

## M I C H I G A N   D E P A R T M E N T   O F   S T A T E

RICHARD H. AUSTIN

SECRETARY OF STATE

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MICHIGAN 48918

November 16, 1987

Thomas H. Shields  
Marketing Resource Group, Inc.  
115 W. Allegan, Suite 910  
Lansing, Michigan 48933

Dear Mr. Shields:

This is in response to your request for a declaratory ruling concerning the applicability of the Campaign Finance Act (the Act), 1976 PA 388, as amended, to a Corporate Executive Guaranteed Contribution System proposed by Marketing Resource Group, Inc. (MRG) for the collection of contributions to its separate segregated fund (MRG-PAC).

MRG-PAC was established by MRG pursuant to section 55 of the Act (MCL 169.255). This section states, in relevant part:

"Sec. 55. (1) A corporation or joint stock company formed under the laws of this or another state or foreign country may make an expenditure for the establishment and administration and solicitation of contributions to a separate segregated fund to be used for political purposes. A fund established under this section shall be limited to making contributions to, and expenditures on behalf of, candidate committees, ballot question committees, political party committees, and independent committees.

(2) Contributions for a fund established by a corporation or joint stock company under this section may be solicited from any of the following persons or their spouses:

- (a) Stockholders of the corporation.
- (b) Officers and directors of the corporation.
- (c) Employees of the corporation who have policy making, managerial, professional, supervisory, or administrative nonclerical responsibilities."

The proposed Corporate Executive Guaranteed Contribution System would apply only to "eligible employees," or those employees from whom contributions may be solicited under section 55(2)(c), and would operate as a "reverse check-off." Under the proposal, a contribution of \$1.00 per month will automatically be deducted from each eligible employee's paycheck and remitted to MRG-PAC unless the employee indicates that he or she does not wish to make a contribution, or the

employee requests a refund.

To implement the system, new and existing eligible employees will be given MRG-PAC Continuing Contribution Authorization Forms. The form explains that a contribution will be withheld from the employee's paycheck "unless you check the box and sign the statement below. This contribution will be withheld unless this form is returned to the MRG payroll office within the next month or if at a later date you change your mind and request a refund." The form then describes how to obtain a refund, explains that a refund request will automatically operate to discontinue MRG-PAC contributions in future years, and discloses that contributions to MRG-PAC will be used to support candidates for elective office. Finally, the form states that 1) a contribution to MRG-PAC is voluntary and not a condition of employment, 2) an employee has the right to refuse to contribute to MRG-PAC, and 3) refusing to contribute will not alter the employee's status, rights or benefits with MRG. An employee may decline to participate in the system and prevent - at the outset - the deduction of political contributions by checking-off and returning the form within the allotted time.

The contribution system you describe appears to be identical, with one exception, to the reverse check-off plan recently implemented by the Michigan Education Association (MEA) and its separate segregated fund (MEA-PAC). In the attached declaratory ruling issued to Mr. Peter F. McNenly, dated August 4, 1987, the Department indicated that MEA's reverse check-off system was not prohibited by the Act. The only apparent difference between the MRG and MEA contribution systems is the relationship between the corporation and the individuals solicited.

Under the reverse check-off plan approved in McNenly, contributions to MEA-PAC are solicited only from members of MEA, a non-profit corporation which is restricted in the solicitation of contributions to its separate segregated fund by section 55(3). MRG-PAC, on the other hand, was established by a profit corporation and solicitations by MRG are regulated by section 55(2). Thus, the solicitation of contributions under the proposed Corporate Executive Guaranteed Contribution System will be limited to MRG employees who have policymaking, managerial, professional, supervisory, or administrative nonclerical responsibilities.

However, solicitations by non-profit and profit corporations are governed equally by section 55(4), which states:

"Sec. 55. (4) Contributions shall not be obtained for a fund established under this section by use of coercion, physical force, or as a condition of employment or membership or by using or threatening to use job discrimination or financial reprisals."

