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STATE OF MICHIGAN

FRANK J. KELLEY, ATTORNEY GENERAL

Opinion No. 5882

April 22, 1981

ELECTIONS:

Contribution of corporate funds on ballot question

MUNICIPALITIES:

Contributions to nonprofit corporation

NONPROFIT CORPORATIONS:

Contributions on ballot question

The Michigan Municipal League, a nonprofit corporation, may, subject to the requirements of 1976 PA 388, expend funds of the corporation in connection with the passage or defeat of a ballot question.

Honorable Jerome T. Hart

State Senator

The Capitol

Lansing, Michigan

You have requested my opinion on the following question:

> 'Were state laws compiled with, by the use of tax dollars via dues from various cities by the Michigan Municipal League promoting their position on Proposal D on the 1980 General Election ballot?'

In the absence of authority, public funds may not be expended to influence the outcome of an election. See Mosier v Wayne Co Bd of Auditors, 295 Mich 27; 294 NW 85 (1940); OAG, 1965-1966, No 4291, p 1 (January 4, 1965); OAG, 1965-1966, No 4421, p 36 (March 15, 1965); and OAG, 1979-1980, No 5597, p 482 (November 28, 1979).

Your question refers to the use of funds by the Michigan Municipal League to influence the outcome of the election on the elector-initiated amendment to Const 1963, art 9. It further suggests the source of such funds to be from dues [1] paid the Michigan Municipal League by Michigan cities holding membership in that organization.

To answer your question, consideration first must be given to (1) the authority of Michigan cities to expend funds for

dues to the Michigan Municipal League, and (2) the power of the Michigan Municipal League to expend its funds to publicize its views concerning ballot questions. These questions are considered together.

The answer to the first question has been definitively resolved by the Michigan Supreme Court in Hays v City of Kalamazoo, 316 Mich 443, 458; 25 NW2d 787 (1947), where the Court upheld the expenditure of local public funds for membership in the Michigan Municipal League, and stated:

> '. . . [T]he city of Kalamazoo had the right to join the Michigan Municipal League, to avail itself of the services rendered thereby, and to expend money out of public funds in payment therefor. The record fully justifies the conclusion that the welfare of the city was thereby served and, hence, that the purpose was a city public purpose.'

It should be noted that the Michigan Municipal League was granted intervention as a party Defendant in Hays, supra. The Court traced its history as first a voluntary association and then a nonprofit corporation, its purposes and its financing by means of assessment of fees on its member cities and villages, based upon population. In describing the nature of the Michigan Municipal League, and the services provided cities and villages, the Court in Hays, supra, at pp 449-450, found that the services provided involved public purposes for which the public funds might lawfully be appropriated:

> "The improvement [(2)] of municipal government and administration through co-operative effort; and this purpose shall be advanced by the maintenance of a central bureau of information and research; by the holding of annual conventions, schools and short courses; by the publication of an official magazine; by the encouraging of legislation beneficial to the municipalities of Michigan and the citizens thereof; by the rendering of such special and general services as may be deemed advisable; and by the fostering of municipal education and a greater civic consciousness among the citizens of the municipalities of Michigan.'
>
> 'The general character of the services rendered by the Michigan Municipal League to its constituent members is set forth in paragraph 11 of its answer, which reads:
>
> 'That the Michigan Municipal League exists for the purpose of perpetuating and organizing an agency for the co-operation of Michigan cities in the practical study of matters pertaining to municipal government, and the establishment and maintenance of a central bureau of information for use in collection, compilation and dissemination of statistics, reports and all kinds of information relative to municipal government; that this information and service, among other things, includes taxation problems, utility regulations, construction and engineering, garbage disposal, zoning, civil service, extension of city limits, streets, paving, housing, law enforcement and ordinances, public welfare, liquor control, research, labor problems, pension, compensation, directories, licensing, police and fire protection, legal assistance, transient merchants, floods, stream pollution, accounting, purchasing, public health, parks and play-grounds, post-war planning, information on proposed legislation, drafting charters, and many other services which are essential to the efficient management of the different municipalities constituting its membership.'

Mosier, supra was distinguished in Hays, supra, in that the object in Mosier of reapportioning the legislature was found to be lacking as a county public purpose.

In Advisory Opinion on Constitutionality of 1975 PA 227, 396, Mich 465, 494, 495; 242 NW2d 3 (1976), 1975 PA 227, Sec. 95; MCLA 169.95; MSA 4.1701(95) which prohibited corporations from making contributions or expenditures for the purpose of influencing the qualification, passage or defeat of a ballot question was declared by a majority of the Court to be an unconstitutional infringement on the right to freedom of expression guaranteed by Const 1963, art 1, Sec. 5:

> '. . . Political expression must be afforded the broadest protection in order 'to assure the unfrettered interchange of ideas for the bringing about of political and social changes desired by the people.' That our discussion involves corporations and not individuals does not render inapplicable our society's 'profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.'
>
> 'Contributions or expenditures by corporations to communicate their positions or opinions concerning ballot questions serve to enlighten the public and encourage an informed decision-making process. Such contributions

> or expenditures create no danger of incurring obligations from an elected official to a major contributor. The right of the public to be informed is a paramount consideration in seeking to preserve the free exchange of ideas in the market place.
>
> 'A ballot question may affect the assets, the conduct, or, indeed, the very existence of a corporation. Especially in such cases, the corporation is deserving of a public forum to express its position or opinion, much the same as the public has a right to hear those same matters.
>
> 'It is our opinion that insofar as Sec. 95 interferes with the right of the public to hear divergent views of public importance by prohibiting corporations from making contributions or expenditures for the purpose of communicating its opinion concerning ballot questions, it is violative of Const 1963, art 1, Sec. 5 . . .'

Thereafter, the legislature enacted 1976 PA 388, as amended; MCLA 169.201 et seq; MSA 4.1703(1) et seq, authorizing corporations to make contributions not in excess of $40,000 to each ballot committee for the qualification, passage or defeat of a particular ballot question [Section 54(3) and (4)].

Under 1976 PA 388, supra, Sec. 15, compliance is monitored, in the first instance, by the Secretary of State, with referrals to be made by the Secretary of State to the Attorney General of possible violations for enforcement.

It is, therefore, my opinion that the Michigan Municipal League, as a nonprofit corporation, may, subject to the requirements of 1976 PA 388, supra, expend funds of the corporation in connection with the passage or defeat of a ballot question.

Frank J. Kelley

Attorney General

> (1) Special fund raising, not within the scope of ordinary dues or fees, to be used for or against a specific ballot proposal, is not suggested by your question and is not dealt with in this opinion.

(2) The purposes quoted in this paragraph by the Court in Hays, supra, are from the articles of association of the Michigan Municipal League which continues to provide for such purposes.

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

MUTUAL BUILDING
208 N. CAPITOL AVE.

LANSING
MICHIGAN 48918

April 24, 1981

Honorable James DeSana
P. O. Box 30036
Lansing, Michigan 48909

Dear Senator DeSana:

This is in response to your inquiry concerning applicability of the Campaign Finance Act ("the Act"), 1976 PA 388, as amended, to the disbursement of monies held in your candidate committee and officeholder expense fund accounts.

You indicate you have been asked to purchase advertising space in a program book for a member of Congress who represents your Senate district. However, you are uncertain whether you may charge either your candidate committee or officeholder account for such an expense. This situation has led you to ask the following questions:

"1) May a state legislator charge either a candidate committee account or an officeholder expense fund for the purchase of advertising space in a testimonial book for a member of Congress? Which expenditure is more appropriate?

2) May an officeholder charge either fund for the purchase of advertising space in the program book for a political party fund-raising dinner, such as the Jefferson-Jackson Day Dinner?

3) May an officeholder charge either fund for the purchase of a ticket for a political party fund-raising dinner, such as the Jefferson-Jackson Day Dinner?"

In a May 29, 1979, declaratory ruling issued to Mr. Mitch Irwin, the Department indicated that sections 6, 21, 26 and 45 of the Act (MCL 169.206, 169.221, 169.226 and 169.245) prohibit a candidate from using campaign funds for any purpose other than to influence his or her nomination or election. A copy of this ruling is attached for your convenience. Pursuant to section 3 of the Act (MCL 169.203), an officeholder is a candidate for purposes of the Act. Accordingly, expenditures from a state legislator's candidate committee account must be for the purpose of influencing that legislator's renomination or reelection.

Section 44 of the Act (MCL 169.244) further limits the use of campaign funds. Section 44 provides that a candidate committee shall not make a contribution to or independent expenditure on behalf of another candidate committee. "Contribution" is defined in section 4 of the Act (MCL 169.204) as including anything of ascertainable monetary value made for the purpose of influencing the nomination or election of a candidate. Section 6 defines "expenditure" in similar terms. According to section 5 of the Act (MCL 169.205), "election" means any election held in this state, and "elective office" means a public office filled by an election, except for federal offices. Thus, section 44 prohibits a candidate from making a contribution to or expenditure on behalf of a candidate for state or local office.

Officeholder expense funds, on the other hand, are governed by section 49 of the Act (MCL 169.249). Pursuant to this section, an elected public official is authorized to establish an officeholder fund. The fund may only be used for expenses incidental to the person's office. It may not be used to further the nomination or election of that public official.

The Department has previously indicated that section 49 permits a public official to purchase a ticket to another candiate's fundraiser with monies from an officeholder expense fund. In a letter to Senator Gary Corbin, dated March 21, 1978, the Department stated:

> " . . . it has been custom and tradition for incumbent public officials to purchase tickets to the fundraisers of other candidates for political office. Indeed, it may be stated the expenditure of monies for this purpose by an elected public official is often necessitated by, and therefore incidental to, the person's office. In enacting language authorizing the establishment of an officeholder's expense fund, the Legislature was cognizant of this political tradition."

It was noted in a January 23, 1980, letter to Mr. Edward Chmielewski that the common theme in permitting a disbursement from an officeholder expense fund is that "the expense is traditionally associated with or necessitated by, and therefore incidental to, the holding of public office."

Applying the above principles to the questions you have raised, it is apparent that a state legislator would traditionally be expected to purchase advertising space in a testimonial book for a member of Congress who represents that legislator's district. Indeed, it may be presumed that the legislator would not have been asked to purchase such space but for his status as officeholder. Consequently, the purchase of advertising space in a Congressional testimonial book by a state legislator is incidental to office and may be charged to the legislator's officeholder expense fund.

