

## MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN

SECRETARY OF STATE

STATE TREASURY BUILDING



LANSING

MICHIGAN 48918

June 15, 1989

Larry M. Gerschbacher, L.L.S.  
 Treasurer - Surveyors Political Action Committee of Michigan  
 220 S. Museum Drive  
 Lansing, Michigan 48909-1905

Dear Mr. Gerschbacher:

This is in response to your inquiry concerning the applicability of the Campaign Finance Act (the Act), 1976 PA 388, as amended, to the Surveyors Political Action Committee of Michigan (SURPAC). Specifically, you indicate:

"Our PAC would like to be able to accept corporate funds and use these contributions exclusively to pay for administrative costs such as, but not limited to, postage, stationary, secretarial fees, etc. and keep individual contributions strictly for candidates."

Pursuant to section 54 of the Act (MCL 169.254), a corporation is prohibited from making any contribution or expenditure in candidate elections. Therefore, a corporation may not pay for the administrative costs of an independent or political committee unless the committee is also a separate segregated fund of that corporation.

Separate segregated funds are governed by the requirements of section 55 of the Act (MCL 169.255). This section states:

"Sec. 55. (1) A corporation or joint stock company 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 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, and independent committees.

(2) Contributions for a fund established by a corporation or joint stock company under this section may be solicited from any of the following persons or their spouses:

- (a) Stockholders of the corporation.
- (b) Officers and directors of the corporation.
- (c) Employees of the corporation who have policy making, managerial, professional, supervisory, or administrative nonclerical

responsibilities.

(3) Contributions for a fund established under this section by a corporation which is nonprofit may be solicited from any of the following persons or their spouses:

- (a) Members of the corporation who are individuals.
- (b) Stockholders of members of the corporation.
- (c) Officers or directors of members of the corporation.
- (d) Employees of the members of the corporation who have policy making, managerial, professional, supervisory, or administrative nonclerical responsibilities.

(4) Contributions shall not be obtained for a fund established under this section by use of coercion, physical force, or as a condition of employment or membership or by using or threatening to use job discrimination or financial reprisals.

(5) A person who knowingly violates this section is guilty of a felony and shall be punished by a fine of not more than \$5,000.00 or imprisoned for not more than 3 years, or both, and if the person is other than an individual, the person shall be fined not more than \$10,000.00.

Enclosed is a copy of an Attorney General opinion, OAG, 1977-78, No 5344, p 549 (July 20, 1978), interpreting this section of the Act. In his opinion, the Attorney General indicates that a corporation may pay the administrative costs of a single separate segregated fund established by that corporation. However, a corporation is prohibited from paying the administrative costs of a separate segregated fund established by a different corporation.

Thus, if SURPAC was established by a corporation, only that corporation may pay SURPAC's administrative costs. However, the Act does not allow a corporation to pay the administrative costs of a separate segregated fund established by another corporation or the administrative costs of a committee which is not a separate segregated fund.

This response is informational only and does not constitute a declaratory ruling.

Very truly yours,

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

PTF/cw

Enc.

When information described in 1956 PA 218, § 2477(2) and (3), as added by 1975 PA 44, *supra*, is transmitted to the Medical Practice Board from the insurance commissioner, it automatically becomes part of a licensee's historical record by virtue of 1973 PA 185, *supra*, § 11b(1) which states:

"The board shall create and maintain a permanent historical record for each licensee with respect to information and data transmitted pursuant to law."

It is my opinion, therefore, that all of the information provided to the Medical Practice Board by the insurance commissioner pursuant to section 2477 is relevant and becomes part of a licensee's historical record.

FRANK J. KELLEY,  
*Attorney General.*

**ELECTIONS: Corporate contributions**

Establishment of a "separate segregated fund" by a corporation

**CAMPAIGN FINANCE ACT: Establishment of a "separate segregated fund" by a corporation**

A "separate segregated fund" established by a corporation pursuant to section 55 of the campaign finance act is a committee that is required to comply with the registration and reporting requirements of the act.

A "separate segregated fund" established by one corporation may not contribute to a "separate segregated fund" established by another corporation.

A corporation may only establish one "separate segregated fund".

Opinion No. 5344

July 20, 1978.

Honorable Richard H. Austin  
Secretary of State  
Treasury Building  
Lansing, Michigan 48918

You have asked several questions concerning the Campaign Finance Act, 1976 PA 388, as amended by 1977 PA 314, MCLA 169.201 *et seq.*; MSA 4.1703(1) *et seq.* (hereinafter referred to as "the Act"). Your letter of request indicated that several "separate segregated funds" established by corporations have registered with the Department of State pursuant to provisions of the Act and that they have registered either as an independent committee, which is defined in section 8(2), or as a political committee, which is defined in section 11(2). Your questions are:

1. Is it necessary for a "separate segregated fund" to register with the Department of State?
2. May a "separate segregated fund" established by one corporation contribute to a "separate segregated fund" established by a second corporation?

