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MICHIGAN DEPARTMENT OF STATE

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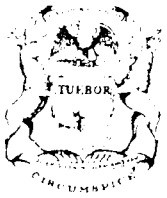
STATE TREASURY BUILDING



LANSING

MICHIGAN 48918

December 3, 1982

Mr. D. Gravatt Huber
Michigan Citizens for Headlee Committee
Post Office Box 1481-RHH
East Lansing, Michigan 48823

Dear Mr. Huber:

This is in response to your request for answers to three questions with respect to the provisions in the Campaign Finance Act (the "Act"), 1976 PA 388, as amended, dealing with expenditures made by an independent committee in support of a candidate.

You indicate you are the campaign director for Michigan Citizens for Headlee Committee ("MCHC"), a political committee supporting the gubernatorial candidacy of Richard H. Headlee. (Since MCHC did not file a statement of organization at least six months before November 2, 1982, it is not an "independent committee" as defined in section 8(2) of the Act (MCL 169.208(2).) MCHC wishes to make expenditures urging the election of Mr. Headlee without the expenditures being attributable to and reportable by the Headlee candidate committee.

"Independent expenditure" is defined in section 9(1) of the Act (MCL 169.209(1)) as:

> "An expenditure as defined in section 6 by a person if the expenditure is not made at the direction of, or under the control of, another person and if the expenditure is not a contribution to a committee."

Also relevant is section 70 of the Act (MCL 169.270) which states:

> "A contribution or expenditure which is controlled by, or made at the direction of, another person, including a parent organization, subsidiary, division, committee, department, branch, or local unit of a person, shall be reported by the person making the expenditure or contribution, and shall be regarded as an expenditure or contribution attributable to both persons for purposes of expenditure or contribution limits."

An expediture in support of a candidate which is not an independent expenditure and which is not a contribution in money to another committee is an in-kind contribution or expenditure which must be reported by the candidate committee as well as the committee making the expenditure.

Your questions are set out and answered below:

> "1. Can a candidate (or the official candidate committee) supply an Independent/Political Committee (making independent expenditures, and desiring to preserve that independence) with copies of his weekly schedule? his press releases? his speeches?"

The standard set forth in the Act, in the two sections quoted above, is "direction or control". The three items about which you specifically inquire are all made for purposes other than providing them to friendly political committees. Press releases and speeches are statements of a candidate's positions made to favorably influence voters and contributors; they do not show direction and control over a favorably disposed political committee which receives copies. Assuming the weekly schedules, press releases, and copies of speeches are available upon request to the general public, a candidate or his committee would not be exercising direction or control over a political committee by providing these items.

> "2. Can a candidate for Governor attend, by invitation, a function sponsored by an Independent/Political Committee (which makes independent expenditures, and desires to preserve this inde pendence)? In fact, doesn't the act somewhere recognize the possibility of jointly shared functions (fund raisers)?"

What you are really asking is whether a political committee may make an independent expenditure for an event which a candidate attends. The answer depends upon a number of factors which cannot be determined from the limited facts you provide. For instance:

Did the candidate purchase a fund raising ticket and attend on the same basis as the supporters of the political committee?

Is the candidate given an opportunity to address the gathering, as contrasted with mingling and conversing in small groups?

Are people encouraged to attend the event because the candidate will be there?

Are all candidates for the same office (or all major party candidates) invited to the event and treated equally?

Is the political committee openly supporting the candidate?

Only the final question can be answered based upon the information you have provided. Since MCHC supports Mr. Headlee, his attendance by invitation at an event sponsored by MCHC would be strong evidence that Mr. Headlee is exercising direction or control over the event. Mr. Headlee certainly controls the content of any statements he makes at the event. Once direction or control is exercised by Mr. Headlee, the expenditures by MCHC lose their independent status and become in-kind contributions to the Headlee candidate committee.

You raise the possibility of joint fund raisers held by a political committee and a candidate committee. By its very nature, a joint fund raiser is necessarily directed or controlled by all participating committees. MCHC could not retain its "independence" at a fund raiser held jointly with the Headlee candidate committee.

"3. Can an Independent/Political Committee (which makes independent expenditures and desires to preserve that independence) pay for the distribution of literature, or provide for the vehicle of distributing the literature, that was printed and paid for by the candidate, or his staff or his official committee. Again continuing with the presumption that none of the literature was printed for distribution by this independent source, and no "direction or control" of the independent committee or its activities lies within the official candidate committee, or the candidate himself?"

As stated previously, the test for independent expenditures is direction and control. If MCHC distributes literature, bumper stickers, buttons, etc. which the Headlee candidate committee wrote, designed, conceptualized, or printed, the Headlee candidate committee would have exercised direction and control over the material and MCHC's expenditures would be in-kind contributions. Similarly, quotes from the press releases and copies of speeches discussed in question 1 can be extracted by MCHC for use in independent expenditure material distributed by MCHC, but MCHC may not copy and distribute the material provided by the Headlee candidate committee without MCHC's costs and efforts being in-kind contributions.

Of course, MCHC must comply with the disclaimer and identification requirements in section 47 of the Act (MCL 169.247) and rule 36 (1982 AACS R169.36).

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

Very truly yours,

Phillip T. Frangos

Phillip T. Frangos
Director
Office of Hearings and Legislation