It should be noted, however, that pursuant to section 49 the advertisement itself may not urge the renomination or reelection of the state legislator paying for the space. If it does, then the expenditure would also be for the purpose of influencing that legislator's nomination or election. In this instance, the legislator must charge the purchase of the advertising space to his or her candidate committee account, provided the testimonial book is for a federal officeholder. If the book is for a state or local official, the purchase of advertising space would constitute an illegal contribution from one candidate to another. As noted above, such a contribution is prohibited by section 44.

With respect to your second question, it would also appear that the purchase of advertising space in the program book for a political party fundraiser is traditionally associated with or necessitated by the holding of public office. Ordinary citizens would not be expected to advertise in a book distributed at a fundraiser. As such, the purchase of such advertising space is incidental to office and may be paid for with monies from an officeholder expense account, provided the advertisement does not contain words such as "vote for", "nominate" or "reelect". Advertisements which further the nomination or election of the state legislator must be paid with funds held in the legislator's candidate committee account.

Finally, you have asked which account may be used for the purchase of a ticket to a political party fundraiser. As indicated previously, it is customary and traditional for an officeholder to purchase tickets to other candidates' fundraisers. Similarly, the purchase of a ticket to a political party fundraiser is often traditionally associated with or necessitated by, and therefore incidental to, the holding of public office. Consequently, an officeholder may charge his or her officeholder expense fund for the purchase of a political party fund raising ticket. However, if the ticket is purchased for the purpose of influencing the officeholder's renomination or reelection, the expenditure must be made from the officeholder's candidate committee account.

In summary, if a state legislator makes an expenditure for the purpose of influencing that legislator's nomination or election, the expenditure must be made from the legislator's candidate committee account. However, the expenditure cannot also be a contribution to another state or local candidate committee. On the other hand, if the expenditure is traditionally associated with or necessitated by, and therefore incidental to, the holding of office, the legislator may charge the expense to his or her officeholder expense fund, provided the expenditure does not also further that legislator's nomination or election.

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

Very truly yours,

Phillip T. Frangos

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF:lr

Attachment

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

April 29, 1981

Mary F. Galasso, Office Administrator
Levin, Levin, Garvett and Dill
3000 Town Center, Suite 1800
Southfield, Michigan 48075

Dear Ms. Galasso:

This is in response to your inquiry concerning applicability of the Campaign Finance Act (the "Act"), 1976 PA 388, as amended, to partnership contributions. Specifically, you have asked whether a partnership which makes contributions of less than $1,000 is exempt from the filing requirements of the Act, where the "contributions are spelled out in the Partnership Return and apportioned back to each of the nine partners" involved.

Pursuant to section 3(4) of the Act (MCL 169.203):

> "(4) 'Committee' means a person who receives contributions or makes expenditures for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate, or the qualification, passage, or defeat of a ballot question, if contributions received total $200.00 or more in a calendar year or expenditures made total $200.00 or more in a calendar year. An individual, other than a candidate, shall not constitute a committee." (emphasis added)

"Person" is defined in section 11(1) of the Act (MCL 169.211) as "a business, individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, labor organization, company, corporation, association, committee, or any other organization or group of persons acting jointly."

Section 6 of the Act (MCL 169.206) defines "expenditure" as including anything of ascertainable monetary value given in assistance of or opposition to the nomination or election of a candidate, or the qualification, passage or defeat of a ballot question. According to section 6(2), an expenditure includes a contribution.

The above sections indicate that a person, including a partnership, who makes contributions totalling $200 or more in a calendar year becomes a committee for purposes of the Act. The only exception found in section 3(4) is with respect to individuals who are not candidates. Thus, a private individual may contribute more than $200 without registering as a committee.

You argue that a partnership which contributes more than $200 should not be considered a committee where the contribution is apportioned back to the individual partners. Essentially, you contend that for purposes of the Act, a partnership contribution should not be attributed to the partnership as a whole, but rather a share of each contribution should be attributed to the partners as individuals. For example, in the case of a four member partnership which contributes $1,000, one-fourth of the contribution, or $250, should be attributed to each partner (assuming each has an equal share in the partnership). Since non-candidate individuals are excluded from the definition of committee, the four individuals who contributed $250 are not required to register as committees.

In Michigan the courts have adopted a minority position which holds that a partnership is a distinct legal entity separate from the individuals composing it. The Campaign Finance Act recognizes this distinction by excluding individuals, but not partnerships, from the definition of committee. Therefore, it must be presumed that a partnership contribution is from the partnership itself and not from the individual partners. If the partnership contributes $200 or more in a calendar year, it is also presumed that the partnership is a committee, and the partnership must register as such pursuant to section 24 of the Act (MCL 196.224).

However, the Department recognizes that partnerships are unique. A partner may often use the partnership account as a means of reaching his or her individual draw or share of the profits. Consequently, the presumption that a partnership contribution is from the partnership entity may be rebutted if the partners instruct the recipient candidate or committee that the contribution should be attributed to the individual partners. If the contribution is actually from the partners as individuals, the partnership is not required to register as a committee. Of course, the individuals themselves are excluded from the definition of committee.

When partners wish to use a partnership check to make a contribution to a committee, the check should be accompanied by a written statement containing the name, address, date, and amount of contribution being made by each partner. The recipient committee should then report the contributions as if they had received a separate check from each partner and no mention should be made of the partnership as a contributor. Those partners whose contributions total more than $200 must have their occupation, employer, and principal place of business reported in addition to their name, address, date, and amount of contribution. When the partnership acts as a person in its own right, a separate statement should not

accompany the check and the amount contributed will not be attributed to the individual partners. By following this contribution and reporting procedure, partnerships and their partners will avoid violating section 41(6) of the Act (MCL 169.241) which prohibits a contribution being made "by any person in a name other than the name by which that person is identified for legal purposes."

You indicate in your letter that your partnership made a $1,000 contribution which was "apportioned back to each of the nine partners." You should now advise the recipient committee in writing that the contribution in question was not from the partnership as a whole, but from the partners as individuals. The statement should indicate the amount of each individual's contribution and list each contributor's name and address. Once a copy of this written statement is received by the Department, it will be clear the partnership is not required to register as a committee. If, in the future, individuals within the partnership make contributions from the partnership account, they should supply the recipient committee with a written statement explaining that the contribution is from the partners as individuals.

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

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings & Legislation

PTF/jmp

MICHIGAN DEPARTMENT OF STATE

3-81-CI

RICHARD H. AUSTIN • SECRETARY OF STATE

LANSING, MICHIGAN 48918

MEMORANDUM

DATE: September 3, 1981
TO: John T. Turnquist, Campaign Finance Reporting
FROM: Phillip T. Frangos, Office of Hearings & Legislation
SUBJECT: EXPENDITURES OF PUBLIC FUNDS FOR REPAYMENT OF DEBTS AND OBLIGATIONS

You have asked that we review the question of whether public funds may be used to pay debts and obligations incurred in years prior to the year of an election, and you indicate that you recently had occasion to consider the impact of a declaratory ruling directed to Mr. William R. Ralls on September 29, 1978, on the payment of obligations from public funds which were incurred prior to the election. The Ralls opinion concerned the deadline before which a committee may apply for public funds, and provided that this candidate committee could apply to receive public funds for which it qualified to retire debts incurred in the August 1978 primary election, i.e., that a committee may receive public funds through December 31st of the year of the election in order to pay previously incurred obligations and may even retain public funds on hand after December 31st, provided there are outstanding debts and obligations incurred before that date. You have asked how (or if) this opinion applies to debts incurred in the year(s) prior to the year of the gubernatorial election.

As you point out, section 66(2) of the Campaign Finance Act provides, first that a candidate may only apply public funds against "qualified campaign expenditures" which is defined to mean:

> ". . . an expenditure for services, materials, facilities or other things of value by the candidate committee to further the candidate's nomination or election to office during the year in which the primary or general election in which the candidate seeks nomination or election is held . . . ." (emphasis added)

Clearly the committee may only use public funds to pay those expenditures meeting the definition of "qualified campaign expenditures," which includes (accepting your "underlying necessary assumption" that the date of an expenditure is the date the expenditure is incurred rather than the date of payment) the requirement that the expenditure be incurred "during the year in which the primary or general election in which the candidate seeks nomination or election is held." It would therefore appear that your second alternative is an acceptable analysis of the Act - i.e., that "any debts or obligations incurred in the year(s) prior to the year of the election are not subject to repayment with public funds." Accordingly, the Department should take the following position with respect to committees seeking to apply public funds to such debts and/or obligations:

1. In cases where payment is made prior to the year of the election, public funds may not be used;
2. In cases where a debt or obligation is reported as due in the "1982 Annual Report" (with a closing date of December 31, 1981) public funds may not be used.

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

5-81-CI

LANSING

MICHIGAN 48918

September 4, 1981

Honorable James DeSana
P.O. Box 30036
Lansing, Michigan 48909

Dear Senator DeSana:

You have requested an "update" on a declaratory ruling issued to Mr. John L. Damstra, Treasurer of the Kent County Republican party on September 2, 1977. That ruling involved the transfer of funds by a political party committee from its official depository account to a certificate of deposit or other interest bearing account in the same or another financial institution. The Department stated that "the (Campaign Finance) Act would not preclude a transfer from the official depository account to an interest bearing account in any financial institution if the committee retains complete control of the funds at all times and full disclosure is made." To assure compliance with the Act, certain specific procedures were required. They are:

(1) That all funds transferred out of the designated official depository account to any savings account, certificate of deposit, or other interest bearing account be eventually transferred back into the official account.

(2) That no expenditures be made from any funds transferred to an account other than the official depository account.

(3) That any interest earned from an account consisting of funds belonging to the committee be reported timely on the required reports of the committee pursuant to section 28(1).

(4) That the committee's supporting records for cash on hand reflect the cash balances in all accounts and all transfers of funds between these accounts.

(5) That the committee's required reporting for cash on hand reflect the cash balances in all accounts consisting of funds belonging to the committee.

You have asked that the above ruling be reconsidered and pose three questions concerning the use of draft accounts from credit unions. First, you ask whether a credit union draft account may be used as the official depository pursuant to the Act. It is understood such drafts, although not "checks" as that term is generally defined in the Uniform Commercial Code (at MCL 440.3104), are treated as checks in commercial usage. They are generally payable on demand and backed by funds on account. So long as funds of the depositor back the draft, it may be treated for purposes of the Act as if it were a check. The credit union may be considered a "financial institution" consistent with section 21(3) of the Act and may serve as the official depository. In the event there are no funds of the depositor in the account, the account becomes a continuing or open loan, and is to be treated (and reported) as such.

