STATE OF MICHIGAN

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

July 27, 1998

Mr. Robert W. Stocker II
Fraser Trebilcock Davis & Foster, P.C.
1000 Michigan National Tower
Lansing, Michigan 48933

Dear Mr. Stocker:

The following information constitutes the response to your request for a declaratory ruling concerning the applicability of the Michigan Campaign Finance Act (MCFA), 1976 PA 388, as amended, to a proposed settlement, less than full value, of a debt which had been personally guaranteed by a candidate for public office. You express concern that this settlement might be interpreted as a prohibited contribution to Lawrence D. Owen's current campaign for governor of the State of Michigan.

According to your request, the proposed settlement seeks to extinguish Mr. Owen's obligation to pay all but $500,000 of a deficiency judgment entered on November 13, 1997, by a Nevada District Court. This obligation stems from Mr. Owen's guarantee of a $2,500,000 promissory note from Mr. Owen's stepson, Marc Curtis, Steve Burnstine and Pioneer Gaming Company, Inc., to Pioneer Investment Group, which was owned by your clients. Marc Curtis, Steve Burnstine and the Pioneer Gaming Company, Inc., subsequently defaulted on payment of the Promissory Note. Prior to this default, Mr. Belding, Mr. Ensign and Mr. Richardson had become senior executives in Circus Circus Enterprises, Inc.

In its oral ruling, the District Court found that the fair market value of the foreclosed property was $1,760,000, creating a deficiency judgment in the amount of $1,219,599.80 as of November 13, 1997. Additional statutory interest has been accruing at the rate of $309.6921 per day. Under the terms of the proposed settlement, the deficiency judgment would be fully settled upon payment of a single lump sum payment of $500,000.

Your request states, in part:

> The debt has no relation to Mr. Owen's campaign for the office of Governor of the State of Michigan . . . This obligation has nothing to do with the "nomination" or the "election" of Mr. Owen to public office.

In 1980, a question regarding the settlement of debts at less than full value was presented to Secretary of State Richard H. Austin, resulting in a February 6, 1980, declaratory ruling to Mr. Steven R. Bartholomew on behalf of the McCollough-Michigan gubernatorial campaign committee. (See attachment.) McCollough-Michigan had incurred campaign debts, which remained unpaid, in connection with the 1978 primary election. The committee proposed negotiating settlements of less than full value with its creditors but was concerned that the deficiency might constitute a prohibited contribution under the MCFA. This is the same concern identified in your letter.

In the Bartholomew ruling, Secretary of State Austin declared that a negotiated settlement of less than full value could constitute a contribution. Therefore, any settlement would require the prior approval of the Department of State and would be granted only if it was shown that the settlement was not for the purpose of influencing an election. Your declaratory ruling request presents an issue of whether the benefit Mr. Owen would realize by your clients' forgiveness of a debt of more than $1,000,000 could be construed as influencing the 1998 gubernatorial election.

While the similarities between the settlement proposals advanced by McCollough-Michigan and your clients prompted you to request a declaratory ruling, the Bartholomew ruling concerned "the settlement of outstanding <u>campaign debts</u>." (Emphasis added.) According to the facts you have presented, the proposed settlement between the Circus Circus executives and Mr. Owen involves a business debt that was incurred by Mr. Owen as an individual and not as a candidate. This debt could not be repaid with funds acquired by the Larry Owen for Governor committee, which is limited to making expenditures in assistance of Mr. Owen's nomination or election. Consequently, the proposed settlement of the outstanding debt is not a contribution and is not subject to provisions of the MCFA.

The question of whether the proposed settlement at less than full value would disqualify Circus Circus from obtaining a license to construct and operate a casino falls exclusively within the jurisdiction of the Michigan Gaming Control Board and the Gaming Control and Revenue Act, 1997 PA 69. There is a possibility that, during the course of its review of the Circus Circus casino license application, the Michigan Gaming Control Board may obtain disclosable information that has campaign finance implications affecting this matter.

This response does not constitute a declaratory ruling with respect to the question raised in your ruling request and is provided for informational purposes only because this matter is not subject to the MCFA.

Sincerely,

Robert T. Sacco

ROBERT T. SACCO
Deputy Secretary of State

RTS:rlp
enclosure

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

February 6, 1980

Mr. Steven R. Bartholomew
5206 Sunrose Avenue
Lansing, Michigan 48910

Dear Mr. Bartholomew:

This is in response to your inquiry concerning the applicability of the Campaign Finance Act ("the Act"), 1976 PA 388, as amended, to the settlement of outstanding campaign debts by negotiating less than full payment agreements with various creditors, including corporations.

