

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN

SECRETARY OF STATE

STATE TREASURY BUILDING



DEC 30 1977 2-

LANSING

MICHIGAN 48918

PM

December 29, 1977

Mr. Zolton Ferency  
P.O. Box 20  
East Lansing, Michigan 48823

Dear Mr. Ferency:

The Department has received your request of December 9, 1977, for a declaratory ruling concerning the applicability of P.A. 388 of 1976 ("the Act") to an alleged factual situation. Your request was made pursuant to P.A. 306 of 1969, the Administrative Procedures Act, as provided in R169.6 of the General Rules promulgated to implement the Act.

After examining your letter, it has been determined that you are not a proper party to request a declaratory ruling with respect to the factual situation in question.

In your request, the following is stated:

"The undersigned is informed and believes that:

1. A candidate for the 1978 Democratic gubernatorial nomination, having formed a candidate committee and filed a statement of organization indicating the intent to seek qualifying contributions in order to receive moneys from the state campaign fund, has received and expended the proceeds of certain loans in the amounts of \$5,000 - \$7,500 from six or seven persons. The proceeds of the loans were received and expended prior to December 1, 1977.
2. The proceeds of the loans were received and expended by the candidate and/or the candidate committee.

"On the bases of the facts outlined on information and belief, you are respectfully requested to issue a declaratory ruling." (Emphasis added)

Section 63 of the Michigan Administrative Procedures Act, provides:

"On request of an interested person, an agency may issue a declaratory ruling as to the applicability to an actual state of facts of a statute administered by the agency or of a rule or order of the agency. An agency shall prescribe by rule the form for such a request and procedure for its submission, consideration and disposition. A declaratory ruling is binding on the agency and the person requesting it unless it is altered or set aside by any court. An agency may not retroactively change a declaratory ruling, but nothing in this subsection prevents an agency from prospectively changing a declaratory ruling. A declaratory ruling is subject to judicial review in the same manner as an agency final decision or order in a contested case." (Emphasis added)

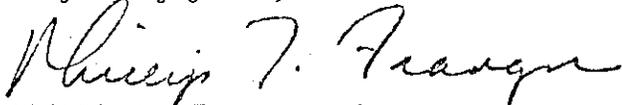
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R169.6, the rule prescribed by the Department to properly request a declaratory ruling concerning the Act, states that "An interested person is a person whose course of action would be affected by the declaratory ruling." It is noted Section 63 binds only the agency and requestor of the declaratory ruling. A third party who is the subject of a factual situation would not be bound. In the present case, however, it is the third party who appears to be the "interested person whose course of action would be affected by the declaratory ruling."

Accordingly, since your request is founded "on information and belief" and not as an interested person whose course of action would be affected by a declaratory ruling, the Department must deny your request. Of course, should you become an "interested person" as the result of a factual situation applicable to you, the Department would consider any request you made at that time.

Finally, your attention is directed to R169.51 of the General Rules implementing the Act. This rule allows any person who believes a violation of the Act or the rules has occurred to file a written complaint with the Secretary of State. R169.52 provides that a complaint, verified and signed by the complainant, shall name the alleged violator, set forth the alleged violator's address, describe in reasonable detail the alleged violation, and identify all available evidentiary material.

Very truly yours,



Phillip T. Frangos, Director  
Office of Hearings and Legislation

PTF:pk