1-83-C

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

MUTUAL BUILDING
208 N. CAPITOL AVENUE

LANSING
MICHIGAN 48918

March 4, 1983

Mr. David M. Savu
Attorney at Law
105 S. First Street
Ishpeming, Michigan 49849

Dear Mr. Savu:

This is in response to your request for a declaratory ruling concerning the applicability of the Campaign Finance Act (the "Act"), 1976 PA 388, as amended. Your question is "whether or not a group of persons circulating either an initiatory or referendary petition to be submitted to the Marquette City Commission constitute a 'Ballot Question Committee' as that term is defined in the . . . Act" and second, "are such persons, as a group, required to file a statement of organization under section 24 of the . . . Act prior to the time the City of Marquette might take action under Charter Section 7.12 to refer an initiatory or referendary petition to the electors."

It is your position that a ballot question cannot exist as a matter of law until the City Commission decides "to put the question to the electorate" and further, if the City Commission decides to adopt or repeal an ordinance, no ballot question exists because the question was never put to the voters. You further opine that a group "supervising the circulation of such petitions" does not come within the ambit of the Act and is therefore not required to file a statement of organization or anything else until the City Commission determines to put the question before the voters.

You included a copy of sections 7.10-7.14 of the City Charter which apparently establishes the procedure for "Initiatory and Referendary Petitions." In summary, these sections provide that such petitions are to be signed by not less than 10% of the registered electors, as of the last regular city election, are to be addressed to the (City) Commission, are to be attached to a sworn affidavit by the circulator and are to be filed with the Clerk, who has 15 days to "canvass the signatures thereon." When a petition with sufficient signatures is appropriately filed, the Clerk is to present it to the Commission at the next regular meeting. Upon receipt of such a petition from the Clerk, the Commission has (generally) 30 days to either (a) adopt the ordinance (initiatory petition), (b) repeal all or part of the ordinance (referendary petition), or (c) "Determine to submit the proposal provided for in the petition to the electors." If the Commission determines that the proposal is to be submitted to the electors, it is to be submitted to the voters at the "next election held in the city for any other purpose" or at a special election called for that purpose.

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 actions of the voters for or against the nomination or election of a candidate."

A third definition which must be considered is that of "committee," found in 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."

MCL 169.202(2) includes committees acting in support of or opposition to "the qualification" of a ballot question. Qualification is preliminary to the actual decision to place a question before the voters. A ballot question committee may come into existence prior to the time that, in your case, the City Commission exercises its option of determining to submit a proposal to the electorate. This follows from the definition of "ballot question committee" quoted earlier. An issue may be a ballot question "whether or not it qualifies for the ballot" - in your case, whether or not the City Commission determines to submit the issue to the voters.

At the time action is taken which may result in the qualification of a question which may be submitted to a popular vote at an election, the person taking such action is a ballot question committee if the other requirements of a committee are met; that is, if the "person . . . receives contributions or makes expenditures for . . . the qualification, passage or defeat of a ballot question, if contributions received . . . or expenditures made total $200.00 or more in a calendar year." MCL 169.203(4)

Until the $200.00 threshold is crossed, the person is not a committee and therefore the filing requirements of the Act do not come into play. Section 24 of the Act requires that a statement of organization be filed "within 10 days after a committee is formed." Pursuant to the above analysis a statement of organization is required within 10 days after the person receives or spends $200.00 in a calendar year.

In response to your specific question, you should be advised that, at the time a person other than an individual circulating the referendary or initiatory petitions, receives or expends $200.00 or more in a calendar year for the purpose of qualifying a ballot question, the person constitutes a ballot question committee as defined in the Act; within 10 days after receiving or expending $200.00 in a calendar year, the committee must file a statement of organization with the appropriate filing official.