You have also inquired about guidelines with respect to reporting interest from draft and regular share accounts. Pursuant to section 28(1) of the Act, such interest is to be reported as "interest" rather than a contribution, and interest paid by a committee shall be reported as an expenditure. This is true with respect to both accounts - even though only one may be the official depository.

In the event of an overdraft, the automatic transferring of funds from one account to the other will be promptly and completely reported on the first campaign statement required after the transfer.

Your final question concerns the opening by the committee of a special deposit interest bearing account. It would appear that your inquiry is answered by the ruling addressed to Mr. Damstra as follows:

> " . . . The mere transfer of funds deposited in the official depository to an interest bearing account for investment purposes is not an 'expenditure' as defined in Section 6 of the Act. Thus, the Act would not preclude a transfer from the official depository account to an interest bearing account in any financial institution <u>if the</u> committee retains complete control of the funds at all times and full disclosure is made."

In an interpretative statement addressed to Senator Michael O'Brien on May 30, 1979, it was pointed out that funds in a certificate of deposit account are always subject to the complete control of the investor - even though a substantial interest penalty might be extracted for early withdrawal of the funds. It would appear, therefore, so long as the account remains the official depository of committee funds and the funds are under the complete control of the committee at all times, the committee may utilize such an account. Interest should be treated as required by section 28 of the Act and as discussed in the Damstra ruling.

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

Very truly yours,

Phillip T. Frangos

Phillip T. Frangos, Director
Office of Hearings & Legislation

PTF/cw

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

4-81-CI

LANSING

MICHIGAN 48918

September 4, 1981

Ms. Elizabeth R. Schwartz
Attorney at Law
209 City Center Building
Ann Arbor, Michigan 48104

Dear Ms. Schwartz:

This is in response to your request for an interpretation of the Campaign Finance Act, 1976 PA 388, as amended ("the Act"), with respect to an opinion poll which has been circulated regarding the operation of the Washtenaw County Prosecutor's Office.

As a copy of the opinion poll was not included with your request, it is difficult to respond other than in a general manner. As you noted, section 47 of the Act (MCL 169.247) requires:

> "(1) A billboard, placard, poster, pamphlet, or other printed matter having reference to an election, a candidate, or ballot question shall bear upon it the name and address of the person paying for the matter.
> (3) If the printed matter relating to a candidate is an independent expenditure which was not authorized in writing by the candidate committee of that candidate, the printed matter shall contain the following disclaimer: 'Not authorized by the candidate committee of _____.' . . . "
> candidate's name

You must determine whether the opinion poll made reference to an election, candidate, or ballot question. Please keep in mind that all incumbent elected officials who are eligible for reelection are candidates as defined in section 3(1) of the Act (MCL 169.203(1)). That section states, in part:

> "Unless the officeholder is constitutionally or legally barred from seeking reelection or fails to file for reelection to that office by the applicable filing date, an elected officeholder shall be considered to be a candidate for reelection to that same office for the purposes of this act only."

Therefore, if the opinion poll makes reference to the incumbent county prosecutor the poll may be making a reference to a "candidate."

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

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF:lr

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

6-81-CI

LANSING
MICHIGAN 48918

September 4, 1981

Olivia Maynard
Chairperson
Michigan Democratic Party
1300 E. Lafayette
Detroit, Michigan 48207

Dear Ms. Maynard:

This is in response to your inquiry concerning the applicability of the Campaign Finance Act ("the Act"), 1976 PA 388, as amended, to an account recently opened by the Michigan Democratic Party as a result of the passage of 1981 PA 25.

Your question specifically asks about 1981 PA 25 which provides for a total appropriation of $500,000.00 to the Commission on Legislative Apportionment. The Commission is made up of eight members evenly split between the two major political parties. The appropriation requires that $250,000.00 be spent under the direction of the four members of one of the parties and that the other $250,000.00 shall be spent under the direction of the other four members of the Commission. Section 16 of 1981 PA 25 limits the use of the funds to legislative apportionment purposes as specified in section 6 of article 4 of the State Constitution of 1963 and various statutes. The Departments of Management and Budget and State are directed to develop audit procedures to insure that the funds have been expended for the purposes intended.

At its meeting held June 1, 1981, the Apportionment Commission unanimously adopted the following resolution with respect to the funds appropriated by 1981 PA 25:

> "WHEREAS, Act No. 25 of the Public Acts of 1981 contains an appropriation in Section 1 to the Commission on Legislative Apportionment in the amount of Five Hundred Thousand and no/100 Dollars ($500,000.00), and further provides in Section 16:

'Of the $500,000.00 appropriated in Section 16 for the commission on legislative apportionment, $250,000.00 shall be expended under the direction of the 4 members of the commission selected pursuant to section 6 of article 4 of the constitution of 1963 by the state organization of 1 of the political parties represented on the commission, with the other $250,000.00 to be expended under the direction of the other 4 members of the commission selected pursuant to section 6 of article 4 of the state constitution of 1963. The $500,000.00 appropriated in section 1 shall be expended only for purposes of carrying out the activities required by section 6 of article 4 of the state constitution of 1963; Act No. 261 of the Public Acts of 1966, as amended, being sections 46.401 to 46.616 of the Michigan Compiled Laws: and section 22, chapter 28, 46 Stat. 26, U.S.C. 2a. The $500,000.00 appropriated in section 1 may be expended beginning on the first day that the commission convenes and may be expended in lump sums up to $250,000.00. The department of management and budget and department of state shall jointly develop audit procedures to insure that these funds have been expended for the purposes intended by this section.'

WHEREAS, the four commissioners selected by the Republican Party and the four commissioners selected by the Democratic Party have each decided to expend the Two Hundred Fifty Thousand and no/100 Dollars ($250,000.00) allocated by the statute to each group of commissioners.

Resolved by the Commission on Legislative Apportionment that:

1. Two Hundred Fifty Thousand and no/100 Dollars ($250,000.00) is hereby transferred under the direction of the four commissioners selected by the Michigan Republican Party to the Republican State Committee of Michigan, to be expended only for the purposes intended by Section 16 of Act No. 25 of the Public Acts of 1981.

The funds shall be deposited in an account separate from all other funds of the Republican State Committee of Michigan, and any of the four Commissioners selected by the Republican State Committee shall be entitled to review the records of disbursement at any time during normal business hours. The Republican State Committee shall cooperate with the Department of Management and Budget and the Department of State.

2. Two Hundred Fifty Thousand and no/100 Dollars ($250,000.00) is hereby transferred under the direction of the four commissioners selected by the Michigan Democratic Party to the Democratic State Central Committee of Michigan, to be expended only for the purposes intended by Section 16, Act No. 25 of the Public Acts of 1981.

The funds shall be deposited in an account separate from all other funds of the Michigan Democratic Party, and any of the four Commissioners selected by the Democratic Party shall be entitled to review the records of disbursement at any time during normal business hours. The Michigan Democratic Party shall cooperate with the Department of Management and Budget and the Department of State."

It is clear from both 1981 PA 25 and the resolution of the Commission on Legislative Apportionment that the funds to be utilized by the political parties are to be used only for legislative apportionment purposes and are not to be used for any purpose within the scope of the Campaign Finance Act.

Political parties perform a wide variety of functions in our society. They are not single purpose organizations devoted only to the election of candidates to public office. The Election Code establishes various roles for political parties and substantially regulates their operations. 1981 PA 25 and the resolution of the Commission on Legislative Apportionment simply set up a new job for the political parties. That activity is entirely independent of supporting the election of candidates and opposing or supporting the enactment of ballot questions, and is not reportable under the Act.

Please be informed that on June 2, 1981, the Department of Management and Budget, in a letter signed by James Bolthouse, Director, Accounting Division, established standards for recording and reporting expenditures made involving these special apportionment funds.

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

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings & Legislation

PTF/cw

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

7-81-CI

September 5, 1981

Deane Baker
4944 Scio Church Road
Ann Arbor, Michigan 48103

Dear Mr. Baker:

This is in response to your inquiry concerning applicability of the Campaign Finance Act (the "Act"), 1976 PA 388, as amended, to certain expenditures you made in reaction to Lieutenant Governor James H. Brickley's call for a ballot proposal to reduce the number of elected officials in Michigan state government.

On January 30, 1981, Mr. Brickley spoke before the Michigan Press Association and suggested "the time is ripe for placing before the voters a proposal to shorten Michigan's ballot." Specifically, Mr. Brickley indicated that certain elected officials, including members of the governing boards of Wayne State University, Michigan State University and the University of Michigan, should be appointed by the governor. Further, he stated that "in the months ahead" he would launch a petition drive to place a constitutional amendment which would accomplish this plan before the voters.

As a concerned citizen and regent of the University of Michigan, you felt compelled to respond to Mr. Brickley's comments. In a speech before the Detroit Rotary Club on April 1, 1981, you offered several rationales for opposing the proposed constitutional amendment. You also incurred expenses totalling $233.31 to reproduce and distribute copies of your remarks. After conferring with members of the Department, you filed an Independent Expenditure Report with the Washtenaw County clerk disclosing the exact nature of the expenditures you made. You now ask if you were actually required, under the circumstances, to file this report.

"Independent expenditure" is defined in section 9 of the Act (MCL 169.209) as an expenditure which is not made at the direction or control of another person and which is not a contribution to a committee. Section 51 of the Act (MCL 169.251) requires certain independent expenditures to be reported. Specifically, section 51 provides:

> "(1) A person, other than a committee, who makes an independent expenditure, advocating the election of a candidate or the defeat of a candidate's opponents or the qualification, passage, or defeat of a ballot question, which totals an amount of $100.01 or more in a calendar year shall file a report of the independent expenditure, within 10 days, with the clerk of the county of residence of that person. The report shall be made on an independent expenditure report form provided by the secretary of state and shall include the date of the expenditure, a brief description of the nature of the expenditure, the amount, the name and address of the person to whom it was paid, the name and address of the person filing the report, together with the name, address, occupation, employer, and principal place of business of each person who contributed $100.01 or more to the expenditure. The filing official receiving the report shall forward copies, as required, to the appropriate filing officers as described in section 36.
> (2) A person who violates this section is subject to a civil penalty of not more than $500.00."