The McCollough-Michigan Committee ("MMC") incurred debts during the 1978 gubernatorial primary election. You state that some of those debts, which were qualified expenditures, remain unpaid. MMC does have some funds remaining which you believe are sufficient to allow MMC to negotiate settlements with all of the committee's creditors. Of those funds, $2,030.50 are in MMC's public funding account.

You ask if MMC may negotiate settlements with creditors at less than the full amount of the debts without the creditors thereby making a contribution to the committee. You are particularly concerned about corporate creditors. Additionally, you ask if the money in MMC's public funding account may be used to pay these settlements:

Section 4 of the Act (MCLA § 169.204) defines "contributions" as follows:

> "Sec. 4.(1) Contribution means a payment, gift, subscription, assessment, expenditure, contract, payment for services, dues, advance, forbearance, loan, donation, pledge or promise of money or anything of ascertainable monetary value, whether or not conditional or legally enforceable, or a transfer of anything of ascertainable monetary value to a person, made for the purpose of influencing the nomination or election of a candidate, or for the qualification passage, or defeat of a ballot question. An offer or tender of a contribution is not a contribution if expressly and unconditionally rejected or returned.
>
> (2) Contribution includes the purchase of tickets or payment of attendance fee for events such as dinners, luncheons, rallies, testimonials, and similar fund raising events; and individual's own money or property other than the individual's

> homestead used on behalf of that individual's candidacy; the granting of discounts or rebates not available to the general public; or the granting of discounts or rebates by broadcast media and newspapers not extended on an equal basis to all candidates for the same office." (Emphasis added)

This language indicates clearly a negotiated settlement of less than the full value of the debt is a contribution if the settlement is not available to the general public. In order that the discounting or writing off of a debt is not made a contribution, a committee must receive prior approval from the Department of State. This approval will be granted only when the Department is convinced all of the following conditions are met:

1) At the time the debt was incurred both the committee and the creditor expected the debt would be repaid in full within a reasonable time;

2) The committee has made a good faith effort to raise sufficient money to repay all outstanding debts;

3) The creditor has taken all the steps it normally takes against debtors in the same financial condition as the committee;

4) The proposed settlement agreement between the creditor and the committee is similar to previous settlements made by the creditor and other debtors;

5) The committee has treated all creditors equally since it became aware there would be difficulty in the repayment of all debts; and

6) The proposed settlement agreement between the creditor and the committee is similar to other settlements proposed or made by the committee.

A settlement approved by the Department is not "made for the purpose of influencing the nomination or election of a candidate" and is not, therefore, a "contribution." As long as the settlement is not a contribution, it may be made with a corporate creditor.

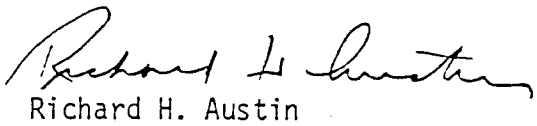
Your second question is partially answered by a declaratory ruling issued on September 29, 1978, to Mr. William R. Ralls. It is attached to and adopted as part of this declaratory ruling by reference. MMC is considered to have spent the money when the debt was incurred. You state MMC received money from the State Campaign Fund which was not credited to MMC's account until after January 1, 1979. MMC may apply money in its public funding account

to retire primary debts which are qualified expenditures. However, for the period subsequent to 60 days after the primary election, MMC must submit proof to the Department that the money being spent from the public funding account is directed to, and not in excess of, qualified campaign expenditures.

In conclusion, MMC may submit proposed debt settlements to Mr. John T. Turnquist, Deputy Director, Elections Division, for approval. State Campaign Fund money may be used for the settlement(s) if proof is submitted that the debts are qualified expenditures.

This response constitutes a declaratory ruling concerning the applicability of the Act to the specific factual situation described in your request.

Sincerely,



Richard H. Austin
Secretary of State

RHA:lmr

Attachment

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

September 29, 1978

Mr. William R. Ralls
Kemp, Klein, Endelman & Ralls
3000 Town Center, Suite 2700
Southfield, Michigan 48075

Dear Mr. Ralls:

This is in response to your request for a ruling by the Department concerning the deadline before which a gubernatorial committee may file an application for public funds available under the Campaign Finance Act, P.A. 388 of 1976, as amended ("the Act"), to retire a debt incurred in the primary election.

