

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE
STATE TREASURY BUILDING



LANSING
MICHIGAN 48918

October 22, 1986

Senator John M. Engler
Senate Majority Leader
The State Senate
State of Michigan
Lansing, Michigan 48909

Dear Senator Engler:

This is in response to your request for an interpretation of the Campaign Finance Act, 1976 PA 388, as amended (the Act), with respect to joint fundraiser participation by committees.

Since the Act first went into effect a number of questions have been submitted to the Department regarding whether committees may operate joint fundraising events and what procedures may be utilized in carrying out these plans.

The Department has consistently advised that the Act does not specifically prohibit joint fundraising events. The written responses were issued to help committees avoid violating the Act. Enclosed is a recent issue of the "Campaign Finance Reporter" which summarizes these responses in an article on "Joint Fundraisers."

As you know there are a number of specific violations of the Act which could occur in the context of a joint fundraising event. The most obvious of these are listed below:

Contributions received by a committee cannot be commingled with the funds of another person, section 21(8). (MCL 169.221)

Candidate committees are prohibited from making expenditures or contributions on behalf of another candidate committee, section 44(2). (MCL 169.244)

Corporate contributions or expenditures on behalf of candidates are prohibited, section 54. (MCL 169.254)

The letters and articles applying the Act to joint efforts by committees have considered many of the "fact" situations presented by your letter. The Department's previous declaratory rulings and interpretative statements have

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already been supplied to your office. If you wish to obtain additional copies of any of the previous letters on the subject of joint committee activity please contact the Elections Division. The declaratory rulings and interpretative statements are listed below:

Michael W. Hutson - 9/20/78 - sets forth steps to be taken in operating joint fundraiser to avoid possible violations of the Act.

Robert J. Kauflin - 8/6/80 - contributions over \$20.00 to purchase joint fundraiser ticket must be made by written instrument pursuant to section 41 of the Act. (MCL 169.241)

Wayne M. Deering - 8/6/80 - section 44 (2) (MCL 169.244) of the Act prohibits contributions by one candidate committee to another candidate. A federal candidate is not prohibited from contributing to a state candidate.

William Faust - 10/23/81 - although a joint rally is not a fundraising event, previous interpretations applicable to joint fundraisers are helpful in preventing unlawful contributions at such events.

Robert A. Welborn - 7/11/84 - a candidate committee is not prohibited from having a joint fundraiser with a charitable organization.

This letter does not specifically respond to the fact situations you present. As indicated above, the prior rulings appear to deal with the operation of such functions.

It should also be noted that in your letter you cite a "joint fundraiser between Representative Doe Campaign Committee and Representative Doe Officeholder Expense Fund" as one example of joint fundraising activity. The Department has never issued a statement concerning the legality of such activity. This letter should not be construed as an endorsement of the legality of concerted fundraising activity between an individual's candidate committee and officeholder's expense fund. If you desire a ruling or interpretation as to whether such activity is legal within the context of the Act, you should set forth a request with a detailed statement of facts.

The letters issued previously with respect to joint fundraising events have on occasion used the term "guidelines" to refer to the various steps recommended for the conduct of such events. This was an unfortunate selection of terms. "Guidelines" is a defined term in the Michigan Administrative Procedures Act. The definition is found at MCL 24.203(6) which states:

"6) 'Guideline' means an agency statement or declaration of policy which the agency intends to follow, which does not have the force or effect of law, and which binds the agency but does not bind any other person."

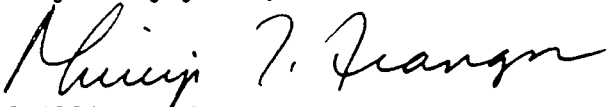
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It is clear that these interpretations of the Act were neither guidelines nor rules pursuant to the Act. As indicated in the letters themselves, they were "informational only." Under the terminology of the Administrative Procedures Act they were issued as "interpretative statements." Although it is not defined in the Administrative Procedures Act, its meaning has been elaborated by the courts. The most extensive discussion of the differences between rules and interpretative statements is found in Michigan Farm Bureau v Bureau of Workmen's Compensation, 408 Mich 141 (1980).

