



White, Schneider, Young & Chiodini, PC

Attorneys at Law

Karen Bush Schneider
William F. Young
James J. Chiodini
Kathleen Corkin Boyle
Shirlee M. Bobryk
Jeffrey S. Donahue
Michael M. Shoudy

Timothy J. Dlugos
James T. Feeny

Of Counsel:
James A. White
Deborah G. Adams
Thomas K. Byerley

L RSA
handle - reply

August 22, 2006



Honorable Terri Lynn Land
Secretary of State
Executive Office
Treasury Building, First Floor
430 W. Allegan Street
Lansing, MI 48918

Re: Request for Declaratory Ruling

Dear Secretary Land:

This office represents the Michigan Education Association (MEA), a voluntary incorporated labor organization that represents professional and support employees who work in public schools throughout the state of Michigan. Please consider this letter as the MEA's request for a declaratory ruling pursuant to Section 15(1)(e) and (2) of the Michigan Campaign Finance Act (MCFA), MCL 169.201, *et seq.*, and Rule 169.6 of the Michigan Administrative Code as to the applicability of the MCFA to the facts set forth herein.

Background

1994 PA 117 made extensive revisions to the MCFA. The changes that resulted from that legislation modified the requirements for consent to payroll deductions to a separate segregated fund established by a corporation or a labor organization. Those requirements, which are set forth in Section 55(6) of the Act, MCL 169.255(6), include the necessity of obtaining yearly written affirmative consent for "automatic" contributions, including payroll deductions, to fund a separate segregated fund or PAC. The validity of those new requirements was litigated in *AFL-CIO v Miller*, 103 F3d 1240 (CA 6, 1997).

In 1997, following the decision by the Sixth Circuit Court of Appeals in *Miller*, *supra*, emergency rules were enacted by the Secretary of State to implement the



provisions of Section 55(6) of the MCFA. The MEA was involved in litigation that challenged those emergency rules in Ingham County Circuit Court. That case, *Michigan State AFL-CIO v Miller*, Ingham County Circuit Court File No. 97-86692-AZ, challenged the emergency rules that set forth the specific requirements the Secretary of State said were necessary to evidence annual consent for a payroll deduction. As a plaintiff in that case, the MEA was identified in the pleadings as "a Michigan corporation and voluntary labor organization, whose purpose is to enhance public education and represent the interests of the employees of Michigan's public schools." During the course of that litigation, the assistant attorney general representing the Secretary of State said in open court that the payroll deduction consent form used at the time by MEA-PAC, the separate segregated fund established by the MEA pursuant to MCL 169.255, to obtain consent for payroll deductions of MEA members, was in substantial compliance with the emergency rules. This approval of the MEA-PAC payroll deduction form was confirmed in paragraph 37 of the Secretary of State's Answer to First Amended Complaint and First Supplemental Complaint in that case.

The emergency rules were struck down by the Circuit Court, and that decision was upheld by the Michigan Court of Appeals in *Michigan State AFL-CIO v Miller*, 230 Mich App 1 (1998). While that case was pending, the Secretary of State undertook the process for the establishment of permanent rules regarding consent for payroll deductions to separate segregated funds. The undersigned, acting on behalf of the MEA and MEA-PAC, gave testimony regarding the proposed permanent rules at a public hearing convened by the Secretary of State in August 1998. Speaking before a panel composed of Christopher Thomas, Anne Corgan and Thomas McCulloch, I identified myself as a representative of the MEA, which I described as an incorporated voluntary labor organization that represents public school employees throughout Michigan. My testimony addressed, among other issues, the fact that "the public school employees who are our members and their employers work in the context of a school year" and that it would be "much easier, both for the school districts and their employees, if the requests for payroll deductions are submitted at the beginning of the school year and remain in force until the beginning of the next school year."

The permanent rules took effect in December, 1998. These rules were also challenged by the MEA in Ingham County Circuit Court in 1999. *MEA v Secretary State*, Ingham County Circuit Court File No. 99-90324-AZ. The Complaint filed described the MEA as representing "teachers and support staff employed in Michigan's public schools, colleges and universities." That case was ultimately resolved in April, 2002, when Circuit Court Judge Glazer issued an Order finding that the permanent rules were constitutional and properly promulgated, and also finding that MCFA Section 55(6)



was to be interpreted in a manner that permits consent for a calendar year to be obtained prior to the year for which it is given.

