

STATE OF MICHIGAN



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

May 17, 2002

Andrew Nickelhoff
Sachs Waldman
1000 Farmer
Detroit, Michigan 48226

Dear Mr. Nickelhoff:

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:

James Barcia is a member of the United States House of Representatives and maintains a congressional candidate committee. Under the Federal Election Campaign Act ("FECA"), he is allowed to receive \$2,000 per election cycle (\$1,000 per election) from an individual and \$5,000 per election (\$10,000 per election cycle) from a PAC.

Representative Barcia is considering organizing a senate candidate committee pursuant to the MCFA. The MCFA allows a candidate for senate to receive \$1,000 per election cycle from an individual and \$10,000 per election cycle from a PAC.

You have asked whether Representative Barcia's congressional candidate committee may transfer any PAC funds to a MCFA-based senate committee, and if so, what conditions or restrictions would govern such a transfer.

LAW

Until 1999, the MCFA did not contemplate the existence of federal candidate committees. That year, the legislature amended the definition of "elective office" to include federal candidate committees for purposes of Section 57 of the MCFA. Otherwise, the Act is silent regarding the status of federal candidate committees and federal-to-state transfers.

The MCFA does contemplate transfers between MCFA committees. Section 45(1) states that "[A] person may transfer any unexpended funds from 1 candidate committee

to another candidate committee of that person if the contribution limits prescribed in Section 52 or 69 for the candidate committee receiving the funds are equal to or greater than the contribution limits for the candidate committee receiving the funds and if the candidate committees are simultaneously held by the same person."

DECLARATORY RULINGS AND INTERPRETIVE STATEMENTS

The Department has addressed the issue of federal-to-state transfers through its declaratory rulings and interpretive statements. In 1978, the Department informed Phillip J. Arthurhultz that he was prohibited from transferring funds from his FECA congressional candidate committee to his MCFA Senate Committee. In reaching this conclusion, the Department applied Section 45's rationale to federal-to state transfers. The Department stated as follows:

Section 52(1) of the Act (MCLA 169.252) establishes a contribution limit of \$450 per election for the elective offices of State Senator [Now \$1,000 per election cycle]. It is the understanding of the Department [that] the Federal Elections Campaign Act sets a contribution limit in excess of that amount for Congressional office. Section 45(1) of the [MCFA] precludes the transfer of funds from one candidate committee of an individual to another candidate committee of the same individual if the contribution limits of the former committee are greater than the limits of the recipient committee.

Although in the hypothetical you present, the transferring committee is subject to Federal Law and the recipient committee is subject to the Act, Section 45(1) serves to preclude receipt of the funds by the State Senate Committee. This interpretation is consistent with the contribution limits imposed by the Act.

The Department again addressed federal-to-state transfers in its 1992 Wolpe declaratory ruling. In that ruling, the Department stated that:

In a 1978 letter to Mr. Phillip J. Arthurhultz, the Department indicated that a candidate committee for state senate could not receive a transfer of funds from a congressional campaign committee because the contribution limits for the federal committee exceeded the contribution limits for the state committee . . .

Contribution limits for federal campaign committees continue to be calculated on a per election basis. Pursuant to Section 315 of the Federal Election Campaign Act of 1971 [2 USC 441a], contributions to congressional campaign committees are limited to \$1,000 for each election if the contributor is not a multi-candidate committee. For multi-candidate committees, the limit is \$5,000 for each election. If calculated

over the election cycle for the United States House of Representatives, the corresponding contribution limits would be \$2,000 and \$10,000.

When the contribution limits for gubernatorial candidate committees and congressional campaign committees are compared on either a per election or election cycle basis, the contribution limits for the gubernatorial committee are greater than the contribution limits prescribed in the FECA for federal campaign committees. Therefore, in answer to your first question, Section 45(1) of the [MCFA] does not preclude you from transferring funds raised by your congressional campaign committee to a candidate committee organized to support your candidacy for the office of Governor, provided the federal and state committees are simultaneously held.

Thus, while the MCFA does not define federal candidate committees, the department's interpretive statements and declaratory rulings have, on two occasions, treated federal candidate committees as if they were MCFA committees for purposes of Section 45.

