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August 28, 1996
AO-96-26

Robert Volante, Chairman and Treasurer
John Hancock Mutual Life Insurance Company
State Political Action Committee
137 Marlborough Street
Boston, MA 02116

Dear Mr. Volante:

This letter is in response to your July 26, 1996 request for an advisory opinion regarding the John Hancock Mutual Life Insurance Company State Political Action Committee (the PAC). You have asked several questions, each of which I will answer separately.

1. **Are there restrictions on who may be solicited for membership by the PAC? For example, can the PAC solicit spouses, members of boards of directors, employees of subsidiaries or affiliates, vendors or unrelated other third parties?**

There are no restrictions on who may be solicited for membership. Persons employed for compensation by the commonwealth (or any subdivision of the commonwealth) may not, however, participate in fundraising activities for the PAC, and candidates and elected public officials (even at the local level) may not "establish, finance, maintain, control or serve as a principal officer" of a PAC. See M.G.L. c. 55, sections 13 and 5A.

You should also note that if a majority of the members of the PAC share a common employer, the name of the PAC must identify the employer. See M.G.L. c. 55, s. 5B.

2. (a) **Can the same person act as both PAC Chairman and Treasurer?**
(b) **May a registered legislative and/or executive agent act as Chairman and/or treasurer?**

Yes, as to both (a) and (b). Persons employed for compensation by the commonwealth may not solicit or receive contributions and therefore may not serve as treasurer. I assume the treasurer/chairman is not so employed.

3. (a) **Is it necessary for the Chairman/Treasurer of a PAC comprised entirely or mostly of employees of a single corporation to exercise control over all PAC functions, including decision-making regarding contributions to candidates, or may any employees of the corporation do so?**

The chairman and treasurer, or their designated agents, must exercise control over the PAC's expenditures. See M.G.L. c. 55, s. 5. In addition, the campaign finance law states that treasurers

must keep and preserve detailed accounts, and file campaign finance reports. See M.G.L. c. 55, ss. 5 and 18. Because of these responsibilities, treasurers have a substantial degree of control over record keeping and reporting functions.

(b) To what extent may the control be exercised by a registered legislative and/or executive agent or a non-contributor to the PAC?

The campaign finance law does not limit the extent of control which may be exercised by a legislative or executive agent or a non-contributor to the PAC. Therefore, to the extent such control is compatible with the treasurer and chairman meeting the responsibilities listed above, a legislative or executive agent, or a non-contributor to the PAC, may become involved in PAC activities. For example, a legislative or executive agent, or a non-contributor, could provide guidance regarding which candidates should receive contributions from the PAC.

4. (a) To what extent may the Chairman/Treasurer or other decision-maker of a PAC comprised entirely or mostly of employees of a single corporation look to that corporation for guidance on candidate contribution decisions? May the PAC request recommendations from the corporation's management? From the corporation's government relations staff? From the corporation's registered legislative and/or executive agents?

The campaign finance law does not limit the extent to which a PAC may look to a corporation for guidance or recommendations. Business and professional corporations are precluded by M.G.L. c. 55, s. 8 from making contributions of anything of value to state or local candidates for public office, or to any political committees organized on their behalf. In an opinion issued by the Attorney General to OCPF in 1980, the Attorney General considered, in detail, the extent to which corporate political activity is consistent with section 8. Opinion of the Attorney General, November 26, 1980 (a copy of the Opinion is enclosed, for information). The Opinion states:

The prohibition against corporate financial involvement does not extend to individual corporate officers and employees. The proscription contained in G.L. c. 55, s. 8, applies only to the activities of business corporations themselves. It does not attempt to restrict volunteered political activity by individuals associated with those corporations. . . . corporate officers, including a corporation's chief executive officer, are free to endorse any candidate they choose, to discuss that candidacy during the normal course of conducting corporate business, and to solicit support, financial or otherwise, for the candidates of their choice.

To the extent a corporation provides goods or services to a PAC, however, the corporation must be reimbursed for the value of such goods or services. The Opinion also noted that the prohibition does not apply to the extent a corporation allows employees to perform non-work related activities during business hours.

It follows that a corporation may be looked to for guidance on candidate contribution decisions, and the PAC may request recommendations from the corporation's management, government relation staff or legislative or executive agents. This does not mean, however, that the corporation may use its resources to analyze the positions of the different candidates, or prepare written reports for the PAC, unless compensation is provided for such activities.

(b) If guidance can be provided by corporate management, government relations staff or legislative or executive agents, is it necessary for those individuals to be themselves contributors to the PAC?

No. It is not necessary for the persons who provide guidance or recommendations to a PAC to be contributors to the PAC.

5. (a) May a corporation's legislative and/or executive agent deliver a check from a PAC comprised entirely or mostly of employees of that corporation?

