



THE COMMONWEALTH OF MASSACHUSETTS
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September 16, 2008
AO-08-06

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Re: American Resort Development Association Resort Owners Coalition Massachusetts PAC

Dear Mr. DeLaquil:

This letter is in response to your recent request for guidance regarding the creation of a Massachusetts PAC.

You have stated that the American Resort Development Association Resort Owners Coalition PAC, which is registered with the Federal Election Commission, represents the interests of owners of fractional real estate interests, including timeshare resort owners, in local, state and national governmental affairs. This committee would like to create a separate Massachusetts PAC ("the PAC" or "ARDA ROC-MA PAC") on behalf of owners of fractional real estate interests in Massachusetts.

The PAC would accept voluntary contributions from fractional real estate owners in Massachusetts and potentially from owners in other states. Homeowner associations would include a line on resort owners' maintenance statements suggesting a donation to the PAC and indicating that such a donation would be optional. Elsewhere on the maintenance statement, the association would include the following disclaimer:

ARDA ROC-MA PAC ensures that owners are able to engage government officials at all levels of government in order to influence key policy decisions affecting owners' and timeshare homeowners associations. ARDA ROC-MA PAC is non-partisan. The record and quality of each candidate determines who receives ARDA ROC-MA PAC support.

ARDA ROC-MA PAC contributions are political contributions not deductible for federal income tax purposes. You may refuse to contribute or contribute



more or less without reprisal or otherwise affecting your membership. Only U.S. citizens or permanent resident aliens (green card holders) may contribute to ARDA ROC-MA PAC.

The maintenance statement would include an "opt out" box for owners that do not wish to contribute to the PAC to express their intent. The PAC would retain the names of each contributor and the address of the resort in which they have an ownership interest.

Most property owners would be expected to include both their contribution to the PAC and their home owners association assessments in a single check or credit card payment. Individual home owners associations would then aggregate these contributions and address a single check to their resort management company. The resort management company would then either aggregate the contributions from homeowners associations from their resorts and address a single check to the PAC, or would transmit to the PAC the contributions from separate home owners associations. Neither homeowners associations nor resort management companies would contribute monetarily or otherwise to the PAC.

The PAC would be managed for the benefit of its members by employees of the American Resort Development Association, a trade association that is registered as a not-for-profit corporation. The PAC would pay fair market value for all services provided by the Association.

QUESTION

Would the PAC's proposed structure of operations comply with the Massachusetts campaign finance law?

ANSWER

Not if contributions are collected by default (as in your proposal). This is otherwise referred to as a "reverse check-off." The method of raising funds must be revised to use a check-off block which requires a person to affirmatively state that he or she *wants* to make a contribution to the PAC, also referred to as a "positive check-off," in addition to paying the other amounts due under the maintenance statement. In other respects, the PAC's structure would comply with the campaign finance law.

DISCUSSION

"Contributions" are defined, in part, as money or other things of value given to a candidate or committee "*for the purpose* of influencing the nomination or election" of a candidate or candidates. See M.G.L. c. 55, § 1 (emphasis added). *An affirmative action* must be taken to make a contribution; it may not be made by default. See AO-98-03. A contribution may not be made by a person without the person agreeing to make the contribution, knowing the amount of the contribution, and knowing the recipient of the contribution. In addition, when an individual makes a contribution by check-off (or

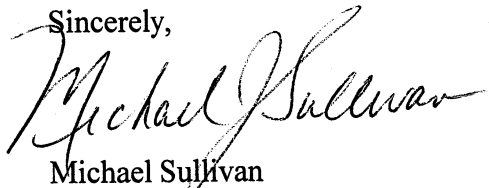
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otherwise) it must be clear to the recipient of the contribution that the contribution is "based on the contributor's expressed intent." See also M.G.L. c. 55, § 10 and 970 CMR 1.04(1), (3) and (4) (requiring contributions to be attributable to the true source of the funds).

The remaining aspects of your proposal would comply with M.G.L. c. 55, the Massachusetts campaign finance law. For further information, I have enclosed OCPF's *Campaign Finance Guide: Political Action Committees and People's Committees*, which summarizes restrictions applicable for PACs.

The advice in this letter is based solely on the information provided in your letter and is limited to providing guidance within the scope of M.G.L. c. 55.

Please contact us if you have further questions.

Sincerely,

Michael Sullivan
Director

Enclosure