MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

2-83-CI

LANSING

MICHIGAN 48918

April 8, 1983

Mr. David A. Plawecki
26621 Ashley
Dearborn Heights, Michigan 48127

Dear Mr. Plawecki:

You have asked the Department of State to render an interpretation of the Campaign Finance Act, 1976 PA 388, as amended, (the "Act"). Specifically, you ask:

> "May a gubernatorial campaign fund repay a loan to a candidate's committee of the same person?"

You indicate your senatorial candidate committee, the Senator Plawecki Fund Committee, loaned your gubernatorial candidate committee, Plawecki 82 Committee, $1,700. This is in addition to a transfer from the senatorial committee to the gubernatorial committee of $50,000. A review of the reports your two committees filed under the Act indicates the senatorial committee has twice made loans to the gubernatorial committee. On February 27, 1981, $1,700 was loaned by the senatorial committee and on December 27, 1981, that $1,700 loan was repaid by the gubernatorial committee. Then on July 28, 1982, the senatorial committee again loaned $1,700 to the gubernatorial committee.

Relevant to the issues raised by your question is an interpretative st atement sent to then senator and gubernatorial candidate Patrick H. McCollough, a copy of which is attached. The McCollough letter clarifies that:

1. A loan made to a candidate committee by a corporate lender in the ordinary course of business is not a contribution.

2. All other loans made to candidate committees are contributions and are subject to the contribution limitations applicable to the lender, e.g. $1,700 or $17,000.

3. Loans are not "qualifying contributions" for the purpose of receiving matching funds from the State Campaign Fund.

4. Repayment of a loan is not an "expenditure," therefore it cannot be a "qualified campaign expenditure" which may be made with monies received from the State Campaign Fund.

Section 44(2) of the Act, MCL 169.244, states:

> "(2) A candidate committee shall not make a contribution to or an independent expenditure in behalf of another candidate committee. A person who knowingly violates this section is guilty of a misdemeanor and shall be punished by a fine of not more than $1,000.00, or imprisoned for not more than 90 days, or both."

Section 45 of the Act, MCL 169.145, provides:

> "(1) A person may transfer any unexpended funds from 1 candidate committee to another candidate committee of that person if the contribution limits prescribed in section 52 for the candidate committee receiving the funds are equal to or greater than the contribution limits for the candidate committee transferring the funds and if the candidate committees are simultaneously held by the same person. The funds being transferred shall not be considered a qualifying contribution regardless of the amount of the individual contribution being transferred."
>
> "(2) Unexpended funds in a campaign committee that are not eligible for transfer to another candidate committee of the person, pursuant to subsection (1), shall be given to a political party committee, or to a tax exempt charitable institution, or returned to the contributors of the funds upon termination of the campaign committee."

Since the contribution limits for a gubernatorial candidate committee are greater than the contribution limits for a senatorial candidate committee, it was permissible for the senatorial committee to transfer unequivocally the $50,000 to the gubernatorial committee. It is also clear from reading section 45(1) that your gubernatorial committee cannot transfer unexpended funds to your senatorial committee.

Loans are not permitted by section 45. This section deals entirely with "unexpended funds" which must mean something other than just "funds" or "money." By modifying "funds" with "unexpended" the Legislature has evidenced an intent to allow left over funds or funds which are not consumed or used up by the candidate's first committee to be transferred to his or her second committee when the second has a larger contribution limit. Both subsections of section 45 provide means of reducing a committee's assets to zero so it may dissolve. It would be inconsistent with this use of the word unexpended to allow any funds to be returned to the dissolving committee.

In addition, a loan is a contribution; therefore, candidate committee to candidate committee loans are prohibited by section 44(2). Unexpended funds are given special status in section 45. Only unexpended funds which meet the requirements of section 45(1) may be transferred from one candidate committee to another. These transfers are not contributions. Therefore, it was improper for your senatorial committee to loan funds to your gubernatorial committee and for the latter to repay the 1981 loan.

If any of the gubernatorial funds are not expended, they must be given to a political party committee or a tax exempt charitable institution or returned to the contributors as required by section 45. The senatorial committee is not a contributor, but rather a transferor, and so is not eligible to receive unexpended funds from the gubernatorial committee.

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

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF/jmp