MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

June 14, 1990

Carl L. Gromek
Research Director
Michigan Court of Appeals
P.O. Box 30022
Lansing, Michigan 48909

Dear Mr. Gromek:

This is in response to your request for an interpretive statement regarding the applicability of the Campaign Finance Act (the Act), 1976 PA 388, as amended, to a "trustee plan designed to facilitate individual contributions by the Judges [of the Michigan Court of Appeals] in state and local, non-federal, elections." On April 9, 1990, your request was made available to the public as required by section 15(2) of the Act (MCL 169.215). There have been no written comments submitted by interested persons as provided in that section.

The "trustee plan" you envision is described in your letter as follows:

> "The plan would consist of one bank account in the name of the Court's Administrative Officer. Periodically, the Chief Judge would request a $50 payment from each of the Judges to the account. The funds received would be recorded by the Administrative Officer and deposited into the account. Contributions from the account would be made in the name of the individual judge who has either directed or consented that the contribution be made in his or her name. No single contribution from any individual Judge would exceed $50 and the total would never reach $200 in any calendar year. However, a contribution of $100 to a campaign in the names of Judge A and B, located in Detroit, would enable Judge C, located in Lansing, to attend a fund-raiser in Lansing as a representative from the Court."

You ask whether the proposed plan is subject to the reporting and filing requirements of the Act.

The Campaign Finance Act requires a "committee" to file a statement of organization and periodic disclosure statements. "Committee" is defined in section 3(4) of the Act (MCL 169.203), which states in pertinent part:

> "Sec. 3. (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 $500.00 or more in a calendar year or expenditures made total $500.00 or more in a calendar year. An individual, other than a candidate, does not constitute a committee....."

"Person" is defined in section 11(1) of the Act (MCL 169.211) to include any organization or group of persons acting jointly.

You suggest that the "'trustee' relationship between the Judges of the Court of Appeals and the Administrative Officer" does not meet the definition of "committee" for two reasons. First, you point out that an individual such as the Court's Administrative Officer cannot constitute a committee. Second, you assert that the Judges who contribute to the proposed plan are analogous to partners who, pursuant to rule 35a of the administrative rules promulgated to implement the Act (1982 AACS R169.35a), are permitted to make contributions from a partnership account without registering as a committee if certain conditions are met.

Your reliance upon the Administrative Officer's status as an individual who is not subject to the Act's reporting requirements is misplaced. The exception for individuals who are not candidates applies to a person who contributes or expends his or her own money. It does not apply to an individual who opens an account for the sole purpose of depositing contributions received from other individuals and subsequently spending the accumulated funds to support or oppose candidates in state and local elections.

The role you have described for the Administrative Officer is that of a committee treasurer or individual designated as responsible for a committee's record keeping. A treasurer or designated individual is required by section 22 of the Act (MCL 169.222) to keep detailed accounts, records, bills and receipts of contributions received and expenditures made by a committee. The Act's reporting requirements cannot be avoided simply by opening an account in the name of the treasurer or Administrative Officer.

With respect to your second assertion, rule 35a provides:

> "Rule 35a. (1) A contribution drawn on a partnership account shall be attributed to the partners as individuals, and not to the partnership, if the contribution is accompanied by a written statement containing the name and address of each contributing partner and the amount of each partner's contribution. The statement shall include the occupation, employer, and principal place of business of each individual who is a member of the partnership and contributed $200.01 or more for that election."

> "(2) A committee which receives a written statement attributing a partnership contribution the partners as individuals shall report the contribution as if the committee had received a separate contribution from each individual."

You state that under the proposed plan, contributions from the joint account to state and local candidates would be made in the name of individual Judges. The check drawn by the Administrative Officer would be accompanied by a written statement identifying the Judge's name, address, date and amount being contributed. You conclude that this procedure is analogous to contributions received from partners and "seems to obviate the need to register as a committee."

This argument ignores the fact that the purpose of establishing the "trustee account" is to receive and expend jointly accumulated funds for the purpose of influencing elections. In contrast, a partnership is an association of two or more persons formed to conduct business for profit. This unique relationship is specifically recognized and controlled by the Uniform Partnership Act, 1917 PA 72, as amended.

Typically, a partner may access partnership assets by executing a check drawn on the partnership account, which is then deducted from his or her share of the partnership's profits. Rule 35a was promulgated to prevent any confusion in cases where a partner uses a partnership check to make a contribution of his or her own funds to a committee. If, instead, a group of partners agreed to contribute a certain amount to a separate account for the purpose of purchasing fund raiser tickets or making other campaign expenditures, rule 35a would not apply and the partners would be required to register as a committee. Disclosure of the individual partners' contributions would then appear in the committee's campaign statements which, pursuant to section 26 of the Act (MCL 169.226), must include the name and address of each partner who contributed $20.01 or more to the committee.

The participants in the plan you describe are not involved in a profit making venture but are acting jointly to influence elections. They are contributing money to a separate account for the express purpose of making expenditures to support or oppose candidates. Therefore, if contributions to the proposed joint account total $500.00 or more in a calendar year, or if the account is used to purchase fund raiser tickets or make other expenditures which total $500.00 or more, a statement of organization as a committee must be filed within 10 days, as provided in section 24 of the Act (MCL 169.224).

However, it should be noted that arranging to transfer contributions to designated candidates may violate section 44(1) of the Act (MCL 169.244)). This section states:

> "Sec. 44. (1) A contribution shall not be made by a person to another person with the agreement or arrangement that the person

receiving the contribution will then transfer that contribution to a particular candidate committee."

According to your letter, individual Judges would contribute $50.00 to a joint account. A Judge could then direct the Administrative Officer to make a contribution in his or her name to a state or local candidate. By so doing, it appears that a contribution would be made by one person to another with the agreement or arrangement to transfer that contribution to a particular candidate. Such earmarked contributions are prohibited by section 44(1).

To summarize, if a group of individuals contribute to a joint account for the purpose of making expenditures or purchasing fund raiser tickets to support or oppose candidates, the group must file a statement of organization as a committee within 10 days after receiving or spending $500.00 in a calendar year. This requirement cannot be avoided by establishing an account in the name of the individual responsible for administering the account or by attributing subsequent expenditures from the account to one of the original contributors. Moreover, if an individual contributes to the joint account with the agreement or arrangement that the contribution will be transferred to a particular candidate committee, a violation of section 44(1) of the Act may occur.

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

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF/ac

101224