

## M I C H I G A N   D E P A R T M E N T   O F   S T A T E

RICHARD H. AUSTIN   •   SECRETARY OF STATE  
STATE TREASURY BUILDING



LANSING  
MICHIGAN 48918

48918-2110

April 14, 1993

Ms. Margaret M. Ayres  
Davis Polk & Wardwell  
1300 I Street, N.W.  
Washington, D. C. 20005

Dear Ms. Ayres:

This is in response to your letter requesting a declaratory ruling with respect to the application of the Michigan Campaign Finance, 1976 PA 388, as amended, (the "Act"). Your request is made on behalf of an unnamed Delaware corporation which has done business in Michigan but does not maintain an office in this State.

The corporation maintains a separate segregated fund which has filed with the Federal Election Commission pursuant to the applicable provisions of the Federal Election Campaign Act. The corporation has never participated in Michigan candidate elections. You have stated the facts underlying your request as follows:

" Recently, one of the Company's officers (the "Officer) responsible in part for the Company's business in Michigan requested that the PAC make a \$2,500 contribution to the candidate committee of a candidate for elective office in Michigan (the "Candidate"). The PAC declined to make the suggested contribution. The Officer now wishes to make part of the contribution to the candidate himself and to ask other Company officers to make contributions to the Candidate as well. The Officer hopes that, as a result of his action, contributions aggregating \$2,500 will be received by the Candidate from the officers of the Company. The Officer plans to collect the officers' contribution checks and pass them on directly to the Candidate's committee. The Company will not reimburse the officers for their contributions and has not provided officers with funds for the purpose of making these contributions. No officer will be required to make a contribution, nor will the Company reward the making of a contribution to the Candidate."

The question presented is whether the Officer and the other officers of the corporation may make the contributions as described above.

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When your request was received it was circulated to the public for comments as required in section 15(2) of the Act (MCL 169.215). One set of comments was received. That commentator suggested that the activity cited in the request would require the officers to file as a committee pursuant to section 24 of the Act (MCL 169.224) because their activities met the definition of committee contained in the Act.

After the comment period ended one of your colleagues requested a copy of the comment. On February 12, 1993 you responded to the comments that had been submitted. In the response you modified the facts set forth in the original letter. The modification in the facts as outlined is that the Officer "could refrain from taking any action to facilitate contributions by other officers." In this scenario the Officer would "do no more than suggest possible political contributions to fellow officer-shareholders and pass on to them the solicitation cards provided by the proposed recipient-committee."

The Act prohibits a corporation or anyone acting on behalf of a corporation from making a contribution or expenditure in a candidate election (MCL 169.254). However, pursuant to section 6(3)(a) of the Act (MCL 169.206), corporate expenditures for communications with paid members or shareholders are exempt from this prohibition.

In an interpretive statement issued to Mr. George Watts, dated December 28, 1979, the Department of State was asked whether this exemption applied to a mailing that included literature produced by a candidate committee. The Department indicated that the exemption did not extend to the republication, reproduction or distribution of a communication prepared by a candidate or candidate committee.

This analysis would apply equally to an officer acting on behalf of a corporation. An officer may communicate with other shareholders and distribute literature produced at corporate expense. However, pursuant to section 54(2), the officer is prohibited from using corporate time, property or other resources to distribute solicitation cards provided by a candidate committee. In other words, the officer may communicate with other officer/shareholders for the purpose of soliciting contributions to Michigan candidates, but the officer may not distribute solicitation cards furnished by the candidate committee.

In addition, the officer may not collect contributions from the other officers and forward them to the candidate. Such bundling of contributions would be construed as joint activity by the individuals involved, making them subject to the Act's requirements because they would be a committee as defined in section 3(4) of the Act (MCL 169.203). In relevant part that definition provides:

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(4) "Committee" means a person who receives contributions or makes expenditures for the purpose of influencing or attempting to influence the action of voters for or against the nomination or election of a candidate....."

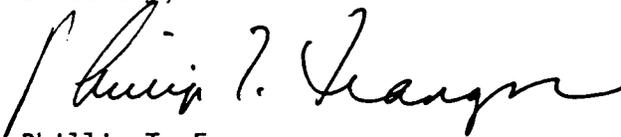
Section 11 of the Act (MCL 169.211) defines the term "person" to include "any other organization or group of persons acting jointly."

In an interpretive statement issued to Mr. Carl Gromek September 24, 1992 the issue of joint activity was explored. That response concluded that there would be joint activity where a group set up a system for purchasing fund-raiser tickets. One of the key facts was the continuous communications proposed along with the maintenance of records to track who in the group had made contributions to candidates.

The facts, as modified, eliminate the joint activity inherent in the original proposal. If the officer simply discusses the candidates, there does not appear to be any joint activity among the officers. The communications would be in only one direction, no funds would be collected or "bundled" and no records of participation would be maintained. In these circumstances, the activity outlined in the amended request does not trigger the registration and reporting requirements of the Act.

This response is informational only and does not constitute a declaratory ruling because the facts provided lack specificity, including the name of the corporation requesting the ruling.

Sincerely,



Phillip T. Frangos  
Deputy Secretary of State  
State Services