As you know, legislation cannot provide detailed answers to every question that may arise under a statute. Administrative agencies are often called upon to add the flesh to the bones of the law. The Department of State has given compliance with the Act a high priority. Rather than relying on the implementation of the criminal and civil sanctions of the Act, the Department has consistently sought to advise the public how to comply with the statute. The materials thus far produced regarding joint activity by committees have been directed toward insuring compliance before enforcement becomes the only available tool.

For the reasons set forth above, this response is informational and does not constitute a declaratory ruling. If after reviewing the sources cited you believe that a question remains regarding an actual statement of facts you may, of course, request a declaratory ruling.

Very truly yours,



Phillip T. Frangos
Director
Office of Hearings and Legislation

PTF:bk

Enclosure

Campaign Finance Reporter

Elections Division Information Bulletin

Richard H. Austin Secretary of State Lansing, Michigan 48918

Volume 10, No. 2

July, 1986

IN THIS ISSUE:

Campaign Statements Due -- Details the Campaign Statement filing requirements for the August 5, 1986 primary and the state political party conventions and the requirements which cover "late contribution reports."

Joint Fundraisers -- Outlines the procedures candidates must follow when holding "joint fundraisers."

Candidate Committee Dissolution -- Discusses the procedures for dissolving a Candidate Committee.

Campaign Statements Due

-- FILING REQUIREMENTS FOR AUGUST 5, 1986 PRIMARY AND
STATE POLITICAL PARTY CONVENTIONS --

Campaign Statement filing deadlines for the August 5, 1986 primary and the state political party conventions and the requirements which cover "late contribution reports" are discussed below. Carefully read this article to determine if the filings described are required of your committee. A committee that has a Reporting Waiver is not required to file Campaign Statements. The Reporting Waiver is discussed at the end of this article.

- . A committee loses its Reporting Waiver if it receives or spends more than \$1,000.00 for an election. Note that funds leftover from one election count toward the "amount received" for the next election. If the Reporting Waiver is lost, the committee must file the next Campaign Statement required of the committee.

Joint Fundraisers

Candidates who wish to hold a joint fundraiser must adhere to the following procedures to avoid violations of Michigan's Campaign Finance Act.

WRITTEN AGREEMENT: A written agreement must be developed by the Candidate Committees that plan to participate in the joint fundraiser. The treasurer of each of the participating Candidate Committees must keep a copy of the agreement with the committee's records. A Candidate Committee participating in the joint fundraiser is not required to file the agreement with its filing official.

- . The written agreement must describe what each committee's contribution and expenditure share will be. Contribution and expenditure shares must be expressed as percentages. A committee's expenditure share must equal the committee's contribution share. For example: "The ABC Committee will receive 60 percent of the contributions received at the fundraiser and will make 60 percent of the expenditures necessary to hold the fundraiser. The XYZ Committee will receive 40 percent of the contributions received at the fundraiser and will make 40 percent of the expenditures necessary to hold the fundraiser."
- . The written agreement must detail how expenditures will be handled. Expenditures can be handled in two ways: Under the first method, each committee agrees to pay its expenditure share at the time each expenditure is made or billed. Under the second method, one of the committees agrees to make all of the expenditures and the other committee(s) agree to provide the necessary reimbursement. The reimbursements must be made within a reasonable period of time and must correspond to the committee's agreed expenditure share.
- . The written agreement must detail how contributions and other receipts will be handled. Contributions and other receipts must be handled in the following manner: The committees agree to open a joint account in a bank, credit union or savings and loan association for the deposit of all contributions and other receipts related to the fundraiser. Funds deposited in the joint account are then transferred, without delay, into each of the committee's official depository accounts. The fund transfers must correspond to each committee's agreed contribution share. Expenditures cannot be made from the joint account established by the committees for the fundraiser.

NOTE: As soon as the joint account is opened, each of the committees participating in the joint fundraiser has 10 days to amend its Statement of Organization to reflect the establishment of a "secondary depository."

ADVERTISING THE EVENT: Advertisements and invitations for a joint fundraising event must include the information detailed below.

