80-122

RICHARD S. COHEN
ATTORNEY GENERAL

STEPHEN L. DIAMOND
JOHN S. GLEASON
JOHN M. R. PATERSON
ROBERT J. STOLT
DEPUTY ATTORNEYS GENERAL

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

July 31, 1980

Ms. Patricia Finnigan, Assistant
Commission On Governmental Ethics And Election Practices
State House Station 101
Office of the Secretary of State
Augusta, Maine 04333

Dear Ms. Finnigan:

This will respond to your letter of June 25, 1980 on behalf of the Commission On Governmental Ethics And Election Practices in which you asked two questions concerning Maine's Campaign Reports and Finances Act. (21 M.R.S.A. §1391, et seq.). Your first question relates to whether certain expenditures made by the political action committee of the Maine State Employees Association are subject to the reporting requirement of 21 M.R.S.A. §1397 (5), ¶2. Your second question pertains to whether political endorsements appearing in newsletters sent to members of M.S.E.A. by the Association's political action committee must comply with the requirements of 21 M.R.S.A. §1394.

In order to properly respond to your inquiries, it is necessary to set out, in some detail, the factual background underlying your questions.

Factual Background[1]

It is our understanding that the Maine State Employees Association has established a political action committee under the name Political Action by Government Employees (hereinafter referred to as P.A.G.E.). P.A.G.E. intends to mail newsletters to M.S.E.A. members who reside in certain legislative districts. These newsletters will contain express endorsements of named

---

1. The factual discussion which follows is based upon your letter of June 25, 1980, a letter to you from the Assistant Executive Director of the Maine State Employees Association and subsequent conversations with both you and M.S.E.A.'s Assistant Executive Director.

candidates who are seeking election to the Maine House or Senate from the legislative district in question. It is our understanding that separate newsletters may be sent to M.S.E.A. members in certain legislative districts. Additionally, it is our understanding that a single newsletter may contain endorsements of more than one candidate.

In his letter of June 4, 1980, the Assistant Executive Director of M.S.E.A. posed the following questions to the Commission On Governmental Ethics And Election Practices, which you have referred to us for response and which we have paraphrased for the sake of clarity:

> "1. Under 21 M.R.S.A. §1397(5) does the $50 maximum, after which reporting is required, apply to a membership organization's expenditure for each legislative race or to all races? In other words, if M.S.E.A.'s P.A.G.E. Committee expends $35 to endorse Candidate Smith in House District A and $35 to endorse Candidate Jones in Senate District B, does the statute require that those expenditures be reported?"

> "2. Under 21 M.R.S.A. §1394 is a membership organization required to state in a communication to its membership expressly advocating the election of a candidate that the communication is not authorized by the candidate, if that candidate has sought and received the organization's endorsement?"

-I-

By virtue of Chapter 621, §9 of the Public Laws of 1975, the Maine Legislature enacted broad legislation regulating campaign financing. P.L. 1975, c.621 became effective on January 1, 1976. However, on January 30, 1976 the United States Supreme Court decided Buckley v. Valeo, 424 U.S. 1, 96 S.Ct. 612, 46 L.ED. 2d 659 (1976) in which it interpreted, and in some instances invalidated, certain provisions of the Federal Election Campaign Act. 2 U.S.C.A. §431, et seq., 18 U.S.C.A. §591, et seq. In view of the fact that Maine's campaign financing law (P.L. 1975, c.621) paralleled the federal act, the validity of many of its provisions was called into question. See Op. Atty.Gen., February 12, 1976.

In response to the Supreme Court's decision in Buckley v. Valeo, supra, the Maine Legislature enacted a new version of the Campaign Reports and Finances Act. See P.L. 1975, c.759 (emergency legislation, effective April 14, 1976). Chapter 759 contained many provisions similar to those in the federal legislation which was, at the time, pending before Congress. In particular, Chapter 759 enacted 21 M.R.S.A. §1392(4)(C)(3) to exclude from the definition of "expenditure"

> "Any communication by any membership organization or corporation to its members or stockholders, if such membership organization or corporation is not organized primarily for the purpose of influencing the nomination or

election of any person to state or county office."

