



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

June 14, 2002

Judith Corley
Perkins Coie
607 Fourteenth Street, Northwest
Washington, D.C. 20005

Dear Ms. Corley:

This is a response to your request for a declaratory ruling under the Michigan Campaign Finance Act (MCFA), 1976 P.A. 388, as amended.

FACTS

Your request presents the following facts:

EMILY's List is a political committee membership group, "incorporated for political liability purposes only." It is a national political organization that supports candidates for both federal and nonfederal elections. EMILY's List is registered with the Federal Election Commission (FEC) and with numerous states throughout the nation. In Michigan, EMILY's List is registered and qualified as an independent committee.

As described in a 1993 request for a Declaratory Ruling, EMILY's List suggests support for specific candidates through a series of mailings. Each mailing discusses between four and eight candidates. The mailings provide biographical and political information about the featured candidates while asking for contributions to these candidates.

The recipient decides which candidate(s) to support, if any, writes a personal check made payable to each candidate, places the checks into a postage paid envelope provided with the mailing, and sends the contributions back to EMILY'S List. Because of the volume of mail, the envelopes are actually received by a vendor—a caging company—that opens the envelopes and distributes the individual checks for deposit in the appropriate recipient's bank account.

LAW

2001 P.A. 250 amended the MCFA to regulate certain bundling activities. The amendments define the following terms:

Sec. 2. (4) "Bundle" means for a bundling committee to deliver 1 or more contributions from individuals to the candidate committee of a candidate for statewide elective office, without the money becoming money of the bundling committee.

Sec. 2. (5) "Bundling committee" means an independent committee or political committee that makes an expenditure to solicit or collect from individuals contributions that are to be part of a bundled contribution, which expenditure is required to be reported as an in-kind expenditure for a candidate for statewide elective office.

P.A. 250 also amended Sections 31 and 52 of the MCFA to create a separate \$34,000 limit for bundled contributions that are delivered by an independent committee. Specifically, Section 31(2) provides that for purposes of contribution limits, a bundled contribution is attributable to both the individual contributor and the bundling committee that delivered the contribution. Pursuant to Section 52(12), an independent committee may only deliver a total of \$34,000 in attributed contributions.

Finally, P.A. 250 amended Section 26 of the MCFA to require detailed reporting of bundled contributions by the bundling committee and the recipient candidate committee.

For the remainder of this communication, "candidate" shall mean candidate for statewide office.

QUESTIONS & ANSWERS

You ask the following questions:

- 1) What is included within the term "bundled contribution?"

A committee becomes a bundling committee when it makes an expenditure to either solicit or collect a contribution that is to be part of a bundled contribution for a candidate. A bundled contribution is a contribution from one or more individuals that is delivered by a bundling committee to a candidate for statewide office. Only those contributions that are delivered to a candidate are part of a bundled contribution.

2) What constitutes "delivery" of contributions?

A committee must receive contributions for a candidate before it can deliver them. A committee that encourages individuals to send contributions directly to a candidate committee has neither received nor delivered the contributions, and such activity does not constitute bundling. It does, however, constitute an in-kind expenditure by the committee to the candidate.

EMILY's List is not precluded from making expenditures to solicit contributions for any candidate as long as the individual contributions are sent directly to that candidate. The cost of the solicitation and any other cost incurred to deliver the contribution, such as the cost of a stamped envelope addressed to the candidate, would count towards EMILY's List \$34,000 limit on direct and in-kind contributions. However, contributions that are sent directly to the candidate are not bundled contributions. Therefore, they are not attributable to EMILY's List under Section 31(2) and are not subject to the \$34,000 limit on bundled contributions established in Section 52(12).

3) What are the definitions of "collect" and "deliver" as used in the definition of bundling committee?

"Collect" and "deliver" are not defined in the MCFA and we cannot supply definitions other than the common usage of those terms. As mentioned above, a committee becomes a bundling committee by making expenditures to solicit or collect contributions that are to be bundled. It is only when the contributions are delivered that they become attributable to EMILY's List for purposes of Section 52(12) and subject to the reporting requirements of Section 26(4), (5) and (6).

4) If EMILY's List receives a contribution made to a candidate and returns it to the original donor, may it assume that the contribution does not count against its limit to the candidate?

Pursuant to Section 4(3)(a), an offer or tender of a contribution that is returned within 30 business days is not a contribution. Therefore, a committee that receives a contribution and returns it to the contributor within 30 business days may do so without that contribution being considered a "bundled contribution." However, any expense incurred in facilitating a contribution to a candidate must be reported as an in-kind contribution. For example, the expense incurred to return a contribution that includes mailing instructions or information supporting a particular candidate would be deemed an in-kind contribution.

- 5) What costs or expenses must be included in calculating the in-kind expenditure made "to solicit or collect from individuals contributions that are to be part of a bundled contribution?"

We do not know precisely how EMILY's List operates and thus cannot give you an exhaustive list of what must be considered an in-kind expenditure. Certainly proportionate expenses incurred for salaries, postage, printing, telephone, computers, and all other services and products which are in used to assist a candidate must be considered an in-kind contribution to a candidate.

CONCLUSION

We have attempted to answer your questions regarding the new "bundling" provisions of the MCFA. It is clear that P.A. 250 does not preclude EMILY's List from making expenditures to solicit an unlimited amount of contributions for any candidate as long as the individual contributions are sent directly to the candidate and not to EMILY's List. Contributions that are sent directly to the candidate are not bundled contributions, and they are not attributable to EMILY's List or subject to the \$34,000 limit on bundled contributions. Under the amendatory law, an independent committee can still make a contribution to a candidate committee of \$34,000. An independent committee may also collect and deliver up to \$34,000 worth of individual contributions. Finally, an independent committee, rather than contributing directly to a candidate, may spend up to \$34,000 in solicitation and mailing costs that facilitate the contribution of funds directly from a donor to a candidate committee.

Thank you for your inquiry. Because it did not present sufficient facts for the Department to issue a declaratory ruling, this response should be considered an interpretive statement. If you have additional questions, please contact the Bureau of Legal Services at (517) 241-3463.

Sincerely



Robert T. Sacco, Director
Regulatory Services Administration

RTS/kc

CONCLUSION

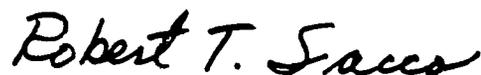
After a thorough review of the MCFA, federal case law, and previous departmental declaratory rulings and complaints, we conclude that we do not have the authority to regulate issue ads.

This in no way endorses some of the so-called issue ads, which are often more vicious than election ads. Clearly, many if not most of these issue ads are campaign ads without words of express advocacy. Moreover, because they are not considered campaign ads, relevant information, such as who paid for them, is often not disclosed.

However, the Department's responsibility is to enforce the law, regardless of whether we like it or not. Our reading of both Michigan and federal law indicates that we do not have the authority to regulate ads that do not contain words of express advocacy. Because the communication itself may not be regulated, the Department also does not have the authority to investigate whether a candidate has directed or controlled an issue ad. Moreover, even if the law were changed to give us that responsibility, we do not have the tools to do so. Without subpoena power and other tools needed to create a factual record, any determination of what was direction or control and what was mere communication between a candidate committee and a Section 54 entity would be mere speculation, which is not the same thing as due process or equal protection of the law.

Because your request does 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, Director
Legal and Regulatory Affairs Administration

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