MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

October 10, 1978

Mr. William R. Lukens
Milliken for Michigan
P.O. Box 40078
Lansing, Michigan 48901

Dear Mr. Lukens:

This is in response to your request for an interpretation concerning the applicability of the Campaign Finance Act, P.A. 388 of 1976, as amended ("the Act"), to two areas of concern to your committee. The first relates to contributions from joint accounts, and the second to mailers soliciting contributions as well as participation in campaign activities.

You state the Milliken for Michigan Committee has received several contributions of amounts over $100 from married individuals by means of checks drawn against jointly held funds. You ask whether contributions received from a married couple may be prorated between each spouse for the purpose of qualifying the contributions for matching funds from the State Campaign Fund under each of the following circumstances:

1. If the contributions are from a joint account by a written instrument signed by only one of the spouses;

2. If the contributions are from a joint account by a written instrument signed by both individuals;

3. If the contributions are from a joint account by a written instrument signed by one of the spouses but expressly indicating that both individuals intend to provide the funds.

Section 12 (1) of the Act (MCLA § 169.212) provides that in order to qualify a contribution for matching moneys from the State Campaign Fund, the contribution must not exceed $100.00 and it must be made by a written instrument. There are additional limitations with respect to the nature of the contribution and the time period in which it is made and qualified.

In a declaratory ruling to Mr. Zolton Ferency, dated September 13, 1977, the Department stated "The Department shall demand that a document in order to be acceptable for purposes of Section 12(1) of the Act must clearly contain the names of the payor, payee, the amount, the date, the purpose of the contribution, and the signature of the contributor." The declaratory ruling was limited to contributions of less than $20.00 since Section 41(1) of the Act (MCLA § 169.241) extended adequate safeguards to all contributions in excess of $20.00, including those made for the purpose of constituting

a "qualifying contribution." Section 41(1) requires that all contributions over $20.00 be made by written instrument containing the names of the payor and the payee.

Accordingly, the Department requires that all written instruments contain the signature of the contributor, regardless of whether the contributions are from a joint or an individual account. The signature serves as evidence of an individual's intent to contribute to the particular committee. The Department will not accept the signature of one individual as reflecting the intent of another individual to make a contribution, notwithstanding the fact the two individuals are joint holders of an account and married.

Consequently, under the circumstances of your first and third examples, the contributions could not be prorated. The contribution must be regarded as having been made by the signatory. Under the circumstances of your second example, however, there may be proration of a contribution made from a joint account on a written instrument signed by both individuals. The contribution must be prorated equally to each of the signatories unless it is otherwise indicated by the contributors.

It should be noted that in the instance where a gubernatorial candidate committee has received a qualifying contribution exceeding $100 on a written instrument signed by only one spouse, expressly indicating that both individuals intend to provide the funds, the Department has permitted the prorating of the contribution to the two individuals upon the submission of a separate document. The latter must state an intent to make a qualifying contribution in the amount set forth in the written instrument, and the signature of both individuals confirming that intent.

With respect to your second concern, you state the Michigan for Milliken Committee has purchased a number of mailers to be used for the primary purpose of soliciting contributions. You indicate the mailers, a copy of which you enclosed in your letter, also solicit volunteer services for the campaign. In addition, language appears in the mailer endorsing the candidate and requesting the potential contributor's support as a voter.

You ask whether the costs of producing and distributing these mailers are exempt from the expenditure limitations set by Section 67 of the Act (MCLA § 169.267)?

Section 67 provides that expenditures of a gubernatorial candidate committee which has applied for public funding may not exceed $1,000,000 in the aggregate for one election. The provision states further that total expenditures of up to $200,000.00 made by a candidate committee solely for the solicitation of contributions shall be exempt from the expenditure limitation.

On August 7, 1978, a letter was addressed to you in which the Department identified several guidelines relating to various types of expenditures intended solely for the solicitation of contributions. The guidelines indicate a key factor in determining whether an expenditure qualifies for the $200,000.00 exclusion is the audience to which the message purchased by the expenditure is directed. Further, the message itself must be subjected to scrutiny.

In addition, a portion of the August 7 letter dealt with circulars and handouts. The pertinent language stated:

> "Circulars and handouts are excluded from the 20% because of the 'mass media' principles stated previously, unless limited to a specific audience (other than geographic area, with common interests and goals, etc.) and limited solely to a plea for funds.
>
> "The addition to a plea for funds of "Doe also needs your vote' will move a 'message' from within to outside of the 20% (or from outside to inside the $1,000,000.00)."

In the present case, your request lacks information as to the persons who will be recipients of the mailer. Further, it does not indicate whether in fact the mailer was mailed or distributed as a handout. Consequently, absent this information, a definitive answer cannot be provided at this time as to whether the mailer qualifies for the exclusion. However, Department staff members are at your disposal to further explore this question.

This response may be considered as informational only and not as constituting a declaratory ruling.

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF:pj