Thus, a person who makes independent expenditures totalling $100.00 or more advocating the qualification, passage or defeat of a ballot question must file a report of those expenditures with the appropriate filing official.

You indicate that to the best of your knowledge "at the time of my response to Lieutenant Governor Brickley on April 1st, his was an idea for an amendment rather than an actual ballot item." However, according to section 2 of the Act (MCL 169.202):

> "(1) 'Ballot question' means a question which is submitted or which is intended to be submitted to a popular vote at an election whether or not it qualifies for the ballot." (emphasis added)

The Department's records indicate Mr. Brickley actually formed a ballot question committee, known as Citizens For An Improved Ballot, on March 11, 1981. According to the Statement of Organization filed on that date, the committee was established to support the following ballot question or issue:

> "Appointment by the Governor of Supreme Court Justices, Appellate Judges, members of the State Board of Education and the governing boards of Wayne State University, Michigan State University and The University of Michigan"

It is clear that by the time a ballot question committee is formed the relevant issue is no longer an idea but is a question "intended to be submitted to a popular vote at an election." Consequently, the $233.31 you expended after March 11, 1981, to copy and distribute your speech were expenditures advocating the qualification, passage or defeat of a ballot question. Since these expenditures totalled more than $100.00, you were required to file an independent expenditure report within 10 days, provided the expenditures were not made at the direction or control of another person. As an individual, you were not required to register as a committee, even though you expended more than $200.00, because section 3(4) of the Act excludes individuals who are not candidates from the definition of committee.

On the other hand, if the University of Michigan or another group or organization directed, controlled or paid for these expenditures, the university or organization would be a committee subject to the reporting requirements of the Act. Similarly, if the reproduction and distribution costs were paid by your company rather than by you as an individual, your company would be required to register as a ballot question committee. Finally, if the expenditures you made were directed or controlled by, or made in concert with another person, you and that person would constitute a committee and would have to file a statement of organization.

Please note the above restrictions do not impinge upon your right to express opinions regarding issues of public concern. The Act simply requires you to disclose certain threshhold amounts of money you may receive or expend in an effort to influence an election.

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

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

September 24, 1981

JoEllen Peterson, Deputy Clerk
County of Ingham
Box 179 Courthouse
Mason, Michigan 48854

Dear Ms. Peterson:

This is in response to your request for an interpretation of the Campaign Finance Act ("the Act"), 1976 PA 388, as amended, concerning when an individual becomes a "candidate" for purposes of the Act.

You write with respect to an individual who circulated a petition for the office of Ingham County Commissioner. You indicate he circulated the petition between January 20 and 29, obtained 20 of the requisite seven to 26 signatures in that period of time, and filed the petition with your office on March 20. You do not indicate whether the individual in question received contributions or made expenditures prior to March 20 toward promoting his election to the office of commissioner.

You ask when the individual became a candidate for purposes of the Act.

Section 3(1) of the Act (MCL 169.203(1)) states (in part):

> "'Candidate' means an individual: (a) who files a fee, affidavit of incumbency, or nominating petition for an elective office; (b) whose nomination as a candidate for elective office by a political party caucus or convention is certified to the appropriate filing official; (c) who receives a contribution, makes an expenditure, or gives consent for another person to receive a contribution or make an expenditure with a view to bringing about the individual's nomination or election to an elective office, whether or not the specific elective office for which the individual will seek nomination or election is known at the time the contribution is received or the expenditure is made; or (d) who is an officeholder who is the subject of a recall vote. Unless the officeholder is constitutionally or legally barred from seeking reelection or fails to file for reelection to that office by the applicable filing deadline, an elected officeholder shall be considered to be a candidate for reelection to that same office for the purposes of this act only."

An individual who meets any of the foregoing definitions is a "candidate" for purposes of the Act and must form a candidate committee within 10 days pursuant to section 21(1) (MCL 169.221(1)). The committee must then file a statement of organization within 10 days of its formation pursuant to section 24(1) (MCL 169.224(1)). The latter section provides that any person who fails to file the requisite statement of organization shall pay a late filing fee of $10.00 for each day the statement remains not filed, up to a maximum penalty of $300.00.

An individual does not become a candidate for purposes of the Act by merely circulating a petition. From the facts you present, the individual in question became a candidate on March 20 when he filed his petition. Of course, he could have become a candidate sooner by receiving a contribution or making an expenditure prior to March 20. However, as noted above, your letter did not provide any information concerning the latter issue.

Therefore, on the basis of the facts presented in your letter, the individual became a candidate not later than March 20, the date on which he filed his petition. He did not become a candidate solely by circulating the petition. Upon becoming a candidate, he was required to form a committee and to file a statement as required by the Act.

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

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings & Legislation

PTF/jmp

9-81-CI

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

September 24, 1981

Mr. Dennis Stabenow
Citizens for a Constitutional Convention
2525 South Deerfield
Lansing, Michigan 48910

Dear Mr. Stabenow:

This is a belated response to your inquiry concerning applicability of the Campaign Finance Act ("the Act"), 1976 PA 388, as amended, to a ballot question the State Constitution required to appear on the ballot. "Citizens for a Constitutional Convention" was organized to support the holding of a constitutional convention.

Article XII, Section 3 of the Michigan Constitution of 1963 states (in part):

> "At the general election to be held in the year 1978, and in each 16th year thereafter and at such times as may be provided by law, the question of a general revision of the constitution shall be submitted to the electors of the state." (Emphasis supplied)

Section 34(2) of the Act (MCL 169.234(2)) provides:

> "A ballot question committee shall file a campaign statement, of which the closing date shall be the twenty-eighth day following the qualification of the measure, not later than 35 days after the ballot question is qualified for the ballot. If the ballot question fails to qualify for the ballot, the ballot question's committee shall file the campaign statement within 35 days after the final deadline for qualifying, the closing date of which shall be the twenty-eighth day following the deadline."

Section 2 of the Act (MCL 169.202) provides (in part):

> "(1) 'Ballot question' means a question which is submitted or which is intended to be submitted to a popular vote at an election whether or not it qualifies for the ballot."
>
> "(2) 'Ballot question committee' means a committee acting in support of, or in opposition to, the qualification, passage, or defeat of a ballot question but which does not receive contributions or make expenditures or contributions for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate."

The facts and law in the present matter give rise to two conclusions: (1) the question of a general revision of the Constitution was a ballot question, and (2) Citizens for a Constitutional Convention was a ballot question committee. However, the filing of the campaign statement provided by section 34(2) is based on "qualification of a measure." For purposes of the Act, "qualification of a measure" takes place upon certification by the state or local board of canvassers that a question shall appear on a ballot.

The presence on the ballot of the subject ballot question was automatic since it was provided by the Constitution. Certification to appear on the ballot by the board of state canvassers was not applicable in this instance. Consequently, the condition precedent to filing a campaign statement pursuant to section 34(2) did not occur. Therefore, the report provided by section 34(2) was not required in the case of this ballot question mandated by the Constitution.

It should be noted, however, the campaign statements required by section 34(1)(a) and (b) (MCL 169.234(1)(a) and (b)) should have been filed. Specifically, there are the preelection and postelection campaign statements.

This response is informational only and sent for purposes of closing the file in this matter.

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings & Legislation

PTF/jmp

10-81-CF

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

SEP 29 2 30 PM '81

STATE

September 28, 1981

Mr. Terry R. Black
200 Mill Street
Lansing, Michigan 48933

Dear Mr. Black:

This is in response to your inquiry as to whether a garage sale is a fundraising event as defined in the Campaign Finance Act ("the Act"), 1976 PA 388, as amended. You also inquire as to the status for purposes of the Act of a purchaser at a sale.

Section 7(4) of the Act (MCL 169.207(4)) defines "fundraising event" to mean "an event such as a dinner, reception, testimonial, rally, auction, bingo, or similar affair through which contributions are solicited or received by purchase of a ticket, payment of an attendance fee, donations or chances for prizes, or through purchase of goods or services." (Emphasis supplied). Section 4(1) (MCL 169.204(1)) defines "contributions" to mean "anything of ascertainable monetary value made for the purpose of influencing an election." Accordingly, since the garage sale was held to raise money for an election campaign through the purchase of goods, it is a fundraising event within the meaning of the Act's provisions.

You correctly point out that a person who donates an item to the committee, such as a $25 toaster, is making a contribution in the amount of the fair market value of the item. Thus the toaster is a $25 contribution by the donor whether it is ultimately sold for $10, $25, or $50.

It is you contention that a payment by a purchaser at a garage sale fundraiser becomes a contribution only insofar as it exceeds the fair market value of the item purchased. In other words, you maintain an individual who pays $25 to purchase a radio worth $25 at fair market value is not a contributor to the sponsoring candidate committee. You indicate if the same individual purchases the same radio for $50, then the purchaser contributes $25 and not $50. You state, "Persons should not be reported as contributors to the campaign if they, in fact, receive value equal to or greater than their payments. They have made no contribution; they've simply purchased property."

In a letter to Mr. Michael Hutson on September 20, 1978, the Department stated that for fundraising events a committee must treat the gross amount of each contribution as a contribution and not merely the net proceeds after deducting expenses. In other words, the fair market value received by the contributor at a fundraising event is irrelevant to the total amount contributed by the contributor to the sponsoring committee. Consequently, in your example of the $25 radio, the contribution is $25 if the contributor pays $25 for it.

The principal purpose of the Act is to insure disclosure of the financial transactions of a campaign. The Act does not insure that a fundraising event, or for that matter an entire campaign, is a profitable occurrence. A candidate committee may sell a $200 watch, provided by a contributor, to a purchaser for $25 at a fundraising event, so long as there is compliance with the Act's recording and reporting requirements.

Any money given at the fundraising event is a contribution to the committee sponsoring the event. This does not mean, however, that the name and address of the purchaser must be obtained by the committee. Although the Act prohibits anonymous contributions, section 41(3) (MCL 169.241(3)) provides that a contribution of $20 or less received as the result of a fundraising event is not considered an anonymous contribution. Section 41(4) (MCL 169.241(4)) makes it the responsibility of the contributor to report his or her name, address, and total amount contributed, in the instance where aggregate contributions to the committee exceed $20 in any calendar year. It should be noted however, that section 26(f) (MCL 169.226(f)) requires the recipient committee to report the total of these contributions. Reference is made also to section 41(1) (MCL 169.241(1)) which prohibits cash contributions over $20. Finally, a garage sale fundraiser must be advertised as such, and contributors must be made aware of how much and to whom they are contributing.

