



STATE OF MICHIGAN
RUTH JOHNSON, SECRETARY OF STATE
DEPARTMENT OF STATE
LANSING

June 26, 2012

Barry A. Bostrom, General Counsel
ActRight Fund
2029 K Street NW, Suite 300
Washington, D.C. 20006

Dear Mr. Bostrom:

The Department of State (Department) acknowledges receipt of your letter dated March 28, 2012, in which you sought a declaratory ruling concerning the Department's interpretation of the Michigan Campaign Finance Act (MCFA), 1976 PA 388, MCL 169.201 *et seq.* A copy of your request was published on the Department's website beginning April 3, 2012, but no public comments were submitted for consideration.

The MCFA and Administrative Procedures Act (APA), 1969 PA 306, MCL 24.201 *et seq.*, authorize the Department to issue a declaratory ruling if an interested person submits a written request that includes a reasonably complete statement of facts and a succinct statement of the legal question presented. MCL 24.263, 169.215(2). Although the factual statement you supplied is insufficient to form the basis for a declaratory ruling on this topic, the MCFA requires the Department to issue an interpretive statement "providing an informational response to the question[s] presented" as a substitute. MCL 169.215(2). Accordingly, the Department offers the following interpretive statement in response to your request.

Your request indicates that your organization's website, www.ActRight.com, facilitates fundraising for certain candidates and ballot questions around the United States, including Michigan. At present the website solicits contributions for Michigan candidates who seek federal elective offices, but ActRight proposes to expand its operations to include candidates running for the Michigan House of Representatives and Michigan Senate, as well as those seeking statewide elective offices.¹ ActRight's 527 organization, the ActRight Fund, intends to form and register as an independent committee in Michigan (ActRight Michigan), which:

will solicit the contributions of website donors and contribute these funds to Michigan candidates. In the case of statewide candidates, ActRight Michigan will bundle contributions for candidates that website users designate when they click on a 'donate' button for a particular Michigan statewide candidate.

¹ Under MCL 169.212(4), "statewide elective office" includes the Governor, Lieutenant Governor, Secretary of State, Attorney General, Supreme Court Justice, or member of the State Board of Education, University of Michigan Board of Regents, Michigan State University Board of Trustees, or Wayne State University Board of Governors.

You first ask whether ActRight Michigan may operate as both an independent committee which accepts undesignated contributions in support of candidates for the Michigan Legislature, and also as a bundling committee with respect to contributions that are designated for candidates seeking statewide elective office in Michigan.

In order to qualify as an independent committee, ActRight Michigan must first file a statement of organization as an independent committee at least 6 months in advance of an election in which it intends to receive contributions or make expenditures to support or oppose a candidate. MCL 169.208(3). Additionally, ActRight Michigan must receive contributions from at least 25 persons and make expenditures - - at the lower limits applicable to political committees provided in MCL 169.252(1) - - to support or oppose 3 or more candidates in a single calendar year. *Id.* Once it achieves these milestones, ActRight Michigan is authorized to make contributions in amounts ten times higher than political committees and individuals. MCL 169.252(2).

The MCFA authorizes the bundling of contributions by a bundling committee, which is one type of independent committee. MCL 169.202(5). Bundling committees exist for the purpose of making expenditures “to solicit or collect from individuals contributions that are to be part of a bundled contribution [.]” *Id.* By defining “bundling committee” as a type of independent committee, the MCFA recognizes that such committees may serve dual purposes. Thus, ActRight Michigan is permitted to operate as both an independent committee and a bundling committee under the MCFA.

Next, you ask whether the MCFA authorizes ActRight Michigan to bundle contributions to candidates seeking statewide elective office (consistent with the individual contributor’s designation), “and distribute these contributions to each candidate as a contribution from the original source (individuals contributing on ActRight.com) as long as all required original source contributor information accompanies the contribution in a Bundled Contribution Schedule to each candidate?”

While your letter includes a partial description of the information required to be disclosed to the recipient candidate committees when delivering bundled contributions, reports of bundling activity must also be filed with the Secretary of State. MCL 169.226(4), (5). With respect to ActRight Michigan’s reporting obligations, please note that a bundling committee’s expenditures for the solicitation or collection of individual contributions must be reported as in-kind expenditures for the recipient candidate committee. MCL 169.202(5). Additionally, the MCFA imposes certain requirements on the handling of bundled contributions.

Although the MCFA does not define the term “bundled contribution,” it defines “bundle” as the delivery of “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.*” MCL 169.202(4) (emphasis added). Your letter does not specifically describe how the bundled contributions received by ActRight Michigan will be transferred to the candidate committees of candidates seeking statewide elective offices, but in order to ensure compliance with the MCFA, bundled contributions must not be deposited into a bank account owned or controlled by ActRight Michigan. As the Department explained in its Interpretive Statement to Jonathan Zucker, November 21, 2007:²

² Available at http://www.michigan.gov/documents/sos/Zucker_Request_-_Final_Response_216319_7.pdf.

