STATE OF MICHIGAN

1-99-CI

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

June 11, 1999

Mr. Gregg R. Nominelli
Attorney at Law
P. O. Box 414
Hancock, Michigan 49930-0414

Dear Mr. Nominelli:

This communication constitutes the Department of State's response to your request for a declaratory ruling under the Michigan Campaign Finance Act (the MCFA; 1976 PA 388, as amended). Your request, in brief, concerns whether a candidate may rent or donate office space to his or her candidate committee for use as campaign headquarters, and if so, what should be reported.

According to your letter of March 22, 1999, you are a candidate for a state elective office. On February 19, 1999, you filed a Statement of Organization indicating that you are seeking the office of state representative for the 110th district. You further wrote that you personally own a duplex and that you live in one half and rent the other side to tenants. You indicated that you would like to use the rental half of the duplex as your campaign headquarters.

You first asked, may candidates rent personally-owned property to their candidate committees for use as their campaign headquarters?

As it happens, the question of whether candidates may rent office space to their campaign committees has been addressed at the federal level by the Federal Election Commission (the FEC). The FEC, in Advisory Opinion 1978-80, which was issued on October 30, 1978, observed that the Federal Election Campaign Act of 1971, the FEC regulations, and several prior advisory opinions (*viz.*, Advisory Opinions 1978-3, 1977-60, and 1977-11) "recognize the broad discretion which may be exercised by a campaign committee in the expenditure of campaign funds." The 1978 opinion was requested by a candidate who owned a building and leased the entire first floor and garage to his campaign committee for campaign use. In responding to this candidate, the FEC ruled that "your campaign committee may expend its funds to lease office space from you as long as payments under the lease are properly reported."

While rulings of the FEC are not dispositive of questions posed under Michigan law, they do constitute guidance with respect to comparable questions presented in Michigan.

Significantly, both federal and state law appear similar in this area. Moreover, there are no provisions in the MCFA prohibiting candidates from renting personally-owned property to their candidate committees. Accordingly, under the MCFA, and similar to the FEC rulings, candidates may rent properties that they own and control to their candidate committees during the course of political campaigns.

You also asked about reporting obligations. As you probably know, the MCFA emphasizes the need for effective public disclosure. In that regard, section 26 of the MCFA (MCL 169.226) prescribes the information which must be included in the campaign statements required by the MCFA. Section 26(1)(m) expressly requires the disclosure of the full name and address of each person to whom expenditures totaling more than $50 are made, as well as the purpose of the expenditure. The word "expenditure" is defined in section 6 of the MCFA (MCL 169.206) to include "a payment . . . of money or anything of ascertainable value . . . in assistance of . . . the nomination or election of a candidate." Accordingly, payments for renting office space or other facilities used for candidates' campaign headquarters fall within the MCFA's definition of expenditure. Therefore, if your committee rents office space for use as campaign headquarters, regardless if the office space rented is one-half of your duplex or office space rented from a third party, the committee would be required to report in its campaign statements any and all office space rental expenditures.

You additionally asked, if a committee uses half of a candidate's duplex "rent free," must the committee report the fair rental value of the duplex as an in-kind contribution?

Section 9 of the MCFA (MCL 169.209) defines "in-kind contribution (or expenditure)" as a contribution (or expenditure) of something other than money. Rule 34 of the administrative rules promulgated under the MCFA (1979 AC, R 169.34) provides that a "committee which is charged less than the fair market value or fair rental value of an item or services shall report the difference between the amount charged and the fair market value or fair rental value as an in-kind contribution."

Whether the reporting requirement of rule 34 applies to the fair rental value of the use of one-half of your duplex depends on whether this use constitutes a contribution under section 4 of the MCFA (MCL 169.204). Section 4 defines the word "contribution" to refer to a payment of anything of ascertainable value that is used to assist in the nomination or election of a candidate. Contribution is further defined in section 4 to include "an individual's own money or property other than the individual's homestead used on behalf of that individual's candidacy."

The use of an individual's homestead is excluded from the MCFA definition of contribution. However, the MCFA does not define the word "homestead." Statutes should be interpreted according to the common and approved usage of any undefined words within them. *People v Fields*, 448 Mich 58, 67; 528 NW2d 176 (1995). The word "homestead" is defined in

Black's Law Dictionary, Rev 6th ed, 1990, p 734, as the "dwelling house and the adjoining land where the head of the family dwells." This word is also defined in *Webster's New Word Dictionary*, Third College Edition, p 646, as "a place where a family makes its home." In light of these definitions, the portion of your duplex that you would either rent or loan "rent free" to your candidate committee for use as your campaign headquarters would not be the place you use as your residence and would not be part of your individual homestead. Therefore, its use is included within the definition of contribution.

As stated above, section 4 defines a contribution to refer to a payment of anything of ascertainable value that is used to assist in the nomination or election of a candidate. The portion of your duplex that you use for rental property clearly has an ascertainable value. A fair rental value for that portion could be established by, among other methods, reviewing the rent you have collected for its use in the past and reviewing the rents currently assessed for comparable rental units in the area. In that such value is ascertainable, your candidate committee would be required to report at fair rental value its rent free use of one-half of your duplex as an in-kind contribution by you. Alternatively, if you rented one-half of your duplex to your committee at a rate under fair rental value, then the committee would also be required to report the difference as an in-kind contribution by you.