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

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings & Legislation

PTF/jmp

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

12-81- CI
LANSING
MICHIGAN 48918

October 12, 1981

Honorable Harry M. Titus
115 South Michigan
Saginaw, Michigan 48602

Dear Judge Titus:

Your letter concerning the effective date of a judicial appointment for purposes of the Campaign Finance Act ("the Act"), 1976 PA 388, as amended, has been referred to this office for response.

You questioned the amount of late filing fees that were assessed after you filed your statement of organization subsequent to your appointment to a judgeship. Section 21(1) of the Act (MCL 169.221(1)) states, "(A) candidate, within 10 days after becoming a candidate, shall form a candidate committee." Section 24(1) (MCL 169.224(1)) provides, "A Statement of Organization shall be filed within 10 days after a committee is formed." The crucial question in your situation is the date on which you became a candidate.

In a December 14, 1979 letter to Mr. John P. Hancock, Jr., it was determined that an appointee becomes a "candidate" upon his or her acceptance of the appointment. This date of "acceptance" is not specified in the Act and is open to several interpretations.

In order to avoid premature designations of candidacy and to insure consistency and the orderly administration of the Act, the date the appointed officeholder is actually sworn into office will be employed as the date of acceptance.

Your late filing fees have been adjusted accordingly.

Very truly yours,

Phillip T. Frangos/jmp

Phillip T. Frangos, Director
Office of Hearings & Legislation

PTF/jmp

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

December 14, 1979

Mr. John P. Hancock, Jr.
1881 First National Building
Detroit, Michigan 48226

Dear Mr. Hancock:

This is in response to your request for a declaratory ruling pursuant to the Campaign Finance Act ("the Act"), 1976 P.A. 388, as amended, concerning the filing requirements of a person appointed to an elective office.

You state Andrew Frostic was appointed to an unexpired term on the Wyandotte School Board of Education in January, 1979. He later decided to seek election to a full term and filed a statement of organization on April 26, 1979. Mr. Frostic was assessed a late filing fee of $300.00 by the Wayne County Clerk because he had not filed a statement of organization by February 7, 1979, twenty days after appointment to the school board.

You ask if Mr. Frostic became a "candidate" under the Act upon appointment to the school board or upon deciding to seek election to the school board.

Section 3(1) of the Act (MCLA §169.203) defines "candidate" (in part):

> "'Candidate' means an individual: (a) who files a fee, affidavit of incumbency, or nominating petition for an elective office; (b) whose nomination as a candidate for elective office by a political party caucus or convention is certified to the appropriate filing official; (c) who receives a contribution, makes an expenditure, or gives consent for another person to receive a contribution or make an expenditure with a view to bringing about the individual's nomination or election to an elective office, whether or not the specific elective office for which the individual will seek nomination or election is known at the time the contribution is received or the expenditure is made; or (d) who is an officeholder who is the subject of a recall vote. Unless the officeholder is constitutionally or legally barred from seeking reelection or fails to file for reelection to that office by the applicable filing deadline, an elected officeholder shall be considered to be a candidate for re-election to that same office for the purposes of this act only." (Emphasis added.)

Section 5(2) of the Act (MCLA §169.205) states (in part):

> " . . . A person who is appointed to fill a vacancy in a public office which is ordinarily elective holds an elective office . . ."

You argue that a person who holds an elective office is not an elected officeholder. Your argument is contrary to the plain meaning of the statute. Accepting your reading of the Act would make the above language of section 5(2) mere surplusage. You state the purpose of the language quoted from section 5(2) is "to prevent an appointed officeholder who decides to run for a full term from escaping the filing requirements of the Act. Such a person cannot claim that he is not a candidate for 'elective office' simply by virtue of his appointment thereto." However, section 5(2) is not needed to accomplish that goal as a person in that position would be a "candidate" upon "filing a fee, affidavit of incumbency, or nominating petition." The purpose of section 5(2) is to clarify that a person appointed to an elective office is to be treated as if he or she were elected to the office.

Mr. Frostic became a "candidate" upon his acceptance of the appointment to the school board. Within ten days of his acceptance, Mr. Frostic was required to form a candidate committee by section 21(1) of the Act and then had ten more days in which to file a statement of organization under section 24 of the Act. The Wayne County Clerk was correct in assessing Mr. Frostic $300.00 in late filing fees. The Act does not authorize either the county clerks or the Secretary of State to waive late filing fees.

This response constitutes a declaratory ruling concerning the applicability of the Act to the facts enumerated in your request.

Sincerely,

Richard H. Austin
Secretary of State

13-81-CI

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

October 12, 1981

Dorothey Sherman, Treasurer
Committee for the Re-Election of
Judge Richard D. McLean
67200 Van Dyke
Romeo, Michigan 48065

Dear Ms. Sherman:

This is in response to your inquiry concerning the Campaign Finance Act ("the Act"), 1976 PA 388, as amended.

You inquire whether a candidate committee may use any remaining campaign funds for a thank-you dinner for the committee after the election. It is your opinion the dinner would "influence an election" as contemplated by the Act.

Section 6 of the Act (MCL 169.206) defines "expenditure" as anything of ascertainable monetary value used for the "nomination or election of a candidate . . . ." This definition is consistent with the definition of "contribution." Section 4 of the Act (MCL 169.204) relates the latter to the "purpose of influencing the nomination or election of a candidate . . . ."

A thank-you dinner for the candidate's committee soon after the election is sufficiently tied to election activity so as to serve to influence his or her nomination or election. Consequently, the use of campaign funds to pay for such an event would be appropriate under the Act's provisions.

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

Very truly yours,

Phillip T. Frangos

Phillip T. Frangos, Director
Office of Hearings & Legislation

PTF/cw

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

11-81-CI

October 12, 1981

Mr. Godfrey A. Glomb
1737 N. Denwood
Dearborn, Michigan 48128

Dear Mr. Glomb:

This is in response to your inquiries concerning the Campaign Finance Act (the "Act"), 1976 PA 388, as amended.

You conduct art auctions as fundraisers for various civic, religious and social groups. It is your desire to extend this service to various political candidates and committees.

You indicate you provide to the group, at no expense, the necessary admission tickets which they sell. The entire proceeds of the ticket sales are retained by the group. You also supply, at your expense, the necessary advertising flyers and posters. Finally, you supply the art objects which are sold. The group provides the facilities and patrons; they retain 20 percent of the gross sales.

Your questions are as follows:

1. Does the auctioneer and provider of supplies and art objects assume any responsibilities under the Act?

2. Does the purchaser at the political fundraiser make a political contribution, and if so, what is its value?

3. Does the candidate committee, including a gubernatorial committee, list the gross sale or its percentage share in its campaign statement?

4. If the answer to the third question is gross sales, does the percentage retained by the auctioneer become an "in-kind" expenditure which must be reported by the candidate committee?

In response to the first question, it appears from your description of the program that the auctioneer functions as an independent contractor. Section 43 of the Act (MCL 169.243) provides that an expenditure shall not be made other than for overhead or normal operating expenses, by an agent or an independent contractor, including an advertising agency, on behalf of or for the benefit of a committee unless the expenditure is reported by the committee as if the expenditure were made directly by the committee, or unless the agent or independent contractor files an independent expenditure report. The agent or independent contractor is required to make known to the committee all information required by the Act to be reported by the committee.

Concerning the second question, an attendee at an auction - political fundraiser makes a contribution to the extent of any admission ticket price or attendance fee paid by him. A purchaser of an art object at such an event makes a contribution in the full amount paid for the item. Each contributor must be made aware prior to the making of a contribution of the amount involved, whether the contribution is made through purchase of an admission ticket and/or purchase of an art object.

As to your third question, a candidate committee, including a gubernatorial candidate committee, must report the entire receipts from a purchase as a contribution.

With respect to the fourth question, the amount paid to the auctioneer for the cost of any art objects sold or services rendered must be reported by the committee as an expenditure.

It should be noted that the auctioneer makes a reportable in-kind contribution to the committee in the full amount of the value of any admission tickets, advertising flyers and posters he provides without charge to the committee. If the auctioneer is a corporation, such a contribution is prohibited by section 54 of the Act (MCL 169.254).

This interpretation is in concert with a series of rulings made by the Federal Election Commission interpreting the provisions of the Federal Election Campaign Act. Advisory Opinion 1980-34 issued May 23, 1980, deals with a fact situation very similar to yours. In concluding that all funds paid for donated art objects are contributions even though the art work is sold through an art dealer in his normal business the Commission cited and relied on its previous rulings on such fundraising activities.

This response may be considered informational only and does not constitute a declaratory ruling.

Very truly yours,

Phillip T. Frangos

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF/cw

15-81-CI

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

October 23, 1981

Honorable William Faust
Michigan State Senate
State Capitol Building
Lansing, Michigan 48909

Dear Senator Faust:

This is in response to your inquiry regarding the Campaign Finance Act (the "Act"), 1976 PA 388, as amended.

Your question is articulated as follows:

> "Would you please tell me what the procedure is for a candidate reporting campaign expenditures when the expenditures are for the purpose of participating in a joint rally."
>
> "By 'joint rally,' I mean an event for the purpose of promoting the candidacy of two or more candidates for public offices. The event would not be to raise funds for any candidate. There would be no proceeds realized by any candidate. All financial transactions concerning the rally would be in payment for the expenses incurred to hold the event."
>
> "There are two factors I feel you should be aware of before you respond."
>
> "First, the total of the expenses for such a rally may not be known until after the event. Therefore, the best method of recording and reporting these expenditures would be perhaps to have one candidate, by agreement with the other candidate(s), incur all expenses and then be reimbursed proportionately by the other candidates once the total of the expenses for the rally is known."

> "Secondly, the proportion of the total expense for the joint rally assumed by each participating candidate would be in direct proportion to the benefit each candidate received. But, because candidates with constituencies of varying sizes (such as candidates for the U.S. Congress, the State Senate, the State House of Representative, a county commission) might benefit from the same rally, the proportion of benefit received by each would be perhaps best determined by the participating candidate in a written agreement. Due to overlapping districts and permutations of candidates possible at a single event, the development of a general expenditure proportion formula for joint rallies would seem to be objectively impossible and impractical. Reasonable proportions developed by the participating candidates for each rally would seem to be the feasible approach and would comply with the general intent of the Campaign Finance Act, which is financial disclosure."