Section 61(4) of the Act (MCLA § 169.261) provides (in part):

> "An amount equal to the cumulative amounts designated under subsection (2) each year shall be appropriated annually from the general fund of the state to the state campaign fund to be available beginning January 1 and continuing through December 31 of each year in which a governor is elected. The amounts appropriated under this section shall not revert to the general fund but shall remain available to the state campaign fund for distribution without fiscal year limitation except that any amounts remaining in the state campaign fund on December 31 immediately following a gubernatorial general election shall revert to the general fund." (Emphasis supplied)

Section 61(4) indicates the moneys in the State Campaign Fund are available from January 1, 1978, through December 31, 1978, when moneys remaining in the State Campaign Fund revert to the General Fund. The Act does not contain language limiting application during this period to a candidate in either the primary or general election. It appears a gubernatorial candidate committee in either the primary or general election may validly apply for public funds and receive moneys throughout 1978 provided the committee is eligible for funds.

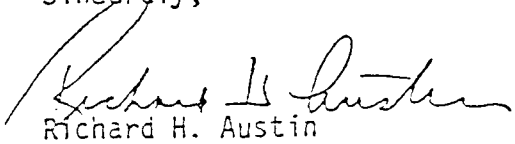
Section 66(3) of the Act (MCLA § 169.266) states "an unexpended balance in this account shall be refunded and credited to the general fund within 60 days after the election for which the moneys were received." The "account" to which reference is made is the separate account a gubernatorial candidate committee must maintain for moneys received from the State Campaign Fund.

The impact of Section 66(3) is upon funds received by the gubernatorial candidate committee from the State Campaign Fund, which remain unspent 60 days after the election for which the moneys were received. Money is considered spent upon incurrence of a debt pursuant to the making of an expenditure as defined in Section 6 of the Act (MCLA § 169.206). Consequently, a candidate who has debts incurred in an election may continue to apply for public moneys, even after the 60-day period, provided the funds in the State Campaign Fund have not reverted to the General Fund because of the December 31 deadline. The gubernatorial candidate committee must provide proof of qualifying contributions (in the case of the primary election) and must apply the moneys received only against qualified campaign expenditures. The committee may receive funds only to the limits authorized by the Act.

Accordingly, your gubernatorial candidate committee may apply to receive public moneys, for which it qualifies, to retire debts validly incurred in the August, 1978, primary election. Application for the public moneys, which will be available through December 31, 1978, must be made a reasonable time prior to that date to permit approval and processing. Moreover, in the period prior to December 31 but subsequent to 60 days after the primary election, the Department will require proof from the committee that moneys applied for are directed to and not in excess of qualified campaign expenditures.

This response constitutes a declaratory ruling concerning the applicability of the Act to the specific factual situation described in your request.

Sincerely,



Richard H. Austin
Secretary of State

RHA:pj

STATE OF MICHIGAN

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

August 4, 1998

Mr. David Cahill
Attorney-at-Law
1419 Broadway
Ann Arbor, Michigan 48105

Dear Mr. Cahill:

The following information constitutes the Department of State response to your request for a declaratory ruling concerning the collection of a student fee by the University of Michigan (the University) and the University's subsequent transfer of these fees directly to a ballot question committee.

Your request is premised upon certain facts outlined in your letter. You first described the history of the Michigan Student Assembly (MSA) and its longstanding desire to add a "student regent" to the University's Board of Regents. You indicated that in March of 1998, students passed an MSA initiative that allowed MSA to ask the University to approve and collect a separate $4.00 student fee on behalf of MSA. You further indicated that if collected, the University would transfer the fees to a ballot question committee. The committee would use the fees to collect signatures needed to qualify a ballot initiative to add a voting student to the University's Regents Board.

You asked whether the University, which is a public body as defined in section 11(6)(d) of the Michigan Campaign Finance Act (the MCFA; MCL 169.211), would be in violation of section 57 of the MCFA (MCL 169.257) if it collected and transferred the fees to an account of a ballot question committee. Section 57 provides in part:

> "Sec. 57. (1) A public body or an individual acting for a public body shall not use or authorize the use of funds, personnel, office space, property, stationery, postage, vehicles, equipment, supplies, or other public resources to make a contribution or expenditure or provide volunteer personal services that are excluded from the definition of contribution under section 4(3)(a). . . ."