To summarize, with respect to your first question, you may rent one-half of a duplex you personally own to your candidate committee for use as your campaign headquarters. However, all committee expenditures for rent must be identified in the campaign finance reports that your committee is required to file with the Secretary of State. In response to your second question, the committee would be required to report as an in-kind contribution by you the fair rental value of the free use of one-half of your duplex for campaign headquarters, or else the difference between its fair rental value and any lesser amount actually paid as rent.

Since your request did not include a statement of facts sufficient to form the basis for a declaratory ruling, this response is informational only and constitutes an interpretive statement with respect to your inquiries.

Sincerely,

Robert T. Sacco

ROBERT T. SACCO
Deputy Secretary of State
Regulatory Services Administration

RTS:ab

STATE OF MICHIGAN

JENNIFER M. GRANHOLM, ATTORNEY GENERAL

CAMPAIGN FINANCE ACT:

CORPORATIONS:

Contribution to campaign committee by employees of corporation doing business with candidate

The Michigan Campaign Finance Act does not prohibit a state legislator's campaign committee from accepting campaign contributions from shareholders, officers or employees of corporations doing business with a corporation owned by the state legislator.

Opinion No. 7032

August 31, 1999

Honorable Andrew Raczkowski
State Representative
The Capitol
Lansing, MI 48909

You have asked whether the Michigan Campaign Finance Act prohibits a state legislator's candidate committee from accepting campaign contributions from shareholders, officers or employees of corporations doing business with a corporation owned by the state legislator.

The Michigan Campaign Finance Act (Act), 1976 PA 388, MCL 169.201 *et seq;* MSA 4.1703(1) *et seq*, regulates campaign financing and restricts campaign contributions. It was enacted "to ensure the integrity of Michigan's political campaigns and offices, thereby protecting the interest of the public at large, individual citizens, and candidates for public office." Senate Legislative Analysis, SB 1570, December 17, 1976.

The Act contains two provisions relating to contributions by corporations to the candidate committee of a person seeking a state office. Section 54(1) prohibits corporations from "mak[ing] a contribution or expenditure [from general corporate funds to a candidate committee of a person seeking a state office]," and section 54(2) prohibits the officers or agents of a corporation from making contributions or expenditures from general corporate funds to a candidate committee. Section 55 empowers a corporation to use general corporate funds to establish a separate segregated fund and to administer the fund, seeking contributions from its shareholders, officers and certain of its employees, to be used for the purpose of making contributions to the candidate committee of a person seeking an elective state office.

In *Austin v Michigan Chamber of Commerce*, 494 US 652; 110 S Ct 1391; 108 L Ed 2d 652 (1990), the Act's constitutionality was upheld against a challenge that its provisions violated a corporation's freedom of speech, as guaranteed by US Const, Am I. Writing for the Court's majority, Justice Marshall characterized sections 54 and 55 of the Act as "not impos[ing] an *absolute* ban on all forms of corporate political spending [from general corporate funds], but permits corporations to make independent political expenditures through separate segregated funds." *Id.*, 494 US at 660.

Thus, the Act expressly permits a corporation's shareholders, officers, and certain enumerated employees to make contributions to a separate segregated fund established by a corporation for the support of candidates for state office. The Act contains no provision barring shareholders, officers and employees of a corporation from making *individual*

contributions[1] from their own funds directly to the candidate committee of a candidate for state office. The Act likewise contains no provision prohibiting corporate shareholders, officers and employees from making such contributions simply because the corporation with which they are associated does business with a corporation owned by the candidate for state office.[2]

It is my opinion, therefore, that the Michigan Campaign Finance Act does not prohibit a state legislator's campaign committee from accepting campaign contributions from shareholders, officers or employees of corporations doing business with a corporation owned by the state legislator.

JENNIFER M. GRANHOLM
Attorney General

[1] These contributions, of course, remain subject to the applicable contribution limitations imposed by section 52 of the Act.

[2] Other state laws may restrict specified persons or entities from making political contributions to candidates or committees. For example, the Michigan Gaming Control and Revenue Act, MCL 432.201 *et seq*; MSA 18.969(201) *et seq*, at section 207b(4), prohibits persons, including corporations, who hold a casino or casino supplier license, or persons with an interest in a casino or casino supplier licensee, from making contributions to political candidates or committees.

STATE OF MICHIGAN

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

October 29, 1999

The Honorable Michael J. Hanley
Michigan House of Representatives
Lansing, MI 48913

Dear Representative Hanley:

This communication constitutes the Department of State's response to your request for a declaratory ruling under the Michigan Campaign Finance Act (MCFA) (1976 PA 388, as amended). Your request asks whether an elected state official may use "state funds, personnel, office space, property or other public resources for the purposes of influencing the nomination or election of a candidate for a federal elective office."

Further, you state that it is your understanding that Michigan law cannot regulate contributions to federal candidates but that the MCFA does regulate the use of state resources in campaigns.

In essence, then, your question asks: does the MCFA regulate the use of public resources for the purpose of influencing the nomination or election of a federal candidate?

A short answer to your question is that the MCFA regulates neither federal elections nor the state resources used to influence them. The scope of the Department's authority is limited by law to non-federal elections. However, other branches or departments may have the authority to prevent the use of state resources to influence federal elections. Because the Department is limited to the jurisdiction granted it by the MCFA, you must look to other departments for enforcement of the law with regard to the use of public resources in federal elections.

FEDERAL ELECTIONS

The Michigan Department of State derives its powers to enforce campaign finance law from 1976 PA 388. One purpose of the act is to "restrict campaign contributions and expenditures," as those terms are defined in the statute. Section 57 of the MCFA provides that a public body shall not use public funds or resources to make a contribution or expenditure. If a use or activity does not meet the definition of contribution or expenditure, it is not subject to the restrictions of the act.