A joint rally is not a "fund raising event," as defined in section 7(4) of the Act (MCL 169.207), so long as contributions are not "solicited or received by purchase of a ticket, payment of an attendance fee, donations or chances for prizes, or through purchase of goods or services." However, guidelines previously developed by the Department regarding the recording and reporting of expenditures incident to joint fund raising events are useful in answering your question.

In a letter to Mr. Michael W. Hutson, dated September 20, 1978, the Department stated that prior to conducting a joint fundraiser, the participants should execute a written agreement indicating, among other things, the proportional share of expenditures to be delegated to each committee and the manner of payment for expenses attributable to the event. It was suggested that one committee may be designated to pay all expenses for the event and then subsequently be reimbursed by the other committees. Otherwise, each committee may pay its proportionate share of each expense as it arises.

Similarly, expenses incident to a joint rally should be allocated by written agreement prior to the event. Such an agreement may provide that one candidate "incur all expenses and then be reimbursed proportionately by the other candidates once the total of the expenses for the rally is known."

Section 44(2) of the Act prohibits a candidate committee from making a contribution to the candidate committee of another candidate. When candidate committees enter into an agreement to share the expenses of a joint rally, they can insure compliance with the Act by agreeing to share expenses equally. However, an agreement can base the sharing of expenses on some other critereon. In your letter you indicate an intent to compute expenses for the rally on the basis of the relative size of each participant's potential constituency. Like equal sharing of expenses this would insure that no candidate committee would be paying a disproportionate share of the expenses of the rally.

The recording and reporting of expenditures relating to the joint rally must meet all of the requirements of the Act. In addition, if the agreement executed by the participating candidates designates a committee to pay all expenses for

which reimbursement will be provided by the other committees at a later time, the designated committee must itemize all expenditures over $50.00 associated with the rally. The committee must indicate the expenditure was made for a joint rally. When the committee making the expenditure receives reimbursement, it should report the reimbursement as "other receipts" in connection with a joint rally.

If a committee is obligated to make reimbursement, it must report the total reimbursement as an expenditure. Also, each expenditure over $50.00 which is included within the total reimbursement must be itemized.

Finally, if it is agreed in writing that each committee will pay its proportionate share as each expenditure arises, each committee must itemize its share of the expenditure if that share exceeds $50.00.

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

16-81-CI

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING

MICHIGAN 48918

October 23, 1981

Mr. Jon K. Jenkins
Attorney at Law
740 Michigan National Tower
Lansing, Michigan 48933

Dear Mr. Jenkins:

This is in response to your inquiry concerning the Campaign Finance Act ("the Act"), 1976 PA 388, as amended. You indicate that you and other individuals are interested in Mr. Michael F. Walsh becoming a candidate for Ingham County Prosecuting Attorney but because of the substantial expense involved in conducting a county-wide campaign, you doubt that Mr. Walsh will become a candidate unless he is assured of sufficient financial support.

In this context you ask several questions which will be answered as presented:

(1) Can we proceed to raise money for Mr. Walsh without his proceeding to become a candidate for Prosecutor?

You may raise money for a prospective candidate before the individual announces an intention to seek a particular office. However, you should note that section 3(1) of the Act (MCL 169.203(1)) defines "candidate," in relevant part, as follows:

> "Sec. 3(1) 'Candidate' means an individual: (a) who files a fee, affidavit of incumbency, or nominating petition for an elective office; (b) whose nomination as a candidate for elective office by a political party caucus or convention is certified to the appropriate filing official; (c) who receives a contribution, makes an expenditure, or gives consent for another person to receive a contribution or make an expenditure with a view of bringing about the individual's nomination or election to an elective office, whether or not the specific elective office for which the individual will seek nomination or election is known at the time the contribution is received or the expenditure is made; or (d) who is an office-

> holder who is the subject of a recall vote. Unless the office-holder is constitutionally or legally barred from seeking reelection or fails to file for reelection to that office by the applicable filing deadline, an elected officeholder shall be considered to be a candidate for reelection to the same office for the purposes of this act only." (emphasis added)

Under the Act a person may become a candidate even though the individual has not announced as a candidate, filed for office, campaigned or otherwise become a candidate in the ordinary sense of the word. When contributions are received with an individual's consent a candidate committee must be formed pursuant to section 21 of the Act (MCL 169.221).

If you raise money without the candidate's consent, you must form a committee pursuant to sections 11(2) and 24 of the Act (MCL 169.211 and 169.224). This is discussed further in the answers to questions 2, 7, and 8 below.

> (2) If the answer to question one is "yes," then is it necessary to form a committee as defined in MCL 169.208(2) or any other type of committee? If so, what kind of committee needs to be formed?

If contributions are received with an individual's consent, section 21 requires the individual to form a candidate committee within 10 days after becoming a candidate.

If a candidate committee is not formed, a political committee or an independent committee must be formed. The Act's provisions with respect to political committees are discussed in answers to subsequent questions. An independent committee as defined in section 8(2) of the Act (MCL 169.208) may be formed instead. This type of committee must support at least three candidates for state elective office. Since you indicate an interest only in a local election, this letter will not elaborate on independent committees and their obligations.

> (3) If a committee is formed and receives contributions can they be transferred to the individual's candidate committee, or hope-fully, to his officeholder's account?

Section 3(2) (MCL 169.203) provides that "'candidate committee' means the committee designated in a candidate's filed statement of organization as that individual's candidate committee. A candidate committee shall be presumed to be under the control and direction of the candidate named in the same statement of organization." Section 21(1) provides, in part, that "a candidate shall not form more than 1 candidate committee for each office for which the person is a candidate." Thus, when contributions are received, the committee formed is the candidate committee for the duration of the campaign and, if elected, throughout the individual's term in office. Upon the candidate's election the committee may transfer funds to his officeholder's expense fund in accordance with Rule 39 (1979 AC R169.39).

A political committee, on the other hand, may make contributions to a candidate committee or an officeholder expense fund. The Act does not limit the amount of contributions which can be made to candidates for local office. Consequently, a political committee may contribute to a candidate committee or an officeholder expense fund by transferring its funds to these entities. It should be noted, however, that section 49 of the Act (MCL 169.249) does not allow an official to make contributions or expenditures from an officeholder expense fund to further his or her nomination or election.

(4) Is there any prohibition against a committee receiving funds if it is not required to register and formally exist?

A committee other than a candidate committee must be created when contributions received total $200.00 or more or expenditures made total $200.00 or more in a calendar year. A candidate committee is required to be formed within 10 days of an individual becoming a candidate as defined in section 3(1). In keeping with the disclosure purpose of the Act, a committee is required to report its existence by filing a statement of organization and to report its activities through periodic reports required by various sections of the Act.

A committee is not prohibited from receiving funds when it is not required to organize and file as a committee under the Act. In other words, a group of people can legally receive and spend less than $200.00 in a calendar year without filing any reports.

(5) If a committee is formed and registered which receives contributions, is the disposition of these funds limited by MCL 169.246 if the individual does not become a candidate or what disposition(s) could be made of these funds in that event?

Your question cites section 46 of the Act (MCL 169.246) but from its context it appears your references should be to section 45 (MCL 169.245). Section 45 controls the disposition of any unexpended funds of a campaign committee and establishes the only method by which these funds may be disbursed, with the exception that in event of election, funds may be transferred to an officeholder's expense fund pursuant to section 49 (MCL 169.249) and rule 39 (1979 AC R169.39). Disposition of political committee funds is discussed in the answer to question 8.

(6) Could the unexpended contributions be given to another candidate if the individual does not become a candidate?

Unexpended funds of a candidate committee can only be disbursed as provided by section 45 and may not be given to another candidate. The only narrow exception is contained in section 45(1) wherein they may be transferred to another candidate committee of the same candidate if he has candidate committees for different offices simultaneously and the other provisions of this subsection are met. A political committee would not be subject to this restriction.

(7) Can a committee be formed to seek a candidate for this (or any other) office which the committee believes to be competent and the contribution then released to that candidate's committee?

Pursuant to section 11(2) of the Act (MCL 169.211), political committees may be established to accept contributions or make expenditures in support of or in opposition to candidates for office. If a political committee has been receiving contributions and a person it supports then becomes a candidate forming his own candidate committee, the political committee may make contributions to his committee or to his officeholder fund if established. Assuming the individual is running for a local office, there is no limitation on the size of the contribution.

(8) If a committee is formed to seek a qualified candidate but believes they are unsuccessful, what disposition must be made of the contributions, if any, which are received by the committee?

As indicated in the response to your question 5, the disposition of unexpended funds of a candidate committee is governed by section 45 of the Act. Political committees are not limited by section 45 in disposing of unexpended funds upon dissolution of the committee. Rule 1(c) (1979 AC R169.1) defines the terms "campaign" or "candidate's campaign" to mean "the candidate committee's activities for a specific election." Section 45(2) of the Act clearly applies to unexpended funds in a campaign committee. Section 45 as clarified by Rule 1(c) does not include within its ambit the regulation of committees other than candidate committees. Such a committee may dispose of unexpended funds in any lawful way. Although the Act does not limit the use of such funds, there may, of course, be other limitations on their use including the imposition of local, state, and federal taxes.

Since your letter does not set forth a precise statement of facts as required by section 62 of the Michigan Administrative Procedures Act with respect to a request for a declaratory ruling, this response should be considered informational only.

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings and Legislation

14-81-CI

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

October 23, 1981

John L. Ward, II, Director
Senate Republican Office
Program and Research Staff
Staff Capitol Building
Lansing, Michigan 48909

Dear Mr. Ward:

This is in response to your request for an interpretative statement concerning the Campaign Finance Act (the "Act"), 1976 PA 388, as amended.

Specifically, you referred to a May 30, 1979, interpretative statement (Honorable George Montgomery) and a January 29, 1980, declaratory ruling (Mr. Gene E. Overbeck) which discussed the definition "committee" in the Act. You take exception to some of the conclusions reached in those two Department of State responses and ask the following question:

> "Must a 'person' who makes a 'contribution' that is in excess of $200.00, but less than the limitations on 'contributions' as established in section 52 and 54 of the Act and is not prohibited by the Act, register as a 'committee'?"

