The Commonwealth of Massachusetts
Office of
Campaign & Political Finance
One Ashburton Place, Boston 02108
727-8352

Dennis J. Duffin
Director

AO-18

September 22, 1982

Mindy Lubber, Treasurer
Campaign to Save the Massachusetts
Bottle Bill
37 Temple Place
Boston, MA 02111

Dear Ms. Lubber:

It has come to my attention that the Campaign to Save the Massachusetts Bottle Bill, a corporation formed under the provisions of M.G.L. c. 180, is functioning as a political committee. Pursuant to my powers as Director under M.G.L. c. 55, section 3, it is my opinion that c. 55 does not permit the incorporation of a political committee.

In reading c. 55 as a whole, it is clear that the legislature did not contemplate that corporations organized under M.G.L. c. 180 could function as a political committee under M.G.L. c. 55. Section 7 states "No person or combination of persons, including a corporation formed under the provisions of chapter one hundred and eighty, shall in connection with any nomination or election receive money or its equivalent, expend or disburse or promise to expend or disburse the same, except as authorized by this chapter." This sentence provides that groups of persons, such as associations who wish to participate in political campaign financing by making contributions or expenditures for political purposes must comply with the provisions of M.G.L. c. 55. This sentence regulates those groups who are involved in political campaign financing in an incidental manner, and does not purport to regulate groups organized specifically for the purpose of receiving and expending funds for political purposes. Rather, it is the second sentence of this paragraph, which regulates political committees with the same language as the first sentence regulates persons, and combinations of persons including 180 corporations, in stating that "A political committee or a person acting under the authority or on behalf of such a committee may receive money or its equivalent, or expend or disburse, or promise to expend or disburse the same for the purpose of aiding or promoting the success or defeat of a candidate at a primary or election or a political party or principle in public election or favoring or opposing the adoption or rejection of a question submitted to the voters, and for other purposes expressly authorized by this chapter subject, however, to the provisions thereof." Since these two sentences separately regulate

180 corporations and political committees, it is apparent that it was never contemplated or intended that a political committee be a 180 corporation. The language of section 7 is clear and unambiguous. It literally refers to 180 corporations in one sentence, and political committees in another, with the same language applying to the two separate entities.

Section 7 explicitly states that 180 corporations can only act in this regard as authorized by this chapter. However, the chapter does not further authorize political campaign finance activity of a 180 corporation. It has been the consistent interpretation of this office that since 180 corporations, associations and other groups or persons incidentally involved in political campaign financing were contemplated, yet not further prohibited, these entities can participate in campaign financing without complying with the disclosure requirements. Political committees, on the other hand, must comply with the reporting and disclosure requirements, as well as other requirements, of c. 55. The clear import of c. 55 is that 180's and political committees are two separate and distinct entities, and the existence of one precludes the existence of the other.

Section 8 states, in part, "No person or persons, no political committee and no person acting under the authority of a political committee, or in its behalf, shall solicit or receive..." As in section 7, which included the 180 corporation as a person or combination of persons and then refers to political committees, section 8 refers to person or persons and then to political committees. Interpretations of each provision of c. 55 must be harmonious with a whole reading of the chapter. In light of that reading, section 8, as well as other similar language must include 180 incorporations in its reference to person or persons, subsequently referring to political committees, thus recognizing the distinction.

Furthermore, other language of c. 55 supports this conclusion. Section 5 details the organizational requirements for political committees. The requirements are clear and precise. Yet, c. 180 corporations administered by the Secretary of State, and potentially regulated by the Office of the Attorney General, are subject to specific requirements for the incorporation and filings of the legal entity organized pursuant to that chapter. In my opinion, it is not sound statutory interpretation to simply conclude that the requirements of one can be added to the requirements of the other. The organizational provisions of c. 55 contemplate a separate and distinct legal entity. While an association, organization or other group of persons may be a political committee, those groups are not legal entities under the laws of the Commonwealth and subject to other legal requirements, as is a 180 corporation.

In my opinion, an entity cannot be regulated in a harmonious and sensible manner under both c. 55 and c. 180. Specific and contradictory provisions of each chapter, such as those regarding dissolution, make this readily apparent. In addition, the incorporation of an entity may work to shield it from the sanctions involved in violations of c. 55.

M.G.L. c. 55, has been interpreted by the Supreme Judicial Court "as intended to reach all political fundraising and expenditures within the Commonwealth." Anderson v. City of Boston, Mass Adv. Sh 2297 (1978). In that case, the court noted, in c. 55, "the existence of broad regulatory legislation concerning the collection and expenditure of funds for election purposes." The court makes it clear that all political financing activity, and therefore those entities involved in that activity, are to be regulated by c. 55. Any action such as incorporation, which could interfere with the effective administration of a political committee subject to c. 55 subverts the legislative intent and purpose of the statute.

In conclusion, it is my opinion that M.G.L. c. 55 does not permit the incorporation under M.G.L. c. 180 of a political committee. I therefore urge that you take appropriate action pursuant to this opinion.

Very truly yours,

Dennis J. Duffin
Director

DJD/rep