During the litigation regarding the Secretary of State's permanent rules, the MEA provided a copy of the payroll deduction consent form utilized by the MEA for deductions to MEA-PAC for review. In March, 1999, attorney Thomas Baird, acting on behalf of the MEA, provided the consent forms used by the PAC to Anne Corgan of your office and obtained her approval of the forms. I have enclosed a copy of the correspondence between Mr. Baird and Ms. Corgan confirming those discussions. Ms. Corgan's response states that "[i]t appears the two forms include all of the information required by R 169.39d." The sole concern articulated by Ms. Corgan regarding the two MEA-PAC forms was the reference in one of the forms to a "Two Year Contribution Cycle," and she states that the form "cannot be used to obtain consent for automatic contributions beyond December 31 of the calendar year in which the consent was given."

Throughout all of the litigation mentioned above, and continuing through more recent litigation involving the MEA and the Secretary of State in *Huron Valley Schools v Secretary of State*, 266 Mich App 638 (2005), the MEA has clearly and consistently identified itself as a voluntary incorporated labor organization that represents public school employees throughout the state of Michigan.

While the litigation regarding 1994 PA 117 was pending, Section 57 was added to the MCFA by 1996 PA 590, which became effective March 28, 1996. As initially enacted, Section 57 read as follows:

(1) A public body shall not make a contribution or expenditure or provide volunteer personal services that are excluded from the definition of contribution under Section 4(3)(a). While acting for a public body, an elected or appointed public official, employee, or any other person shall not make a contribution or expenditure or provide volunteer personal services that are excluded from the definition of a contribution pursuant to Section 4(3)(a).

(2) A person who knowingly violates this section is guilty of a felony punishable, if the person is an individual, by a fine of not more than \$2,000 or imprisonment for not more than one year, or both, or if the person is not an individual, by a fine of not more than \$20,000.



Section 57 has been twice amended, first by 1996 PA 590 and then by 2001 PA 250. The section currently reads as follows:

Sec. 57. (1) A public body or an individual acting for a public body shall not use or authorize the use of funds, personnel, office space, computer hardware or software, property, stationery, postage, vehicles, equipment, supplies, or other public resources to make a contribution or expenditure or provide volunteer personal services that are excluded from the definition of contribution under section 4(3)(a). This subsection does not apply to any of the following:

(a) The expression of views by an elected or appointed public official who has policy making responsibilities.

(b) The production or dissemination of factual information concerning issues relevant to the function of the public body.

(c) The production or dissemination of debates, interviews, commentary, or information by a broadcasting station, newspaper, magazine, or other periodical or publication in the regular course of broadcasting or publication.

(d) The use of a public facility owned or leased by, or on behalf of, a public body if any candidate or committee has an equal opportunity to use the public facility.

(e) The use of a public facility owned or leased by, or on behalf of, a public body if that facility is primarily used as a family dwelling and is not used to conduct a fund-raising event.

(f) An elected or appointed public official or an employee of a public body who, when not acting for a public body but is on his or her own personal time, is expressing his or her own personal views, is expending his or her own personal funds, or is providing his or her own personal volunteer services.



(2) A person who knowingly violates this section is guilty of a misdemeanor punishable, if the person is an individual, by a fine of not more than \$1,000.00 or imprisonment for not more than 1 year, or both, or if the person is not an individual, by 1 of the following, whichever is greater:

(a) A fine of not more than \$20,000.00.

(b) A fine equal to the amount of the improper contribution or expenditure.

Facts

The MEA is a labor organization that currently represents some 136,000 members, who are employed by public schools, colleges and universities throughout Michigan. These schools are "public bodies" as that term is defined by the MCFA, MCL 169.211(6)(c). MEA-PAC is a separate segregated fund established by the MEA in accordance with Section 55 of the MCFA, MCL 169.255. MEA-PAC is funded in part by the payroll deductions of MEA members who have authorized the deductions by executing an Affirmative Consent Authorization Form, a copy of which is enclosed. That consent form includes all of the language that was contained in the consent forms previously approved by the Secretary of State during the course of the litigation described above concerning the emergency and permanent rules.

