

STATE OF MICHIGAN



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

August 4, 1998

Mr. David Cahill
 Attorney-at-Law
 1419 Broadway
 Ann Arbor, Michigan 48105

Dear Mr. Cahill:

The following information constitutes the Department of State response to your request for a declaratory ruling concerning the collection of a student fee by the University of Michigan (the University) and the University's subsequent transfer of these fees directly to a ballot question committee.

Your request is premised upon certain facts outlined in your letter. You first described the history of the Michigan Student Assembly (MSA) and its longstanding desire to add a "student regent" to the University's Board of Regents. You indicated that in March of 1998, students passed an MSA initiative that allowed MSA to ask the University to approve and collect a separate \$4.00 student fee on behalf of MSA. You further indicated that if collected, the University would transfer the fees to a ballot question committee. The committee would use the fees to collect signatures needed to qualify a ballot initiative to add a voting student to the University's Regents Board.

You asked whether the University, which is a public body as defined in section 11(6)(d) of the Michigan Campaign Finance Act (the MCFA; MCL 169.211), would be in violation of section 57 of the MCFA (MCL 169.257) if it collected and transferred the fees to an account of a ballot question committee. Section 57 provides in part:

"Sec. 57. (1) A public body or an individual acting for a public body shall not use or authorize the use of funds, personnel, office space, property, stationery, postage, vehicles, equipment, supplies, or other public resources to make a contribution or expenditure or provide volunteer personal services that are excluded from the definition of contribution under section 4(3)(a).

..."

Section 63 of the Administrative Procedures Act (the APA; MCL 24.263), section 15(2) of the MCFA (MCL 169.215) and rule 6 of the Administrative Rules for the Department of

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State, Bureau of Elections, Campaign Financing (R 169.6 of the Michigan Administrative Code) govern the Department of State's processing of declaratory ruling requests such as yours. Among other things, these laws require the Department to disseminate declaratory ruling requests for public comment. On May 14, 1998, your request was forwarded to "Persons Interested in Michigan Campaign Finance Act Declaratory Rulings" as part of the public input process.

On May 28, 1998, the Department received information from the University's Office of the General Counsel concerning the facts which formed the basis of your request. In particular, the General Counsel indicated that the University's Vice President for Student Affairs declined to present MSA's fee proposal to the University's Board of Regents. Therefore, the University will not be asked to approve or collect the fees as described in your letter.

As indicated above, section 63 of the APA governs the issuance of declaratory rulings. This section provides in part:

"Sec. 63. On request of an interested person, an agency may issue a declaratory ruling as to the applicability to an actual state of facts of a statute administered by the agency or of a rule or order of the agency. An agency shall prescribe by rule the form for such a request and procedure for its submission, consideration and disposition. . . ." (Emphasis added)

In 1979, Attorney General Frank J. Kelley issued an opinion concerning the language of section 63. Mr. Kelley was asked whether the APA required the State Tenure Commission to issue a declaratory ruling. In response, Mr. Kelley indicated that "the refusal of the Tenure Commission to issue a declaratory ruling that gave rise to this opinion request was proper, since the request for a declaratory ruling was not based upon an actual state of facts as required by the Administrative Procedure Act of 1969, § 63, *supra*." OAG, 1979-1980, No. 5565, p. 398, 399 (September 20, 1979).

Section 15(2) of the MCFA and rule 6, which govern the Department's processing of declaratory ruling requests, both contain language similar to section 63 of the APA.

In light of the above, the Department of State has determined that the facts upon which your declaratory ruling request is based (i.e., the collection of student fees by the University for transfer to a ballot question committee) have not occurred and are not likely to occur. Therefore, the Department must decline to issue a declaratory ruling in this matter.

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Nevertheless, the Department has considered the factual circumstances presented in your request and would offer the following preliminary analysis for your information and consideration.

You asked whether the University could legally collect student funds on behalf of MSA and then transfer the funds to a ballot question committee account. The circumstances you described posit that the University would be expending administrative resources in the process of collecting and transferring funds to a ballot question committee.

As further background, it appears that the University issues monthly student account statements to all registered students. These statements list tuition, fees, and other charges such as housing costs. The students pay one lump sum or make two separate payments for the combined amount to the University, or else pay under a payment plan. Student payments are deposited into the University's general funds accounts. During the year, the University disburses funds to MSA based on the number of students registered for each term. The disbursement is not based on the actual amount of fees collected. In some instances, the University is unable to collect past due student accounts, which may include an MSA fee. The University does not separately account for and debit the uncollected student fees from MSA.

