



October 12, 1982

Mr. Timothy Downs
Craig, Farber & Downs, P.C.
1217 First National Building
Detroit, Michigan 48226

Dear Mr. Downs:

This is in response to your request for a "formal ruling" with respect to the provisions of the Campaign Finance Act (the "Act"), 1976 PA 388, as amended.

Specifically, you are concerned with whether a corporation may purchase a paid advertisement in an independent committee's newsletter. In addition, you ask whether an independent committee may solicit a corporation for paid advertising in its newsletter.

You maintain that the purchase of paid advertising in an independent committee's newsletter is not a contribution to the committee because it is not a contribution as defined in section 4 of the Act.

Section 4(1) of the Act sets forth the basic definition of the term "contribution" as follows:

"Sec. 4. (1) 'Contribution' means a payment, gift, subscription, assessment, expenditure, contract, payment for services, dues, advance, forbearance, loan, donation, pledge or promise of money or anything of ascertainable monetary value, whether or not conditional or legally enforceable, or a transfer of anything of ascertainable monetary value to a person, made for the purpose of influencing the nomination or election of a candidate, or for the qualification, passage, or defeat of a ballot question. An offer or tender of a contribution is not a contribution if expressly and unconditionally rejected or returned."

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You appear to have concluded that the test of whether a particular disbursement to a committee is a contribution is determined only by the intent of the person disbursing the funds. In your letter you give as an example, a fast food restaurant "who purchases an ad purely to sell hamburgers in an independent committee's widely disseminated newsletter." However, the use to which funds are to be put is the primary determinant of whether a payment to a committee is a contribution pursuant to section 4(1). A committee's purpose in raising money is to utilize the money by making expenditures. Using a particular form of fundraising cannot transform a contribution into a purchase of goods or services.

Enclosed is an interpretative statement previously issued to Douglas K. Weiland on August 6, 1980, which covers the issue of a corporate purchase of advertising in a candidate's program book. The sale of advertisements in a committee's newsletter is, like the sale of ads in a program book, a fundraising activity.

The Federal Election Commission has dealt with similar issues which have been raised pursuant to the Federal Election Campaign Act of 1971, as amended. Both the federal statute and the Act prohibit corporate contributions and expenditures on behalf of candidates for federal or state office. The federal statute and the Act have similar definitions of the terms contribution and expenditure.

In Advisory Opinion 1981-3 issued March 28, 1981 the Federal Election Commission concluded that corporate payment to purchase advertising in a party newspaper is a contribution or expenditure prohibited by the federal law. Such advertising was prohibited to the extent that the party newspaper's publication was "for the purpose of influencing" or was "in connection with" a federal election.

On September 21, 1981 the Federal Election Commission issued Advisory Opinion 1981-33 which construed a provision of federal law prohibiting contributions or expenditures by corporations "organized by authority of any law of Congress," 2 U.S.C. 441b(a). In that Advisory Opinion the Federal Election Commission concluded that advertisements by a federally chartered savings and loan association in a journal produced by a political club for an anniversary party or political rally are prohibited contributions or expenditures.

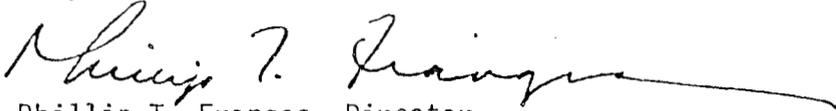
The Department of State has concluded that the purchase of advertising in a newsletter published by a committee is a contribution to the committee. It is clear that the principal purpose of a committee is participation in an election. But for such electoral activity there would be no reason to establish a committee. The publication and distribution of a newsletter by a committee is an activity which is ancillary to the primary purpose, which is to participate in the electoral process. Payments made for advertising in a committee publication are, therefore, contributions to the committee.

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Section 54 of the Act prohibits corporations from making contributions or expenditures except those made for or against a ballot question. Payments for advertising by a corporation in a newsletter published by a candidate, independent or political committee are prohibited by section 54 of the Act.

This letter is informational only and is not a declaratory ruling.

Very truly yours,



Phillip T. Frangos, Director
Office of Hearings & Legislation

PTF/jmp

Enclosure

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