Thus, with the enactment of P.L. 1975, c.759, a communication by a membership organization, such as M.S.E.A.'s P.A.G.E. committee, to its members was not an expenditure subject to any reporting requirements, provided the organization was "not organized primarily for the purpose of influencing the nomination or election of any person...."

However, in 1977 the Legislature enacted P.L. 1977, c.575 and added paragraph 2 to 21 M.R.S.A. §1397(5), to provide:

> "Any membership organization or corporation which makes a communication to its members or stockholders expressly advocating the election or defeat of a clearly identified candidate shall report any expenditures in an aggregate amount in excess of $50 for such communication in any election, whether or not such communication is defined as an expenditure under section 1392, subsection 4, paragraph C, subparagraph (3)."

In view of the foregoing, it is apparent that 21 M.R.S.A. §1397(5), ¶2, makes certain expenditures for communications by a membership organization reportable notwithstanding the fact that the communications may not be expenditures as defined in 21 M.R.S.A. §1392(4)(C)(3).

We must acknowledge at the outset that the language of section 1397(5), ¶2 is facially ambiguous. In our view, the ambiguity arises by virtue of the statutory requirement to "report any expenditures in an aggregate amount in excess of $50 for such communication in any election...." (emphasis added). The phrase "in any election " is susceptible of more than one interpretation. For example, one interpretation of the statutory language is that the $50 threshold amount applies separately to each electoral race for a state or county office. On the other hand, another interpretation of the statute is that the $50 threshold amount is to be computed on the basis of the expenditures made for communications in all of the electoral races for state and county offices. Our task is to determine which interpretation was intended by the Legislature when it enacted 21 M.R.S.A. §1397(5), ¶2, added by P.L. 1977, c.575.[2]

---

2. It should be noted that under either of the possible interpretations described above, the $50 threshold amount applies spearately to primary elections, general elections and special elections. In other words, in computing the $50 aggregate amount "in any election", primaries, and special and general elections are treated as separate elections. See 21 M.R.S.A. §1392(3). See also Buckley v. Valeo, 424 U.S. at 24.

In our effort to ascertain the legislative intent underlying the enactment of paragraph 2 of section 1397(5), we have examined the history of P.L. 1977, c.575 as well as that of every other piece of legislation pertaining to Maine's Campaign Reports and Finances Act. Unfortunately, our search has produced no evidence of what the Legislature intended when it passed the statute in question.

Nevertheless, we are not totally without guidance in construing 21 M.R.S.A. §1397(5), ¶2, since Congress has enacted a similar provision as part of the Federal Election Campaign Act. 2 U.S.C.A. §431(9)(B)(iii)(1980 Supp.), as most recently amended by Pub.L. 96-187 (effective January 8, 1980), provides that the term "expenditure" does not include

> "any communication by any membership organization or corporation to its members, stockholders, or executive or administrative personnel, if such membership organization or corporation is not organized primarily for the purpose of influencing the nomination for election, or election, of any individual to Federal office, except that the costs incurred by a membership organization (including a labor organization) or by a corporation directly attributable to a communication expressly advocating the election or defeat of a clearly identified candidate (other than a communication primarily devoted to subjects other than the express advocacy of the election or defeat of a clearly identified candidate), shall, if such costs exceed $2,000 for any election, be reported to the Commission...."

(emphasis added).