- . An explanation that the event to be held is a joint fundraiser. The explanation must include the names of the participating committees, the names of the participating candidates and the offices sought by the participating candidates.
- . What each participating committee's contribution share will be. If any of the participating committees are subject to contribution limitations, the contributors should be reminded to use the contribution share information to gauge whether they are exceeding the applicable contribution limitation .
- . Specific instructions on how checks should be made out to the fundraising event.

RECORDKEEPING AND REPORTING REQUIREMENTS: The treasurers of committees that participate in a joint fundraiser must carefully record the expenditures made for the event and the contributions and other receipts received in connection with the event. Participating committees that are required to file Campaign Statements must accurately report the recorded information. Participating committees that are not required to file Campaign Statements are not required to report the recorded information. Recordkeeping and reporting requirements related to joint fundraising events are detailed below.

- . Each participating committee records the name and address of each contributor, the date of the contributor's contribution, and the amount the committee received from the contributor's contribution.
- . A participating committee reports the name and address of a contributor if the amount of the contributor's contribution received by the committee exceeds \$20.00. The date the contributor made the contribution is also reported. The committee discloses only the amount of the contributor's contribution received by the committee -- not the entire amount of the contribution.
- . If one of the participating committees has been designated to make all of the expenditures related to the fundraiser, the designated committee must itemize all expenditures which exceed \$50.00. When reporting these expenditures, the committee must specify, under the "Purpose" column on the Expenditure Schedule (1B), that the expenditures were related to a joint fundraiser. When the committee that reports the expenditures is reimbursed by the other participating committees, the reimbursements are reported as "other receipts" on the Receipts Schedule (1A). When reporting a reimbursement as an "other receipt," the committee must check the "miscellaneous" box (column 4 on the Receipts Schedule) and indicate that the other receipt was a reimbursement received in connection with a joint fundraiser. The committees that provide reimbursement for the expenditures must report the amount transferred to the committee that made the expenditures with an explanation that the amount transferred was reimbursement for joint fundraiser expenses. If the amount a committee must reimburse for any given expenditure made for the fundraiser exceeds \$50.00, the reimbursement for the expenditure must be separately itemized on the expenditure Schedule (1B) with the following information entered in the "Purpose" column: (1) an explanation that the amount transferred was reimbursement for a joint fundraiser expense and (2) a description of the original expenditure which includes the name and address of the person to whom the original expenditure was made.
- . If each participating committee pays its share of the expenditures as the

expenditures arise, the committees must report their respective share of each expenditure. If a participating committee's share of any given expenditure exceeds \$50.00, the expenditure share must be itemized on the Expenditures Schedule (1B)

- . A committee that participates in a joint fundraiser must complete a Fundraiser Schedule (1F) to document the event. The Schedule must indicate that the event held was a joint fundraiser and show the share of contributions received by the committee and the share of expenditures made by the committee in connection with the event. The Schedule is not completed to show the total amount of contributions received or the total amount of expenditures made by all of the committees that participated in the event. The Schedule is filed with the next Campaign Statement required of the committee.

Additional Notes on Joint Fundraisers

- . Should a candidate who participated in a joint fundraiser decide not to run for office, the funds received by the candidate from the joint fundraiser must be given to a Political Party Committee, a tax-exempt charitable institution, or to the contributors who gave the funds. The funds cannot be given to the other candidates who participated in the fundraiser.
- . A Candidate Committee is not permitted to accept corporate funds. If a Candidate Committee receives corporate funds in connection with a joint fundraising event, the funds must be returned to the corporation; the corporate funds may not be deposited in an Officeholder Expense Fund account the candidate may have.
- . A contributor to a joint fundraising event must make a contribution to each of the participating Candidate Committees in the ratio publicized to the contributors; the contributor may not choose to allocate his or her contributions differently.
- . A Candidate Committee may hold a joint fundraiser with a Political Party Committee or a tax-exempt charitable organization as long as the percentage of the expenditures paid by the Candidate Committee in connection with the event does not exceed the percentage of the contributions the Candidate Committee takes from the event. As a Political Party Committee or a non-corporate tax-exempt charitable organization can contribute to a Candidate Committee, the percentage of the expenditures paid by a Political Party Committee or a non-corporate tax-exempt charitable organization in connection with a joint fundraising event held with a Candidate Committee may exceed the percentage of the contributions the Political Party Committee or the non-corporate tax-exempt charitable organization takes from the event. Applicable contribution limits apply to this arrangement. NOTE: A charitable or political party organization must register as a committee under the Campaign Finance Act as soon as it contributes \$200.00 or more to a state or local Candidate Committee.
- . A joint fundraiser may be held by a state or local Candidate Committee and a federal Candidate Committee as long as the percentage of the expenditures paid by the state or local Candidate Committee in connection with the event does not exceed the percentage of the contributions the state or local Candidate Committee takes from the event. (This is the same principle that