3. May a corporation establish more than one "separate segregated fund"?

These questions will be addressed seriatim.

1. Is it necessary for a "separate segregated fund" to register with the Department of State?

Section 55 of the Act states:

"(1) A corporation or joint stock company 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 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, and independent committees.

"(2) Contributions for a fund established by a corporation or joint stock company under this section may be solicited from any of the following persons or their spouses:

"(a) Stockholders of the corporation.

"(b) Officers and directors of the corporation.

"(c) Employees of the corporation who have policy making, managerial, professional, supervisory, or administrative nonclerical responsibilities.

"(3) Contributions for a fund established under this section by a corporation which is nonprofit may be solicited from any of the following persons or their spouses:

"(a) Members of the corporation who are individuals.

"(b) Stockholders of members of the corporation.

"(c) Officers or directors of members of the corporation.

"(d) Employees of the members of the corporation who have policy making, managerial, professional, supervisory, or administrative nonclerical responsibilities.

"(4) Contributions shall not be obtained for a fund established under this section by use of coercion, physical force, or as a condition of employment or membership or by using or threatening to use job discrimination or financial reprisals.

"(5) A person who knowingly violates this section is guilty of a felony and shall be punished by a fine of not more than \$5,000.00 or imprisoned for not more than 3 years, or both, and if the person is other than an individual, the person shall not be fined more than \$10,000.00."

To appreciate fully the significance of section 55 of the Act, it is helpful to note that a corrupt practices act was first enacted as 1913 PA 109, and section 14 therefore provided:

"No officer, director, stockholder, attorney, agent or any other person, acting for any corporation or joint stock company, whether incorporated under the laws of this or any other state or any foreign country, except corporations formed for political purposes, shall pay, give or lend, or authorize to be paid, given or lent any money belonging to such corporation to any candidate or to any political committee for the payment of any election expenses whatever."

This language was re-enacted in 1915<sup>1</sup>, 1925<sup>2</sup>, 1929<sup>3</sup>, 1948<sup>4</sup> and, finally, by enactment of 1954 PA 116, became section 919 of the Elections Code<sup>5</sup>. By enactment of 1975 PA 227, the limitations on corporate involvement were relaxed by permitting the use of corporate funds for the "establishment and administration of a separate segregated corporate political education fund to be utilized for the sole purpose of making contributions to and expenditures on behalf of candidate committees." 1975 PA 227, § 95(2). Although 1975 PA 227 was declared unconstitutional for other reasons by the Michigan Supreme Court<sup>6</sup>, 1976 PA 388, *supra*, § 55 re-enacted the above-quoted language of 1975 PA 227, *supra*.

*OAG, 1977-1978, No. 5279, p. \_\_\_* (March 22, 1978), held that a corporation may not use monies from its corporate treasury to make contributions to a committee which in turn supports state candidates, but that the corporation may make expenditures for establishment and administration of a fund to be used for political purposes, and that the contributions to the fund may only come from persons identified in section 55 of the Act, i.e., (1) stockholders of the corporation, (2) officers and directors of the corporation, and (3) employees of the corporation with policymaking, managerial, professional, supervisory or administrative nonclerical responsibilities.

Section 3(4) of the Act defines "committee" as:

"... 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 \$200.00 or more in a calendar year or expenditures made total \$200.00 or more in a calendar year. An individual, other than a candidate, shall not constitute a committee."

Section 11(1) defines "person" as:

"... a business, individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, labor organization, company, corporation, association, committee, or any other organization or group of persons acting jointly."

As amended by 1977 PA 314, MCLA 169.211; MSA 4.1703(1), the Act now identifies five, rather than four, types of committees. Section 2(2) defines a ballot question committee, section 3(2) defines a candidate committee, section 8(2) defines an independent committee, and section 11(5) defines a political party committee. 1977 PA 314, *supra*, amended the Act to include a definition for "political committee" in section 11(2), which states:

"'Political committee' means a committee which is not a candidate committee, political party committee, independent committee, or ballot question committee."

<sup>1</sup> CL 1915, § 3846.

<sup>2</sup> 1925 PA 351, Pt. 5, c. II, § 19.

<sup>3</sup> CL 1929, § 3324.

<sup>4</sup> CL 1948, §§ 189.19 & 196.19.

<sup>5</sup> MCLA 168.919; MSA 6.1919.