Section 4 of the MCFA defines contribution as 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 committee."

Section 6 of the MCFA defines expenditure as "a payment, donation, loan, or promise of payment of money or anything of ascertainable monetary value for goods, materials, services, or facilities in assistance of, or in opposition to, the nomination or election of a candidate, or the qualification, passage, or defeat of a ballot question."

Section 3 defines a candidate as an individual: (a) who files a fee, affidavit of incumbency, or nominating petition for an elective office; (b) whose nomination as a candidate for elective office by a political party caucus or convention is certified to the appropriate filing official; (c) who receives a contribution, makes an expenditure, or gives consent for another person to receive a contribution or make an expenditure with a view to bringing about the individual's nomination or election to an elective office, whether or not the specific elective office for which the individual will seek nomination or election is known at the time the contribution is received or the expenditure is made.

Finally, "elective office" is defined in Section 5(4) as "a public office filled by an election, except for federal offices." That single phrase--"except for federal offices"--renders any activity by any person on behalf of a federal candidate exempt from MCFA coverage.

Federal law preempts any state law which attempts to regulate federal elections. 2 USC §453 states: "The provisions of this Act [Federal Election Campaign Act], and of the rules prescribed under this Act, supersede and preempt any provision of State law with respect to election to Federal office." 11 CFR 108.7(a) states

that "The provisions of the Federal Election Campaign Act of 1971, as amended, and rules and regulations issued thereunder, supersede and preempt any provision of State law with respect to election to Federal office." Thus, even had the legislature wished to include federal offices in its definition of "elective office," it would have been prohibited from doing so.

PUBLIC RESOURCES

The intentional or knowing use of public resources for political purposes is clearly unethical and repugnant to Michigan's deserved reputation for clean government. The mistaken or unintentional use of public resources is also cause for great concern. While Michigan is prohibited from regulating contributions or expenditures to federal candidates, it is the Department's understanding that the state does have the authority to prohibit public employees from utilizing state resources for private or political purposes.

Although this office does not claim to speak for the other departments in state government, it is aware of certain prohibitions against the use of state resources that may rest with other departments. For example, MCL 750.490 holds that "All moneys which shall come into the hands of any officer of the state, or of any officer of any county, or of any township, school district, highway district, city or village, or of any other municipal or public corporation within this state, pursuant to any provision of law authorizing such officer to receive the same, shall be denominated public moneys within the meaning of this section."

Further, the statute holds that "No officer shall, under any pretext, use or allow to be used, any such moneys for any purpose other than in accordance with the provisions of the law; nor shall he use the same for his own private use, nor loan the same to any person, firm or corporation without legal authority to do so."

MCL 15.401 et seq expressly provides that a civil servant shall not engage in political activities when the employee is compensated for the performance of his or her regular duties. The statute also prevents public employers or employees from coercing or commanding another employee to pay, lend or contribute anything of value for the benefit of a person seeking elected office.

MCL 21.46 states that "Upon demand of the auditor general [now State Treasurer] it shall be the duty of any and all offices of the state and county government to produce, for examination, the books of account and the papers of their respective departments, institutions and offices, and to truthfully answer all questions relating thereto."

Finally, the Department believes that both houses of the legislature may have their own rules regulating what a member and his or her own staff may do with public resources.

To summarize, the Michigan Campaign Finance Act cannot regulate federal campaigns. However, other departments or branches of government may have the authority to prevent the unauthorized use of public resources. Should you become aware of the use of state resources in federal campaigns, I suggest you contact the office responsible for enforcing the aforementioned prohibitions.

Since your request did not include a statement of facts sufficient to form the basis for a declaratory ruling, this response is informational only and constitutes an interpretive statement with respect to your inquiries.

Sincerely,

Robert T. Sacco

ROBERT T. SACCO
Deputy Secretary of State
Regulatory Services Administration

STATE OF MICHIGAN

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

MEMORANDUM

DATE: October 29, 1999

TO: Persons Interested in Michigan Campaign Finance Act Declaratory Rulings and Interpretive Statements

FROM: Anne Corgan, Director
Compliance and Rules Division

SUBJECT: **Request of Representative Michael J. Hanley**

Enclosed is a signed copy of an interpretive statement issued under the authority of section 15(2) of the Michigan Campaign Finance Act, 1976 PA 388, as amended.

If you no longer wish to participate as an "interested person" in the notice and written comment procedures required by the act, please contact Cynthia Winn at the Michigan Department of State, Compliance and Rules Division, 208 North Capitol Avenue, Lansing, Michigan 48918-2170.

AC/cw
Enc.

STATE OF MICHIGAN

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

3-99-CI

November 24, 1999

Mr. David M. Parrott
6828 Park Avenue
Allen Park, MI 48101-2036

Dear Mr. Parrott:

This constitutes the Department of State's response to your request for a declaratory ruling concerning the applicability of the Michigan Campaign Finance Act (the MCFA), 1976 PA 388, as amended, to an election held solely for the purpose of electing members of the Retirement Commission of the Genesee County Employees' Retirement System.

Your inquiry cites section 4 of the Genesee County Employees' Retirement System Ordinance which provides for the election of retirement commissioners. Subsection 4(b) provides for the election of, "Three members of the retirement system, to be elected by members of the retirement system." Subsection 4(c) calls for the election of one retired member of the retirement system, and provides, "The retirant shall be elected by the retirees of the Genesee County Employees' Retirement System."