QUESTIONS

Your question asks whether Representative Barcia can transfer PAC funds from his congressional committee to his state senate committee. According to one aforementioned ruling, individual contributions would be prohibited because the election cycle limit for a federal congressional candidate committee (\$2,000) exceeds the election cycle limit for a MCFA-based Senate candidate (\$1,000). The answer is not as clear with respect to PAC transfers.

The Department does not interpret Section 45 as allowing the transfer of PAC funds from a federal congressional candidate committee to a MCFA senate committee. Section 45's purpose is to allow a candidate to use campaign funds that he or she has accumulated to run for a similar or higher office. For example, a MCFA house candidate committee can transfer funds to a MCFA senate candidate committee, but no contribution, regardless of amount, can be transferred from a committee with higher limits to a committee with lower limits. The test is whether a candidate committee wishing to transfer funds to a simultaneously held committee meets Section 52's limitations for all contributions, whether individual or PAC.

We reach this conclusion for several reasons. First, the Michigan legislature was silent regarding a federal candidate running for a state office. The Department is therefore reluctant to sanction a more liberal standard with regard to federal-to-state transfers. While the Department has allowed transfers among candidate committees, it has only done so when all contribution limits for the contributing committee (\$2,000 and \$10,000) were lower than the contribution limits for the recipient committee (\$3,400 and \$34,000). We see no reason to depart from this rationale.

Second, the PAC contribution limits for congressional candidates at the time of the enactment of the MCFA (\$10,000) were greater than the PAC limits for a Michigan Senate Candidate (\$9,000). Section 45 is essentially unchanged since 1976, while Section 52 has been amended. We find it unlikely that the legislature, in increasing Section 52's contribution limits, intended to allow federal-to-state transfers of contributions from PACs but not those from individuals for MCFA senate candidates. Had the legislature intended to do so, we believe that it would have amended Section 45 itself.

Finally, the Department would undermine the legislative intent behind Section 45 if it allowed federal candidate committees to bifurcate contributions and transfer only PAC funds. Once a distinction is made between transferable and non-transferable funds, numerous other transfers are possible. For example, a candidate with a MCFA senate committee may wish to transfer contributions of \$500 or less to a MCFA house committee. Such a transfer violates Section 45, because funds from a candidate committee with a \$1,000 contribution limit are transferred to one with a \$500 limit. Yet once the bifurcation rationale is accepted, the answer is not clear. One could argue that contributions of \$500 or less to the senate committee can be transferred to a house committee. Clearly, such transfers violate both the letter and spirit of Section 45.

Because the legislature did not authorize bifurcated transfers, it also did not provide standards to effectuate them. Consider the situation where a congressional candidate committee received a \$10,000 PAC contribution in the 1998, 2000, and 2002 congressional election cycles (\$30,000 total). What amount could be transferred to a MCFA senate committee? The entire amount? The money the congressional candidate raised during the 2002 MCFA senate election cycle (\$10,000 in 2000 and \$10,000 in 2002 for a total of \$20,000)? If a PAC has already given \$10,000 to a candidate's congressional candidate committee in 2002, may it also give \$10,000 to his MCFA senate committee? The legislature, by its silence on these questions, apparently rejected any transfers other than Section 45's "equal or greater" standard.

CONCLUSION

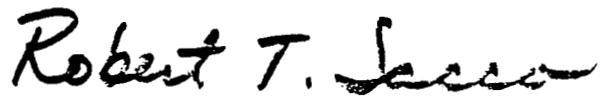
We note that the entire federal-to-state transfer issue may be mooted by the recent amendments to the FECA. These amendments increased the amount that individuals can contribute to FECA house and senate candidate committees from \$2,000 per election cycle to \$4,000 per election cycle. The new \$4,000 contribution limit exceeds the MCFA's \$3,400 limit for statewide office. As a result, after the 2002 election cycle, a federal candidate will be prohibited from transferring funds to a simultaneously held MCFA committee.

Finally, the legislature may wish to address the issue of federal-to-state transfers. The Department has interpreted Section 45 to allow certain transfers between federal and state committees. In the era of term limits, we may see more federal candidates seeking statewide office. If the legislature wishes to allow or disallow federal-to-state transfers in the future, it should consider amending the MCFA.

Andrew Nickelhoff
May 17, 2002
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Thank you for your inquiry. Please contact the Department at (517) 241-3463 if you have any additional questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert T. Sacco".

Robert T. Sacco, Director
Regulatory Services Administration

RTS/DEM/kc