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Office of Campaign and Political Finance

One Ashburton Place, Room 411

Boston, MA 02108

Advisory Opinion

January 2, 2003

AO-03-01

VIA FAX AND REGULAR MAIL

Paul E. Cesan

State Police Assoc. of Massachusetts

550 Worcester Road

Framingham, MA 01702

Re: PAC Contributions

Dear Mr. Cesan:

This letter is in response to your request for an opinion regarding contributions by the State Police Association of Massachusetts (“SPAM”) to the SPAM Political Action Committee.

You have indicated that SPAM would like to amend its by-laws to establish a system where the organization’s aggregate annual contributions to its PAC would be determined based on the number of dues paying members. For example, SPAM is thinking about donating up to \$6.50 to the PAC this year for each of its 2150 members. The proposed bylaw states, “Beginning in February, 2003, a portion of the dues collected from each member will be allocated to the SPAM Political Action Committee (PAC) fund, in an amount not to exceed \$14,900 per year.”

QUESTION

Is SPAM’s proposal consistent with M.G.L. c. 55, the campaign finance law?

ANSWER

Generally speaking, yes. However, the text of the proposed bylaw should be changed to make it is clear that SPAM is not functioning as a political committee by soliciting and receiving political contributions from members, and that ensuing contributions to the PAC are from SPAM’s general treasury in accordance with IB-88-01 and not from its individual members.

DISCUSSION

As a membership organization whose general treasury does not contain funds derived from business or professional corporations, SPAM may make political contributions and expenditures in

accordance with OCPF's Interpretive Bulletin IB-88-01. This includes contributions from SPAM to its PAC. There is nothing in the campaign finance law to preclude SPAM from enacting a bylaw concerning annual contributions to its PAC, or from using a per member figure to determine the aggregate amount of the organizations contributions up to the "incidental threshold" to be provided to the PAC during a calendar year.¹ See IB-88-01.

It is important, however, that SPAM, in establishing a bylaw to accomplish these goals, does not take on the role of a political committee by soliciting or receiving into its general treasury funds from members that are understood to be political contributions. Compare AO-02-36 (advising a professional association that its members could use a single check to pay dues and make an optional PAC contribution, but only if separate segregated transmittal accounts were established to receive such payments). As explained in IB-88-01, an association which solicits or receives any money or other things of value for political purposes is deemed to be functioning as a political committee and is therefore subject to the provisions of the campaign finance law as of the date of the solicitation or receipt of such money or other thing of value. An organization functioning as a political committee is also subject to all limitations on contributions and expenditures, and all relevant reporting requirements, imposed by M.G.L. c. 55.

As drafted, SPAM's proposed bylaw could be interpreted as incorporating an improper political solicitation into its general dues collection, or creating an ambiguity as to whether the contributions should be deemed to be from SPAM or the individual members. To eliminate these concerns, SPAM should consider adopting a bylaw that focuses on its intent to make annual contributions to the PAC in an amount based generally on its number of members, instead of emphasizing the diversion of a particular member's dues, which, as noted, would not be consistent with the campaign finance law. For example, an appropriate bylaw might state, "Beginning in February, 2003, SPAM will contribute each year an amount of money not to exceed \$14,900 to the SPAM Political Action Committee (PAC) fund based on the number of dues-paying members. The contribution will come from the general fund and will not involve any specific PAC contributions from individual members."

This opinion is issued on the basis of representations in your letter and is solely within the context of the campaign finance law. I encourage you to contact us in the future if you have further questions about this opinion or any other aspect of the campaign finance law.

Sincerely,



Michael J. Sullivan
Director

MJS:bp

¹ Of course, SPAM's ability to contribute up to the incidental threshold to the SPAM PAC in a calendar year presumes that SPAM is not bound by the contribution limits for political action committees virtue of it having previously exceeded its incidental threshold for political expenditures. SPAM's "incidental threshold" would be either \$15,000 or 10% of the organization's gross revenue from the previous year, whichever is less. See IB-88-01.