[S]ection 2(4) of the MCFA excludes from the definition of ‘bundled’ any contributions that ‘becom[e] money of the bundling committee.’ Under the scenario you describe, individual contributions intended for Michigan committees will be aggregated and periodically transmitted to the recipient committees using a check drawn on ActBlue’s account after a processing fee of 3.95% is deducted from each contribution. ...

ActBlue’s exercise of control over these funds is demonstrated by the periodic payment of accumulated funds from multiple contributors using a single check on an account maintained by ActBlue, and ActBlue’s ability to deduct processing fees from individual donors’ credit card contributions. By contrast, bundled contributions retain their character as contributions from individual donors because they are not deposited into an account controlled by the bundling committee, are payable directly from the individual donor’s own funds, and are not subject to the deduction of processing fees or other charges. ActBlue’s proposed activities do not comport with that of a bundling committee operating under Michigan law. The word ‘bundled,’ as it is defined in the MCFA, demands that bundled contributions obtained from individual donors remain segregated from the bundling committee’s own funds. MCL 169.202(4).

Consistent with the foregoing, ActRight Michigan is authorized to transfer bundled contributions to candidates seeking statewide elective office in Michigan along with a completed Bundled Contribution Schedule. MCL 169.226(5).

With respect to your third question, whether “the candidates also report the ‘bundled’ contribution amount as a contribution from ActRight Michigan [,]” the MCFA requires the recipient candidate committee to disclose, among other information, “the name of the bundling committee that delivered the contribution.” MCL 169.226(6). This disclosure requirement enhances the Department’s ability to monitor compliance with the applicable contribution limits.

Importantly, “[a] bundled contribution or a contribution that is delivered as part of a bundled contribution shall be regarded for purposes of contribution limits as both a contribution attributable to the bundling committee that delivered the contribution and a contribution attributable to the individual making the contribution.” MCL 169.231(2). Thus, with respect to any contributions to candidates seeking statewide elective office that are bundled by ActRight Michigan, such contributions are counted (1) against the \$34,000.00 contribution limit that applies to independent committees such as ActRight Michigan, and (2) against the \$3,400.00 contribution limit applicable to the individual contributor. MCL 169.231(2), 169.252(12). In addition, ActRight Michigan’s in-kind expenditures for the solicitation or collection of individual contributions are counted against the \$34,000.00 contribution limit. MCL 169.202(5).

Lastly, you asked whether your recitation of Michigan law contained any errors. The Department offers the following comments regarding your summary, listed according to the numbered paragraphs that begin on page 2 of your letter:

Paragraph 1: You cite MCL 169.269 as the statute that permits independent committees to accept unlimited contributions from individuals. Please be advised that, pursuant to MCL 169.203(1), MCL 169.261 to 169.271 apply only to candidates seeking the office of

Governor or Lieutenant Governor. It is true that individual contributions to independent committees are not limited, but the correct citation is MCL 169.252.

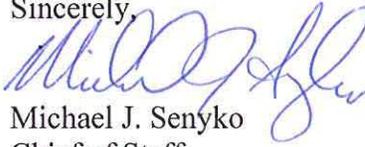
Paragraph 2: For reasons explained in the preceding paragraph, the proper citation for the proposition that ActRight Michigan is prohibited from acting as an intermediary is MCL 169.244(1) (“A contribution shall not be made by a person to another person with the agreement or arrangement that the person receiving the contribution will then transfer that contribution to a particular candidate committee.”)

Footnote 2: Contribution limits are not automatically adjusted every odd year; the contribution limits expressed in MCL 169.252 and 169.269 are currently in force. The Secretary of State is required by law to “*recommend* adjustments” but these recommendations do not carry the force of law unless enacted by the Legislature. MCL 169.246 (emphasis added).

Paragraph 9: The value of ActRight Michigan’s website that supports Michigan candidates is both an in-kind contribution to the candidate and an in-kind expenditure by ActRight Michigan. Under MCL 169.204(1), the value of the website constitutes a contribution that must be reported by the recipient because it represents an expenditure, donation, or transfer of “anything of ascertainable monetary value ... made for the purpose of influencing the nomination or election of a candidate [.]” Under MCL 169.206(1), the website’s value is also an expenditure that must be disclosed by ActRight Michigan because it is a donation, transfer, or expenditure of “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 [.]” The MCFA defines “in-kind contribution or expenditure” as “a contribution or expenditure other than money.” MCL 169.209(3).

Footnote 7: The exclusion described in MCL 169.206(2)(c) only applies to separate segregated funds established pursuant to MCL 169.255. Costs incurred by ActRight Michigan for the solicitation and collection of bundled contributions must “be reported as an in-kind expenditure for a candidate for statewide elective office.” MCL 169.202(5).

The foregoing represents an informational response to the questions presented in your March 28, 2012 letter.

Sincerely,

Michael J. Senyko
Chief of Staff