The dispositive issue in the McNenly ruling was whether this subsection prohibited MEA from implementing its Guaranteed Contribution System. After thoroughly examining MEA's proposal and reviewing relevant decisions from other jurisdictions, the Department concluded that MEA's reverse check-off plan did not violate the Act, stating:

"In these circumstances, MEA will not obtain contributions for MEA-PAC as a condition of employment or membership. A member may refuse to make a contribution to MEA-PAC either before or after money is deducted from his or her paycheck. If a member checks-off or requests a refund, money will no longer be deducted from the member's salary for the purpose of making a contribution to MEA-PAC. Thus, a person is not required to contribute to MEA-PAC in order to acquire or maintain membership in MEA, or employment in an MEA institution. Moreover, it does not appear that MEA members will be coerced, forced or threatened, nor will they suffer job discrimination or financial reprisals if they refuse to contribute to MEA-PAC. Therefore, the revised Guaranteed Contribution System proposed by MEA does not violate section 55 and is permitted under the Act."

This conclusion depended upon three key factors. First, new and existing MEA members may check-off and refuse to participate in the system before or after money is withheld from their paychecks. Second, if a member checks-off or requests a refund, no further political contributions are deducted from his or her paycheck. And third, at the time of MEA's ruling request, there was no evidence of coercion, force, threat, discrimination or financial reprisal if a member refused to contribute to MEA-PAC.

MRG's Corporate Executive Guaranteed Contribution System appears, on its face, to include similar safeguards. MRG proposes to give its eligible employees notice and the opportunity to refuse to participate in the system before contributions are withheld from their paychecks. An employee who does not check-off will be entitled to a refund upon submission of a timely written request. Political contributions will not be deducted from an employee's salary after the employee checks-off or requests a refund. Finally, MRG will advise its employees in notices printed on the contribution authorization form and in payroll stuffers that MRG-PAC contributions are voluntary and not a condition of employment, and that an employee's status, rights and benefits will not be altered if he or she elects not to make a MRG-PAC contribution.

If the above conditions are strictly adhered to, contributions to MRG-PAC will not be obtained as a condition of employment, and if the contributions are not obtained by the use of threat, force or coercion, the guaranteed contribution system is permissible under the Act. However, given the master-servant relationship which exists between MRG and its employees, extreme caution must be exercised to prevent MRG from exerting any coercion, express or implied, upon its solicited employees. For example, if MRG-PAC contributions are solicited outside of normal channels or in circumstances which suggest that an employee does not have a free choice, a violation of the Act may occur. This determination can only be made on a case by case basis.

Finally, it should be noted that this ruling is limited to the application of the Campaign Finance Act to MRG's proposed contribution system. The Wages and Fringe Benefits Act, 1978 PA 390, as amended, may prohibit MRG from implementing a reverse check-off plan. Specifically, section 7 of that act (MCL 408.477) provides:

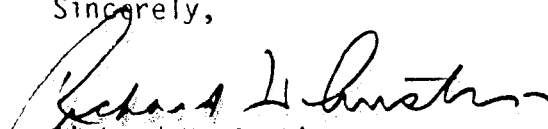
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"Sec. 7. With the exception of those deductions required or expressly permitted by law or by a collective bargaining agreement, an employer shall not deduct from the wages of an employee, directly or indirectly, any amount without the full, free, and written consent of the employee, obtained without intimidation or fear of discharge or refusal to permit the deduction. A deduction for the benefit of the employer shall require written consent from the employee for each wage payment subject to the deduction and the cumulative amount of the deductions shall not reduce the gross wages paid to a rate less than minimum rate as defined in Act No. 154 of the Public Acts of 1964, as amended, being sections 408.381 to 408.397 of the Michigan Compiled Laws. Each deduction shall be substantiated in the records of the employer and shall be identified as pertaining to an individual employee. Prorating of deductions between 2 or more employees shall not be permitted." (emphasis added)

Questions concerning the applicability of this statute to MRG's Corporate Executive Guaranteed Contribution System should be referred to the Department of Labor, Bureau of Employment Standards, 7150 Harris Drive, Box 30015, Lansing, Michigan 48909.

This response is a declaratory ruling concerning the applicability of the Campaign Finance Act to the specific facts and questions presented.

Sincerely,

  
Richard H. Austin