The MEA or its affiliates have entered into collective bargaining agreements with various public school districts across the state. Some of those collective bargaining agreements, including the agreement between the Kalamazoo County Education Association/Gull Lake Education Association and the Gull Lake Community Schools, include a requirement that the employer administer a payroll deduction plan for contributions to MEA-PAC. That collective bargaining agreement is referenced in the Request for Declaratory Ruling submitted by Kevin S. Harty on behalf of Gull Lake Community Schools on August 7, 2006. That collective bargaining agreement also requires the employer to make other payroll deductions such as the payment of MEA dues and service fees.

Because the Gull Lake Public Schools, like the other school districts that employ MEA members, is already making deductions from the pay of MEA members pursuant to the collective bargaining agreement, the MEA believes that any additional cost to the



district of including the MEA-PAC contributions in the payroll deductions is *de minimis* and that the administration of the payroll deductions by the school district does not constitute an "expenditure" under the MCFA and does not constitute a violation of MCFA Section 57. In regard to the MEA members employed by the Gull Lake Public Schools, however, the MEA proposes to pay the employer, in advance, for all anticipated costs of the employer attributable to administering payroll deductions to MEA-PAC or any other separate segregated fund that is affiliated with the MEA. Under this proposal, the full cost of administering the payroll deductions to the separate segregated funds for the 2006-2007 school year would be paid by the MEA to the school district before any deductions are made, and the Gull Lake Public Schools will not incur any costs or expenses in administering the requested deductions.

Declaratory Ruling

Based on the foregoing, the MEA requests that the Secretary of State issue a Declaratory Ruling as to the following issues.

1. May the Gull Lake Public Schools continue to make and transmit to MEA-PAC the payroll deductions requested by MEA members through a properly completed, voluntary consent form?
2. May the Gull Lake Public Schools, consistent with the provisions of the MCFA, administer the payroll deductions to MEA-PAC if either the MEA or MEA-PAC pays the school district, in advance, for any costs associated with administering those payroll deductions?
3. What costs should be considered by the Gull Lake Public Schools in determining the costs attributable to administering the payroll deductions that are to be transmitted to the PAC?

The MEA has done its best to provide facts sufficient to enable the Secretary of State to render a Declaratory Ruling in this matter; however, should the Department of State determine that additional facts are required to issue a Declaratory Ruling, we respectfully request the opportunity to supplement the facts as permitted pursuant to Section 15(2) of the MCFA, MCL 169.215(2). Please note that although this request for a Declaratory Ruling references some of the same facts identified by Kevin Harty in his



White, Schneider, Young & Chiodini, PC

Honorable Terri Lynn Land

Page 7

August 22, 2006

August 7, 2006 letter, an answer to his Request for Declaratory Ruling will not answer the request sought by the MEA in this letter.

Thank you for your attention to this matter.

Very truly yours,

WHITE, SCHNEIDER, YOUNG
& CHIODINI, P.C.

A handwritten signature in cursive script, reading 'Kathleen Corkin Boyle'. The signature is written in dark ink and is positioned below the firm's name.

Kathleen Corkin Boyle
Direct Dial Number: 517/347-7226
E-Mail: kboyle@wsbyc.com

kec

Enclosures

cc: w/enc Arthur R. Przybylowicz, Esq. (MEA Sequence No. ARP-00306A)

WHITE, PRZYBYLOWICZ, SCHNEIDER & BAIRD, P.C.

ATTORNEYS AT LAW
2300 JOLLY OAK ROAD
OKEMOS, MICHIGAN 48864-4597
TELEPHONE (517) 349-7744
FAX (517) 349-8295

ARTHUR R. PRZYBYLOWICZ
KAREN BUSH SCHNEIDER
THOMAS A. BAIRD
WILLIAM F. YOUNG
JAMES J. CHIODINI
SUZANNE KRUMHOLZ CLARK
KATHLEEN CORKIN BOYLE
JEFFREY C. MURPHY
SHIRLEE M. BOBRYK