A comparison of the federal law with 21 M.R.S.A. §1397(5), ¶2 reveals that while there are substantial differences in the scope of the two laws, there is also a strong similarity in the language of each, particularly that portion of the federal law underscored above. 2 U.S.C.A. §431(9)(B)(iii) first became law in 1976 when Congress re-wrote the Federal Election Campaign Act in response to and in compliance with the Supreme Court's decision in Buckley v. Valeo, supra. See Pub.L.94-283, effective May 11, 1976. As noted earlier, the second paragraph of 21 M.R.S.A. §1397(5) was not enacted by the Maine Legislature until 1977. See P.L. 1977, c.575 (effective October 24, 1977). In view of the similarity of language between the federal and Maine statutes, we believe it is appropriate to consider the Congressional intent behind the enactment of 2 U.S.C.A. §431(9)(B)(iii) as guidance in seeking to determine what the Maine Legislature intended when it enacted 21 M.R.S.A. §1397(5), ¶2. See, e.g., Wells v. Franklin Broadcasting Corp., Me., 403 A.2d 771, 773-74, n.4 (1979); Maine Human Rights Comm'n. v. Local 1361, Me., 383 A.2d 369, 375 (1978).

Shortly after the Supreme Court's decision in Buckley v. Valeo, supra Congress began considering legislation to amend the Federal Election Campaign Act. As originally drafted, the Senate Bill (S-3065) did not provide any reporting requirement for communications by membership organizations to its members.

In fact, the original bill maintained the definitions of "expenditure" to exclude such communications. See 2 U.S.C.A. §431(4)(c); 18 U.S.C.A. §610. However, on the floor of the Senate, Senator Packwood of Oregon introduced legislation which would have amended 18 U.S.C.A. §610 to provide that communications by a membership organization to its members were not expenditures "except that expenditures for any such communications which expressly advocate the election or defeat of a clearly identified candidate must be reported to the Commission...." See Vol. 122, pt.6, Cong.Rec. at 6730 (Senate, March 16, 1976). Under Senator Packwood's amendment there was no threshold amount which would trigger a reporting requirement since any expenditures for the type of communication in question would be reportable.

In response to Senator Packwood's amendment, Senator Cranston of California offered an amendment which would have required reporting if the expenditures were "in excess of $1,000." See Vol. 122, Pt. 7, Cong.Rec. at 7914 (Senate, March 24, 1976). On the floor of the Senate, Senator Cranston explained what his amendment would accomplish:

> "...under my amendment if there was one meeting or one communication that could be interpreted as having a value of $1,000 that would have to be reported. But there would not be an accumulative aggregate building up."

Vol. 122, pt.7, Cong.Rec. at 7915-16 (Senate, March 24, 1976).

Senator Packwood expressed concern with the Cranston amendment since it did not provide for aggregating expenditures in computing the $1,000 threshold figure. In an effort to effectuate a compromise, Senator Bumpers of Arkansas offered an amendment to the Cranston amendment which required reporting if the expenditures were "in excess of $1,000 in the aggregate, during the calendar year, with respect to a particular candidate." See Vol. 122, pt. 7, Cong.Rec. at 7918 (Senate, March 24, 1976). The remarks of Senator Packwood in response to the Bumpers amendment are instructive:

> "I frankly prefer his [Senator Bumper's] amendment to that of the Senator of California, because at least it is talking about an aggregate amount for a year. I want to make sure that it does not read 'per candidate per year' so that an organization- let us take New York with 38 Congressmen. A corporation or a union could say, $1,000 a year per candidate; that is $38,000; we do not have to report it. And off they go with $38,000 for a year." (emphasis added).

Vol. 122, pt. 7, Cong.Rec. at 7918. Subsequently, Senator Bumpers changed his amendment to provide for reporting if expenditures were "in excess of $1,000 per candidate per election." Vol.122, pt.7, Cong. Rec. at 7921 (Senate, March 24, 1976). The Senate thereupon passed the Bumpers amendment.

As passed by the Senate and sent to the House, the legislation dealing with the reporting of expenditures for certain communications by a membership organization provided in relevant part:[3]

> "A corporation, labor organization, or other membership organization which explicitly advocates the election or defeat of a clearly identified candidate through a communication with its stockholders or members or their families shall,...report such expenditures in excess of $1,000 per candidate per election... to the extent that they are directly attributable to such communications."

The House passed S-3065 (in lieu of the House Bill, H.R. 12406) but with various amendments which the Senate refused to accept. Consequently, the Senate requested a conference committee.

