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MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918
48918-2110

July 15, 1992

Sandra M. Cotter
Dykema Gossett
800 Michigan National Tower
Lansing, Michigan 48933

Dear Ms. Cotter:

This is in response to your request for an interpretive statement under both the Michigan Campaign Finance Act, 1976 PA 388, as amended, and the Lobby Act, 1978 PA 472, as amended.

The Department has complied with the public notice and comment procedures described in section 15(2) of the Michigan Campaign Finance Act. These procedures and the Department's response to written comments are described below.

The facts giving rise to your request are as follows:

> "A Michigan corporation, ('Donor') proposes to take the following actions to assist a member of the Michigan Legislature in the legislator's campaign among the legislator's caucus members for a leadership position in the legislative body. If the legislator is successful, the legislator will be recommended by the political party caucus for a leadership position in the legislative body.
>
> The Donor proposes to provide the following assistance:
>
> - Host a dinner meeting with members of the Legislature to discuss the leadership caucuses.
> - Provide, at no cost to the legislator, printing and postage related to the caucus election.
> - Make a donation of money to the legislator or an ad hoc committee of legislators organized to support the legislator's candidacy in the caucus election.
>
> None of the money donated will be used for expenditures as defined in the Michigan Campaign Finance Act.
>
> The Donor corporation is not registered as a lobbyist or lobbyist agent pursuant to the Lobbyist Registration and Reporting Act."

You ask whether the Donor's proposed activities are subject to either the Michigan Campaign Finance Act or the Lobby Act.

Michigan Campaign Finance Act (the Act)

On August 21, 1979, the Secretary of State issued a declaratory ruling to Richard D. McLellan concerning corporate payments made for the purpose of influencing the election of party officials at a state convention. A copy of that ruling is enclosed for your convenience. The Secretary of State concluded that the corporation's payments were not subject to the Act's requirements because the offices at stake at the convention were not public offices.

As suggested in McLellan, the Act applies only to contributions and expenditures made for the purpose of influencing an election. "Election" is defined in section 5(1) of the Act (MCL 169.205) to include "a convention or caucus of a political party held in this state to nominate a candidate." However, a person in contention for a leadership position within a legislative caucus is not a "candidate" nominated by a "caucus of a political party" within the meaning of the Act.

"Candidate" is defined in section 3(1) of the Act (MCL 169.203). This section states, in pertinent part:

> "Sec. 3. (1) 'Candidate' means 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; or (d) who is an officeholder who is the subject of a recall vote."

The term "elective office," specifically referenced in subdivisions (a), (b) and (c) of subsection (1), is defined in section 5(2) as "a public office filled by an election." Subdivision (d), on the other hand, expressly refers to a recall vote. Thus, it is clear the Act applies only to those individuals whose names may ultimately be placed on a ballot voted upon by the public.

With respect to party nominees, an individual nominated by a political party caucus and certified to the proper filing official is entitled to appear on an appropriate election ballot. A "political party" is a party "which has a right under law to have the names of its candidates listed on the ballot in a general election." (MCL 169.211) "Caucus" is not defined in the Act, but according to Black's Law Dictionary it is a "meeting of the legal voters of any political party assembled for the purpose of choosing delegates or for the

nomination of candidates for office." These definitions are further indications that the selection of legislative leaders by a "caucus" of one party's House or Senate members is not "a convention or caucus of a political party held in this state to nominate a candidate" within the meaning of the Act.

It is therefore concluded that the donation of money or services to a member of the Legislature to assist in the legislator's campaign for a leadership position within a legislative caucus is not a contribution or expenditure subject to the restrictions and reporting requirements of the Michigan Campaign Finance Act.

Lobby Act

The Lobby Act, on the other hand, applies to the "lobbying" of officials within the State's executive or legislative branches. As defined in section 5(2) (MCL 4.415), "lobbying" is "communicating directly with an official in the executive branch of state government or an official in the legislative branch of state government for the purpose of influencing legislative or administrative action." In your scenario, the Donor's participation in the selection of legislative leaders is subject to regulation under the Lobby Act if the Donor's direct communications with members of the Legislature are for the purpose of influencing legislative action.

