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MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

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October 7, 1983

Honorable William Faust
Senate Majority Leader
The Senate
State Capitol
Lansing, Michigan 48909

Dear Senator Faust:

This is in response to your inquiry concerning applicability of the Campaign Finance Act (the "Act"), 1976 PA 388, as amended, to contributions received by a state legislator who is the subject of a recall campaign. Specifically, you ask whether such contributions must be deposited into the officeholder's candidate committee account and if so, whether the contributions, in the case of a state elective officeholder, are subject to the limitations found in section 52 of the Act (MCL 169.252).

Pursuant to section 3(1) (MCL 169.203), an officeholder who is the subject of a recall vote is a "candidate" for purposes of the Act. Section 3(2) requires a candidate to form a candidate committee "when the individual becomes a candidate under subsection (1)."

Section 21(3) of the Act (MCL 169.221) provides that a candidate committee "shall have 1 account in a financial institution of this state as an official depository for the purpose of depositing all contributions which it receives . . . and for the purpose of making all expenditures." Section 21(5) states that "contributions received or expenditures made by a candidate or an agent of a candidate shall be considered received or made by the candidate committee." Thus, any contribution received by an officeholder/candidate for the purpose of influencing the voters at a recall election is considered to have been received by the officeholder's candidate committee and must be deposited into the committee's account.

You next ask whether contributions received by a state elective officeholder's candidate committee are subject to the contributions limitations found in section 52 of the Act. Section 52 provides in relevant part:

"Sec. 52. (1) A person other than an independent committee or a political party committee shall not make contributions to a candidate committee of a candidate for state elective office which, with respect to a single election, are more than the following:

(a) $1,700.00 in value for a candidate for state elective office other than the office of state legislator.
(b) $450.00 in value for a candidate for state senator.
(c) $250.00 in value for a candidate for state representative.

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(3) An independent committee shall not make contributions to a candidate committee of a candidate for state elective office which, in the aggregate for that election, are more than 10 times the amount permitted a person other than an independent committee or political party committee in subsection (1).

(4) A political party committee other than a state central committee shall not make contributions to the candidate committee of a candidate for state elective office which are more than 10 times the amount permitted a person other than an independent committee or political party committee in subsection (1).

(5) A state central committee of a political party shall not make contributions to the candidate committee of a candidate for state elective office other than candidates for the legislature which are more than 20 times the amount permitted a person other than an independent committee or political party committee in subsection (1). A state central committee of a political party shall not make contributions to the candidate committee of a candidate for state senator or state representative which are more than 10 times the amount permitted a person other than an independent committee or political party committee in subsection (1)" (Emphasis supplied)

Pursuant to section 12(2) of the Act (MCL 169.212), a member of the Legislature is a candidate for "state elective office." However, "elective office" is defined in section 5(2) of the Act (MCL 169.205) as "a public office filled by an election, except for federal offices." Since a recall vote does not fill a public office, it must be concluded that the candidate committee of an officeholder subject to a recall vote is not a "candidate committee of a candidate for state elective office." Therefore, section 52 does not apply to contributions received by an officeholder who is being recalled, provided the contributions are designated for a recall election.

In an election to fill an office, the opponents are two or more candidates operating under the same restrictions. For example, in a state senatorial election, contributions to each candidate are limited by section 52(1) to $450.00, unless made by an independent committee, political party committee, or the state central

committee of a political party. Contributions from these committees, however, are subject to other restrictions.

Proponents of a recall measure are required to file a statement of organization as a political committee. Contributions to political committees are not subject to limitation under the Act. If section 52 were to apply to contributions received by the candidate committee of a state elective officeholder facing a recall, the opponents in a recall election would be operating under different sets of rules. Such an interpretation would undermine the open and fair election policy otherwise promoted by the Act by allowing the political committee advocating the recall to engage in unlimited fundraising, while severely limiting the officeholder's ability to raise money. This result, which is inconsistent with the Act's purpose, is both absurd and unfair and could not have been intended by the Legislature. Consequently, section 52 cannot be construed as applying to contributions received by the candidate committee of a state elective officeholder facing a recall election.

This analysis assumes, of course, that a political committee has been organized to gather petition signatures and to promote a particular officeholder's recall. An officeholder's candidate committee may accept contributions in excess of the section 52 contribution limitations only if the officeholder's recall is actively being sought. Moreover, if a special recall election is not called by the appropriate election official, a contribution designated for the recall election may not be retained unless otherwise designated by the contributor. In the event an election is not called, a contributor may indicate in writing that the portion of the contribution not exceeding the applicable limitation may be retained by the candidate committee for the next election in which the candidate is involved. The portion exceeding the limitation must be returned to the contributor. Any contribution, or portion of a contribution, not otherwise designated by a contributor in the instance where a recall election is not called, shall be given by the candidate committee to a political party committee or to a tax exempt charitable institution.

To summarize, contributions received and expenditures made by an officeholder subject to a recall vote are considered to have been made by the officeholder's candidate committee and must be deposited into or made from the officeholder's candidate committee account. However, contributions received by the candidate committee are not subject to the contribution limitations set out in section 52 of the Act, provided a political committee is actively promoting the officeholder's recall and the contributions are designated for the recall election.

This response is informational only and does not constitute a declaratory ruling.

Very truly yours,

Phillip T. Frangos
Director
Office of Hearings and Legislation

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