

M I C H I G A N D E P A R T M E N T O F S T A T E

RICHARD H. AUSTIN

• SECRETARY OF STATE

STATE TREASURY BUILDING



LANSING

MICHIGAN 48918

April 29, 1981

Mary F. Galasso, Office Administrator
Levin, Levin, Garvett and Dill
3000 Town Center, Suite 1800
Southfield, Michigan 48075

Dear Ms. Galasso:

This is in response to your inquiry concerning applicability of the Campaign Finance Act (the "Act"), 1976 PA 388, as amended, to partnership contributions. Specifically, you have asked whether a partnership which makes contributions of less than \$1,000 is exempt from the filing requirements of the Act, where the "contributions are spelled out in the Partnership Return and apportioned back to each of the nine partners" involved.

Pursuant to section 3(4) of the Act (MCL 169.203):

"(4) 'Committee' means 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. An individual, other than a candidate, shall not constitute a committee." (emphasis added)

"Person" is defined in section 11(1) of the Act (MCL 169.211) as "a business, individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, labor organization, company, corporation, association, committee, or any other organization or group of persons acting jointly."

Section 6 of the Act (MCL 169.206) defines "expenditure" as including anything of ascertainable monetary value given in assistance of or opposition to the nomination or election of a candidate, or the qualification, passage or defeat of a ballot question. According to section 6(2), an expenditure includes a contribution.

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The above sections indicate that a person, including a partnership, who makes contributions totalling \$200 or more in a calendar year becomes a committee for purposes of the Act. The only exception found in section 3(4) is with respect to individuals who are not candidates. Thus, a private individual may contribute more than \$200 without registering as a committee.

You argue that a partnership which contributes more than \$200 should not be considered a committee where the contribution is apportioned back to the individual partners. Essentially, you contend that for purposes of the Act, a partnership contribution should not be attributed to the partnership as a whole, but rather a share of each contribution should be attributed to the partners as individuals. For example, in the case of a four member partnership which contributes \$1,000, one-fourth of the contribution, or \$250, should be attributed to each partner (assuming each has an equal share in the partnership). Since non-candidate individuals are excluded from the definition of committee, the four individuals who contributed \$250 are not required to register as committees.

In Michigan the courts have adopted a minority position which holds that a partnership is a distinct legal entity separate from the individuals composing it. The Campaign Finance Act recognizes this distinction by excluding individuals, but not partnerships, from the definition of committee. Therefore, it must be presumed that a partnership contribution is from the partnership itself and not from the individual partners. If the partnership contributes \$200 or more in a calendar year, it is also presumed that the partnership is a committee, and the partnership must register as such pursuant to section 24 of the Act (MCL 196.224).

However, the Department recognizes that partnerships are unique. A partner may often use the partnership account as a means of reaching his or her individual draw or share of the profits. Consequently, the presumption that a partnership contribution is from the partnership entity may be rebutted if the partners instruct the recipient candidate or committee that the contribution should be attributed to the individual partners. If the contribution is actually from the partners as individuals, the partnership is not required to register as a committee. Of course, the individuals themselves are excluded from the definition of committee.

When partners wish to use a partnership check to make a contribution to a committee, the check should be accompanied by a written statement containing the name, address, date, and amount of contribution being made by each partner. The recipient committee should then report the contributions as if they had received a separate check from each partner and no mention should be made of the partnership as a contributor. Those partners whose contributions total more than \$200 must have their occupation, employer, and principal place of business reported in addition to their name, address, date, and amount of contribution. When the partnership acts as a person in its own right, a separate statement should not

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accompany the check and the amount contributed will not be attributed to the individual partners. By following this contribution and reporting procedure, partnerships and their partners will avoid violating section 41(6) of the Act (MCL 169.241) which prohibits a contribution being made "by any person in a name other than the name by which that person is identified for legal purposes."

You indicate in your letter that your partnership made a \$1,000 contribution which was "apportioned back to each of the nine partners." You should now advise the recipient committee in writing that the contribution in question was not from the partnership as a whole, but from the partners as individuals. The statement should indicate the amount of each individual's contribution and list each contributor's name and address. Once a copy of this written statement is received by the Department, it will be clear the partnership is not required to register as a committee. If, in the future, individuals within the partnership make contributions from the partnership account, they should supply the recipient committee with a written statement explaining that the contribution is from the partners as individuals.

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

Very truly yours,


Phillip T. Frangos, Director
Office of Hearings & Legislation

PTF/jmp