



RICHARD H. AUSTIN • SECRETARY OF STATE

LANSING

MICHIGAN 48918

STATE TREASURY BUILDING

August 24, 1989

Thelma Castillo
4958 Heather Drive
Building 6-109
Dearborn, Michigan 48126

Dear Ms. Castillo:

This is in response to your request for an interpretive statement under the Campaign Finance Act (the Act), 1976 PA 388, as amended. Specifically, you ask whether a hypothetical corporation's separate segregated fund may collect contributions by a reverse check-off if refunds of an employee's contributions are limited to the prior two payroll deductions.

Pursuant to rule 6 of the administrative rules promulgated to implement the Act, 1979 AC R169.201, et seq, the Secretary of State may issue a declaratory ruling as to the applicability of the Act to an actual state of facts. If the facts, though actual, are lacking in specificity the Department will issue an interpretive statement in lieu of a ruling. The Department is unable to issue a specific response to a hypothetical question. However, the following general discussion is offered for your benefit.

Under a reverse check-off, contributions to a separate segregated fund are automatically deducted from eligible employees' paychecks unless an employee indicates beforehand that he or she does not wish to participate in the system. In the enclosed letters to Peter F. McNenly, dated August 4, 1987, and to Thomas H. Shields, dated November 16, 1987, the Secretary of State ruled that reverse check-offs proposed by the Michigan Education Association and the Marketing Resource Group, Inc., did not violate the Act. These rulings relied, in part, upon the Sixth Circuit Court of Appeal's decision in Kentucky Educators Public Affairs Council v Kentucky Registry of Election Finance, 677 F2d 1125 (CA 6, 1982). There, the Court specifically approved a reverse check-off procedure permitting an employee to opt out of the contribution system before any amount was deducted from his or her paycheck and request and receive refunds of prior contributions.

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As the cases cited by the Court of Appeals and discussed at length in the McNenly letter indicate, only reverse check-off plans which provide refunds of prior contributions have withstood legal scrutiny. The right to a refund insures that an employee knowingly and voluntarily contributes to the fund for the express purpose of participating in shared political activity. An employee who does not initially comprehend the political purpose of the payroll deduction or who misses the deadline for checking off may therefore disassociate himself or herself from the separate segregated fund's activities by obtaining a refund. Similarly, if an employee is offended by the fund's political views, the employee can withdraw support by recovering contributions previously deducted from his or her paycheck. A reverse check-off plan which limits the refund of contributions to the two previous payroll deductions may not adequately protect employees from engaging in unwanted political activity.

An employer contemplating the implementation of a reverse check-off should also be aware of the restrictions found in the Wages and Fringe Benefits Act, 1978 PA 390, as amended. As pointed out in the letter to Thomas H. Shields, § 7 of the Act prohibits an employer from deducting "from the wages of an employee, directly or indirectly, any amount without the full, free, and written consent of the employee, obtained without intimidation or fear of discharge for refusal to permit the deduction."

This response is informational only and does not constitute a declaratory ruling. It should also be noted that your request for an interpretive statement was received prior to the enactment of 1989 PA 95 and was therefore not subject to the notice and written comment provisions of the amendatory act.

Very truly yours,



Phillip T. Frangos, Director
Office of Hearings and Legislation
517/373-8141

PTF:rlp
enclosures