

## STATE OF MICHIGAN



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

November 13, 1995

Mr. J. Blair Richardson, Jr.  
Counsel for Aristotle Industries  
205 Pennsylvania Avenue, SE  
Washington, DC 20003

Dear Mr. Richardson:

This is in response to your request for a declaratory ruling or an interpretive statement concerning the applicability of the Michigan Campaign Finance Act (the MCFA), 1976 PA 388, as amended, to the resale of reformatted or reprocessed contributor information obtained from campaign finance statements or reports filed with the Secretary of State.

You ask whether section 16(3) of the MCFA prohibits a for-profit corporation from selling contributor information it obtains from campaign finance reports or statements filed with the Secretary of State under the MCFA, if purchasers use the contributor information for noncommercial purposes.

General Conclusion

- ▶ A for-profit corporation may not use contributor information obtained from statements or reports required to be filed with the Secretary of State under the MCFA to solicit individual contributors for any commercial purpose.
- ▶ A for-profit corporation may not use contributor information obtained from statements or reports required to be filed with the Secretary of State under the MCFA for the purpose of publishing and reselling the contributor information, whether in its original format or in a reprocessed format, to a person who uses, or intends to use, the information to solicit individual contributors for any commercial purpose.
- ▶ A corporation may publish and sell contributor information obtained from reports filed with the Secretary of State under the MCFA to a person who uses, or intends to use, the information to solicit individual contributors for campaign contributions or for other than commercial purposes.

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### Facts

Aristotle Industries (Aristotle) is a for-profit corporation that collects, assembles, publishes, and markets publicly available voter and election-related information, primarily to candidates, elected officials, and political organizations for political use. Aristotle processes or formats the data so it can be used more easily by the customer. Aristotle intends to include in its publications contributor information obtained from campaign statements and reports required to be filed with the Secretary of State under the Act.

The contracts under which Aristotle sells this processed contributor information notify the purchasers that the contributor information may be used only for lawful, noncommercial purposes. The contracts also require the purchasers to warrant and represent that the contributor information will be used lawfully, and provide for penalties and forfeiture of the product for any breach of representations.

### Discussion

A fundamental purpose of the MCFA was the disclosure of campaign contributions and contributors. The disclosure provisions were intended to: (1) inform the public of the source of campaign money and its expenditure by candidates and committees, (2) deter corruption and avoid the appearance of corruption by publicly disclosing large contributions, and (3) provide information for the detection of violations of campaign contribution limitations. *Advisory Opinion on Constitutionality of 1975 PA 227*, 396 Mich 465 (1976).

Subsections 16(1) and (3) of the MCFA, as amended by 1992 PA 188, provide:

“Sec. 16. (1) A filing official shall make a statement or report required to be filed under this act available for public inspection and reproduction . . .

\* \* \* \* \*

“(3) A statement open to the public under this act shall not be used for any commercial purpose.” (Emphasis added.)

Provisions of the MCFA which superficially appear to limit or hinder public disclosure of campaign contributions and contributors must be reconciled with this overarching goal. It is in this light that the term “commercial purpose”, as used in subsection 16(3) of the MCFA must be examined for meaning.

The term “commercial purpose” is not defined in the MCFA. However, this provision is similar in language and purpose to section 311(a)(4) of the Federal Election Campaign Act of 1971 (the FECA), 2 USC 438(a)(4), which prohibits individual contributor information copied from federal

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campaign reports or statements from being used for “soliciting contributions or for commercial purposes”.

In Federal Election Commission v Political Contributions Data, Inc, 943 F2d 190 (CA 2, 1991), the court interpreted the term “commercial purposes” as used in 2 USC 438(a)(4):

“When we look to the legislative history of the §438(a)(4) prohibition, we find that Senator Bellmon, in proposing the amendment, was concerned with the possibility that contributors would have their personal lives interrupted by unwanted solicitations. The purpose of this restriction, he said, was ‘to protect the privacy of’ campaign contributors by insulating them, as best as possible, from ‘all kinds of solicitations’.

“These remarks seem to offer the best guidance for interpreting §438(a)(4)’s prohibitions; they clearly indicate that the overarching goal of the prohibition was to protect campaign contributors for ‘all kinds’ of unwanted solicitations. Without the ‘commercial purposes’ prohibition, the only solicitations at which the statute would be aimed would be solicitations for contributions. Since those prohibitions extend to ‘the purpose of soliciting contributions’ and ‘commercial purposes’, we read the latter prohibition to encompass only those commercial purposes that could make contributors ‘prime prospects for *all kinds of solicitations*’, 117 Cong. Rec. 30,057 (remarks of Sen. Bellmon) (emphasis added), i.e., not merely solicitations for ‘contributions’, but solicitations for cars, credit cards, magazine subscriptions, cheap vacations, and the like. In light of the prohibition’s purported aim of protecting the privacy of campaign contributors and the FECA’s broader aim of full disclosure, not to mention the serious constitutional [first amendment] problems that FEC’s reading would engender . . . , this is the proper, reasonable reading of the ‘commercial purposes’ provision. FEC, supra, p 197.” (Brackets added.)

The interpretation of the term “commercial purposes”, as used in 2 USC §438(a)(4), adopted by the 2d Circuit Court of Appeal espouses a rationale that applies equally well to that same term, as used in section 16(3) of the MCFA. The difference between Michigan’s prohibition under section 16(3) of the MCFA and the federal prohibition under 2 USC §438(a)(4) is that the federal prohibition applies to “all kinds of solicitation”, whereas, the prohibition of section 16(3) of the MCFA applies only to commercial solicitations.

Prohibiting the use of campaign contributor information for the purpose of soliciting individual contributors for commercial purposes reconciles the true intent of the “commercial purpose”

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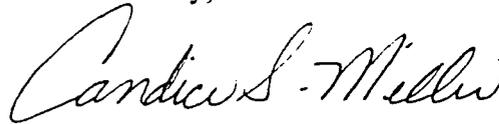
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prohibition with the overarching goal of public disclosure of campaign contributions and contributors.

In light of the foregoing, a for-profit corporation may use contributor information filed with the Secretary of State for resale to third parties who will use the information for noncommercial purposes, including the solicitation of potential contributors to campaign committees.

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.

Sincerely,

A handwritten signature in cursive script that reads "Candice S. Miller".

Candice S. Miller  
Secretary of State

CSM:rlp