

STATE OF MICHIGAN



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

October 29, 1999

The Honorable Michael J. Hanley
Michigan House of Representatives
Lansing, MI 48913

Dear Representative Hanley:

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). Your request asks whether an elected state official may use "state funds, personnel, office space, property or other public resources for the purposes of influencing the nomination or election of a candidate for a federal elective office."

Further, you state that it is your understanding that Michigan law cannot regulate contributions to federal candidates but that the MCFA does regulate the use of state resources in campaigns.

In essence, then, your question asks: does the MCFA regulate the use of public resources for the purpose of influencing the nomination or election of a federal candidate?

A short answer to your question is that the MCFA regulates neither federal elections nor the state resources used to influence them. The scope of the Department's authority is limited by law to non-federal elections. However, other branches or departments may have the authority to prevent the use of state resources to influence federal elections. Because the Department is limited to the jurisdiction granted it by the MCFA, you must look to other departments for enforcement of the law with regard to the use of public resources in federal elections.

FEDERAL ELECTIONS

The Michigan Department of State derives its powers to enforce campaign finance law from 1976 PA 388. One purpose of the act is to "restrict campaign contributions and expenditures," as those terms are defined in the statute. Section 57 of the MCFA provides that a public body shall not use public funds or resources to make a contribution or expenditure. If a use or activity does not meet the definition of contribution or expenditure, it is not subject to the restrictions of the act.

Section 4 of the MCFA defines contribution as a "payment, gift, subscription, assessment, expenditure, contract, payment for services, dues, advance, forbearance, loan, or donation of money or anything of ascertainable monetary value, or a transfer of anything of ascertainable monetary value to a person, made for the purpose of influencing the nomination or election of a candidate, or for the qualification, passage, or defeat of a ballot question committee."

Section 6 of the MCFA defines expenditure as "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 3 defines a candidate as an individual: (a) who files a fee, affidavit of incumbency, or nominating petition for an elective office; (b) whose nomination as a candidate for elective office by a political party caucus or convention is certified to the appropriate filing official; (c) who receives a contribution, makes an expenditure, or gives consent for another person to receive a contribution or make an expenditure with a view to bringing about the individual's nomination or election to an elective office, whether or not the specific elective office for which the individual will seek nomination or election is known at the time the contribution is received or the expenditure is made.

Finally, "elective office" is defined in Section 5(4) as "a public office filled by an election, except for federal offices." That single phrase--"except for federal offices"--renders any activity by any person on behalf of a federal candidate exempt from MCFA coverage.

Federal law preempts any state law which attempts to regulate federal elections. 2 USC §453 states: "The provisions of this Act [Federal Election Campaign Act], and of the rules prescribed under this Act, supersede and preempt any provision of State law with respect to election to Federal office." 11 CFR 108.7(a) states

that "The provisions of the Federal Election Campaign Act of 1971, as amended, and rules and regulations issued thereunder, supersede and preempt any provision of State law with respect to election to Federal office." Thus, even had the legislature wished to include federal offices in its definition of "elective office," it would have been prohibited from doing so.

PUBLIC RESOURCES

The intentional or knowing use of public resources for political purposes is clearly unethical and repugnant to Michigan's deserved reputation for clean government. The mistaken or unintentional use of public resources is also cause for great concern. While Michigan is prohibited from regulating contributions or expenditures to federal candidates, it is the Department's understanding that the state does have the authority to prohibit public employees from utilizing state resources for private or political purposes.

Although this office does not claim to speak for the other departments in state government, it is aware of certain prohibitions against the use of state resources that may rest with other departments. For example, MCL 750.490 holds that "All moneys which shall come into the hands of any officer of the state, or of any officer of any county, or of any township, school district, highway district, city or village, or of any other municipal or public corporation within this state, pursuant to any provision of law authorizing such officer to receive the same, shall be denominated public moneys within the meaning of this section."

Further, the statute holds that "No officer shall, under any pretext, use or allow to be used, any such moneys for any purpose other than in accordance with the provisions of the law; nor shall he use the same for his own private use, nor loan the same to any person, firm or corporation without legal authority to do so."

MCL 15.401 et seq expressly provides that a civil servant shall not engage in political activities when the employee is compensated for the performance of his or her regular duties. The statute also prevents public employers or employees from coercing or commanding another employee to pay, lend or contribute anything of value for the benefit of a person seeking elected office.

MCL 21.46 states that "Upon demand of the auditor general [now State Treasurer] it shall be the duty of any and all offices of the state and county government to produce, for examination, the books of account and the papers of their respective departments, institutions and offices, and to truthfully answer all questions relating thereto."

Representative Michael J. Hanley

Page 1

October 29, 1999

Finally, the Department believes that both houses of the legislature may have their own rules regulating what a member and his or her own staff may do with public resources.

To summarize, the Michigan Campaign Finance Act cannot regulate federal campaigns. However, other departments or branches of government may have the authority to prevent the unauthorized use of public resources. Should you become aware of the use of state resources in federal campaigns, I suggest you contact the office responsible for enforcing the aforementioned prohibitions.

Since 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,

A handwritten signature in black ink that reads "Robert T. Sacco". The signature is written in a cursive style with a large, prominent "R" and "S".

ROBERT T. SACCO
Deputy Secretary of State
Regulatory Services Administration

STATE OF MICHIGAN



CANDICE S. MILLER, Secretary of State
MICHIGAN DEPARTMENT OF STATE
LANSING, MICHIGAN 48918-0001

MEMORANDUM

DATE: October 29, 1999

TO: Persons Interested in Michigan Campaign Finance Act Declaratory Rulings and Interpretive Statements

FROM: Anne Corgan, Director
Compliance and Rules Division

SUBJECT: Request of Representative Michael J. Hanley

Enclosed is a signed copy of an interpretive statement issued under the authority of section 15(2) of the Michigan Campaign Finance Act, 1976 PA 388, as amended.

If you no longer wish to participate as an "interested person" in the notice and written comment procedures required by the act, please contact Cynthia Winn at the Michigan Department of State, Compliance and Rules Division, 208 North Capitol Avenue, Lansing, Michigan 48918-2170.

AC/cw
Enc.