You have subsequently informed the Department that persons eligible to vote for the election of retirement commissioners of the Genesee County Employees' Retirement System are not required to be qualified voters of Michigan, or even citizens of Michigan.

The MCFA regulates political activity in the nature of contributions and expenditures which relate to an election held for political purposes in which only qualified voters of Michigan may cast a ballot.

Const 1963, art 2, § 1, provides:

> " Sec. 1.. Every citizen of the United States who has attained the age of 21 years, who has resided in this state six months, and who meets the requirements of local residence provided by law, shall be an elector and qualified to vote in any election except as otherwise provided in this constitution. The legislature shall define residence for voting purposes."

The voting age was reduced to 18 by US Const, Am XXVI.

In *Empire v Orhanen*, 455 Mich 410, 427 (1997), the Supreme Court reiterated a rule of statutory construction which requires that "statutes that relate to the same subject matter should be read, construed, and applied together to distill the Legislature's intention."

> "Statutes in pari materia are those which relate to the same person or thing, or the same class of persons or things, or which have a common purpose. It is the rule that in construction of a particular statute, or in the interpretation of its provisions, all statutes relating to the same subject, or having the same general purpose, should be read in connection with it, as together constituting one law, although enacted at different times, and containing no reference one to the other." *Detroit v Michigan Bell*, 374 Mich 543, 558 (1965).

The MCFA and the Michigan Election Law, 1954 PA 116, as amended, are statutes *in pari materia*. Section 10 of the Michigan Election Law, MCL 168.10, defines a "qualified elector" as:

> ". . . any person who possesses the qualifications of an elector as prescribed in section 1 of article 2 of the state constitution and who has resided in the city or township for 30 days."

Section 492 of the Michigan Election Law, MCL 168.492, provides:

> "Sec. 492. Every person who has the following qualifications of an elector, or who will have those qualifications at the next election or primary election, shall be entitled to be registered as a elector in the township, city, or village in which he or she resides. The person shall be a citizen of the United States; not less than 18 years of age; a resident of the state for not less than 30 days; and a resident of the township, city, or village on or before the thirtieth day before the next regular or special election or primary election."

Section 491 of the Michigan Election Law, MCL 168.491, provides:

> "Sec. 491. The inspector of election at an election or primary election in this state, or in a district, county, township, city, or village in this state, shall not receive the vote of a person whose name is not registered in the registration book or listed on the computer voter registration precinct list of the township, ward, or precinct in which he or she offers to vote unless the person has met the requirements of section 507b."

Finally, section 736 of the Michigan Election Law, MCL 168.736, provides in pertinent part::

> "Sec. 736. When an elector applying to vote shall not be challenged, or, having been challenged, if the answers to questions asked him while under oath as to his qualifications shall show that he is a qualified elector at that poll, he shall be permitted to vote."

It is clear from your inquiry and the information provided that the election of members of the Retirement Commission of the Genesee County Employees' Retirement System is an employee relations election and not an election for political purposes. It is also clear from information you subsequently provided that persons other than qualified and registered electors under Michigan law are entitled to cast a ballot in the retirement commission election. For these reasons, the Genesee County Employees' Retirement System commission election is not an election within the purview of the MCFA. Therefore, the provisions of the MCFA do not apply.

Since your request did not include a statement of facts sufficient to form the basis for a declaratory ruling, this response is informational only and constitutes an interpretive statement with respect to your inquiries.

Sincerely,

Robert T. Sacco

ROBERT T. SACCO
Deputy Secretary of State
Regulatory Services Administration

STATE OF MICHIGAN

4-99-CI

CANDICE S. MILLER, Secretary of State

MICHIGAN DEPARTMENT OF STATE

TREASURY BUILDING, LANSING, MICHIGAN 48918

December 2, 1999

Mr. Joseph Cella
The Ann Arbor Political Action Committee
24 Frank Lloyd Wright Drive
Ann Arbor, MI 48106-0426

Dear Mr. Cella:

This communication constitutes the Department of State's response to your request for a declaratory ruling under the Michigan Campaign Finance Act (MCFA), 1976 PA 388, as amended. Below is a summary of the information that you provided, the two questions that you have asked and a response to your questions.

You state that the Ann Arbor PAC ("the PAC") is an independent Political Action Committee with one member on its board of directors. The sole board member wishes to make substantial contributions to the PAC. The PAC also expects to solicit and receive substantial contributions from other individuals and PACs. The PAC now wishes to structure its decision-making procedures so that its contributions are not attributed to the sole board member.

Independent Committees are defined by section 8(3) of the MCFA (MCL 169.208(3)). That section reads:

> "Sec. 8. (3) 'Independent Committee' means a committee, other than a political party committee, that before contributing to a candidate committee of a candidate for elective office under section 52(2) or 69(2) files a statement of organization as an independent committee at least 6 months before an election for which it expects to accept contributions or make expenditures in support of or in opposition to a candidate for nomination to an elective office; and receives contributions from at least 25 persons and makes expenditures not to exceed the limitations of section 52(1) in support of or in opposition to 3 or more candidates for nomination or election to an elective office in the same calendar year."

You then pose two questions. The first is: "Because Ann Arbor PAC has only one member on its Board of Directors, and if [he] has made substantial contributions to the Ann Arbor PAC, does MCL 169.270 mean that any contributions to state candidates by Ann Arbor PAC would be attributable to the board member and subject to the contribution limits contained in MCL 169.252(1)?"

Section 52(1) limits the amount of money an individual may contribute to a candidate. An individual is limited to contributing $500 to a state representative, $1,000 to a state senator, and $3,400 to a statewide candidate. An independent committee can contribute ten times those amounts.