Section 63 of the Administrative Procedures Act (the APA; MCL 24.263), section 15(2) of the MCFA (MCL 169.215) and rule 6 of the Administrative Rules for the Department of

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State, Bureau of Elections, Campaign Financing (R 169.6 of the Michigan Administrative Code) govern the Department of State's processing of declaratory ruling requests such as yours. Among other things, these laws require the Department to disseminate declaratory ruling requests for public comment. On May 14, 1998, your request was forwarded to "Persons Interested in Michigan Campaign Finance Act Declaratory Rulings" as part of the public input process.

On May 28, 1998, the Department received information from the University's Office of the General Counsel concerning the facts which formed the basis of your request. In particular, the General Counsel indicated that the University's Vice President for Student Affairs declined to present MSA's fee proposal to the University's Board of Regents. Therefore, the University will not be asked to approve or collect the fees as described in your letter.

As indicated above, section 63 of the APA governs the issuance of declaratory rulings. This section provides in part:

> "Sec. 63. On request of an interested person, an agency may issue a **declaratory ruling as to** the applicability to **an actual state of facts** of a statute administered by the agency or of a rule or order of the agency. An agency shall prescribe by rule the form for such a request and procedure for its submission, consideration and disposition. . . ." (Emphasis added)

In 1979, Attorney General Frank J. Kelley issued an opinion concerning the language of section 63. Mr. Kelley was asked whether the APA required the State Tenure Commission to issue a declaratory ruling. In response, Mr. Kelley indicated that "the refusal of the Tenure Commission to issue a declaratory ruling that gave rise to this opinion request was proper, since the request for a declaratory ruling was not based upon an actual state of facts as required by the Administrative Procedure Act of 1969, § 63, *supra*." OAG, 1979-1980, No. 5565, p. 398, 399 (September 20, 1979).

Section 15(2) of the MCFA and rule 6, which govern the Department's processing of declaratory ruling requests, both contain language similar to section 63 of the APA.

In light of the above, the Department of State has determined that the facts upon which your declaratory ruling request is based (i.e., the collection of student fees by the University for transfer to a ballot question committee) have not occurred and are not likely to occur. Therefore, the Department must decline to issue a declaratory ruling in this matter.

Nevertheless, the Department has considered the factual circumstances presented in your request and would offer the following preliminary analysis for your information and consideration.

You asked whether the University could legally collect student funds on behalf of MSA and then transfer the funds to a ballot question committee account. The circumstances you described posit that the University would be expending administrative resources in the process of collecting and transferring funds to a ballot question committee.

As further background, it appears that the University issues monthly student account statements to all registered students. These statements list tuition, fees, and other charges such as housing costs. The students pay one lump sum or make two separate payments for the combined amount to the University, or else pay under a payment plan. Student payments are deposited into the University's general funds accounts. During the year, the University disburses funds to MSA based on the number of students registered for each term. The disbursement is not based on the actual amount of fees collected. In some instances, the University is unable to collect past due student accounts, which may include an MSA fee. The University does not separately account for and debit the uncollected student fees from MSA.

In 1994, Secretary of State Richard H. Austin submitted three questions to Attorney General Kelley concerning the MCFA. One of the questions concerned the use of public resources to support a committee. Mr. Kelley was asked, "May a school district or a university pay for the establishment, administration, and solicitation of contributions to a separate segregated fund to be used for committees authorized under section 55 of the Michigan Campaign Finance Act?" In response, Mr. Kelley indicated:

> "In section 55 of the Michigan Campaign Finance Act, MCL 169.255; MSA 4.1703(55), the Legislature has authorized profit and nonprofit corporations and joint stock companies to contribute corporate funds for the establishment, administration and solicitation of contributions to a separate segregated fund to be used for committees. The Legislature has not authorized schools districts or universities to make payments of public money for these purposes under section 55 of the Michigan Campaign Finance Act.
>
> "It is my opinion, therefore, in answer to your third question, that neither school districts nor universities may pay for the establishment, administration, and solicitation of contributions to a separate segregated fund to be used for committees authorized under section 55 of the Michigan

> Campaign Finance Act." OAG, 1993-1994, No. 6785, p. 102, 104 (February 1, 1994).