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

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings and Legislation

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

2-83-CI

LANSING

MICHIGAN 48918

April 8, 1983

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

Dear Mr. Plawecki:

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

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

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

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

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

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

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

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

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

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

Section 45 of the Act, MCL 169.145, provides:

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

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

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

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

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

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

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF/jmp

1-83-CD

June 3, 1983

RICHARD H. AUSTIN
SECRETARY OF STATE

MICHIGAN
DEPARTMENT
OF STATE
LANSING, MICHIGAN 48918

Thomas H. Ritter, Treasurer
Jeffrey M. McHugh, Legal Counsel
Headlee for Governor Committee
P.O. CS 1982
Southfield, Michigan 48037

Gentlemen:

This is in response to your request for a declaratory ruling with respect to the public funding provisions of the Campaign Finance Act (the "Act"), 1976 PA 388, as amended.

Your letter asks approval of the following "proposed transaction" in a "ruling request:"

"PROPOSED TRANSACTION

Several vendors supplied services to the Committee in the course of both the primary and general elections. These vendors, because of their ongoing relationship to the Committee, and the large volume of work being performed for the Committee had significant account balances with the Committee on or immediately after the primary election held August 10, 1982. To enable these vendors to continue performing work for the Committee, it was necessary to make payments as soon as possible to them. Their need for working capital made it unrealistic for them to wait until public funds were received and applied to their primary campaign balances, since the time period from application to receipt of public funds was, at that time, approximately four to six weeks. The Committee therefore made payments out of the "private-general" account (ie. funds received during the general election campaign from private contributions) to these vendors, with the understanding the Committee would later pay them out of primary public funds when it was feasible to do so (ie. when the public funds were received by the Committee). It was anticipated this would be accomplished in compliance with the statute, by having a vendor issue a check to the Committee which would be deposited in the private funds account as a reimbursement of the prior payment from that account. The vendor would then be paid with primary public funds in the same amount. The money which was redeposited in the private funds account would then be used for general election debts of the Committee. Our objective of paying these vendors with public funds for primary election expenditures would then be accomplished, without the cash flow problem necessitated by the normal time wait to receive the public funds.

When presented with this set of facts, CFR stated public funds would not be available to the Committee.

RULING REQUEST

The Headlee for Governor Committee submits this transaction is sufficient to allow the release of public funds for reasons based in the statute, public policy, and equity. We therefore request our application for public funds be granted in total and any further application be granted up to the $660,000.00 maximum."

The materials submitted with your request contend that there is no statutory provision which would prohibit the proposed transaction. However, the Department of State has consistently interpreted the provisions of the Act to preclude the transaction you propose.

This interpretation was included in the manual "Gubernatorial Candidate Committees: Standards and Practices Under the Campaign Finance Act" which was supplied to your committee. The interpretation is based on the combined effect of various provisions of the statute.

Section 6 of the Act (MCL 169.206) defines the term "expenditure." That definition consistent with the reporting and disclosure purposes of the Act, establishes the time of the expenditure as the date a committee becomes obligated to pay a person for any goods or services provided to the committee. Subsequent sections of the Act require that all expenditures be included on campaign statements filed by a committee. When a committee ultimately pays the debt in full no future reporting is required by the Act.

Gubernatorial candidate committees which accept public funds pursuant to sections 61 through 69 of the Act (MCL 169.261-169.269) subject themselves to the provisions of those sections. Section 67 limits expenditures by candidate committees accepting public funding to $1,000,000 per election plus an additional 20% for expenditures made solely for the solicitation of contributions. Violation of this section is a misdemeanor: in addition the attorney general may petition the circuit court for an order prohibiting a violator of the sections from assuming a public office or receiving compensation, or both.

Since its inception the Department has administered the public funding provisions of the Act to insure that committees do not exceed the limit on expenditures set forth in section 67. Candidates have been advised verbally and in writing of the accounting practices to be followed.

Section 66(3) of the Act (MCL 169.266) requires that public funds be kept in a separate account. Section 66 also limits the use of public funds to the payment of qualified campaign expenditures. The purpose of these provisions is to make it as easy as possible to account for the public funds which are provided to the committee for the limited purpose of making qualified campaign expenditures in a single election.

The transaction you describe in your letter would permit a gubernatorial committee to transfer expenditures that had already been incurred from the private funds account of the committee to the primary public funds account well after the debt had been incurred and the funds had actually been paid. In effect a debt already paid from privately raised funds would be reincurred so that public funds subject to the overall limitation in effect for the primary could be used to pay it. Revival of the obligation previously paid is inconsistent with the need to provide for the orderly administration of the Act.