An individual could easily circumvent these limits if he or she were allowed to form an independent committee, qualify to contribute at the higher limits, and then assume exclusive control over contributions to, and expenditures by, the independent committee. In order to prevent this from happening, section 3(4) of the MCFA (MCL 169.203(4)) specifically states that an individual, other than a candidate, does not constitute a committee. In addition, sections 31 and 70 of the MCFA (MCL 169.231 and 169.270) require the attribution of contributions to individuals and independent committees in certain circumstances.

Section 31 provides:

> A contribution which is controlled by, or made at the direction of, another person, including a parent organization, subsidiary, division, committee, department, branch, or local unit of a person, shall be reported by the person making the contribution, and shall be regarded as a contribution attributable to both persons for purposes of contribution limits.

Section 70 provides:

> A contribution or expenditure which is controlled by, or made at the direction of, another person, including a parent organization, subsidiary, division, committee, department, branch, or local unit of a person, shall be reported by the person making the expenditure or contribution, and shall be regarded as a contribution attributable to both persons for purposes of expenditure or contribution limits.

If the PAC is controlled by, or at the direction of the board member, then its contributions would count against both the PAC limits as well as the individual limits. This would mean that the PAC's contributions would be limited to the level of an individual contributor.

As applied to the scenario you describe, a one-person board of directors would certainly be considered to be controlled by, or operating at the direction of, the board member, particularly where the sole board member also contributed a large sum of money to the PAC.

Your second question is: "If [the PAC could not separate its contributions from those of its sole director], if Ann Arbor PAC establishes a committee of the PAC (henceforth "PAC Committee"), which would be vested by the PAC with the sole decision making authority to make contributions to candidates, and which would be made up of a majority of persons who are not the board member, or any member of his family, and any persons employed by him or any corporation or other entity in which he owns a majority interest, would any contributions made as a result of the decisions by this independent committee now be attributable to the board member and subject to the contribution limits contained in MCL 169.252(2)? In answering this question, would it make any difference to your answer if the board member is a member of this independent committee but does not have a majority vote on it?"

The statute does not detail the degree of separation necessary to create sufficient distance between the sole Director and the PAC Committee. The Department of State cannot determine whether the corporate structure you describe will provide independence on the part of the PAC Committee.

Some factors this office will consider in attempting to determine whether the "contributions committee" is independent from the board member include:

1) Did one or two contributors give the vast majority of money to the independent committee, or were the contributions spread more equally among several contributors?

2) How do the members obtain a seat on the independent committee within the PAC? Are they appointed by someone? Are they elected by the major contributors? Are they elected by the general membership of the PAC?

3) The minimum number of contributors needed to form an independent committee is 25. In subsequent years, has the committee continued to have 25 or more donors? Or has the number dropped? If so, do the number of contributors give the appearance that the independent committee is acting at the command of one person? If the PAC had the requisite number of contributors in 1999, but dropped to one in subsequent years, this would certainly give evidence of the PAC being controlled by, or acting at the direction of, the major contributor.

4) Are the members of this independent committee at-will directors? If so, who decides whether they will stay on the Board? Do they instead serve a fixed term?

5) If one person donated most of the money to the independent committee, does he have a seat on the Board? Does he have to "run" for his seat, or can he appoint himself?

6) Have formal legal documents, such as bylaws, been drafted which indicate independence? Are those bylaws followed by the board? Or, to the contrary, is the independent board an informal arrangement?

7) How much influence does the sole director have in his status as a PAC Committee director?

Thus, no single factor will likely guarantee independence, or be sufficient to indicate "direction and control." Instead, the Department must look at the totality of the circumstances before determining whether the contribution or expenditure is controlled by, or made at the direction of, another person.

Because your request did not include a statement of facts sufficient to form the basis for a declaratory ruling, this response is informational only and constitutes an interpretive statement with respect to your inquiries.

Sincerely,

Robert T. Sacco

ROBERT T. SACCO
Deputy Secretary of State
Regulatory Services Administration

STATE OF MICHIGAN

5-99-CI

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

December 9, 1999

Mr. David Cahill
Attorney at Law
1419 Broadway
Ann Arbor, Michigan 48105

Dear Mr. Cahill:

This constitutes the response to your request for a declaratory ruling under the Michigan Campaign Finance Act (the MCFA; 1976 PA 388, as amended). On behalf of your client, Andrew Wright, you have specifically asked:

1. Does the MCFA prohibit the spending of University (of Michigan) funds for lobbying the state legislature to place a proposal on the ballot for a constitutional amendment?

2. Does the MCFA apply at any point in the legislative process, from the introduction of proposed language for a constitutional amendment through the adoption of a resolution and the placement of the proposed amendment on the ballot by the Secretary of State?

Background

Const 1963, art 8, § 5 entrusts the general supervision of the University of Michigan, along with the control and direction of all University expenditures, to its board of regents. This section also provides that the board must consist of eight members who serve eight-year terms and are elected in accordance with Michigan law.

In 1969, the Attorney General (the AG) addressed the question of who may serve as regents. The AG noted that regents are state officers. The AG further noted that Const 1963, art 4, § 10 governs conflicts of interest by state officers. In OAG 1969-1970, No 4679, p 98 (December 2, 1969), the AG opined that "it is abundantly clear that there would be a substantial conflict of interest violative of Article IV, Sec. 10 if a terminal

degree candidate at a state institution of higher education were to be elected to and serve upon that institution's governing board during the time he was a candidate for the degree."

