

SACHS WALDMAN
PROFESSIONAL CORPORATION

ATTORNEYS AND COUNSELORS AT LAW
1000 FARMER
DETROIT, MICHIGAN 48226-2899

(313) 965-3464

Writer's Direct Dial: (313) 496-9429
Facsimile Number: (313) 965-4602
E-Mail: anickelhoff@sachswaldman.com

March 26, 2003

ROLLAND R. O'HARE
BARRY P. WALDMAN
EILEEN NOWIKOWSKI
ANN E. NEYDON
I. MARK STECKLOFF
GREGORY M. JANKS
GRANNER S. RIES
MARY ELLEN GUREWITZ
GEORGE H. KRUSZEWSKI
GEORGE T. FISHBACK
JOHN R. RUNYAN, JR.
JOHN C. MCINTOSH
ANDREW NICKELHOFF

JOY A. TURNER
JOYCE M. OPPENHEIM
MARY KATHERINE NORTON
PATRICIA J. FABRIZIO
CARLTON R. ROESER
EILEEN E. KROLL
BRIAN A. MCKENNA
CHRISTOPHER P. AMBROSE
MARSHALL J. WIDICK
LINDA TUREK
HOPE L. CALATI
FRANCES YTURRI
DAVID W. BEST

PONTIAC OFFICE
28 N. SAGINAW, SUITE 500
OAKLAND TOWNE CENTER
PONTIAC, MICHIGAN 48342-2145
(248) 333-0887
(248) 334-0582
FAX (248) 334-9436

FLINT OFFICE
G-1388 W. BRISTOL ROAD
BRISTOL WEST CENTER
FLINT, MICHIGAN 48907-5500
(810) 233-4202
FAX (810) 235-7239

THEODORE SACHS
1928-2001

ROBERT G. HODGES
RONALD S. WEINER
JAMES M. MORROW
ANTONETTE R. BAHR
D. BRUCE BEALSON
OF COUNSEL

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
MAR 31 A 11:16

Lawrence Norton, Esq.
General Counsel
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

AOR 2003-11

re: advisory opinion request

Dear Mr. Norton:

I am writing on behalf of the Michigan Democratic State Central Committee ("MDSCC") to request, pursuant to 2 U.S.C. § 437f(a)(a) and 11 C.F.R. § 112.2, an advisory opinion from the Federal Election Commission as to the following question:

Should amounts expended by MDSCC for fringe benefits for employees, such as insurance and retirement benefits, be treated in the same manner as "salaries and wages" for purposes of allocating such expenses between Federal and non-Federal accounts under the FEC regulations?

Factual Background

The MDSCC is a State committee pursuant to 11 C.F.R. § 110.14(a) and is a state central political party committee as defined in the Michigan Campaign Finance Act, MCL § 169.211(5). The MDSCC is responsible for the day-to-day operation of the Democratic Party in the State of Michigan. The MDSCC employs a number of full time employees on a regular and ongoing basis at its headquarters in Lansing, Michigan. In addition to salaries, the MDSCC provides its employees with other forms of compensation, including: medical, dental, and prescription drug insurance coverage; short term disability (wage loss) and long term disability insurance benefits; a life insurance benefit; and a 401(k) plan with employer matching contributions. In addition, MDSCC's labor costs include standard payroll taxes. All of the foregoing non-payroll forms of compensation are referred to herein as "fringe benefits." The MDSCC's cost for the fringe benefits it provides constitutes approximately 38% of the total labor cost MDSCC incurs, on average, for each employee:

The MDSCC has established separate Federal and non-Federal accounts under 11 C.F.R. § 102.5(a)(1)(i).

Lawrence Norton, Esq.
March 26, 2003
Page 3

treat cash compensation paid to employees and fringe benefits provided to employees in the same manner.

Additionally, treating fringe benefits in the same manner as salary payments is consistent with and better reflects the purposes of the BCRA. In passing BCRA Congress concluded that any employee who devotes more than 25% of his compensable time to Federal election activity is sufficiently engaged in Federal election-related activities that the salary of such an employee should be paid entirely from funds subject to the limitations, prohibitions and reporting provisions of Federal law. It is difficult to discern a reasonable basis for treating other forms of individual compensation differently.

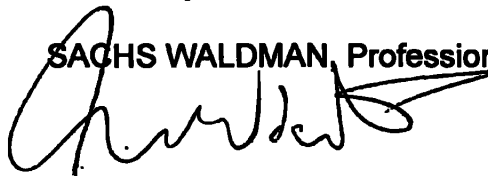
To illustrate the illogic of disparate treatment, consider an employee who is presented a choice between a higher base salary or greater deferred compensation. What conceivable reason would there be for allowing the employee's choice of compensation to dictate how payment of that employee is treated for election law purposes? The form of compensation should be irrelevant. Had Congress specifically addressed this issue, it is hard to imagine that it would have come to any other conclusion.

Uniform treatment has the distinct benefit to committees such as the MDSCC of simplifying bookkeeping and reporting. MDSCC's reporting for employees who engage in minimal Federal election activity, with respect to salaries and to other paid compensation such as fringe benefits, should be uniformly governed by state law. Consistent treatment of employee compensation would eliminate the bookkeeping task of reconciling state and Federal reporting regimes. For organizations such as the MDSCC, simplicity and common sense regulation is a real virtue and facilitates compliance with both Federal and state law.

We look forward to your response to this request. Please contact me if you have any questions or if additional information is needed.

Yours truly,

SACHS WALDMAN, Professional Corporation



Andrew Nickelhoff

cc: Mark Brewer, Chair