The end result is a transfer of funds from the primary public funds of the committee to the private funds account of the committee. Such a transfer undermines the limitations on spending imposed on candidates who receive public funding. If permitted in this case it would also establish the principle that transfers between accounts may be made on an unlimited basis. The risk in permitting such an interpretation is not only that the expenditure limits would be exceeded but that accountability for public funds would be lost in a sea of transfers between accounts. For the reasons set forth above the transaction that you propose cannot be approved.

The only transfers between accounts that candidates receiving public funding may make are as follows:

1. Transfers to correct an error by a committee in either depositing funds in the wrong account, or making an expenditure from the wrong account. Such transfers may only be made after obtaining the prior written approval of the Campaign Finance Reporting Section.

2. Asset "purchases" made with funds subject to a general election limit from the assets used by the same candidate in the primary. This procedure was previously addressed in the attached interpretative statement to Wallace Long on September 29, 1978.

This response is a declaratory ruling concerning the applicability of the Act to the specific set of facts you have submitted.

Very truly yours,

Richard H. Austin
Secretary of State

3-83-CI

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

June 13, 1983

Nina F. Collins
Running, Wise and Wilson
326 State Street
P.O. Box 686
Traverse City, Michigan 49586

Dear Ms. Collins:

This is in response to your inquiry concerning applicability of the Campaign Finance Act (the "Act"), 1976 PA 388, as amended, to the donation of billboard space to a ballot question committee.

Specifically, on July 22, 1982, Dingeman Advertising, Inc., provided billboard space valued at $3,610 to the Upper Peninsula Citizens for the Freeze, a ballot question committee organized to support a proposal appearing on the 1982 general election ballot. You do not dispute that donation of the billboard space was an in kind expenditure by the corporation and an in kind contribution to the committee. However, you assert that the space was provided "purely as a public service" and not for the purpose of influencing or attempting to influence the action of the voters. Therefore, it is your position that the corporation did not become a ballot question committee by contributing billboard space to the committee. Alternatively, you argue that even if the expenditure was for the purpose of influencing the voters, section 54(3) of the Act (MCL 169.254) permits a corporation to contribute up to $40,000 to a ballot question committee without the corporation itself becoming a committee.

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

> "(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."

Pursuant to section 2(2) (MCL 169.202), a committee acting in support of or in opposition to the qualification, passage or defeat of a ballot question is a ballot question committee.

You appear to have concluded that the sole test for determining whether a particular expenditure is "for the purpose of influencing or attempting to influence the action of the voters" is the subjective intent of the person making the expenditure. However, the extent to which an expenditure is actually used to influence voters is equally important in determining the expenditure's purpose.

A committee's sole reason for acquiring billboard space is to promote the committee's views on a particular candidate or ballot proposal. A person who contributes that space to a committee is certainly aware that the billboard will be used to persuade the public to vote in accordance with the committee's position. Thus, the expenditure's purpose -- which must be attributed to the person making the expenditure -- is to influence or attempt to influence the voters. As such, a person other than an individual who donates billboard space which is used for political advertising to a committee has made an in kind expenditure (and an in kind contribution) for the purpose of influencing or attempting to influence the voters. If the expenditure totals $200.00 or more in a calendar year, the person must file a statement of organization as a committee within 10 days after the expenditure is made, as required by section 24 of the Act (MCL 169.224).

Pursuant to section 11(1) of the Act (MCL 169.211), a corporation is a person subject to the Act's requirements. However, section 54 prohibits corporations from making contributions or expenditures to candidates. Therefore, a corporation may only contribute billboard space to committees supporting or opposing ballot questions. If that contribution is valued at $200.00 or more, the corporation must file a statement of organization as a ballot question committee.

It is your contention, however, that section 54(3) exempts corporations from the definition of committee found in section 3(4). As noted previously, you argue that section 54(3) allows a corporation to contribute up to $40,000 to a ballot question committee without the corporation itself becoming a committee. You maintain that a corporation becomes a ballot question committee only if it makes independent expenditures pursuant to section 54(4).