The question of whether students may serve as regents was recently revisited by the AG. [See Michigan Register, 1999-8, AG No 7029, p 199 (August 25, 1999)]. In that opinion, the AG analyzed an amendment to section 4a of the State Officer's Conflict of Interest Act (1968 PA 318, §4a, as added by 1974 PA 317; MCL 15.304a). The AG opined that in "light of this legislative amendment, OAG, 1969-1970, No 4679, is superseded."

Notwithstanding the recent AG opinion, the Michigan Student Assembly (the MSA) at the University of Michigan (the University) apparently wishes to have students participate as regents. In this regard, MSA plans to continue pursuing options to initiate a constitutional amendment requiring that the board include student(s). Const 1963, art 12, prescribes several ways to amend the constitution.

Under Const 1963, art 12, § 2, registered voters in Michigan may propose constitutional amendments. This is done by petition. Petitions must include the full text of the proposed amendment and must be signed by registered voters equal to ten per cent of the total votes cast for all candidates for governor at the last general election in which a governor was elected. If a majority of the voters approve an amendment, it becomes part of the constitution 45 days after the election.

In 1998, the MSA attempted to pursue a constitutional amendment under Const 1963, art 12, § 2. In this regard, MSA asked the University to collect student fees and then to transfer these fees directly to a ballot question committee. The committee would seek the necessary signatures for a petition.

On August 4, 1998, the Department of State (the Department) issued an interpretive statement to you indicating that section 57 of the MCFA (MCL 169.257) prohibited the University from collecting and transferring student funds to a ballot question committee account. The Department's position was based on information submitted by the University in connection with that ruling. The University indicated that it would incur administrative and other costs in collecting and disbursing the student fees as requested by MSA. The University's administrative and other costs would be considered expenditures under the MCFA. Consequently, the University would be placed in the position of making prohibited expenditures to a ballot question committee.

On August 26, 1998, the Department's Compliance and Rules Division (the CRD)

responded to several written comments submitted by Trent Thompson, on behalf of MSA, concerning the Department's interpretative statement. In particular, Mr. Thompson posited that in the past, MSA had used fees that were collected by the University to retain a lobbyist and to join a statewide coalition. Mr. Thompson then asked how this activity differed from the proposed activity discussed in the interpretive statement.

In responding to Mr. Thompson, the CRD referred to the definition of "committee" found in section 3 of the MCFA (MCL 169.203). The response then indicated that if the activities of student organizations, such as MSA, involved the influencing of voters, then the organizations would come under the purview of the MCFA, and the organizations would be required to comply with its provisions. The response further indicated that activities pertaining to the retention of lobbyists and/or membership in statewide coalitions do not come within the parameters of this definition and are generally outside the purview of the MCFA.

Following this response, Mr. Thompson authorized Mr. Wright to pursue a constitutional amendment, however, this time under Const 1963, art 12, § 1. Under Const 1963, art 12, §1, constitutional amendments may be proposed in the State Senate or House of Representatives. Proposed amendments agreed to by two-thirds of the members serving in each house are submitted to the voters at the next general election or special election not less than 60 days thereafter. If a majority of the voters approve an amendment, it becomes part of the constitution 45 days after the election.

Mr. Wright subsequently incurred $117.77 in "travel expenses" to lobby two state legislators, Senator George A. McManus, Jr., and Representative Jason Allen, regarding a constitutional amendment. During this same period, the University's General Counsel Office informed the MSA's staff advisor that it believed that the MCFA also prohibited the University from using MSA's funds to pay for lobbying activities.

Consequently, you have now requested clarification on the applicability of the MCFA and the Lobby Act to constitutional amendments that are pursued under Const 1963, art 12, § 1.

Michigan Campaign Finance Act

The MCFA was designed to regulate the influencing of political activity by promoting full public disclosure of campaign financing for elections. In this regard, the MCFA requires the filing of campaign statements and reports, and it restricts campaign contributions and expenditures. It also requires payor identification on most campaign advertising

and literature.

Michigan Lobby Registration Act

Similar to the MCFA, the Lobby Act was enacted to regulate the public disclosure of expenditures made to influence certain political activity. While the MCFA requires the public disclosure of expenditures by persons attempting to influence voters, the Lobby Act requires the public disclosure of expenditures by persons attempting to influence the actions of state level public officials.

Section 5 of the Lobby Act (MCL 4.415) defines "lobbying" to mean "communicating directly with . . . an official in the legislative branch of state government for the purpose of influencing legislative or administrative action." Section 5 also defines "legislative action" to mean the "introduction, sponsorship, support, opposition, consideration, debate, vote, passage, defeat, approval, veto, delay, or an official action by . . . an official in the legislative branch on a bill, resolution, amendment, nomination, appointment, report, or any matter pending or proposed in a legislative committee or either house of the legislature."

The Lobby Act requires persons who make expenditures or receive compensation or reimbursement for lobbying activities in excess of certain thresholds, to register and report as lobbyists or lobbyist agents with the Department's Bureau of Elections. In 1999, the threshold amounts specified under section 5 of the Lobby Act (MCL 4.415) for a "lobbyist" include more than $1,725 in expenditures in any 12-month period or more than $425 in any 12-month period for lobbying a single public official. The threshold amount for a "lobbyist agent" includes compensation and reimbursement in excess of $425 in any 12-month period. However, section 3(2) of the Lobby Act indicates that expenditures do not include travel costs to visit public officials. Further, campaign contributions reported under the MCFA are not subject to the Lobby Act pursuant to section 4(1)(a) of the Lobby Act (MCL 4.414).