DOUGLAS V. WILCOX
BERNARD MARINELLI
JEFFREY S. DONAHUE
ANTHONY J. SZILAGYI

Of Counsel:
JAMES A. WHITE

March 26, 1999

Ms. Anne Corgan, Director
Office of Rules and Compliance
Secretary of State
Lansing, MI 48918-9900

Re: PAC Deduction Forms

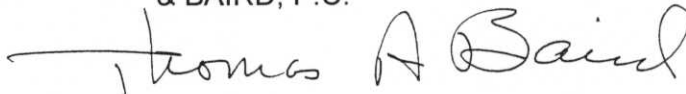
Dear Ms. Corgan:

Pursuant to my telephone call to your office today, please find enclosed MEA-PAC's new authorization forms for automatic contributions. I believe they comply with 1994 PA 117, as well as the permanent rules promulgated last year by the Secretary of State.

If you feel otherwise, please advise immediately. MEA-PAC is beginning its fund-raising drive. I therefore thank you in advance for your prompt attention to this matter.

Sincerely,

WHITE, PRZYBYLOWICZ, SCHNEIDER
& BAIRD, P.C.



Thomas A. Baird
Direct Dial Number: 517/347-7215
E-Mail: tbaird@wpsbpc.com

nmp
Enclosures

cc w/enc: Gary Gordon, Esq.
bcc w/enc: Al Short
Ken MacGregor
Jeffrey Nyquist, Esq.
W. Grove Sandrock (#0-3558-A)

STATE OF MICHIGAN



APR 24 1999

CANDICE S. MILLER, Secretary of State
MICHIGAN DEPARTMENT OF STATE
LANSING, MICHIGAN 48918-0001

April 23, 1999

Thomas A. Baird
White, Przybylowicz, Schneider & Baird
2300 Jolly Oak Road
Okemos, Michigan 48864-4597

Dear Mr. Baird:

Pursuant to your request, the Department of State has reviewed the two Affirmative Consent Authorization forms that MEA-PAC plans to use to obtain automatic contributions by payroll deduction.

Section 55(6) of the Michigan Campaign Finance Act, MCL 169.255(6), provides that an individual who contributes to a separate segregated fund on an automatic basis must affirmatively consent to the contribution at least once every calendar year. R 169.39d describes the minimum information that must be included in the written form that is used to obtain the required consent. It appears that the two forms include all of the information required by R 169.39d.

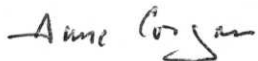
However, one of the two forms suggests that the solicited contribution is for a "Two-Year Contribution Cycle." The use of this phrase is misleading. Pursuant to R 169.39c, the affirmative consent required by section 55(6) shall be effective only through December 31 of the year for which it is given. Therefore, this form cannot be used to obtain consent for automatic contributions beyond December 31 of the calendar year in which the consent was given.

I am advised by counsel that the proposed consent decree in Michigan State AFL-CIO et al v Miller et al, Ingham Circuit Court No. 97-86692-AZ, awaits your signature. We would certainly appreciate your expediting the final resolution of this case.

Thomas A. Baird
April 23, 1999
Page 2

Please contact the Compliance and Rules Division if you have further questions or concerns.

Sincerely,

A handwritten signature in cursive script, appearing to read "Anne Corgan".

Anne Corgan, Director
Compliance and Rules Division
Bureau of Legal Services

cc: Gary Gordon

CASH FOR KIDS NEA FUND FOR CHILDREN AND PUBLIC EDUCATION

AFFIRMATIVE CONSENT AUTHORIZATION

PRINT FIRMLY WITH A BALL POINT PEN

State campaign finance law requires your full legal name including your middle name when contributing by payroll deduction.

