



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

December 2, 1999

Mr. Joseph Cella
The Ann Arbor Political Action Committee
24 Frank Lloyd Wright Drive
Ann Arbor, MI 48106-0426

Dear Mr. Cella:

This communication constitutes the Department of State's response to your request for a declaratory ruling under the Michigan Campaign Finance Act (MCFA), 1976 PA 388, as amended. Below is a summary of the information that you provided, the two questions that you have asked and a response to your questions.

You state that the Ann Arbor PAC ("the PAC") is an independent Political Action Committee with one member on its board of directors. The sole board member wishes to make substantial contributions to the PAC. The PAC also expects to solicit and receive substantial contributions from other individuals and PACs. The PAC now wishes to structure its decision-making procedures so that its contributions are not attributed to the sole board member.

Independent Committees are defined by section 8(3) of the MCFA (MCL 169.208(3)). That section reads:

"Sec. 8. (3) 'Independent Committee' means a committee, other than a political party committee, that before contributing to a candidate committee of a candidate for elective office under section 52(2) or 69(2) files a statement of organization as an independent committee at least 6 months before an election for which it expects to accept contributions or make expenditures in support of or in opposition to a candidate for nomination to an elective office; and receives contributions from at least 25 persons and makes expenditures not to exceed the limitations of section 52(1) in support of or in opposition to 3 or more candidates for nomination or election to an elective office in the same calendar year."

You then pose two questions. The first is: "Because Ann Arbor PAC has only one member on its Board of Directors, and if [he] has made substantial contributions to the Ann Arbor PAC, does MCL 169.270 mean that any contributions to state candidates by Ann Arbor PAC would be attributable to the board member and subject to the contribution limits contained in MCL 169.252(1)?"

Section 52(1) limits the amount of money an individual may contribute to a candidate. An individual is limited to contributing \$500 to a state representative, \$1,000 to a state senator, and \$3,400 to a statewide candidate. An independent committee can contribute ten times those amounts.

An individual could easily circumvent these limits if he or she were allowed to form an independent committee, qualify to contribute at the higher limits, and then assume exclusive control over contributions to, and expenditures by, the independent committee. In order to prevent this from happening, section 3(4) of the MCFA (MCL 169.203(4)) specifically states that an individual, other than a candidate, does not constitute a committee. In addition, sections 31 and 70 of the MCFA (MCL 169.231 and 169.270) require the attribution of contributions to individuals and independent committees in certain circumstances.

Section 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.

Section 70 provides:

A contribution or expenditure 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 expenditure or contribution, and shall be regarded as a contribution attributable to both persons for purposes of expenditure or contribution limits.

If the PAC is controlled by, or at the direction of the board member, then its contributions would count against both the PAC limits as well as the individual limits. This would mean that the PAC's contributions would be limited to the level of an individual contributor.

As applied to the scenario you describe, a one-person board of directors would certainly be considered to be controlled by, or operating at the direction of, the board member, particularly where the sole board member also contributed a large sum of money to the PAC.

Your second question is: "If [the PAC could not separate its contributions from those of its sole director], if Ann Arbor PAC establishes a committee of the PAC (henceforth "PAC Committee"), which would be vested by the PAC with the sole decision making authority to make contributions to candidates, and which would be made up of a majority of persons who are not the board member, or any member of his family, and any persons employed by him or any corporation or other entity in which he owns a majority interest, would any contributions made as a result of the decisions by this independent committee now be attributable to the board member and subject to the contribution limits contained in MCL 169.252(2)? In answering this question, would it make any difference to your answer if the board member is a member of this independent committee but does not have a majority vote on it?"

The statute does not detail the degree of separation necessary to create sufficient distance between the sole Director and the PAC Committee. The Department of State cannot determine whether the corporate structure you describe will provide independence on the part of the PAC Committee.

Some factors this office will consider in attempting to determine whether the "contributions committee" is independent from the board member include:

- 1) Did one or two contributors give the vast majority of money to the independent committee, or were the contributions spread more equally among several contributors?
- 2) How do the members obtain a seat on the independent committee within the PAC? Are they appointed by someone? Are they elected by the major contributors? Are they elected by the general membership of the PAC?
- 3) The minimum number of contributors needed to form an independent committee is 25. In subsequent years, has the committee continued to have 25 or more donors? Or has the number dropped? If so, do the number of contributors give the appearance that the independent committee is acting at the command of one person? If the PAC had the requisite number of contributors in 1999, but dropped to one in subsequent years, this would certainly give evidence of the PAC being controlled by, or acting at the direction of, the major contributor.

- 4) Are the members of this independent committee at-will directors? If so, who decides whether they will stay on the Board? Do they instead serve a fixed term?
- 5) If one person donated most of the money to the independent committee, does he have a seat on the Board? Does he have to "run" for his seat, or can he appoint himself?
- 6) Have formal legal documents, such as bylaws, been drafted which indicate independence? Are those bylaws followed by the board? Or, to the contrary, is the independent board an informal arrangement?
- 7) How much influence does the sole director have in his status as a PAC Committee director?

Thus, no single factor will likely guarantee independence, or be sufficient to indicate "direction and control." Instead, the Department must look at the totality of the circumstances before determining whether the contribution or expenditure is controlled by, or made at the direction of, another person.

Because your request did not include a statement of facts sufficient to form the basis for a declaratory ruling, this response is informational only and constitutes an interpretive statement with respect to your inquiries.

Sincerely,



ROBERT T. SACCO
Deputy Secretary of State
Regulatory Services Administration