Unlike section 57 of the MCFA, the Lobby Act does not contain language prohibiting public bodies from making expenditures for lobbying activities. In fact, section 5 of the Lobby Act indicates that "lobbyists" include the state and political subdivisions which contract for lobbyist agents. Further, rules 24 and 25 of the administrative rules promulgated to implement the Lobby Act (1979 AC, R 4.424 and R 4.425) indicate that state executive departments and boards are considered lobbyists if they compensate or reimburse lobbyist agents and if their expenditures for lobbying exceed the threshold amounts prescribed in section 5 of the Lobby Act.

Discussion

The information that you submitted in connection with your prior request presented a scenario that would come under the purview of the MCFA. In that regard, MSA had asked the University, which is a public body as defined under section 11 of the MCFA (MCL 169.211), to collect student fees and then transfer those fees to a ballot question committee to assist with the qualification and passage of a ballot question, *i.e.*, constitutional amendment, under Const 1963, art 12, § 2. By way of contrast, the information that you submitted with your latest request indicates that MSA has asked the University to use MSA student fees to reimburse Mr. Wright for lobbying activities to seek a constitutional amendment under Const 1963, art 12, § 1.

As already noted, the travel expenses described by Mr. Wright to meet with two legislators to lobby for a constitutional amendment are excluded from the definition of expenditure under the Lobby Act. However, should Mr. Wright receive compensation (or reimbursement of other expenses) that exceeds the thresholds described above (i.e., $425.00 in any 12-month period), his activities would meet the definition of a "lobbyist agent" in section 5.[1] He himself would then need to register and comply with any report filing requirements under the Lobby Act. Additionally, if the University's Board of Regents, which is currently registered as a lobbyist, compensates or reimburses Mr. Wright for lobbying activities, then the University must include this information in its disclosure reports. If MSA compensates or reimburses Mr. Wright for lobbying activities, then MSA must register as a lobbyist (and file disclosure reports) upon meeting the specified thresholds.

You also asked about the point in the constitutional amendment process prescribed by Const 1963, art 12, § 1, when a person would need to comply with the provisions of the MCFA. This question is prompted in part by the language found in several MCFA sections that refer to the "qualification, passage, or defeat of a ballot question."[2] Past interpretations of this phrase have been in relation to the ballot question process prescribed under Const 1963, art 12, § 2, and the integral steps required, such as the approval of the ballot petitions as to form, the circulation of the petitions, the filing of the

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[1] Your letter identified only reimbursement expenses for Mr. Wright. It did not identify any compensation for his lobbying activities.

[2] This phrase appears in the definitions for ballot question committee and committee (MCL 169.202), contribution (MCL 169.204), and expenditure (MCL 169.206).

petitions, the canvass to determine whether the petitions bear an adequate number of proper signatures, the decision of the Board of State Canvassers whether to certify the question, and the vote.[3] In contrast, constitutional amendments under Const 1963, art 12, § 1, do not require these steps. Instead, art 12, § 1, requires the vote by two-thirds of the members serving in each house. Thereafter, a resolution ordering the submission of the amendment to the voters will be filed with the Department's Office of the Great Seal.

Const 1963, art 12, § 3, also involves the consideration of a constitutional amendment. This section prescribes that voters be asked whether they support a general revision of the constitution, beginning with the general election held in 1978 and every 16th year thereafter. In 1981, the Department responded to a question concerning when the MCFA would apply to a constitutional amendment question required to be placed on the ballot by art 12, § 3. In responding at that time, the Department wrote that for "purposes of the Act, 'qualification of a measure' takes place upon certification by the state or local board of canvassers that a question shall appear on a ballot."[4]

Const 1963, art 12, §§ 1 and 3, appear analogous in that they both prescribe constitutional amendments through a process that does not involve voter petitions. Accordingly, under art 12, § 1, "qualification" of a ballot question would occur at the point in time that the legislative resolution ordering the submission of the ballot question to the voters is filed with the Department's Office of the Great Seal.

Conclusions

In conclusion, the MCFA and the Lobby Act regulate the public disclosure of expenditures made to influence the different types of political activity. The MCFA requires the public disclosure of expenditures by persons attempting to influence voters, whereas the Lobby Act requires the public disclosure of expenditures by persons attempting to influence the actions of state level public officials. Accordingly, the MCFA does not prohibit the University from collecting student fees, depositing those fees in the MSA account, and later disbursing a portion of those fees for lobbying activities on behalf of MSA. As noted, expenditures for lobbying are regulated by the Lobby Act. Unlike section 57 of the MCFA, the Lobby Act clearly recognizes that public bodies, such as the University, may make expenditures for lobbying. However, as also

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[3] Declaratory Ruling to Peter H. Ellsworth, April 3, 1995.

[4] Interpretative Statement to Dennis Stabenow, September 24, 1981.

noted above, the travel expenses incurred by Mr. Wright are not expenditures under the Lobby Act.

Further, at the point in time when a constitutional amendment proposed under Const 1963, art 12, § 1, is passed by a two-thirds vote of the members serving in each house and a legislative resolution ordering the submission of the amendment to the voters is filed with the Office of the Great Seal, the amendment would be considered "qualified" as a ballot question, and provisions of the MCFA would thereafter apply to expenditures made to influence voters with respect to its passage or defeat.

This response is an interpretive statement and does not constitute a declaratory ruling, inasmuch as the information presented in your request did not include a sufficient statement of actual facts.

