

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE
STATE TREASURY BUILDING



LANSING
MICHIGAN 48918

January 6, 1988

Pat Turner
Michigan Trucking Association
Suite 4, 5800 Executive Drive
Lansing, Michigan 48911

Dear Mr. Turner:

This is in response to your inquiry concerning the applicability of the Campaign Finance Act (the Act), 1976 PA 388, as amended, to a voluntary payroll deduction plan for collecting contributions to the Michigan Truck PAC. Specifically, you ask whether managerial employees of a corporate member of the Michigan Trucking Association, Inc. (MTA) may contribute to the Michigan Truck PAC through a voluntary payroll deduction program.

Your inquiry does not include a detailed statement of facts or a description of MTA or the Michigan Truck PAC. Therefore, the following discussion is general in nature and assumes that 1) MTA is a non-profit corporation, and 2) Michigan Truck PAC is a separate segregated fund established by the corporation pursuant to section 55 of the Act (MCL 169.255).

Corporate participation in the political process is governed by sections 54 and 55 of the Act. Section 54 (MCL 169.254) prohibits a corporation from using its treasury money to make contributions or expenditures in candidate elections. However, pursuant to section 55, a corporation may establish a separate segregated fund to be used for political purposes. Section 55 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."

* * *

(3) Contributions for a fund established under this section by a

corporation which is nonprofit may be solicited from any of the following persons or their spouses:

- (a) Members of the corporation who are individuals.
- (b) Stockholders of members of the corporation.
- (c) Officers or directors of members of the corporation.
- (d) Employees of the members of the corporation who have policy making, managerial, professional, supervisory, or administrative nonclerical responsibilities.

(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.

(5) A person who knowingly violates this section is guilty of a felony and shall be punished by a fine of not more than \$5,000.00 or imprisoned for not more than 3 years, or both, and if the person is other than an individual, the person shall be fined not more than \$10,000.00."

In an interpretive statement issued to William E. Hazel, Jr., dated August 1, 1978, the Department was asked whether the Act allowed a corporation to make disbursements or contributions for the establishment, administration or solicitation of contributions for a political action committee formed by a different corporation. After discussing an opinion rendered by the Attorney General in OAG, 1977-78, No 5344, p 549 (July 20, 1978), the Department answered in the negative:

"As noted previously, Section 55 is the exclusive statutory authorization for corporate involvement with a separate segregated fund. The Attorney General has decided: (1) one corporation may not contribute to another corporation's separate segregated fund, and (2) a corporation may only establish one separate segregated fund.

In view of the foregoing, it is concluded Section 55 does not permit a corporation to make disbursements or contributions for the establishment, administration or solicitation of contributions for a political action committee formed by another corporation."

Subsequently, the Department was asked whether corporate members of the Michigan State Chamber of Commerce (State Chamber) could occasionally offer the use of their facilities and personnel in connection with the administration of the State Chamber Political Action Committee (State Chamber PAC). The State Chamber PAC is the separate segregated fund of the State Chamber, a non-profit corporation whose members include other corporations. In a declaratory ruling issued to James Barrett, dated October 26, 1983, the Department stated:

"The Department position is that a corporation, which is a member of a non-profit corporation, may have its officers and directors or employees authorized by an officer or director make occasional, isolated use of facilities of the corporation for activity in connection

with the establishment, administration or solicitation of contributions to a separate segregated fund established by the non-profit corporation of which that corporation is a member.

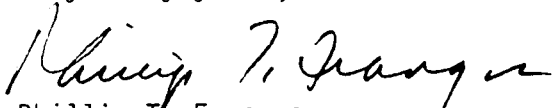
Occasional, isolated, or incidental use of corporate facilities or personnel by or as authorized by an officer or director of the corporation is limited to one hour of activity per week or four hours of activity per month, regardless of whether the activity is undertaken during or after normal working hours."

The distinction between the Hazel and Barrett letters turns upon the definition of "contribution." As indicated previously, sections 54 and 55 prohibit a corporation from making contributions to another corporation's separate segregated fund. Pursuant to section 4(1) of the Act, "contribution" includes anything of ascertainable monetary value. The Barrett ruling holds that if the occasional, isolated or incidental use of a corporate member's facilities or personnel does not exceed one hour of activity per week, the activity does not have ascertainable monetary value. In these circumstances, use of a corporate member's facilities or staff will not result in an impermissible contribution to another corporation's separate segregated fund.

You indicate a corporate member of MTA intends to initiate a voluntary payroll deduction program to collect contributions to Michigan Truck PAC from the corporation's "management employees." The Attorney General has previously indicated that the Act permits a voluntary payroll deduction plan as a form of collecting contributions to a separate segregated fund. OAG, 1977-78, No 5279, p 391 (March 22, 1978). Therefore, a corporate member of a non-profit corporation may institute a voluntary payroll deduction plan, if 1) the plan is limited to employees who have policy making, managerial, professional, supervisory, or administrative nonclerical responsibilities; 2) contributions collected through the plan are not obtained by threat, force or coercion, or as a condition of employment; and 3) use of the corporate member's facilities and personnel to collect and transmit contributions to the separate segregated fund has no ascertainable monetary value and does not result in a contribution to the separate segregated fund by the corporate member. These determinations can only be made on a case by case basis.

This response is informational only and does not constitute a declaratory ruling.

Very truly yours,



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