

## MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE  
STATE TREASURY BUILDING



LANSING  
MICHIGAN 48918

December 2, 1981

Committee to Elect Judge Thomas Edward Kennedy  
Macomb Circuit Court  
30500 VanDyke, Suite 800  
Warren, Michigan 48093

Dear Judge Kennedy:

This is in response to your request for a declaratory ruling concerning applicability of the Campaign Finance Act ("the Act"), 1976 PA 388, as amended, to certain joint expenditures made by four candidates for circuit judge. You also inquired about the reporting requirements of the Act.

At the time of your request, you were a candidate for circuit court judge in Macomb County. Your opponent was one of four incumbent circuit judges who was seeking reelection. The three others were unopposed. Apparently, the incumbent judges made certain joint advertising expenditures.

You raised the following issues with respect to these facts:

"Issue I: Is a contribution by a candidate committee for an advertisement (Billboard, sign, literature, etc.) which is intended to influence the election of all four, three who are unopposed for election and one who is opposed, equally, a violation of section 44(2) of the Campaign Finance Act, which states:

'A candidate committee shall not make a contribution to, or an independent expenditure in behalf of, another candidate committee . . . .'

Issue II: Would the result in issue I be different if the expenditure in that issue was made prior to the filing deadline, at a time when the three circuit judges, who are now unopposed, believed that there would or might be opposition, though there was no announced opposition?

Issue III: Must an incumbent district judge file an annual financial statement (Due June 30) for his circuit court committee when he becomes a candidate for a higher office, where his opponent would be exempt from such a disclosure requirement?"

It has been determined that you are not a proper party to request a declaratory ruling regarding issues I and II. Section 63 of the Administrative Procedures Act, 1969 PA 306, as amended, provides (in part):

"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 procedures 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." (emphasis added)

"Interested person" is defined in rule 6 of the administrative rules promulgated to implement the Act, 1977 AACRS R269.1 *et seq.*, as "a person whose course of action would be affected by a declaratory ruling." Although you state you are an opponent of one of the candidates whose campaign practices are in question, your course of action would not be affected or bound by a ruling based upon these facts. In a letter to Mr. Zolton Ferency, dated December 29, 1977, the Department indicated it would not issue a declaratory ruling to a third party in these circumstances. Your request for a declaratory ruling with respect to issues I and II is therefore denied.

However, the issues you raised are of sufficient interest to merit a general response. For this reason, the following analysis is offered.

With respect to issues I and II, the Department has previously recognized that the Act permits candidates to make joint expenditures. In a letter to Mr. Wayne M. Deering, dated August 6, 1980, the Department indicated "the same considerations which apply to joint fund raising events also apply to joint expenditures such as shared advertising." These considerations are detailed in a September 20, 1978, letter to Mr. Michael W. Hutson. Copies of the Deering and Hutson letters are attached for your convenience.

In each of the attached letters, the Department emphasized that section 44(2) of the Act (MCL 169.244) prohibits a candidate committee from making a contribution to another candidate committee. Consequently, it is imperative that no candidate bear a disproportionate share of a joint expenditure. Such a disproportionate share may constitute an illegal contribution to the other participating candidate committees.

You indicate that "funds from each of the candidate committees of the four circuit judges have been spent for advertising (specifically billboards and literature) that promote each candidate . . . equally." It is assumed, therefore, that each candidate has paid an equal share of the joint advertising expenditures. You are concerned, however, that an opposed candidate realizes an unequal benefit as the result of a joint expenditure. You argue that such benefit constitutes an impermissible contribution from the unopposed candidate to the opposed candidate.

"Contribution" is defined in section 4 of the Act (MCL 169.204) as anything of ascertainable monetary value made for the purpose of influencing the nomination or election of a candidate. If an opposed candidate receives more benefit from joint advertising than an unopposed candidate, that benefit has no ascertainable monetary value as long as the candidates bear an equal share of the joint expenditure. Thus, an unopposed candidate who shares equally in a joint expenditure with an opposed candidate does not make a contribution to the opposed candidate in violation of section 44.

Issue III concerns whether an incumbent district judge who is seeking election to the circuit bench must file an annual campaign statement. Section 35 of the Act (MCL 169.235) provides for the filing of annual campaign statements. This section, which was recently amended by 1980 PA 215, states (in relevant part):

"(1) In addition to any other requirements of this act to file a campaign statement, a committee other than an independent committee, shall also file a campaign statement not later than January 31 of each year. The campaign statement shall have a closing date of December 31 of the previous year. The period covered by the campaign statement filed pursuant to this subsection shall begin from the day after the closing date of the previous campaign statement. A campaign statement filed pursuant to this subsection shall be waived if a post-election campaign statement has been filed which has a filing deadline within 30 days of the closing date of the campaign statement required by this subsection.

(2) Subsection (1) does not apply to a candidate committee for an officeholder who is a judge or a supreme court justice, or holds an elective office for which the salary is less than \$100.00 a month and does not receive any contribution or make any expenditure during the time which would be otherwise covered in the statement."  
(emphasis added)

(Former section 35(1) required all committees to file a campaign statement not later than June 30 and contained no waiver provision. Subsection (2) was changed by adding "or a supreme court justice.")

You argue that pursuant to section 35(2) a district judge who has formed a circuit court candidate committee should not be required to file an annual campaign statement, especially where his or her opponent is an incumbent circuit judge who is exempt from filing. However, under the Act each candidate committee a person forms is considered a separate entity. Thus, the candidate committee of an incumbent is considered the candidate committee of an officeholder, but any other committee the incumbent forms is simply the candidate committee of a candidate for a particular office. In other words, the incumbent is not an officeholder with respect to each office he or she seeks.

In answer to your question, a judge who becomes a candidate for another office must file an annual campaign statement when he or she forms a new candidate committee because the judge is not considered an officeholder with respect to the office sought. Section 35(2) applies only to the candidate committee of an incumbent judge.

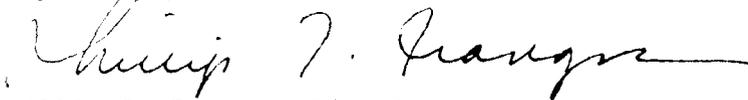
A review of statements and reports filed by your committee indicates that on June 27, 1980, the committee filed an incomplete annual campaign statement which noted: "This is a candidate committee for an officeholder who is a judge and, therefore, exempt from the filing of an annual statement pursuant to section 35(1) of the act." On October 29, 1980, the committee filed a pre-general campaign statement which included a list of contributions received

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and expenditures made during the period covered by the disputed annual statement. Since the issue you have raised is one of first impression and there has been full disclosure, you will not be required in this instance to file an amended annual report.

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

Very truly yours,



Phillip T. Frangos, Director  
Office of Hearings and Legislation

PTF/cw

Attachment