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
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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 The AG opined that in "light of this legislative amendment, OAG, 1969-1970, No 4679, is superseded."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