

680301.1

CORPORATIONS: Political contributions for local elections.

ELECTIONS: Corrupt practices—corporate donations for political purposes.

A chamber of commerce is not a corporation organized for political purposes and therefore may not make contributions to campaigns for local school millage elections.

No. 4605

March 1, 1968.

Mr. James K. Miller
Prosecuting Attorney
416 Hall of Justice
333 Monroe Avenue, N.W.
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You have requested an opinion as to whether the Greater Grand Rapids Chamber of Commerce may lawfully make contributions to the campaign for the favorable passage of a proposal in a school millage election.

Section 919 of the Michigan election law, Act 116, P.A. 1954; C.L.S. 1961 § 168.919; M.S.A. 1956 Rev. Vol. § 6.1919, states:

“No officer, director, stockholder, attorney, agent or any other person, acting for any corporation or joint stock company, whether incorporated under the laws of this or any other state or any foreign country, except corporations formed for political purposes, shall pay, give or lend, or authorize to be paid, given or lent, any money belonging to such corporation to any candidate or to any political committee for the payment of any election expenses whatever.”

The Greater Grand Rapids Chamber of Commerce is incorporated as a nonprofit corporation under the provisions of Act 327, P.A. 1931, the Michigan general corporation act, C.L. 1948 § 450.1 et seq.; M.S.A. 1963 Rev. Vol. § 21.1 et seq. The articles of incorporation set out the purposes of that corporation as follows:

“The purpose or purposes of this corporation are as follows:

“To promote and protect the commercial, civic, manufacturing and industrial interests of the city, its inhabitants and members of this Chamber; to acquire and disseminate valuable commercial and other information relating to these purposes; and encourage a greater interest and a better understanding of commerce, manufacturing and industry as factors in the growth and prosperity of the city; to promote just and equitable principles of trade and foster commercial integrity; to increase acquaintanceship among the members and facilitate the speedy adjustment by arbitration of business disputes; to interchange views and secure concerted action upon matters of public and civic interest.”

Section 919 of the Michigan election law is a re-enactment of Section 14 of Act 109, P.A. 1913; 1 C.L. 1915 § 3841, the so-called “corrupt practices act.” The Michigan Supreme Court has interpreted that act to apply to all elections wherever “the electors are called upon to decide any

measure or measures that may be before the people to be voted upon. . . .”
People v. Gansley, 191 Mich. 357 (1916).

In *La Belle v. Hennepin County Bar Ass'n*, 206 Minn. 290, 288 N.W. 788 (1939), one issue presented to the Minnesota Supreme Court was whether the corrupt practices statute prohibiting contributions for political purposes “by a corporation doing business in the state” was applicable to a county bar association. The opinion stated at page 790:

“The contention that the corrupt practices act does not apply to defendant rests upon the proposition that the statute applies only to a corporation organized for pecuniary profit doing business in the state, and that defendant is not doing business at all, much less that it so organized. The statute does not define the term ‘doing business’. Hence, the meaning of the term is to be taken as generally understood in the light of other legislation and the purpose of the statute.

“Ordinarily doing business means the exercise of the functions for which a corporation was created, whether such function be for profit or not. (citations omitted)

“Defendant’s activities are to be considered as doing business under the statute under which it was incorporated. Subsection 4 of § 7893 requires the election of officers ‘to conduct the transactions of the society’ and an annual meeting for such election ‘and the transaction of other business’. Transacting business is the same as doing business.

“Other statutes in *pari materia* seem to indicate quite persuasively that the language was used in the sense indicated. . . .”

The issue here is similar, it being whether or not the Chamber of Commerce is a corporation formed for political purposes. While it may be conceded that the policies and the administration of the government may affect the commercial interests of a locality, it does not follow that an association of businessmen in the form of a chamber of commerce to promote and protect those interests, is organized for political purposes.

Historically chambers of commerce were incorporated under the provisions of Act 166, P.A. 1863 as amended; C.L. 1915 § 8936 et seq., entitled “AN ACT for the incorporation of boards of trade and chambers of commerce.” It is clear from provisions of that act that the purpose of such corporations was to seek regulation of trade and commerce by the voluntary association of businessmen who would formulate rules and regulations to govern business transactions.

In *Retailers Credit Ass'n. of Alameda County v. Commissioner of Internal Revenue*, 90 F. 2d 47, 51 (9th C.C.A. 1937), reference is made to the dictionary definition of a chamber of commerce:

“A chamber of commerce is defined by Webster’s New International Dictionary to be ‘A board or association to promote the commercial interests of a locality, a country, or the like.’ In 11 C.J. 228, and Bouv. Law Dict. (Rawle’s 3rd Rev.), it is defined as ‘a society of a city, who meet to promote the general trade and commerce of the place.’ This latter definition is quoted in *Crooks v. Kansas City Hay Dealers’ Ass’n* (C.C.A. 8) 37 F. (2d) 83, 85.”

It is significant that both the Michigan general corporation act of 1931 and its predecessor Act 84, P.A. 1921, C.L. 1929 § 9943 et seq., which expressly repealed Act 166, P.A. 1863, differentiate between a chamber of commerce and a corporation formed for political purposes. Section 132 of the Michigan general corporation act, C.L. 1948 § 450.132; M.S.A. 1963 Rev. Vol. § 21.133, which is similar to the provision in the earlier act, states in part:

"The provisions of sections 117 to 131 of this act apply to all associations, societies and corporations of the nature of clubs, boards of trade and commerce, associations of persons engaged in the same or allied professions, trades, occupations and industries, when such persons desire to associate for mutual benefit, comfort or instruction not involving direct pecuniary profit; and to societies for the advancement of particular scientific or sociological, political views or opinions, the collection and dissemination of historical or scientific facts, the advancement of literature, cultivation of art, the prevention of cruel and inhuman practices, and to any other such society, except burial associations and funeral benefits societies not otherwise provided for by statute, whether enumerated herein or not, so long as the purpose or purposes thereof are lawful, and not for direct pecuniary profit of the members. . . ."