With respect to the provision requiring the reporting of expenditures in connection with communications made by membership organizations to its members, the conference committee replaced the Senate amendment to 2 U.S.C.A. §434(e)(2)(quoted above) with an amendment to 2 U.S.C.A. §431(9)(B)(iii)(quoted at page 4 supra). The conference amendment eventually became law. Of particular significance for the purposes of this opinion is the fact that the conference amendment deleted the language of the Senate amendment which required reporting if expenditures were "in excess of $1,000 per candidate per election," and replaced it with language requiring a report "if such costs exceed $2,000 for any election...." 2 U.S.C.A. §431(9)(B)(iii). Thus, the Conference Committee not only increased the threshold amount but also rejected the Senate's version by which the threshold amount was computed on a "per candidate" basis. In its report to Congress, the Conference Committee stated:

> "The conferees also intend that the $2,000 limit on excluded communications would apply without regard to the number of candidates mentioned in the communication. If, for example, a communication refers to 3 candidates and the cost of the communication is $3,000, the person making the communication would not be permitted to allocate the cost on the basis of the number of candidates mentioned in the communication. Since the communication cost more than $2,000 it would be reported regardless of the number of candidates mentioned in the communication."[4]

House Conference Report No. 94-1057, 2 U.S.Code Cong. & Adm. news at 957 (1976).

---

3. As originally passed by the Senate this legislation was an amendment to 18 U.S.C.A. §610. However, during the course of the enacting process the statutory reference was changed and the Senate amendment in question was transferred to 2 U.S.C.A. §434(e)(2). This change in the statutory reference is irrelevant for purposes of this opinion.

4. These sentiments were also expressed by Senator Cannon of Nevada who was the Senate Chairman of the Conference Committee. He stated, in response to a question from Senator Packwood:

In view of the language of the Conference Committee report as well as the remarks of various members of the conference committee (See, e.g., Vol. 122, Pt. 10, Cong.Rec. at 12198, 12199-21200, remarks of Rep. Hays of Ohio, House Chairman), it seems apparent to us that Congress intended that the $2,000 threshold figure would be computed on the basis of expenditures for all candidates for Federal office. This interpretation finds additional support in the regulations adopted by the Federal Election Commission.[5] 11 CFR §100.8 [b][4][v] (Revised as of April 1, 1980) provides that the term "election" as used in 2 U.S.C.A. §431(9)(B)(iii)

> "...means two separate processes in a calendar year, to each of which the $2,000 threshold described above applies separately. The first process is comprised of all primary elections for Federal office, whenever and wherever held; the second process is comprised of all general elections for Federal office, whenever and wherever held. The term 'election' shall also include each special election held to fill a vacancy in a Federal office or each runoff election."

Having examined the Congressional history of 2 U.S.C.A. §431 (9)(B)(iii)(1980 Supp.) it is now possible to return to your original question concerning the method of computing the $50 threshold figure appearing in 21 M.R.S.A. §1397(5), ¶2. While the language of section 1397(5), ¶2 is not identical to that contained in its federal counterpart, it is substantially similar. Moreover, a comparison of Maine's Campaign Reports and Finances Act with the Federal Election Campaign Act reveals numerous structural and linguistic similarities in the two statutes. As was the case in Maine Human Rights Comm'n. v. Local 1361, Me., 383 A.2d 369, 375 (1978), "[o]ur examination of the legislative history and statutory structure of the Maine Act inescapably compels but one conclusion: the ...provisions in our statute were intended to be the state counterparts of the Federal Act, complimenting and in certain instances supplementing the federal."

> "We [the Senate] required reporting for amounts over $1,000. The conference changed that to the amount of $2,000, but a cumulative amount, so it would apply even though it might have been for several candidates, and you would not separate it out. For example, if you had three candidates and $3,000 total expenditure even though the expenditure for each candidate might be $1,000, it is the cumulative figure of $2,000 which would trigger the reporting requirement." Vol.122, pt.10, Cong.Rec. at 12183 (Senate, May 3, 1976).