FULL FIRST NAME FULL MIDDLE NAME LAST NAME () PHONE - HOME () WORK

STREET ADDRESS CITY STATE ZIP CODE SOCIAL SECURITY NUMBER

E-MAIL LOCAL ASSOCIATION NAME check one ☐ EA ☐ ESP ☐ MEA-Retired

CHECK YOUR PREFERENCE:

Your option	Cash for Kids	NEA Fund	TOTAL
Suggested Contribution	<input type="checkbox"/> \$25	<input type="checkbox"/> \$15	= \$40
Capitol Club	<input type="checkbox"/> \$50	<input type="checkbox"/> \$15	= \$65
Franklin Club	<input type="checkbox"/> \$100	<input type="checkbox"/> \$15	= \$115
Jefferson Club	<input type="checkbox"/> \$150	<input type="checkbox"/> \$15	= \$165

TWO SIGNATURES REQUIRED TO CONTRIBUTE:

TODAY'S DATE: / /

2006

2007

PAYMENT OPTIONS: choose one A, B, C or D

A. ☐ PAYROLL DEDUCTION:

I affirmatively consent to have a total of \$ withheld from my salary, and paid to **Cash for Kids** and/or the NEA Fund as indicated above.

B. ☐ CASH ☐ CHECK or ☐ MONEY ORDER

Attached, made payable to **Cash for Kids**

C. ☐ CHARGE: ☐ VISA ☐ MasterCard Account Number

Exp. Date: / /

D. ☐ EFT (Electronic Funds Transfer): If unsure of above information, please attach a voided check for proper credit.

Routing Number: (Located at lower left on check) Account Number: Check Number:

Please deduct (or charge) a total of \$ for a one time contribution or please deduct (or charge) \$.00 in each of the months checked below for a total contribution of \$.00.

☐ September 2006 ☐ October 2006 ☐ November 2006 ☐ December 2006 ☐ January 2007 ☐ February 2007
☐ March 2007 ☐ April 2007 ☐ May 2007 ☐ June 2007



Please return your contribution and form to your local association. Thank you for your support!
40% of your contribution is rebated back to your local PAC. Contributions or gifts to Cash for Kids and/or NEA Fund for Children and Public Education are not tax deductible.

Affirmative Consent to Political Contribution: Section 55(6) of the Michigan Campaign Finance Act provides that a corporation, a joint stock company, a domestic dependent sovereign, or a labor organization "may solicit or obtain contributions for a separate segregated fund established on an automatic basis, including but not limited to a payroll deduction plan, only if the individual who is contributing to the fund affirmatively consents to the contribution at least once in every calendar year."

The Michigan Education Association Political Action Committee (MEA-PAC) collects voluntary contributions from association members for political purposes, including but not limited to making contributions to and expenditures on behalf of friends of public education who are candidates for state and local offices. Although MEA-PAC requests a contribution of \$25, this is only a suggested amount.

The National Education Association Fund for children and Public Education collects voluntary contributions from Association members and uses these contributions for political purposes, including, but not limited to, making contributions to and expenditures on behalf of friends of public education who are candidates for federal office. Contributions to the The NEA Fund for Children and Public Education are voluntary; making a contribution is neither a condition of employment nor membership in the Association, and members have the right to refuse to contribute without suffering any reprisal. Although The NEA Fund for Children and Public Education requests an annual contribution of \$15, this is only a suggestion. A member may contribute more or less than the suggested amount, or may contribute nothing at all, without it affecting his or her membership status, rights, or benefits in NEA or any of its affiliates.

Contributions or gifts to MEA-PAC and to The NEA Fund for Children and Public Education are not deductible as charitable contributions for federal income tax purposes. Federal law requires us to use our best efforts to collect and report the name, mailing address, occupation and the name of the employer for each individual whose contributions aggregate in excess of \$200 in a calendar year.

Federal law prohibits The NEA Fund for Children and Public Education from receiving donations from persons other than members of NEA and its affiliates and their immediate families. All donations from persons other than members of NEA and its affiliates, and their immediate families, will be returned forthwith.

I understand that I am contributing to a joint fundraising effort between MEA-PAC and the NEA Fund for Children and Public Education and that, as part of that arrangement, my contributions will first be applied to the NEA Fund and, once satisfied, the remaining to MEA-PAC.

MICHIGAN EDUCATION ASSOCIATION
1216 Kendale Blvd., PO Box 2573, East Lansing, Michigan 48826-2573
Visit our Web site @ www.mea.org

DISTRIBUTION: WHITE—MEA FINANCE • YELLOW—SCHOOL BUSINESS OFFICE • PINK—LOCAL UNISERV OFFICE • BLUE—LOCAL ASSOCIATION TREASURER • BACK—MEMBER

5/2006