1-87-CD

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

January 20, 1987

Ms. Peggy E. Thodis
IMPAC
P.O. Box 20163
Lansing, Michigan 48901-0763

Dear Ms. Thodis:

This is in response to your request for a declaratory ruling concerning the applicability of the Campaign Finance Act (the Act), 1976 PA 388, as amended, to Industrial Michigan (IM) and the Industrial Michigan Political Action Committee (IMPAC).

You indicate that IM is an unincorporated association consisting of individuals, partnerships, corporations, associations and other persons. Members of IM are required to pay dues as provided in the association's bylaws. IM does not spend any of the dues it receives to directly participate in ballot question campaigns or candidate elections.

IMPAC is an independent committee as defined in section 8(2) of the Act (MCL 169.208). According to Article III of the committee's bylaws, IMPAC was established by IM "to solicit and receive voluntary political contributions from individuals to make expenditures (contributions) to candidates for elective office." The relationship between IM and IMPAC is further explained in paragraphs 11 through 13 of your statement of facts:

> "11. IM and IMPAC funds are maintained in separate bank accounts and separate books and records are maintained for the two organizations. The contributions and expenditures of IMPAC are reported as required under the Campaign Finance Act. None of the activities of IM is reported to the Department of State since none of the funds of IM is classified as a contribution or expenditure as defined in the Act.
>
> 12. IM and IMPAC have, in the past, jointly sponsored dinners and receptions for prominent public figures and social events such as golf outings. Contributions to such an event for IMPAC are deposited in IMPAC accounts and donations or dues received by IM for such an event are deposited in IM accounts.
>
> 13. IM funds are used to pay the administrative expenses of IMPAC, including the costs of dinners, receptions and social events sponsored by the organizations."

You then request a series of rulings concerning the Act's application to IM and IMPAC. First, you suggest that IM is not a "committee" as defined in section 3(4) of the Act (MCL 169.203). This section states:

> "Section 3. (4) 'Committee' means a person who receives contributions or makes expenditures for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate, or the qualification, passage, or defeat of a ballot question, if contributions received total $200.00 or more in a calendar year or expenditures made total $200.00 or more in a calendar year. An individual, other than a candidate, shall not constitute a committee."

According to your statement of facts, IM and IMPAC have jointly sponsored dinners, receptions and other social events at which contributions to IMPAC are solicited and received. Pursuant to section 4 (2) of the Act (MCL 169.204), "contribution" includes the purchase of tickets or payment of an attendance fee for dinners, luncheons, rallies, testimonials and similar fund raising events. The definition of "fund raising event" is set out in section 7(4) of the Act (MCL 169.207):

> "Sec. 7. (4) 'Fund raising event' means an event such as a dinner, reception testimonial, rally, auction, bingo, or similar affair through which contributions are solicited or received by purchase of a ticket, payment of an attendance fee, donations or chances for prizes, or through purchase of goods or services."

These definitions indicate that the social gatherings sponsored by IM and IMPAC, as described in your letter, are fund raising events which are subject to the Act's regulation.

Section 26(g)(v) (MCL 169.226) requires an independent committee to report in its campaign statement expenditures incident to a fund raising event. It is therefore clear that paying the costs of a fund raiser is an expenditure unless otherwise provided by the Act.

As previously noted, IM funds are used to pay the administrative expenses of IMPAC and the costs of jointly held dinners, receptions and social events, which are in fact fund raising events. The issue raised by your first ruling request is whether IM's payment of IMPAC's administrative and fund raising costs is an "expenditure" as defined in the Act. If so, IM is a committee if the expenditures total $200.00 or more in a calendar year.

Pursuant to section 6 of the Act (MCL 169.206), an "expenditure" is anything of ascertainable monetary value given in assistance of, or in opposition to, the nomination or election of a candidate, or the qualification, passage or defeat of a ballot question, including a contribution. However, section 6(3)(c) provides:

"Sec. 6. (3) Expenditure does not include:

* * * * *

(c) An expenditure for communication on a subject or issue if the communication does not support or oppose a ballot issue or candidate by name or clear inference or an expenditure for the establishment, administration, or solicitation of contributions to a fund or independent committee."

Section 6 (3)(c) exempts an expenditure for the establishment, administration or solicitation of contributions to a fund or independent committee from the Act's regulation. Therefore, expenditures by an unincorporated association for establishing, administering or soliciting contributions to an affiliated independent committee do not trigger the Acts' registration requirements. In response to your first ruling request, IM is not a committee under the Act by virtue of its paying IMPAC's administration and solicitation costs.