"Committee" is defined in section 3(4) of the Act (MCL 169.203(4)):

> "(4) 'Committee' means a person who receives contributions or makes expenditures for the purpose of influencing or attempting to influence the action of voters for or against the nomination or election of a candidate, or the qualification, passage, or defeat of a ballot question, if contributions received total $200.00 or more in a calendar year or expenditures made total $200.00 or more in a calendar year. An individual, other than a candidate, shall not constitute a committee."

Section 6 of the Act (MCL 169.206) defines "expenditure" in part as follows:

> "Sec. 6(1) 'Expenditure' means a payment, donation, loan, pledge, or promise of payment of money or anything of ascertainable monetary value for goods, materials, services, or facilities in assistance of, or in opposition to, the nomination or election of a candidate, or the qualification, passage, or defeat of a ballot question . . . .
>
> (2) Expenditure includes a contribution or a transfer of anything of ascertainable monetary value for the purposes of influencing the nomination or election of a candidate, or the qualification, passage, or defeat of a ballot question."

Under this definition, a contribution made to a candidate committee, ballot question committee, political party committee, independent committee, or political committee is an expenditure made by the contributor. When that contribution/expenditure is for the purpose of influencing an election, exceeds $200.00, and is made by a "person" who is not an individual, the "person" is a committee and must file as such. Likewise a labor union which contributes more than $200.00 to a ballot question committee or a corporation which purchases an advertisement or advertisements in a newspaper that total more than $200.00, in support of or in opposition to a ballot question must file as a committee.

The only entity which may receive contributions or make expenditures totalling $200.00 or more in a single year without being required to file as a committee is an individual. If an individual is a sole proprietor it does not matter whether checks are drawn on the individual's personal or business account. The contributions or expenditures do not result in an obligation to become a committee. This exception is included in section 3(4) of the Act (MCL 196.203(4)). Checks drawn on the owner's personal account and checks drawn on the business account must be combined for the purpose of the limits on contributions for a person set forth in section 52 of the Act (MCL 169.252).

Because an expenditure can be a "contribution" and a contribution can be an "expenditure," your statement, "A 'person' who makes a 'contribution,' is not a 'committee' anymore than a 'person' who receives an 'expenditure.'" is incorrect. Making a contribution is making an expenditure and receiving an expenditure is receiving a contribution.

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

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

19-CI-81

LANSING

MICHIGAN 48918

October 28, 1981

Mr. Lloyd Pitsch, Treasurer
Citizens for Sheriff Phil Heffron
7515 Lincoln Lake, N.E.
Belding, Michigan 48809

Dear Mr. Pitsch:

This is in response to your request for a declaratory ruling regarding the Campaign Finance Act, 1976 PA 388, as amended ("the Act") and the propriety of refunding to the candidate unexpended campaign funds which the candidate has contributed.

You state the facts as follows:

> "Our funding raising activity was more successful than we had anticipated, leaving us with a large unexpended balance after the election. A portion of these unexpended funds are being transferred to an office holder's expense account, and we would like to refund Sheriff Heffron his contributions at this time rather than waiting four years until we can dissolve the candidate committee."

Section 3 of the Act (MCL 169.203) states as part of the definition of candidate that "(u)nless the officeholder is constitutionally or legally barred from seeking reelection or fails to file for reelection to that office by the applicable filing deadline, an elected officeholder shall be considered to be a candidate for reelection to that same office for the purposes of this act only." Section 21 of the Act (MCL 169.221) requires that a candidate form and maintain a candidate committee. Officeholders are therefore required to maintain their campaign committees throughout their tenure in office and until they are no longer considered candidates for reelection under the Act.

The only provision contained in the Act for the disbursement of unexpended funds is section 45(2) of the Act (MCL 169.245) which provides:

> "(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." (emphasis added)

Since disbursement under this section can occur only on termination of the campaign committee, Sheriff Heffron cannot distribute unexpended campaign funds to contributors until he is no longer a candidate as defined in section 3.

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

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF/cw

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

20-CI-81

LANSING

MICHIGAN 48918

October 28, 1981

Mr. Alan V. Reuther
Assistant General Counsel
International Union
United Automobile, Aerospace & Agricultural
Implement Workers of America
8000 East Jefferson Avenue
Detroit, Michigan 48214

Dear Mr. Reuther:

This is in response to your letter requesting an interpretation of the Campaign Finance Act ("the Act"), 1976 PA 388, as amended, with respect to certain contributions the Michigan UAW Political Action Committee (Michigan PAC) wishes to make.

You indicate Michigan PAC wishes to contribute to various campaigns for state and local office by paying printers directly for printed matter to be used in a campaign. This payment would be in lieu of a contribution of money to the committees which would in turn purchase campaign materials.

Your proposal would have the printed matter prepared and ordered by the candidates. The candidates would be solely responsible for disseminating the printed material. Michigan PAC's only involvement would be payment of the bill.

Further, you state payments for the printed material would be reported by Michigan PAC as in-kind contributions to the respective candidates. The candidates would also list the payments as in-kind contributions on their reports. You indicate there would be full disclosure of the transactions.

You go on to suggest that printed matter contributed in this matter by Michigan PAC will meet the requirements of the Act for identification of printed matter used in an election campaign if it bears only the name and address of the candidate's committee. Section 47(1) of the Act (MCL 169.247) provides:

> "A billboard, placard, poster, pamphlet, or other printed matter having reference to an election, a candidate, or ballot question, shall bear upon it the name and address of the person paying for the matter."

In support of your contention, you submit that requiring the name and address of Michigan PAC to appear on the printed matter "would give the misleading impression that Michigan PAC was responsible for preparation of the literature."

Adoption of the interpretation of section 47(1) that you suggest requires interpretation of the phrase "person paying for the matter" as meaning "the person on behalf of whom the matter was purchased." Such an interpretation would dilute the clear legislative intent as expressed in unambiguous language, to identify written material with the entity which provides the funding for its publication.

Therefore, the Department declines to interpret section 47(1) of the Act in the manner you have suggested.

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

MICHIGAN DEPARTMENT OF STATE

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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

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

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

November 3, 1981

Charles Perlow
Honigman, Miller, Schwartz and Cohn
2290 First National Building
Detroit, Michigan 48226

Dear Mr. Perlow:

This is in response to your inquiry concerning applicability of the Campaign Finance Act (the "Act"), 1976 PA 388, as amended, to the return of certain late filing fees which were paid after July 1, 1981. Before addressing the issue you have raised, a brief review of relevant provisions of the Act is in order.

Pursuant to section 3(4) of the Act (MCL 169.203), a person other than an individual who receives or expends $200.00 or more for the purpose of influencing the action of the voters for or against the qualification, passage or defeat of a ballot question is a committee subject to the reporting requirements of the Act. Thus, a person who contributes (i.e., expends) $200.00 or more to a ballot question committee becomes a ballot question committee and must file a statement of organization as required by section 24 of the Act (MCL 169.224). A person who fails to file a statement of organization within 10 days is subject to late filing fees of up to $300.00. Failure to file for more than 30 days is a misdemeanor which may result in a fine of not more than $1,000.00.

Ballot question committees are also required by sections 34 and 35 of the Act (MCL 169.234 and 169.235) to file certain other statements and reports on a periodic basis. Failure to do so may result in the assessment of late filing fees and other penalties.

Section 82 (MCL 169.282) establishes the effective dates of certain penalty provisions contained in the Act. This section was recently amended by 1981 PA 102 to read in pertinent part:

> "(2) A penalty or late filing fee imposed pursuant to section 24, 34, or 35 shall neither be enforceable nor due or payable as a result of a person making expenditures of $200.00 or more as a contribution to a ballot question committee before October 15, 1981. If a person has paid a late filing fee as a result of an expenditure of $200.00 or more as a contribution to a ballot question committee before July 1, 1981, the late filing fee imposed pursuant to section 24, 34, or 35 shall be returned by the person who collected the late filing fee upon written request of the person who paid it."

Thus, a person who contributes $200.00 or more to a ballot question committee by October 15, 1981, and who fails to timely file a statement of organization or other report is immune from any penalty or late filing fee which would otherwise be assessed.

1981 PA 102 was signed by the Governor on July 16, 1981, and given immediate effect. Since that date, the Secretary of State and other filing officials have been without authority to collect late filing fees from persons contributing to ballot question committees.

In addition, 1981 PA 102 provides "if a person has paid a late filing fee as a result of an expenditure of $200.00 or more as a contribution to a ballot question committee before July 1, 1981," the person is entitled to a refund upon written request. You have asked whether this sentence authorizes a person who paid a late filing fee after July 1st to obtain a refund. You point out that the above-quoted language is ambiguous and can be construed in either one of two ways.

First, the sentence can be interpreted to mean that a person who pays a late filing fee before July 1, 1981, is entitled to a refund. If this interpretation prevails, there are persons who paid late filing fees after July 1st but before July 16th (the effective date of the amendment) who are not entitled to reimbursement. On the other hand, the sentence can be construed to mean that a person who contributes to a ballot question committee before July 1, 1981, may apply for a refund. The latter construction would entitle persons who filed a statement of organization before July 1, 1981, to obtain a refund without regard to the date on which the penalty was paid.

The courts in this state have consistently held that an ambiguous statute must be construed to carry out the legislature's intent. Moreover, when the meaning of a statute is in doubt:

> "The spirit and intention of the statute should prevail over its strict letter (citations omitted). Ordinarily, if a statute is open to construction at all, it will be construed if possible as to prevent injustice (citations omitted) and obviate absurd circumstances." Smith v City Commission of Grand Rapids, 281 Mich 235, 240-241 (1937).

It is clear that the underlying purpose of 1981 PA 102 was to grant relief to all persons who inadvertently became committees by contributing $200.00 or more to a ballot question committee before October 1, 1981. If 1981 PA 102 is construed to mean that only those persons who paid late filing fees before July 1, 1981, are entitled to refunds, an absurd result follows. That is, a group of persons within the designated class (those who paid late filing fees after July 1st but before the effective date of the amendment) would be barred from relief. This injustice could not have been intended by the legislature. Consequently, 1981 PA 102 must be construed as permitting a person who paid a late filing fee after July 1, 1981, as a result of contributing to a ballot question committee to apply for and obtain a refund.

