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To: internetprn@FEC
cc: "Kelley, Barbara" <KelleyB@Michigan.gov>, "Dore, A Edwin" <DoreAE@Michigan.gov>, "Sacco, Robert" <SaccoR@Michigan.gov>

Subject: Notice 2001-14



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STATE OF MICHIGAN



CANDICE S. MILLER, Secretary of State
MICHIGAN DEPARTMENT OF STATE
LANSING, MICHIGAN 48918-0001

December 3, 2001

Ms. Rosemary C. Smith
Assistant General Counsel
Federal Election Commission
999 E. Street, NW
Washington, D.C. 20463

Dear Ms. Smith:

This comment regarding proposed 11 CFR 117.2 is being submitted on behalf of the Michigan Department of State by Anne Corgan (corgana@michigan.gov) Director, Bureau of Legal Services, Regulatory Services Administration, 208 N. Capitol Avenue, Lansing, Michigan 48918.

The Michigan Department of State is responsible for administering the Michigan Campaign Finance Act, which parallels the Federal Election Campaign Act in many respects. In a recent interpretive statement addressing the placement of hyperlinks on a corporate web site, the Department indicated that if a corporation or union is fully reimbursed for the placement of a hyperlink, then no contribution has occurred. However, a corporation or union that is not fully reimbursed for the placement of a hyperlink on its website should be deemed to have made a contribution.

The Federal Election Commission seemed to have adopted this rationale in its Matters Under Review and Advisory Opinions. For example, in M.U.R. 4340, the FEC argued that a link on a corporate website was a contribution because it provided "additional exposure to members of the general public, which is tantamount to advertising." The FEC also dismissed the respondent's argument that because a hyperlink was ordinarily provided free of charge, it did not have value. The FEC asserted that "the mere fact that something is ordinarily provided free of charge does not alone answer the question of whether it has value—certainly, something can be free of charge but still have value." The FEC and the respondent signed a conciliation agreement in which the respondent admitted that the hyperlink was a contribution in violation of 2 U.S.C. 441b(a).

We fail to see any compelling reason for the FEC to abandon its previous position. If it does, corporate and union resources will be used to steer viewers to the candidates of their choice, to the detriment of opposing candidates. This would erode the prohibition against corporate and labor organization contributions or expenditures.

Thank you for allowing us the opportunity to comment on the proposed regulations.

Sincerely,

Anne Corgan, Director
Bureau of Legal Services
Regulatory Services Administration