The second and third issues you raise relate to IM's corporate membership. Historically, the use of corporate money in candidate elections has been totally prohibited. Section 55(1) carves a very narrow exception to this longstanding prohibition by authorizing a corporation to establish a single separate segregated fund which may participate in election activities. Specifically, section 55(1) allows a corporation to "make an expenditure for establishment and administration and solicitation of contributions to a separate segregated fund to be used for politcal purposes". The separate segregated fund is then allowed to solicit and receive contributions from a limited number of individuals and to make contributions to candidate committees, ballot question committees, political party committees and independent committees. Contributions received and expenditures made by the fund must be reported as required by the Act. However, corporate dollars used to pay the establishment, administration and solicitation costs of the separate segregated fund are not reported because they are excluded from the definition of "expenditure" by section 6(3)(c). Moreover, a corporation which pays the administration and solicitation costs of its separate segregated fund does not itself become a committee, and thus continues to be excluded from participation in candidate elections.

As indicated above, corporate participation in election campaigns was prohibited in Michigan prior to the passage of the Act. The Act modified the historical ban on corporate participation in two ways. First, corporations are permitted by section 54(3) and (4) to make contributions and independent expenditures in ballot question elections. Second, corporations may establish separate segregated funds under section 55, as outlined above.

It is crucial to note that no corporate treasury monies are allowed to be used to support or oppose candidates. This policy is continued by the Act. In fact, section 54 actually includes a more stringent minimum prison sentence and higher fine amounts than its predecessor provisions. It is noteworthy that making an unlawful corporate contribution or expenditure is and was a felony in Michigan under section 54 and its predecessor MCL 168.919.

The Act manifests the Legislature's continued policy against participation in candidate elections with the limited exception provided to corporate payment with respect to some overhead expenses of separate segregated funds. You state in your letter that IM is composed of dues paying members, including corporations. If an association with corporate dolllars in its treasury paid an independent committee's operating costs, corporate money would flow into the independent committee and could be used to covertly finance candidate elections. Indirect corporate participation of this nature would allow corporations to circumvent the direct prohibition against the use of corporate money in the political process, a result the legislature could not have intended.

Accordingly, if an unincorporated association is funded by corporate dollars, the association may not pay the administrative and solicitation costs of an independent committee. To hold otherwise would result in impermissible corporate contributions to the independent committee. Consequently, any expenditures IM makes for the administration and solicitation of contributions to IMPAC must be made from an account which has not been tainted with corporate dues money.

Your final question concerns the joint sponsorship of fund raising events by IM and IMPAC. In an interpretative statement issued to Michael W. Hutson, dated September 20, 1978, the Department explained the procedures which must be followed when holding a joint fund raising event. A copy of the Hutson letter is attached for your convenience. Prior to a joint event, the sponsors are required to execute a written agreement. The agreement must include, among other things, the exact share of contributions to be assigned to each sponsor and designation of a joint account for the deposit of all contributions. In addition, the Hutson letter states:

> "All advertising, either before or at the event, must inform contributors of the following:
>
> 1. The event is a joint fundraiser.
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> 2. The names of the committees and candidates involved.
>
> 3. The office sought by each candidate.
>
> 4. The agreed share of each contribution to be allocated to each candidate
>
> 5. The manner of writing checks or other written instruments by the contributors to the event. For example, the name of each candidate receiving a contribution should appear on a written instrument."

There is nothing in the Act which prevents IM and IMPAC from co-sponsoring a fund raiser if the Hutson procedures are followed. However, these procedures clearly require that contributions and expenditures associated with a joint fund raiser are to be shared by the sponsors of the event and then allocated pursuant to the written agreement. As noted previously, section 54 of the Act prohibits a corporation from making contributions or expenditures under the Act. Consequently, corporate contributions may not be solicited or accepted at a fund raiser which is co-sponsored by a committee under the Act.

Finally, it should be noted that IM may pay the administration and solicitation costs of any fund raiser held, either jointly or spearately, by IMPAC. The Department noted in an interpretative statement to Mr. Jack Schick, dated October 4, 1984, that the predominant element of "solicitation" is communication. As Mr. Schick was advised, expenditures for the purchase of entertainment, premiums or raffle prizes are not included in the ordinary meaning of the term "solicitation" and result in contributions to the fund raising committee. Similarly, any expenditures by IM which exceed the ordinary administrative and solicitation costs of a fund raiser held to benefit IMPAC will result in a contribution from IM to IMPAC. If such contributions total $200.00 or more in a calendar year, IM will be required to register as a committee and file periodic disclosure reports under the Act.

This response is a declaratory ruling concerning the specific facts and issues presented.

Very truly yours,

Richard H. Austin
Secretary of State

Attachments

RHA:PTF:AC:bk