applies when two or more state or local Candidate Committees hold a joint fundraiser.) As a federal Candidate Committee can contribute to a state or local Candidate Committee, the percentage of the expenditures paid by a federal Candidate Committee in connection with a joint fundraising event held with a state or local Candidate Committee may exceed the percentage of the contributions the federal Candidate Committee takes from the event. Applicable contribution limits apply to this arrangement. NOTE: A federal Candidate Committee must register under the Campaign Finance Act as soon as it contributes \$200.00 or more to a state or local Candidate Committee.

Candidate Committee Dissolution

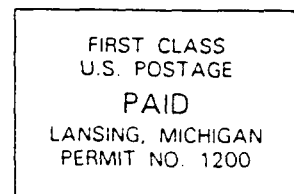
The Act specifies when and under what conditions a Candidate Committee may be dissolved. As a dissolved committee has no further filing obligations under the Act, the dissolution of the committee is, in effect, the final compliance step.

WHEN A COMMITTEE CAN BE DISSOLVED: To be eligible for dissolution, a committee must have no assets or outstanding debts. An unpaid late filing fee is considered to be a committee debt. A candidate who is not elected to office is encouraged to dissolve his or her Candidate Committee as soon as practicable after the election. An officeholder cannot dissolve his or her Candidate Committee until his or her term of office expires.

DISPOSITION OF LEFTOVER FUNDS: The Act specifies that funds leftover in the Candidate Committee's account must be contributed to a Political Party Committee, contributed to a tax-exempt charitable institution or returned to contributors.

DISSOLVING A COMMITTEE: If the committee has a Reporting Waiver, it is dissolved by filing a single-page Dissolution Campaign Statement form. If the committee does not have a Reporting Waiver, it is dissolved by filing a final Campaign Statement with supporting schedules. A detailed Dissolution Campaign Statement can be combined with any other Campaign Statement required of the committee as long as the committee dissolves on or before the closing date of the Campaign Statement.

**ELECTIONS DIVISION
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STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



STANLEY D. STEINBORN
Chief Assistant Attorney General

FRANK J. KELLEY
ATTORNEY GENERAL

LANSING
48913

December 29, 1986

Honorable Richard H. Austin
Secretary of State
Treasury Building
Lansing, Michigan

Dear Mr. Austin:

You have requested my opinion on the question whether moneys in an officeholder's expense fund (OEF) authorized by MCL 169.249; MSA 4.1703(49), may be expended for personal use by the officeholder upon leaving public office and as to final disposition of funds remaining in the officeholder's expense fund. Your letter of request included a July 18, 1986, interpretative statement addressed to Professor Maurice Kelman concluding:

"The only permissible use of OEF money is to pay for expenses incidental to the holding of public office. Personal enrichment is not an expense incidental to office. Therefore, it must be concluded that the Act prohibits an elected official from converting unexpended OEF funds to his or her personal use upon leaving office. Similarly, if an officeholder should die while in office, money held in an OEF cannot be considered part of the officeholder's personal estate."

While the matter of how funds remaining in an OEF after the elected official leaves office is still being considered, I can advise you that your conclusions that in enacting MCL

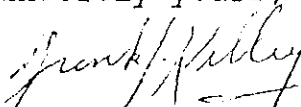
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169.249; MSA 4.1703(49) the legislature did not authorize moneys remaining in an officeholder's expense fund to be expended by the public officer leaving his or her office for the personal use of the officeholder is correct.

Because the expiration of the term of office of some public officeholders is imminent, they should be immediately advised that moneys remaining in officeholder expense funds may not be expended for the personal use of the officeholder.

Sincerely yours,



FRANK J. KELLEY
Attorney General