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

cc: Mary McLean

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

21-81-CI
LANSING
MICHIGAN 48918

November 10, 1981

Mr. John D. Pirich
Miller, Canfield, Paddock & Stone
110 Business & Trade Center
200 Washington Square, North
Lansing, Michigan 48933

Dear Mr. Pirich:

This is in response to your inquiry concerning applicability of the Campaign Finance Act (the "Act"), 1976 PA 388, as amended, to partnership contributions. Specifically, you have asked:

> "May a law firm which is a partnership including professional corporations make firm contributions to a political candidate or committee and have the contributions charged back to only non-professional corporation partners?"

As indicated in an April 29, 1981 letter to Mary F. Galasso, partnerships are unique creatures under Michigan law. A partnership is a separate entity, yet it is also a group of individuals. Under the Department's interpretation of the Act set forth in the Galasso letter, a partnership may act as a single entity or a partnership check may be used to make one lump sum contribution which is attributed in specific amounts to individual partners. Obviously, no part of a campaign contribution may be attributed to an individual partner who is incorporated as a professional corporation because of section 54 of the Act (MCL 169.254). However, the fact that some partners are incorporated does not prevent the unincorporated partners from having contributions made with partnership checks where the contributions are attributed only to the unincorporated partners. Attribution, as used in this context, means the unincorporated partners' shares of the partnership profits shall be reduced by the amount of the contribution while the draw or compensation of the unincorporated partners remains unaffected, i.e., as if no contribution had been made.

As stated in the Galasso letter, a partnership is presumed to be separate entity when using the partnership checking account unless a written statement identifying the actual individual contributors accompanies the contribution. The proper procedure a partnership must follow when making a contribution bears repeating from the Galasso letter:

> "When partners wish to use a partnership check to make a contribution to a committee, the check should be accompanied by a written statement containing the name, address, date, and amount of contribution being made by each partner. The recipient committee should then report the contributions as if they had received a separate check from each partner and no mention should be made of the partnership as a contributor. Those partners whose contributions total more than $200 must have their occupation, employer, and principal place of business reported in addition to their name, address, date, and amount of contribution. When the partnership acts as a person in its own right, a separate statement should not accompany the check and the amount contributed will not be attributed to the individual partners. By following this contribution and reporting procedure, partnerships and their partners will avoid violating section 41(6) of the Act (MCL 169.241) which prohibits a contribution being made 'by any person in a name other than the name by which that person is identified for legal purposes.'"

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

22-81-CI

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING

MICHIGAN 48918

December 1, 1981

Mr. James C. VanHeest
A 6137 146th Avenue
Holland, Michigan 49423

Dear Mr. VanHeest:

You raised several questions concerning the Campaign Finance Act (the "Act"), 1976 PA 388, as amended. However, your primary question is whether or not the "principal campaign committee of a candidate for federal office . . . shall be required to file campaign finance reports with the Michigan Secretary of State's office." Since the issues raised by your secondary questions are variations of the issue giving rise to the primary question, only the latter is answered in this statement.

In a letter to Mr. Phillip J. Arthurhultz, dated November 2, 1978, it was noted that "It is possible for an individual to be a candidate for purposes of Federal law and the Act." The Act applies to an individual at the point in time that he or she becomes a "candidate" as defined in section 3(1), (MCL 169.203). Simply being a candidate for a Federal office in this state does not subject a person to the filing and other requirements of the Act. However, if the Federal candidate is also a candidate for elective office as defined in the Act, there must be compliance with the requirements of the Michigan statute.

As the Arthurhultz letter points out, political campaigns for Federal office are within the jurisdiction of the Federal Elections Commission. It is suggested you direct an inquiry to that agency. Accordingly, the answer to your "primary question" is that the candidate committee of a candidate for Federal office is not automatically required to comply with the Campaign Finance Act. However, such compliance may be required if the Federal candidate is also a candidate for state or local office or if the committee of the Federal candidate engages in financing activity within the purview of the Act.

For example, Federal committees may desire to make contributions to political party committees. There is nothing in the Act precluding contributions from Federal committees to political party committees. However, if funds totalling more than $200.00 are turned over to a political party committee and placed in an account from which they may be used to further the nomination or election of candidates for state or local office, the donor of such funds, if other than an individual, becomes a "committee" as defined by section 3(4) of the Act and compliance with the Campaign Finance Act is required. This is true whether the transferred funds are placed in the official committee depository or a

secondary depository of the political party committee. Unless the contributor clearly designates the funds as being for other than campaign purposes, the Department presumes that contributions to a political party are made for the purpose of influencing the nomination or election of a candidate for state or local office, or the qualification, passage or defeat of a ballot question.

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

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings & Legislation

PTF/jmp

23-81-CI

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 AACS 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

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

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

24-81-CI

December 2, 1981

Mr. Jack Bailey
General Manager
CN - WCAR
Livonia, Michigan 48901

Dear Mr. Bailey:

This is in response to your inquiry concerning applicability of the Campaign Finance Act ("the Act"), 1976 PA 388, as amended, to the sponsorship of a radio program hosted by a state senator.

Specifically, you indicate WCAR radio currently airs a weekly public service program entitled "People Power," which is hosted by State Senator Doug Ross. You state the program focuses upon "consumer oriented problems and solutions." However, "(t)here is absolutely no political content allowed in this program, and certainly no content that would give campaign support" to Senator Ross.

Your question concerns whether local retailers may sponsor the program without violating the Act. Before responding, however, it is first necessary to determine whether a station may hire an officeholder to host a public service program without itself violating the Act's provisions.

The Campaign Finance Act, in part, regulates the nature and amount of contributions and expenditures made in support of or opposition to a "candidate." Pursuant to section 3(1) (MCL 169.203) an officeholder is a "candidate" for purposes of the Act. Thus, any contribution or expenditure made with respect to a state senator is subject to the Act's provisions.

"Contribution" is defined in section 4 of the Act (MCL 169.204) as including anything of ascertainable monetary value "made for the purpose of influencing the nomination or election of a candidate, or for the qualification, passage, or defeat of a ballot question." The definition of "expenditure" is set forth in section 6 of the Act (MCL 169.206):

> "(1) 'Expenditure' means a payment, donation, loan, pledge, or promise of payment of money or anything of ascertainable monetary value for goods, materials, services, or facilities in assistance of, or in opposition to, the nomination or election of a candidate, or the qualification, passage, or defeat of a ballot question. An offer or tender of an expenditure is not an expenditure if expressly and unconditionally rejected or returned."

> "(2) Expenditure includes a contribution or a transfer of anything of ascertainable monetary value for purposes of influencing the nomination or election of any candidate or the qualification, passage, or defeat of a ballot question." (Emphasis added)

These definitions make it clear that before an action can be determined to be a contribution or expenditure it must be something of ascertainable monetary value which is "in assistance of, or in opposition to, the nomination or election of a candidate or the qualification, passage, or defeat of a ballot question . . ." If a radio station furnishes the facilities in assistance of a candidate's election it has made a contribution to the candidate's campaign.

However, subsection (3) of section 6 exempts certain expenditures from the operation of the Act. This subsection provides, in part:

> "(3) Expenditure does not include:
>
> > (c) An expenditure for communication on a subject or issue if the communication does not support or oppose a ballot issue or candidate by name or clear inference or an expenditure for the establishment, administration, or solicitation of contributions to a fund or independent committee." (Emphasis added)

Accordingly, if a given program has no content which would support or oppose either the candidate hosting the program, another candidate or a ballot question, the activity is exempt under section 6(3)(c). On the other hand, if any portion of the program does support or oppose any candidate or ballot question, the exemption is no longer available, and the Act's regulatory scheme is fully applicable.

In the latter instance, if the program supports the candidate serving as host, the candidate must report as a contribution the value of the wages, goods, materials, services or facilities not paid for by a sponsor and given by the station in assistance of the candidate's nomination or election. Similar reporting requirements are applicable where the program supports or opposes another candidate or ballot question, and the station's expenditures with respect to that segment of the program are directed or controlled by another person.

Where no such direction or control is exerted, the station is deemed to have made an independent expenditure. If such expenditures total $100.01 or more, the station must file a report of the independent expenditure within 10 days pursuant to section 51 of the Act (MCL 169.251). When expenditures reach $200.00 a statement of organization as a committee must be filed pursuant to section 24 of the Act (MCL 169.224).

It is particularly important to note that section 54 of the Act (MCL 169.254) prohibits a corporation from making a contribution or expenditure on behalf of a candidate. Consequently, if a station is incorporated and the program supports or opposes any candidate, the station has violated the Act. A corporation may, however,

contribute up to $40,000 to a ballot question committee and may also make an independent expenditure relating to a ballot question, which is defined in section 2(1) of the Act (MCL 169.201) as a question which is submitted or which is intended to be submitted to the voters, whether or not it qualifies for the ballot.

Of course, section 54 does not prohibit any station from making an expenditure for a news story, commentary or editorial in support of or opposition to a candidate or ballot question. This type of expenditure, when made in the regular course of broadcasting, is excluded from the operation of the Act by section 6(3)(d).

The answer to the question you raised, i.e., whether a local retailer may sponsor a public service program without violating the Act, also depends upon the program's content. Thus, where the program does not support or oppose any candidate or ballot question, the activity is exempt pursuant to section 6(3)(c), and a retailer may sponsor the broadcast without regard to the provisions of the Act. Conversely, if the program supports or opposes a candidate or ballot question, the above-described statutory provisions come into play. In such cases, an incorporated retailer is prohibited by section 54 from sponsoring a program affecting the nomination or election of a candidate, but not a ballot question.

If the candidate who hosts the broadcast is benefitted by the program's content, the candidate must report the fact of sponsorship as an in-kind contribution. Where the program supports or opposes another candidate or a ballot question, sponsorship is considered an independent expenditure, provided the expenditure is not made at the direction or control of another person, and must be reported by the retailer if such expenditures total $100.01 or more. When such expenditures reach $200.00 a statement of organization as a committee must be filed pursuant to section 24 of the Act (MCL 169.224).

Finally, the Department is unable to respond to your inquiry concerning applicability of the lobbyist regulation act, 1978 PA 472, to the above-described facts. In order to respond, more information is needed regarding the financial relationships between the parties involved. For your information, the legislation was declared unconstitutional by the Ingham County Circuit Court. The decision is being appealed.

It should be emphasized that broadcasting is subject to regulation by the Federal Communications Commission. Nothing in this response should be read as being in conflict with or contradictory to any law, regulation, rule or decision administered or issued by the FCC with respect to political broadcasts, equal time provisions or related subjects.

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

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings & Legislation

PTF/jmp