Subsections (3) and (4) of section 54 provide:

> "Sec. 54. (3) A corporation or joint stock company, whether incorporated under the laws of this or any other state or foreign country, except a corporation formed for political purposes, shall not make a contribution or provide volunteer personal services which services are excluded from the definition of a contribution pursuant to section 4(3)(a), in excess of $40,000.00, to each ballot question committee for the qualification, passage, or defeat of a particular ballot question.

> (4) Nothing in this section shall preclude a corporation or joint stock company from making an independent expenditure in any amount for the qualification, passage, or defeat of a ballot question. A corporation making an independent expenditure under this subsection shall be considered a ballot question committee for the purpose of this act."

Unlike subsection (4), subsection (3) does not specifically require a corporation to organize as a ballot question committee. You therefore conclude that a corporation does not become a committee when it makes contributions authorized by section 54(3).

Section 54 must be interpreted with reference to the Act as a whole. Although section 54(3) does not specifically require a corporation to become a ballot question committee, section 3(4) defines committee as any person who contributes $200.00 or more in a calendar year to influence voters. Section 3(4) specifically excludes individuals -- but not corporations -- from this definition. Therefore, a corporation which contributes $200.00 or more to a ballot question committee in a calendar year becomes a ballot question committee and must file a statement of organization with the appropriate filing official.

This interpretation of the Act was brought to the legislature's attention in 1981, when the Department sought to collect late filing fees from corporations which made contributions of more than $200.00 to a ballot question committee but failed to file statements of organization. The legislature responded by enacting 1981 PA 102, which provided that late filing fees "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 the legislature agreed with your interpretation of the Act, it presumably would have amended section 54(3) to "clarify" that corporations making contributions of $200.00 or more to ballot question committees should not be considered committees.

To summarize, a corporation which contributes billboard space to a ballot question committee has made an expenditure for the purpose of influencing or attempting to influence the voters. If the expenditure totals $200.00 or more in a calendar year, the corporation must file a statement of organization as a ballot question committee within 10 days after making the expenditure. Failure to do so will result in the assessment of late filing fees, as provided in section 24, and possible criminal penalties.

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

4-83-CI

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

June 20, 1983

Richard J. Padzieski
1200 Frank Murphy Hall of Justice
1441 St. Antoine Street
Detroit, Michigan 48226

Dear Mr. Padzieski:

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 a school board reimbursing an employee for the price of tickets to fundraisers for candidates for election to public office.

The Attorney General of Michigan has recently issued the enclosed letter opinion. The opinion clearly states that public funds shall not be used for political purposes.

In the materials submitted with your letter it is stated the school board spent public funds to reimburse an employee for the amounts he paid to attend fundraisers for a number of candidates. A contention included in the materials accompanying your letter is that a school board which files pursuant to the "Lobbying Act" may purchase tickets to candidate fundraisers provided the purchases are reported.

The Lobbying Act cited in the materials you provided was enacted as 1978 PA 472. However, this statute has never become operative because its implementation was enjoined by the Ingham County Circuit Court. That injunction has remained in effect until the present time. The case is currently before the Michigan Supreme Court. The law, while being upheld by the Court of Appeals, has not as yet gone into effect. No filings have ever been received by the Secretary of State pursuant to that statute.

Since 1978 PA 472 and its reporting and disclosure requirements have never gone into effect, the law which it was designed to replace has remained in effect. The statute, 1947 PA 214, as amended, (copy enclosed) provides that a legislative agent must file a sworn statement disclosing information about the legislative agent including the name of those firms retaining the agent. There is no provision requiring a legislative agent or a person employing such an agent to file reports that disclose monies received or spent in lobbying. That was the major change included in 1978 PA 472 which has never gone into effect.

The contention that funds spent for attendance at fundraisers is a lobbying expenditure is totally at odds with all of the statutes discussed above. The 1947 Lobbying Act does not touch the issue in any way. 1978 PA 472 contains a specific exemption in section 4(a) that puts fundraiser ticket purchases within the purview of the Campaign Finance Act. Section 4(2) of the Act clearly defines the term contribution to include fundraiser ticket purchases.

