

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN

SECRETARY OF STATE

STATE TREASURY BUILDING



LANSING

MICHIGAN 48918

August 21, 1979

Mr. John P. Dickey
Consumers Power Company
Attorney, Legal Department
212 West Michigan Avenue
Jackson, Michigan 49201

Dear Mr. Dickey:

This is in response to your request for an interpretation of the Campaign Finance Act ("the Act"), P.A. 388 of 1976, as amended, as it relates to payment for the costs of a special election held to confirm a contract for services between a local community and Consumers Power Company.

You state that Consumers Power Company is a Michigan corporation, investor-owned public utility, providing electric and natural gas service to a large area of the lower peninsula of Michigan, as well as steam heat to one community. Your company serves a large portion of its customers under various local franchises, which are confirmed by vote of the people of the township, village, or municipality served.

Usually, approval is obtained at a special election called for that purpose. The costs incurred by the community in holding such a special election are reimbursed by your company as required by state law. You indicate, "Normally the only costs paid for by the company in such cases are the ballot printing, notice publication, poll workers, canvass of election results, and such other expenses as may be properly incurred by the local government directly in connection with the special election."

You state the company takes no action to influence voters in any way with request to the franchise proposed. The franchise is essentially a contract between the company and the community, granting the utility the right to serve the area in return for certain promises from the company.

After the election is held and exact costs are known, there is a settlement in which the company pays for any costs above the original estimate or the community refunds any monies it received above actual expenses of the election. This amount of reimbursement is a matter of public record within each community.

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You ask whether the reimbursement of costs for holding the election should be reported pursuant to the Act?

In a letter dated March 29, 1978 to Ms. Cindy Sage of the Republican Women's Federation of Michigan, the Department stated:

"The determination of whether the RWF is subject to the Act's provisions is contingent on whether the state organization or any of the local organizations is a 'committee' as defined in the Act. Section 3 of the Act (MCLA § 169.203) defines a 'committee' as a person who receives contributions or makes expenditures for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate, or the qualification, passage, or defeat of a ballot question, if contributions received total \$200.00 or more in a calendar year or expenditures made total \$200.00 or more in a calendar year. 'Person' is defined in the Act as including an association, committee, or any other organization or group of persons acting jointly."

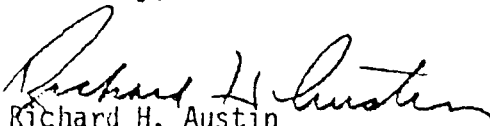
In addition, Section 6(1) (MCLA § 169.206(1)) defines an expenditure as "anything of ascertainable value paid to influence an election."

Accordingly, notwithstanding that Section 5(1) (MCLA § 169.205(1)) defines an "election" as including a "special election" such as the election in question, your company is not expending monies to influence the results of the election. The costs being reimbursed represent the actual costs of the election pursuant to state law (see MCLA § 460.602 for townships and MCLA § 117.5) for cities. Therefore, no reporting pursuant to the Act is required of your company.

It should be stated, however, that should the company seek to influence the outcome of any franchise election, reporting would then be required by the Act.

This response constitutes a declaratory ruling concerning the applicability of the Act to the facts enumerated in your report.

Sincerely,


Richard H. Austin
Secretary of State

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