*', 117 Cong. Rec. 30,057 (remarks of Sen. Bellmon) (emphasis added), i.e., not merely solicitations for 'contributions', but solicitations for cars, credit cards, magazine subscriptions, cheap vacations, and the like. In light of the prohibition's purported aim of protecting the privacy of campaign contributors and the FECA's broader aim of full disclosure, not to mention the serious constitutional [first amendment] problems that FEC's reading would engender . . . , this is the proper, reasonable reading of the 'commercial purposes' provision. FEC, supra, p 197." (Brackets added.)

The interpretation of the term "commercial purposes", as used in 2 USC §438(a)(4), adopted by the 2d Circuit Court of Appeal espouses a rationale that applies equally well to that same term, as used in section 16(3) of the MCFA. The difference between Michigan's prohibition under section 16(3) of the MCFA and the federal prohibition under 2 USC §438(a)(4) is that the federal prohibition applies to "all kinds of solicitation", whereas, the prohibition of section 16(3) of the MCFA applies only to commercial solicitations.

Prohibiting the use of campaign contributor information for the purpose of soliciting individual contributors for commercial purposes reconciles the true intent of the "commercial purpose"

prohibition with the overarching goal of public disclosure of campaign contributions and contributors.

In light of the foregoing, a for-profit corporation may use contributor information filed with the Secretary of State for resale to third parties who will use the information for noncommercial purposes, including the solicitation of potential contributors to campaign committees.

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.

Sincerely,

Candice S. Miller

Candice S. Miller
Secretary of State

CSM:rlp