

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN

SECRETARY OF STATE

STATE TREASURY BUILDING



18-CI-81

LANSING

MICHIGAN 48918

November 3, 1981

Mr. Frederick L. Schmoll, III
Suite 600
352 S. Saginaw
Flint, Michigan 48502

Dear Mr. Schmoll:

I have been asked to respond to your letter of February 17, 1981 to Ms. Susan K. Clark. I understand that you represent Flint Arrowhead Lodge No. 126, F.O.P., and that on October 11, 1980 this organization made an in-kind contribution of \$520.90 to the "Fullerton for District Judge Committee." This contribution was not reported by your client, but by the recipient. On December 3, 1980, as a result of a review of the Fullerton Committee's filings by the Department of State, your clients were sent a Notice of Failure to File. On February 19, 1980, the Department received a Statement of Organization and Campaign Statements covering the period from 1/11-12/31/80 along with your cover letter to Ms. Clark. Although you did not specifically request it, the Department will treat your letter as a request for an interpretative statement and respond accordingly.

In 1980 the legislature considered proposed amendments to sections 35 and 24 of the Act. Senate Bill 801 was intended to modify section 24, while House Bill 5265 was designed to amend section 35. Senate Bill 801 did not pass, while House Bill 5265 was passed and became 1980 PA 215. These proposed modifications related section 35(4) to the filing waiver requirements of section 24 and provided that the waiver applies to expenditures of less than \$500.00. This is supported by a perusal of section 35(4) in its entirety, including the first sentence, which you did not consider pertinent. That sentence reads: "A committee filing a sworn statement pursuant to section 24(7) need not file a Statement in accordance with subsection (1)" Because Senate Bill 801 did not become law, the Department, in order to give logical and consistent meaning to section 35(4) reads this section in conjunction with the existing waiver provisions and has determined that the only relevant amount is the \$500.00 figure imposed by section 24. Because the committee which you represent exceeded this figure, it does not have a

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filing waiver; nor was one asserted in your Statement of Organization filed February 19, 1981. Therefore, the late fees which were assessed should be paid. I am enclosing a copy of a similar ruling directed to John W. Northrup which addresses similar concerns along with information published by the Department concerning the reporting waiver.

Since the Department disagrees with your first contention (i.e., that no late filing fees are due) your request that late fees be waived pursuant to section 15(1)(g)(ii) of the Act must be considered. For purposes of discussing this issue, it will be assumed that your letter of February 17th constitutes the required written request and that all required filings have been made.

Section 15 provides that late fees may be waived only upon a showing of "good cause," a term specifically defined in the Act. In your letter, you do not allege any of the elements of "good cause" contained in section 15(g)(i) but contend that such cause is demonstrated by the factors noted in your letter (i.e., all required filings have been made; any failure to make a "technically required filing was unintentional" and "the circumstances are somewhat unique and do not suggest negligence in any ordinary sense of the word."). You should be advised that the factors you allege do not fall within the very limited examples of "good cause" specified in section 15(g)(ii). Those factors "include the loss or unavailability of records due to a fire, flood, theft or similar reason and difficulties related to the transmission of the filing to the filing official, such as exceptionally bad weather or strikes involving transportation systems." Since you have documented no showing of "good cause" as contemplated by the above-quoted section, no waiver is possible.

Your third suggested alternative concerns a "conciliation agreement" which you submitted pursuant to sections 15(2) and 15(3) of the Act. You should be advised that the Department is not able to "conciliate" this matter. A conciliation agreement is inappropriate because section 16 of the Act provides that the Secretary of State must refer committees that fail to file to the Attorney General. This has already been done in your case.

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