



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

December 9, 2002

Daniel J. Loepp
bluesPAC
602 West Ionia Street, B102
Lansing, Michigan 48933

Dear Mr. Loepp:

This is a response to your request for a declaratory ruling under the Michigan Campaign Finance Act (MCFA), 1976 P.A. 388, as amended.

FACTS

Your request presents the following facts:

bluesPac is the separate segregated fund (SSF) of Blue Cross/Blue Shield. It currently obtains the annual affirmative consent required by the MCFA by "traditional" means, such as hand-written authorizations from members of its restricted class.

You wish to use the BC/BS e-mail and intranet system (system) to obtain the written authorization required by Section 55(6) of the MCFA. Your system requires a person to login and provide a password before he or she can access the site. Your proposed system will allow the contributor to revoke or modify his or her authorization at any time and will keep a permanent record of every transaction so that it can be retrieved in the event of an audit.

Whether BC/BS can use its electronic system to meet Section 55(6)'s annual affirmative consent requirements will depend on the requirements of the MCFA and the new Uniform Electronic Signatures Act.

CAMPAIGN FINANCE LAW

Section 55(6) of the MCFA reads, in relevant part "A corporation organized on a for profit basis, a joint stock company, a domestic dependent sovereign, or a labor organization may solicit or obtain contributions for a separate segregated fund [from an eligible contributor] 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 administrative rule implementing this section, 1999 AC, R 169.39(d), states that "the affirmative consent required by Section 55(6) of the act shall be given in writing and shall include" the contributors name, the amount of money to be withheld, etc.

ELECTRONIC SIGNATURES

The title of the Uniform Electronic Signatures Act (UESA), 2000 P.A. 305, describes it as "An act to authorize and provide the terms and conditions under which information and signatures can be transmitted, received, and stored by electronic means." In determining whether BC/BS can use its computer system to meet the MCFA's requirements, three questions must be answered: 1) Does the UESA apply to the consent required by Section 55(6)? 2) Is the electronic record or signature described in the UESA "given in writing," as required by rule 39(d)? 3) Does the BC/BS system conform to the UESA requirements for electronic signatures and electronic records?

Section 3 of the UESA indicates that it applies to electronic records and electronic signatures relating to an action, or set of actions, occurring between 2 or more persons relating to the conduct of business, commercial or governmental affairs. Section 55 requires a contributor to a SSF to consent annually to having money taken out of her paycheck. The process of administering, and contributing to, a SSF appears to be a series of actions that relate to both business and governmental affairs. Thus, it appears that the UESA applies to the exchange that occurs between employer and employee in obtaining annual affirmative consent.

Rule 39 (d) requires a contributor to put his or her annual affirmative consent "in writing." If "writing" only means a hand-written response, using pen and paper, then the BC/BS proposal would seem to violate Rule 39(d). If "writing" can be defined to include some type of electronic means, then the proposed system would seem to comply with Rule 39(d).

Section 7(3) of the UESA states that "If a law requires a record to be in writing, an electronic record satisfies that law." Section 7(4) states "If a law requires a signature, an electronic signature satisfies the law." Finally, Section 8(1) provides "If parties have agreed to conduct a transaction by electronic means and a law requires a person to provide, send, or deliver information in writing to another person, the requirement is satisfied if the information is provided, sent, or delivered in an electronic record capable of retention by the recipient at the time of receipt." Clearly, if the BC/BS system creates an electronic record and electronic signature, it would comply with Rule 39(d)'s requirements of a "written" record.

Section 9 of the UESA sets forth minimal requirements for electronic signatures and electronic records. Section 9(1) reads "An electronic record or electronic signature is

attributable to a person if it is the act of the person. The act of the person may be shown in any manner, including the showing of the efficacy of any security procedure applied to determine the person to whom the electronic record or electronic signature was attributable."

Your proposed record system appears to meet Section 9's requirements. Your system requires a password and will also send e-mail verification to the employee, confirming that the authorization has been received. Finally, your system will archive the submission of a contributor's "authorizing" signature, as well as the aforementioned e-mail verification.

CONCLUSION

The UESA allows an employer to meet the MCFA's written annual affirmative consent requirements by collecting electronic signatures. The MCFA's Rule 39(d) requires annual affirmative consent forms to be in writing, but fails to define the term "writing". The UESA makes such a definition unnecessary, for it authorizes parties to use electronic signatures and records to conduct transactions between parties. bluesPac will have to determine whether its proposed record system complies with the UESA. However, it appears to the Department that bluesPac's proposed system for collecting written annual affirmative consent forms complies with the UESA.

Because your request does 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, Director
Legal and Regulatory Affairs

RTS/kc