Consistent with this and other Attorney General opinions regarding the use of public funds, the Legislature subsequently amended the MCFA by adding section 57 (1995 PA 264). This section prohibits public bodies from making contributions, expenditures, or providing personal services using public funds. Section 57, as amended by 1996 PA 590, provides:

> "(1) A public body <u>or an individual acting for a public body</u> shall not <u>use or authorize the use of funds, personnel, office space, property, stationery, postage, vehicles, equipment, supplies, or other public resources to</u> make a contribution or expenditure or provide volunteer personal services that are excluded from the definition of contribution under section 4(3)(a). . . ." (Emphasis added)

From a plain reading of the language, it appears that the Legislature's intent in 1996 was to re-emphasize the ban on public bodies from using public funds to make expenditures. Further, the 1996 amendment indicated that the ban applied to the use of "funds, personnel, office space, property, stationery, postage, vehicles, equipment, supplies, or other public resources."

The prohibition in section 57 is similar to that found in section 54 of the MCFA (MCL 169.254). Section 54 prohibits corporations, joint stock companies, domestic dependent sovereigns, or labor organizations from making contributions or expenditures or providing volunteer personal services. Section 54(3) does however permit an exception to this prohibition in that corporations, etc., may make a contribution to a ballot question committee subject to this act. Section 54(3) provides:

> "(3) A corporation, joint stock company, domestic dependent sovereign, or labor organization may make a contribution to a ballot question committee subject to this act. A corporation, joint stock company, domestic dependent sovereign, or labor organization may make an independent expenditure in any amount for the qualification, passage, or defeat of a ballot question. A corporation, joint stock company, domestic dependent sovereign, or labor organization that makes an independent expenditure under this subsection is considered a ballot question committee for the purposes of this act."

Neither section 57 nor any other section of the Act contains language that provides an exception for public bodies that is similar to the exception in section 54(3).

It appears clear that the collection and subsequent payments as proposed to be made by the University are "expenditures" as defined in section 6 of the MCFA (MCL 169.206). This section provides as follows:

> "Sec. 6. (1) 'Expenditure' means a payment, donation, loan, or promise of payment of money or anything of ascertainable monetary value for goods, materials, services, or facilities in assistance of, or in opposition to, the nomination or election of a candidate, or the qualification, passage, or defeat of a ballot question."

Section 6 does however identify an exception. In this regard, section 6(2) provides:

> "(2) Expenditure does not include any of the following:
>
> * * *
>
> "(c) An expenditure for the establishment, administration, or solicitation of contributions to a separate segregated fund or independent committee." (Emphasis added)

This exception corresponds to the authority found in section 55 of the MCFA (MCL 169.255), which provides for the establishment of separate segregated funds. Section 55(1) contains a narrow exception for the entities defined in section 54. Section 55(1) provides in part:

> "Sec. 55. (1) A corporation organized on a for profit or nonprofit basis, a joint stock company, or domestic dependent sovereign, a labor organization formed under the laws of this or another state or foreign country may make an expenditure for the establishment and administration and solicitation of contributions to a separate segregated fund to be used for political purposes. A separate segregated fund established under this section shall be limited to making contributions to, and expenditures on behalf of, candidate committees, ballot question committees, political party committees, political committees, and independent committees."

Neither section 57 nor any other section of the Act contains language that provides an exception for public bodies that is similar to section 55(1).

Michigan courts have followed a longstanding rule of statutory construction that presumes the Legislature knows of, and legislates in harmony with, existing laws. Moore v City of Southfield Police Dept, 160 Mich App 289, 408 NW2d 136 (1987). When the Legislature enacted section 57, language in sections 54(3) and 55(1) outlined narrow exceptions for

corporations to make expenditures to ballot question committees or to separate segregated funds. Presumably, had the Legislature wished to permit similar exceptions for public bodies to make expenditures, they would have done so in 1996 PA 590.

In light of the above, it is the Department's position that the University would be prohibited from collecting and transferring students funds to a ballot question committee account as described.

Your request also asked whether there were other alternatives that would permit the University to collect the fees and deposit them into a ballot question committee account. In this vein, one of the written comments posited that MSA could "reimburse" the University for its collection and payment activities. As indicated, it appears that the Legislature's intent in 1996 was to re-emphasize the ban on public bodies from using public funds to make expenditures. If the Legislature had wished to permit exceptions to this ban, they would have done so. Therefore, the underlying prohibition in section 57 can not be avoided by permitting MSA to reimburse the University for activities, which are themselves prohibited by section 57, without express statutory authority.

This response is an interpretive statement and does not constitute a declaratory ruling, in as much as your request did not include a statement of actual facts.

Sincerely,

Robert T. Sacco

ROBERT T. SACCO
Deputy Secretary of State
Regulatory Services Administration

RTS:rlp