In 1994, Secretary of State Richard H. Austin submitted three questions to Attorney General Kelley concerning the MCFA. One of the questions concerned the use of public resources to support a committee. Mr. Kelley was asked, "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 response, Mr. Kelley indicated:

"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 schools 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

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Campaign Finance Act.” OAG, 1993-1994, No. 6785, p. 102, 104 (February 1, 1994).

Consistent with this and other Attorney General opinions regarding the use of public funds, the Legislature subsequently amended the MCFA by adding section 57 (1995 PA 264). This section prohibits public bodies from making contributions, expenditures, or providing personal services using public funds. Section 57, as amended by 1996 PA 590, provides:

“(1) A public body or an individual acting for a public body shall not use or authorize the use of funds, personnel, office space, property, stationery, postage, vehicles, equipment, supplies, or other public resources to make a contribution or expenditure or provide volunteer personal services that are excluded from the definition of contribution under section 4(3)(a). . . .” (Emphasis added)

From a plain reading of the language, it appears that the Legislature’s intent in 1996 was to re-emphasize the ban on public bodies from using public funds to make expenditures. Further, the 1996 amendment indicated that the ban applied to the use of “funds, personnel, office space, property, stationery, postage, vehicles, equipment, supplies, or other public resources.”

The prohibition in section 57 is similar to that found in section 54 of the MCFA (MCL 169.254). Section 54 prohibits corporations, joint stock companies, domestic dependent sovereigns, or labor organizations from making contributions or expenditures or providing volunteer personal services. Section 54(3) does however permit an exception to this prohibition in that corporations, etc., may make a contribution to a ballot question committee subject to this act. Section 54(3) provides:

“(3) A corporation, joint stock company, domestic dependent sovereign, or labor organization may make a contribution to a ballot question committee subject to this act. A corporation, joint stock company, domestic dependent sovereign, or labor organization may make an independent expenditure in any amount for the qualification, passage, or defeat of a ballot question. A corporation, joint stock company, domestic dependent sovereign, or labor organization that makes an independent expenditure under this subsection is considered a ballot question committee for the purposes of this act.”

Neither section 57 nor any other section of the Act contains language that provides an exception for public bodies that is similar to the exception in section 54(3).

It appears clear that the collection and subsequent payments as proposed to be made by the University are "expenditures" as defined in section 6 of the MCFA (MCL 169.206). This section provides as follows:

"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 of a candidate, or the qualification, passage, or defeat of a ballot question."

Section 6 does however identify an exception. In this regard, section 6(2) provides:

"(2) Expenditure does not include any of the following:

* * *

"(c) An expenditure for the establishment, administration, or solicitation of contributions to a separate segregated fund or independent committee." (Emphasis added)

This exception corresponds to the authority found in section 55 of the MCFA (MCL 169.255), which provides for the establishment of separate segregated funds. Section 55(1) contains a narrow exception for the entities defined in section 54. Section 55(1) provides in part:

"Sec. 55. (1) A corporation organized on a for profit or nonprofit basis, a joint stock company, or domestic dependent sovereign, a labor organization 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 separate segregated 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, political committees, and independent committees."

Neither section 57 nor any other section of the Act contains language that provides an exception for public bodies that is similar to section 55(1).

Michigan courts have followed a longstanding rule of statutory construction that presumes the Legislature knows of, and legislates in harmony with, existing laws. Moore v City of Southfield Police Dept, 160 Mich App 289, 408 NW2d 136 (1987). When the Legislature enacted section 57, language in sections 54(3) and 55(1) outlined narrow exceptions for

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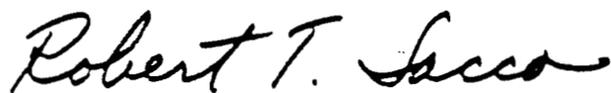
corporations to make expenditures to ballot question committees or to separate segregated funds. Presumably, had the Legislature wished to permit similar exceptions for public bodies to make expenditures, they would have done so in 1996 PA 590.

In light of the above, it is the Department's position that the University would be prohibited from collecting and transferring students funds to a ballot question committee account as described.

Your request also asked whether there were other alternatives that would permit the University to collect the fees and deposit them into a ballot question committee account. In this vein, one of the written comments posited that MSA could "reimburse" the University for its collection and payment activities. As indicated, it appears that the Legislature's intent in 1996 was to re-emphasize the ban on public bodies from using public funds to make expenditures. If the Legislature had wished to permit exceptions to this ban, they would have done so. Therefore, the underlying prohibition in section 57 can not be avoided by permitting MSA to reimburse the University for activities, which are themselves prohibited by section 57, without express statutory authority.

This response is an interpretive statement and does not constitute a declaratory ruling, in as much as your request did not include a statement of actual facts.

Sincerely,



ROBERT T. SACCO
Deputy Secretary of State
Regulatory Services Administration

RTS:rlp