<sup>6</sup> *Request for Advisory Opinion on Constitutionality of 1975 PA 227*, 396 Mich 123; 240 NW2d 193 (1976).

Corporate involvement in the financing of elections is limited to activity authorized by sections 54 and 55 of the Act. Section 54 indicates the means by which a corporation may form a ballot question committee<sup>7</sup>. A "separate segregated fund" is precluded from qualifying as a candidate committee or political party committee by their definitions. However, a "separate segregated fund" may qualify and, in fact, must register as either a political committee or an independent committee, provided it meets the appropriate definition. Since the "separate segregated fund," once it exceeds \$200.00 in contributions or expenditures, is a committee, it is my opinion that it must register with the Department of State either as a political committee or as an independent committee, as defined in the statute.

A "separate segregated fund" functions as the result of joint action by an organization; consequently, it is a "person" as defined in the statute. If a "separate segregated fund" receives \$200.00 or more in a calendar year, it is a "committee" for purposes of the Act. As such, it is subject to the registration and reporting requirements set forth in the statute.

2. May a "separate segregated fund" established by one corporation contribute to a "separate segregated fund" established by a second corporation?

As noted above, a "separate segregated fund" is restricted to contributions from the following sources: (1) shareholders of the corporations, (2) officers and directors of the corporation and (3) employees of the corporation with policymaking, managerial, professional, supervisory or administrative nonclerical responsibilities. No other person, except spouses of the foregoing individuals, may contribute to the "separate segregated fund".

Section 55 of the Act further indicates that the "separate segregated fund" is limited to making contributions to or expenditures on behalf of candidate committees, ballot question committees, political party committees and independent committees. Thus, a "separate segregated fund" established by a corporation, even though registered as a political committee, may not make contributions to another corporation's "separate segregated fund", because it may only make contributions to "candidate committees, ballot question committees, political party committees and independent committees". Section 55.

3. May a corporation establish more than one "separate segregated fund"?

Section 55 of the Act states that a corporation may make an expenditure for the establishment and administration and solicitation of contributions to a "separate segregated fund" to be used for political purposes. The use of the singular followed by language which strictly restricts contributions for a fund leads to the conclusion that the legislature intended that only one separate segregated fund may be created by a corporation. This conclusion is consistent with the legislative history of corporate involvement in elections noted above.

As noted in OAG, No 5279, *supra*, administration of the separate segregated fund and the authorization of expenditures from the fund must be by the board of

<sup>7</sup> It will be noted that, in addition, the United States Supreme Court held in *First National Bank of Boston v Bellotti*, \_\_\_ US \_\_\_, 98 S Ct 1407 (1978), that the First Amendment protects the right of a corporation to expend its funds to influence a vote on a referendum proposal.

directors of the corporation or by a committee authorized by the board of directors of the corporation.

The limitation of one "separate segregated fund" for each corporation is consistent with other provisions of the Act. For example, a candidate may only have one candidate committee. Section 21(3) provides that all monies in the candidate committee must pass through one official depository of the committee. All contributions to the committee and expenditures by the committee must be made from the committee's official depository.

Section 11(5), in defining "political party committee", limits each state central, district or county party to a single committee. Section 8(2), in defining "independent committee", indicates that a separate level, subsidiary, subunit or affiliate of an organization which is an independent committee may create an independent committee only if the decisions or judgments for the subsidiary committee to make contributions or expenditures on behalf of candidates are independently exercised within the separate level, subsidiary, subunit or affiliate of the parent organization.

Thus, a corporation may make an expenditure for the establishment, administration and solicitation of contributions to only one "separate segregated fund."

FRANK J. KELLEY,  
*Attorney General.*

**OFFICERS AND EMPLOYEES:** Reduction of salary during term of office

**PROSECUTING ATTORNEY:** Reduction of salary during term of office

**WORDS AND PHRASES:** "Salary"

"Compensation"

Payment by county board of commissioners of dues to the State Bar Association or other professional organization on behalf of the county prosecutor is a fringe benefit of employment and may be terminated by the board at any time.

Opinion No. 5334

July 21, 1978.

The Honorable Jack Welborn  
State Senator  
The Capitol  
Lansing, Michigan 48909

You have requested my opinion as to whether a county board of commissioners may discontinue payment by the county of state bar dues and membership fees in professional organizations on behalf of a county prosecuting attorney during his current term of office, where the same have been regularly paid since the inception of his term of office.

1879 PA 154, § 1, as amended by 1967 PA 163; MCLA 45.421; MSA 5.1101, provides:

"The annual *salaries* of all salaried county officers, which are now or may be hereafter by law fixed by the board of supervisors, shall be fixed by the