

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE
STATE TREASURY BUILDING



LANSING
MICHIGAN 48918

January 24, 1994

Mr. Patrick M. Poor
Advantage Communications, Inc.
PO Box 7178
Riverside, California 92513

Dear Mr. Poor:

You have requested a declaratory ruling concerning the applicability of the Campaign Finance Act (the Act), 1976 PA 388, as amended, to a fund raising event you are proposing to organize for the Michigan Republican Party (MRP) involving the marketing of long distance telephone service.

Advantage Communications, Inc. (ACI), is a corporation in the business of marketing long distance telephone service. One of the ways ACI markets these services is through an "Advantage Fund Raiser". Under this fund raising scheme a membership organization, such as the MRP, markets ACI's long distance telephone services to its members and receives a monthly commission based on the monthly paid billings of its members generated by the fund raising event. The member ACI consumer pays the same rates and receives the same service as a nonmember ACI consumer. The MRP would receive the same commission as any other membership organization which conducts an "Advantage Fund Raiser".

You ask whether this proposed transaction constitutes an ordinary business enterprise which is beyond the ambit of the Act, or constitutes a fund raising device to generate payments which would be contributions under the Act. In essence, you ask whether money paid to the MRP generated by this fund raising event would constitute a contribution under the Act. And if so, who would be the contributor?

Section 4(1) of the Act, MCLA 169.204, provides:

"Sec. 4. (1) 'Contribution' means 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."

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The proposed transaction would use party identification or affiliation to generate income for the MRP by engaging in a continuing commercial venture to sell long distance telephone services.

The Federal Elections Commission (the Commission) has addressed this issue as it applies to the Federal Election Campaign Act of 1971, as amended. In Advisory Opinion AO 1992-40 issued to you on December 11, 1992, the Commission stated:

"Your inquiry properly characterizes the proposed transaction as a fundraising device. . . The Commission notes that the situation in this inquiry is similar to other advisory opinions where political committees use committee assets, in this case, goodwill and party identification, to generate income through ongoing business or commercial ventures. The Commission has found these to be fundraising in another form."

AO 1992-40 is consistent with interpretations of the Act issued by the Department of State (see interpretive statement issued to Godfrey A. Glomb, dated October 12, 1981, considering art auctions as fundraisers).

As stated in an interpretive statement issued to Timothy Downs, dated October 12, 1982, "Using a particular form of fundraising cannot transform a contribution into a purchase of goods or services." This interpretive statement also noted the federal statute and the Act have a similar definition of "contribution".

There are certain circumstances when isolated sales of committee assets, such as computer hardware, office equipment, or motor vehicles, do not result in contributions under the Act.

The MRP receives contributions and makes expenditures for the purpose of influencing the nomination or election of candidates, or the qualification, passage, or defeat of ballot questions, and is a "committee" as defined in section 3(4) of the Act, MCLA 169.203. However, a political party is unlike other committees in that it also performs functions which are not within the ambit of the Act. In an interpretive statement to Olivia Maynard, dated September 4, 1981, it was noted:

"Political parties perform a wide variety of functions in our society. They are not single purpose organizations devoted only to the election of candidates to public office."

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In pursuance of its noncampaign functions, a political party may receive and expend funds which are not contributions or expenditures under the Act. An interpretive statement to Timothy Downs, dated October 12, 1982, stated, "[T]he use to which funds are to be put is the primary determinant of whether a payment to a committee is a contribution pursuant to section 4(1)."

According to an interpretive statement issued to James C. VanHeest on December 1, 1981, payments to a political party are presumed to be made for the purpose of influencing the nomination or election of a candidate, or the qualification, passage or defeat of a ballot question, unless the person making the payment clearly designates the payment as being for other than campaign purposes.

And as stated in an interpretive statement to Philip Van Dam, dated October 31, 1984:

"A contribution to a political party which is clearly designated as being for other than campaign purposes is not a contribution under the Act. . ."

Consequently, a corporation would not violate the Act by making a payment to a political party which is clearly designated as being for other than campaign purposes. A copy of the Van Dam letter is enclosed.

Unless clearly designated as being for other than campaign purposes, a commission paid by ACI to the MRP is a "payment . . . made for the purpose of influencing the nomination or election of a candidate, or for the qualification, passage, or defeat of a ballot question" and is a contribution under the Act. Section 54(1) of the Act, MCLA 169.254, prohibits a corporation from making a contribution or expenditure, except for a ballot question. ACI is a corporation, and a contribution from ACI to the MRP is prohibited under section 54(1) of the Act.

Since your request did not include sufficient facts to form the basis of a declaratory ruling, this response is informational only and does not constitute a declaratory ruling.

Very truly yours,



Phillip T. Frangos
Deputy Secretary of State
State Services

enclosure