In *People v. Gansley, supra*, the court was not called upon to determine whether or not a specific corporation was formed for political purposes. However, it did discuss the meaning of the word "political" as used in the corrupt practices act at page 366:

"We think this too narrow a view of the question. When the word 'political' is used as it is in this act, even if held to qualify the words 'principle or measure,' it is a narrow construction to hold that it applies to one or more of the recognized political parties only. The word has a much broader meaning, and often refers to matters of public policy. The first three definitions of the word as given by Webster are:

"1. Of or pertaining to polity, or politics, or the conduct of government, referring in the widest application to judicial, executive and legislative branches; of or pertaining to, or incidental to, the exercise of the functions vested in those charged with the conduct of government, relating to the management of affairs of state; as, *political theories*.

"2. Having, or conforming to a polity, or settled system of administration; as a *political body or government*.

"3. Of or pertaining to the exercise of the rights and privileges or the influence by which the individuals of a State seek to determine or control its public policy; having to do with the organization or action of individuals, parties or interests that seek to control the appointment or action of those who manage the affairs of State; as, his *political affiliations were with the Republicans*."

"The word 'political' is defined by Bouvier to be pertaining to policy or the administration of government. *People v. Morgan*, 90 Ill. 558, 563. See, also, Black's Law Dictionary, defining 'Political.'"

Later, after citing *State v. Patterson*, 67 Fla. 499, 65 S. 659, as follows at page 367:

"The object of the law is to prevent corruption, fraud, and deception of all kinds, and the statutes should be enforced to accomplish the legislative purpose."

the court stated the probable purpose for the prohibition of corporate contributions for election expenses at page 376:

". . . It is probably that the legislature had in mind the fact that it is matter of history that corporations have in many instances used their funds (acting through and by their officers) to influence elections, and that body believed that such practice was an abuse and menace to good government, which it sought to remedy by this legislation. . . ."

It may be argued that the interest that the Greater Grand Rapids Chamber of Commerce has in the general welfare of the community, as expressed in its articles of incorporation, "to interchange views and secure concerted action upon matters of public and civic interest," qualifies it as a corporation formed for political purposes. First it should be pointed out, as is stated by the court in *State v. Joe Must Go Club of Wisconsin*, 270 Wis. 108, 70 N.W. 2d 681, 684 (1955), that "[t]he powers and purposes of a corporation cannot be determined entirely by its declaration thereof in its articles of incorporation and by-laws, but consideration must be given to the manner in which it is conducted. . . .", and secondly, that the same purpose, as expressed in the articles of incorporation, is common to many of the nonprofit corporations enumerated in Section 132 of the Michigan general corporation act. Had the legislature wished to exclude such corporations from the prohibition against corporate contributions, they could have done so in express terms. It is stated in *La Belle v. Hennepin County Bar Ass'n*, *supra*, at page 791:

"Where the intention has been to limit an act to corporations organized for profit, it has been so provided in express terms as in the original law prohibiting campaign contributions by such corporations (§ 601, *supra*) and the statutes regulating the admission of foreign corporations to do business in the state which apply only to those organized for profit. . . ."

"The need for regulating campaign expenditures by corporations not organized for pecuniary profit is as great as that of other corporations. The purpose of the corrupt practices law is to prevent fraud and to insure the purity of elections by limiting the amounts of campaign expenses, prohibiting corporate campaign contributions, requiring publicity of all campaign contributions and regulating practices incident to political campaigns. That nonprofit corporations and associations may raise funds for expenditure on behalf of candidates and measures to be voted on at an election as effectively as those organized for pecuniary profit is apparent from the decisions. . . ."

From the foregoing it appears clear that the legislature intended that the sole exception to the prohibition on corporate contributions for election expenses be limited to those corporations formed primarily for political purposes. The term does not include the sundry social, civic and professional corporations which, while having an interest in the welfare of the community, are not formed primarily to influence the policies or the administration of the government. Accordingly, it is my opinion that the Greater Grand Rapids Chamber of Commerce may not make contributions to the campaign for the favorable passage of a proposal in a school millage election.

FRANK J. KELLEY,
Attorney General.

680305.1

FEDERAL: Radio transmission.

FEDERAL: Enforcement of federal laws by state police officers.

The federal government has not so preempted the field of radio transmission and reception as to exclude state and local governments from the exercise of police powers which do not conflict with specific federal regulations in this area.

The federal government has preempted the licensing and assignment of radio frequencies and the state cannot regulate this activity.

Peace officers of the state may arrest for violations of federal laws and regulations although offenses against the federal sovereignty may only be tried in a federal court.

No. 4631

March 5, 1968.

Honorable Emil Lockwood
State Senator
The Capitol
Lansing, Michigan

You have requested my opinion on the following five questions concerning the rights and powers of the State in the regulation of radio transmission and reception:

1. Does the Federal Government have exclusive control in the regulation of radio transmission and reception?
2. If not, then what are the prerogatives of the state in the matter of radio transmission and reception control?
3. Can the state require that radio transmitters and receivers, capable of transmitting on or receiving messages from law enforcement radio frequencies be either registered or licensed by the state?
4. Can the state through its officers delegate to law enforcement agencies the power to enforce any Federal legislation or regulation that may exist to prohibit the interference with or reception of law enforcement radio transmissions?