The definition of "legislative action" is found in section 5(1) of the Lobby Act:

> "Sec. 5. (1) 'Legislative action' means introduction, sponsorship, support, opposition, consideration, debate, vote, passage, defeat, approval, veto, delay, or an official action by an official in the executive branch or 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. Legislative action does not include the representation of a person who has been subpoenaed to appear before the legislature or an agency of the legislature."

Thus, "legislative action" includes any type of action on any matter which is pending or proposed in either a legislative committee or an entire house of the Legislature.

Floor leaders, whips and certain other leadership positions are selected by legislative caucus and do not require any action on the part of a committee or house of the Legislature. Therefore, the selection of leaders to fill these positions is not "legislative action" and is not regulated under the Lobby Act.

However, the selection of three leadership positions in the Senate and three leadership positions in the House are matters considered by and voted upon by the full membership of each respective house. While the nominee supported by

the majority party may inevitably prevail, the election of the President Pro Tempore, Assistant President Pro Tempore and Associate President Pro Tempore requires action by the full Senate, and the election of the Speaker of the House, Speaker Pro Tempore and Associate Speaker Pro Tempore requires action by the full House. Consequently, the selection of leaders to fill these positions is a "matter pending or proposed in . . . either house of the legislature" subject to the Lobby Act's requirements.

In answer to your question, expenditures made by the Donor corporation to communicate directly with legislators to influence the selection of a leadership position presented to the full Senate or House for consideration must be included when calculating whether the Donor has become a "lobbyist" under the Act. In 1992, a "lobbyist" is a person whose expenditures for lobbying exceed $1,425.00 in a twelve month period (section 5(2)). Upon reaching this threshold, the Donor must register as a lobbyist within fifteen days (section 7(1); MCL 4.417). The Act does not apply, however, to leadership positions which are not presented to the full Senate or House for consideration.

Finally, it should be noted that the gift prohibition found in section 11(2) of the Lobby Act (MCL 4.421) prohibits a registered lobbyist or lobbyist agent from donating money or services to a public official if the value of the money or services exceeds $36.00 in any one month period.

Notice and Public Comment

While not required under the Lobby Act, section 15(2) of the Michigan Campaign Finance Act (MCL 169.215) requires the Secretary of State to make a request for a declaratory ruling available for public inspection within forty-eight hours of its receipt. The Department has chosen to follow this procedure when receiving a request for an interpretive statement. A member of the public then has ten business days to submit written comments regarding the request.

Your request for an interpretive statement was made available to the public on February 26, 1992. However, no written comments were submitted by interested persons during the ten business day period.

On May 21, 1992, the Department made a proposed response available to the public, as required by section 15(2). Interested persons were required to submit written comments regarding the proposal within five business days, or by May 29, 1992. The Department did not receive any comments concerning the response proposed under the Campaign Finance Act.

However, on June 11, 1992, Richard McLellan and Mark Brewer submitted comments concerning the Department's interpretation of the Lobby Act. Although not required to do so, the Department has chosen to consider and respond to those comments.

Mr. McLellan indicated that the response did "not include the application, if any, of the Lobby Act to the situation where a Donor corporation merely donates money to an ad hoc committee of legislators where there is no

communication by the corporation." After reviewing the response, the Department has concluded that this issue is adequately addressed.

Mr. Brewer disagreed with the Department's interpretation of "legislative action." The Department's response interprets section 5(1) of the Lobby Act to include any type of action on any matter which is pending or proposed in either a legislative committee or an entire house of the legislature. Mr. Brewer argued that the definition of "legislative action" also includes a matter pending before a caucus in either house of the legislature.

The Department is not persuaded that the Legislature intended to include caucus activity within the definition of "legislative action." Therefore, the response does not adopt Mr. Brewer's position. The Legislature is the appropriate forum for expanding this definition to include matters considered by a caucus.

Finally, Mr. Brewer suggested that the proposed response "should also indicate the other laws and legislative rules which regulate the assistance at issue." The Department's response is limited to interpretations of the Michigan Campaign Finance Act and the Lobby Act. Any person contemplating making donations to members of the Legislature should, of course, consider whether bribery, conflict of interest, or other statutes or legislative rules prohibit the proposed donation.

This response is informational only and does not constitute a declaratory ruling because a ruling was not requested.

Very truly yours,

Phillip T. Frangos
Deputy Secretary of State
State Services

Enclosure