Sincerely,

Robert T. Sacco

ROBERT T. SACCO
Deputy Secretary of State
Regulatory Services Administration

RTS:ab

STATE OF MICHIGAN

JENNIFER M. GRANHOLM, ATTORNEY GENERAL

ATTORNEY GENERAL:

CAMPAIGN FINANCE ACT:

CRIMES AND OFFENSES:

ELECTIONS:

PROSECUTING ATTORNEYS:

Authority to prosecute violation of criminal provisions of Campaign Finance Act

Michigan's Attorney General does not have the exclusive authority to enforce the criminal provisions of Michigan's Campaign Finance Act. The enforcement of such provisions may be prosecuted by the Attorney General or by county prosecuting attorneys.

Opinion No. 7040

December 9, 1999

Mr. Carl J. Marlinga
Prosecuting Attorney
Macomb County
One South Main, Third Floor
Mount Clemens, MI 48043

You have asked whether Michigan's Attorney General has the exclusive authority to enforce the criminal provisions of the Michigan Campaign Finance Act.

The Michigan Campaign Finance Act (MCFA), 1976 PA 388, MCL 169.201 *et seq*; MSA 4.1703(1) *et seq*, is an act to regulate campaign financing; to require campaign statements and reports; and to prescribe penalties and provide remedies. As originally enacted, the MCFA contained two sections specifically addressing the authority of the Attorney General and county prosecuting attorneys. Section 15(3) originally provided that:

> If the secretary of state, upon investigation of a report filed under this act, determines that there is reason to believe a violation of the act has occurred, the secretary of state *shall* forward the results of that investigation to the *attorney general* for enforcement of the criminal penalties provided by this act.

(Emphasis added.)

Section 33(4) originally provided that:

> If a person who is subject to this section is found guilty, the circuit court of that county, on application of

> the *attorney general or the prosecuting attorney of that county*, may prohibit that person from assuming the duties of a public office or from receiving compensation from public funds, or both.

(Emphasis added.)

To determine the Legislature's intent in adopting and amending statutes, one must look to their plain meaning. In *Dussia v Monroe County Employees Retirement System*, 386 Mich 244, 249, 191 NW2d 307 (1971), the court stated: "'It is a cardinal rule that the legislature must be held to intend the meaning which it has plainly expressed, and in such cases there is no room for construction, or attempted interpretation to vary such meaning.'"

A study of the legislative history of these two sections is instructive. Section 15 was amended by 1980 PA 465, 1989 PA 95, and 1996 PA 590. The first amendatory act, 1980 PA 465, required the Secretary of State to follow the procedures set forth in subsection (2) but made no change in that officer's duty to forward investigation results to the Attorney General for enforcement of criminal penalties. The second amendatory act, 1989 PA 95, rewrote section 15, assigned a new number (7) to the subsection regarding referrals to the Attorney General, and made referrals to the Attorney General permissive rather than mandatory. 1989 PA 95 became effective on June 21, 1989. Section 15(7) currently provides that:

> When a report or statement is filed pursuant to this act, the secretary of state shall review the report or statement and may investigate an apparent violation of this act pursuant to the rules promulgated pursuant to this act. If the secretary of state determines that there may be reason to believe a violation of this act has occurred and the procedures prescribed in subsection (5) have been complied with, the secretary of state *may* refer the matter to the *attorney general* for the enforcement of any criminal penalty provided by this act, or commence a hearing under subsection (6) to determine whether a civil violation of this act has occurred.

(Emphasis added.)

On April 18, 1989, the Michigan Court of Appeals rendered its decision in *Forster v Delton School Dist*, 176 Mich App 582, 585; 440 NW2d 421 (1989), construing section 15 of the MCFA, and observed that:

> The campaign financing act also provides for criminal penalties for knowing violation of the act, and *enforcement for such knowing violation may be prosecuted by the Attorney General or local prosecuting attorneys*.
>
> Because the campaign financing act creates new rights and imposes new duties, the remedies provided in the act are the exclusive means by which the act may be enforced. Since the act provides an adequate remedy to enforce its provisions, no private right of action may be inferred.

(Emphasis added.)

The third amendatory act, 1996 PA 590, amended section 15 of the MCFA but made no change in subsection (7) regarding referrals. This amendment did, however, add a new subsection (9) to provide that:

> There is no private right of action, either in law or in equity, pursuant to this act. The remedies provided in this act are the exclusive means by which the act may be enforced and by which any harm resulting from a violation of this act may be redressed.

Amendments to statutes which include language previously subjected to judicial construction are presumed to have been adopted in the light of the prior construction. *Van Antwerp v State*, 334 Mich 593, 604; 55 NW2d 108 (1952); *People v Powell*, 280 Mich 699, 703; 274 NW 372 (1937). If the Legislature disagreed with the Court of Appeals' 1989 interpretation of the MCFA, it could have amended the statute. From a plain reading of sections 15 and 33 of the MCFA, and giving meaning and effect to these provisions, it is clear that the Legislature did not intend to confer exclusive authority upon Michigan's Attorney General, to the exclusion of county prosecuting attorneys, regarding enforcement of the MCFA's criminal provisions.

The Legislature has provided that county prosecuting attorneys shall, in their respective counties, prosecute all civil and criminal matters in which the state or county may be interested. MCL 49.153; MSA 5.751. Nothing contained in the MCFA diminishes the authority of county prosecutors to prosecute crimes committed in their respective counties.

It is my opinion, therefore, that Michigan's Attorney General does not have the exclusive authority to enforce the criminal provisions of Michigan's campaign finance act. The enforcement of such provisions may be prosecuted by the Attorney General or by county prosecuting attorneys.

JENNIFER M. GRANHOLM
Attorney General

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