5. It is a well-established principle of statutory construction that the interpretation of a statute by the administrative agency charged with the responsibility of enforcing that statute is entitled to considerable weight. See, e.g., Dupler v. City of Portland, 421 F.Supp. 1314 (D. Me., 1976); Witt v. Secretary of Labor, 397 F.Supp. 673 (D.Me. 1975); Brooks v. Smith, Me., 356 A.2d 723 (1976).

We are persuaded that in enacting paragraph 2 of section 1397(5) the Maine Legislature, for the most part, sought to accomplish for state and county offices what Congress, by virtue of 2 U.S.C.A. §431(9)(B)(iii), sought to accomplish for Federal offices. Accordingly, it is our conclusion that the $50 threshold figure referred to in 21 M.R.S.A. §1397(5), ¶2 is to be computed on the basis of the expenditures made for communications in all of the electoral races for state or county offices, with primary, general and special elections being treated as separate elections to each of which the $50 threshold amount applies separately.[6]

-II-

In your second question you have inquired whether "a membership organization [is] required to state in a communication to its membership expressly advocating the election of a candidate that the communication is not authorized by the candidate, if that candidate has sought and received the organization's endorsement?"

21 M.R.S.A. §1394 (1965-1979 Supp.) provides in pertinent part:

> "Whenever any person makes an expenditure for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate through broadcasting stations, newspapers, magazines, outdoor advertising facilities, direct mails and other similar types of general public political advertising and through flyers, handbills, bumper stickers and other nonperiodical publications, such communication, if authorized by a candidate, a candidate's authorized political committee or other agents, shall clearly and conspicuously state that the communication has been so authorized and shall clearly state the name and address of the person who made or financed the expenditure for the communication.
>
> If such communication is not authorized by a candidate, a candidate's authorized political committee or their agents, the communication shall clearly and conspicuously state that the communication is not authorized by any candidate, and state the name and address of the person who made or financed the expenditure for the communication."[7]

---

6. Consequently, it is our conclusion that 21M.R.S.A. §1397(5), ¶2 requires reporting of expenditures in the circumstances described in your opinion request and quoted below:

> "....if M.S.E.A.'s P.A.G.E. Committee expends $35 to endorse Candidate Smith in House District A and $35 to endorse Candidate Jones in Senate District B, does the statute require that those expenditures be reported?"

7. The third paragraph of 21 M.R.S.A. §1394 also provides that "[n]o person operating a broadcasting station

A membership organization is a "person" within the meaning of section 1394. See 21 M.R.S.A. §1392(5)(1965-1979 Supp.).[8]

The obvious purpose of section 1394 is to inform the voting public as to whether or not a communication "expressly advocating the election or defeat of a clearly identified candidate" has received the authorization of a particular candidate. In our view, the language of section 1394 is clear. Any person, including a membership organization, who makes a communication of the type specified in the statute, is required to clearly and conspicuously state either that the communication has been "authorized by a candidate, a candidate's authorized political committee or other agents," or that the communication "is not authorized by any candidate." The fact that a candidate has sought and received a membership organization's endorsement, does not relieve the membership organization of its statutory obligation to clearly and conspicuously state that its "communications expressly advocating the election or defeat of a clearly identified candidate" have been authorized or not authorized by a candidate. If the candidate who has sought the membership organization's endorsement has also authorized the making of a communication of the type covered by section 1394, then the communication must state that it "has been so authorized." On the other hand, if the candidate has not authorized the making of such a communication, the communication must state that it "is not authorized by any candidate."

I hope this information is helpful to you. Please feel free to contact me if I can be of further assistance.

Sincerely,

RICHARD S. COHEN
Attorney General

RSC:sm

---

within this State shall broadcast any such communication without an oral or written visual announcement of the name of the person who made or financed the expenditure for the communication." As amended by P.L. 1979, c.638 (effective March 13, 1980).

8. 21 M.R.S.A. §1392(5) defines "person" to mean "an individual, committee, firm, partnership, corporation, association or any other group or organization of persons."