Yes. Although the "bundling" provisions of the campaign finance law place certain limitations on "contributions made to a candidate . . . through an intermediary or conduit" such limitations do not "prohibit" a corporation's legislative or executive agent from delivering a PAC check. See M.G.L. c. 55, s. 10A. Section 10A does not "prohibit" the making of contributions through intermediaries or conduits. Moreover, your question states that only one contribution is being delivered, and section 10A only applies where more than one contribution is delivered, or arranged, by a "regulated intermediary."

A legislative or executive agent is a "regulated intermediary" and as such is subject to the limitations defined in section 10A and in regulations issued by OCPF at 970 CMR 1.07. As discussed in more detail in the enclosed advisory opinion, AO-95-06, regulated intermediaries and bundled contributions to candidates are limited in two ways. First, if at least one of the bundled contributions is greater than \$102,¹ the contributions are treated not only as contributions from the person making the contribution but also as "contributions from the intermediary or conduit to the candidate, if the intermediary or conduit is [a regulated intermediary] . . ." M.G.L. c. 55, s. 10A(b)(2). For example, if five contributions of \$100 each from five individuals and two contributions of \$200 each from two other individuals were made

¹ Section 10A(g) states that "the limitations of this section . . . shall not apply when each contribution is one hundred dollars or less; provided, however, that said one hundred dollar amount shall be indexed biennially for inflation by the director, who, not later than December thirty-first of each odd numbered year, shall calculate and publish such indexed amount, using the federal consumer price index for the Boston statistical area." The amount was indexed in December 1995 to \$102, and will next be indexed in December 1997.

Robert Volante
August 28, 1996
Page 4

through a legislative agent, the legislative agent would be treated as having made a \$900 contribution. Since a legislative agent's individual contribution limit is only \$200, such an agent would be deemed to have made an "excess contribution." See M.G.L. c. 55, s. 7A(b).

Second, if contributions are made through a regulated intermediary, that regulated intermediary must "report in writing the original source and the intended recipient of such contribution along with other information required by [chapter 55] to the director [of OCPF] and to the [candidate]." See M.G.L. c. 55, s. 10A(e).

(b) If a corporation's legislative and/or executive agent may deliver a check from a PAC comprised entirely or mostly of employees of that corporation, must the legislative and/or executive agent him or herself be a member of the PAC?

No. The campaign finance law does not require a corporation's legislative or executive agent, who delivers a check for the corporation's PAC, to be a member of the PAC.

(c) To what extent does a PAC check delivered by a corporation's legislative and/or executive agent count against the agent's personal contribution limit?

A PAC check delivered by an officer or agent of the PAC would not be considered to be a "contribution made through an intermediary or conduit." Therefore, such a contribution would not count against the agent's personal contribution limit. See 970 CMR 1.07(3)(c). A legislative or executive agent of the corporation may or may not also be an agent or officer of the PAC.

Whether a corporation's legislative or executive agent who delivers a PAC check is subject to the limitations of the bundling law when delivering the PAC check depends on the agent's relationship to the PAC making the contribution. If the corporation's legislative or executive agent is also an agent or officer of the PAC, the PAC check would not be considered to be made "through an intermediary or conduit."

If the corporation's legislative or executive agent, however, is not also an agent or officer of the PAC, the PAC check would be considered to be given "through an intermediary or conduit." In that event, if the legislative or executive agent delivers at least one other check with the PAC check and one of the checks being delivered is for more than \$102, the delivery by the legislative or executive agent would be subject to the provisions of section 10A and the PAC's check would count against the corporation's legislative or executive agent's personal contribution limit.

A copy of the relevant portion of the OCPF regulations is enclosed, for information.

6. **(a) May a PAC use company premises, employees and other resources to administer the PAC, as long as the PAC reimburses the company for the reasonable value of these resources?**

Robert Volante
August 28, 1996
Page 5

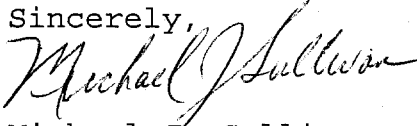
Yes. If the PAC pays the fair market value of whatever resources are provided by a corporation, a contribution from a corporation, which would be prohibited by section 8, would not have been made.

(b) If a company has a policy or practice of allowing employees to perform personal tasks on company time (e.g., making a personal phone call, smoking a cigarette, running a quick errand, etc.) then is it also permissible for employees to perform business on behalf of the PAC in the same manner (e.g., walking to someone's office and picking up a PAC check) without necessitating reimbursement?

Yes. The prohibition on corporate contributions does not apply to the extent a corporation allows employees to perform non-work related activities during business hours. "If, however, the corporation generally prohibits its employees from performing non-business activities during normal working hours, it may not make an exception for political services rendered to a particular candidate [or PAC]." Opinion of the Attorney General, November 26, 1980.

This opinion has been rendered solely on the basis of representations made in your letter, and solely in the context of M.G.L. c. 55.

Please do not hesitate to contact this office should you have additional questions about this or any other campaign finance matter.

Sincerely,

Michael J. Sullivan
Director

MJS/cp
Enclosures