



CANDICE S. MILLER, Secretary of State
MICHIGAN DEPARTMENT OF STATE
TREASURY BUILDING, LANSING, MICHIGAN 48918

June 11, 1999

Mr. Gregg R. Nominelli
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P. O. Box 414
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Dear Mr. Nominelli:

This communication constitutes the Department of State's response to your request for a declaratory ruling under the Michigan Campaign Finance Act (the MCFA; 1976 PA 388, as amended). Your request, in brief, concerns whether a candidate may rent or donate office space to his or her candidate committee for use as campaign headquarters, and if so, what should be reported.

According to your letter of March 22, 1999, you are a candidate for a state elective office. On February 19, 1999, you filed a Statement of Organization indicating that you are seeking the office of state representative for the 110th district. You further wrote that you personally own a duplex and that you live in one half and rent the other side to tenants. You indicated that you would like to use the rental half of the duplex as your campaign headquarters.

You first asked, may candidates rent personally-owned property to their candidate committees for use as their campaign headquarters?

As it happens, the question of whether candidates may rent office space to their campaign committees has been addressed at the federal level by the Federal Election Commission (the FEC). The FEC, in Advisory Opinion 1978-80, which was issued on October 30, 1978, observed that the Federal Election Campaign Act of 1971, the FEC regulations, and several prior advisory opinions (*viz.*, Advisory Opinions 1978-3, 1977-60, and 1977-11) "recognize the broad discretion which may be exercised by a campaign committee in the expenditure of campaign funds." The 1978 opinion was requested by a candidate who owned a building and leased the entire first floor and garage to his campaign committee for campaign use. In responding to this candidate, the FEC ruled that "your campaign committee may expend its funds to lease office space from you as long as payments under the lease are properly reported."

While rulings of the FEC are not dispositive of questions posed under Michigan law, they do constitute guidance with respect to comparable questions presented in Michigan.

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Significantly, both federal and state law appear similar in this area. Moreover, there are no provisions in the MCFA prohibiting candidates from renting personally-owned property to their candidate committees. Accordingly, under the MCFA, and similar to the FEC rulings, candidates may rent properties that they own and control to their candidate committees during the course of political campaigns.

You also asked about reporting obligations. As you probably know, the MCFA emphasizes the need for effective public disclosure. In that regard, section 26 of the MCFA (MCL 169.226) prescribes the information which must be included in the campaign statements required by the MCFA. Section 26(1)(m) expressly requires the disclosure of the full name and address of each person to whom expenditures totaling more than \$50 are made, as well as the purpose of the expenditure. The word "expenditure" is defined in section 6 of the MCFA (MCL 169.206) to include "a payment . . . of money or anything of ascertainable value . . . in assistance of . . . the nomination or election of a candidate." Accordingly, payments for renting office space or other facilities used for candidates' campaign headquarters fall within the MCFA's definition of expenditure. Therefore, if your committee rents office space for use as campaign headquarters, regardless if the office space rented is one-half of your duplex or office space rented from a third party, the committee would be required to report in its campaign statements any and all office space rental expenditures.

You additionally asked, if a committee uses half of a candidate's duplex "rent free," must the committee report the fair rental value of the duplex as an in-kind contribution?

Section 9 of the MCFA (MCL 169.209) defines "in-kind contribution (or expenditure)" as a contribution (or expenditure) of something other than money. Rule 34 of the administrative rules promulgated under the MCFA (1979 AC, R 169.34) provides that a "committee which is charged less than the fair market value or fair rental value of an item or services shall report the difference between the amount charged and the fair market value or fair rental value as an in-kind contribution."

Whether the reporting requirement of rule 34 applies to the fair rental value of the use of one-half of your duplex depends on whether this use constitutes a contribution under section 4 of the MCFA (MCL 169.204). Section 4 defines the word "contribution" to refer to a payment of anything of ascertainable value that is used to assist in the nomination or election of a candidate. Contribution is further defined in section 4 to include "an individual's own money or property other than the individual's homestead used on behalf of that individual's candidacy."

The use of an individual's homestead is excluded from the MCFA definition of contribution. However, the MCFA does not define the word "homestead." Statutes should be interpreted according to the common and approved usage of any undefined words within them. *People v Fields*, 448 Mich 58, 67; 528 NW2d 176 (1995). The word "homestead" is defined in

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Black's Law Dictionary, Rev 6th ed, 1990, p 734, as the "dwelling house and the adjoining land where the head of the family dwells." This word is also defined in *Webster's New Word Dictionary*, Third College Edition, p 646, as "a place where a family makes its home." In light of these definitions, the portion of your duplex that you would either rent or loan "rent free" to your candidate committee for use as your campaign headquarters would not be the place you use as your residence and would not be part of your individual homestead. Therefore, its use is included within the definition of contribution.

As stated above, section 4 defines a contribution to refer to a payment of anything of ascertainable value that is used to assist in the nomination or election of a candidate. The portion of your duplex that you use for rental property clearly has an ascertainable value. A fair rental value for that portion could be established by, among other methods, reviewing the rent you have collected for its use in the past and reviewing the rents currently assessed for comparable rental units in the area. In that such value is ascertainable, your candidate committee would be required to report at fair rental value its rent free use of one-half of your duplex as an in-kind contribution by you. Alternatively, if you rented one-half of your duplex to your committee at a rate under fair rental value, then the committee would also be required to report the difference as an in-kind contribution by you.

To summarize, with respect to your first question, you may rent one-half of a duplex you personally own to your candidate committee for use as your campaign headquarters. However, all committee expenditures for rent must be identified in the campaign finance reports that your committee is required to file with the Secretary of State. In response to your second question, the committee would be required to report as an in-kind contribution by you the fair rental value of the free use of one-half of your duplex for campaign headquarters, or else the difference between its fair rental value and any lesser amount actually paid as rent.

Since your request did not include a statement of facts sufficient to form the basis for a declaratory ruling, this response is informational only and constitutes an interpretive statement with respect to your inquiries.

Sincerely,



ROBERT T. SACCO
Deputy Secretary of State
Regulatory Services Administration

RTS:ab