When an item is a contribution under the Act it must be disclosed pursuant to the Act. However, the Attorney General has ruled a number of times that a governmental agency is precluded from participating in elections by making contributions or independent expenditures to support or oppose candidates or ballot questions.

A political subdivision or governmental agency is not subject to the Act. It may not either directly or indirectly make contributions or expenditures pursuant to the Act. Purchases of fundraiser tickets are contributions, not lobbying expenses. Political subdivisions may not reimburse employees for the purchase of fundraiser tickets. If they do so, they have exceeded their authority. When this Department becomes aware of a school district or other political subdivision participating in elections, it will refer the matter to the appropriate unit of the Department of Education or Department of Treasury.

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

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings & Legislation

PTF/cw

Enc.

5-83-CI

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

September 21, 1983

Mr. David A. Lambert
639 N. Hayford
Lansing, Michigan 48912

Dear Mr. Lambert:

You have requested an interpretative statement under the Campaign Finance Act (the "Act"), 1976 PA 388, as amended.

You referred to an interpretative statement issued to Mr. Timothy Downs on October 12, 1982, which indicates a corporation may not purchase an advertisement in an independent committee's newsletter and asked:

> "Does this prohibition apply if a political party committee places said corporate receipts in a seperate (sic), segregated administrative account which is not used for making contributions to or expenditures on behalf of candidates for public office?"

Political party committees are unlike other committees in that they have functions which are outside the ambit of the Act. The Department issued an interpretative statement to Philip Van Dam on April 12, 1982, a copy of which is attached, which indicated a political party committee may receive contributions from corporations for the purpose of affecting the legislative reapportionment process as long as the money is not commingled with money subject to the Act. Therefore, the answer to your first question is a qualified yes. A political party committee may receive money from corporations, place the money in an account separate from the account used for expenditures made under the Act, and spend the corporate money in such a way as to not be a contribution or expenditure under the Act.

The second question you asked is:

> "Can a political party committee use corporate funds (such as those received from the sale of advertising in party newsletters) in order to cover the costs of those administrative functions not directly related to the election of candidates to public office?"

The Act does not use the concept of costs being or not being "directly related to the election of candidates." The definition of "expenditure" in section 6 of the Act (MCL 169.206) states, in part:

> "(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 . . . ." (emphasis added)

The "in assistance of" language in section 6 is much broader than the "directly related" language in your question. Funds received from corporations cannot be used in assistance of a candidate. Because the purchase of an advertisement assists the recipient, a corporation may not purchase an advertisement in a program book, ad book, or newsletter which supports or opposes candidates. While it is conceivable a political party committee could publish a newsletter which does not support or give assistance to a candidate ("candidate" includes all incumbents), this seems unlikely. If a political party committee wants to designate a specific fundraiser or method of fundraising as being for non-campaign purposes, it may do so and accept corporate contributions. But it may not merely pull corporation contributions out of the receipts for a fundraiser (or for newsletter ads), and put the corporate funds into a separate account. If a newsletter which does not support a candidate or ballot question could somehow be published, a political party committee could designate all advertising income for a separate account for non-campaign purposes.

Your third question is:

> "What would the Department of State consider to be those administrative costs that could be payed for with corporate funds?"

It is impossible for the Department to answer this question in a factual vacuum. As the Van Dam letter indicated, reapportionment is one area where corporate money may be used. At this time, however, these activities are the only ones for which the use of corporate money has been approved by the Department. The Department will continue to consider specific fact situations on a case by case basis.

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

Enc.

6-83-CI

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

OCT 11 2 34 PM '83

STATE

October 7, 1983

Honorable William Faust
Senate Majority Leader
The Senate
State Capitol
Lansing, Michigan 48909

Dear Senator Faust:

This is in response to your inquiry concerning applicability of the Campaign Finance Act (the "Act"), 1976 PA 388, as amended, to contributions received by a state legislator who is the subject of a recall campaign. Specifically, you ask whether such contributions must be deposited into the officeholder's candidate committee account and if so, whether the contributions, in the case of a state elective officeholder, are subject to the limitations found in section 52 of the Act (MCL 169.252).

Pursuant to section 3(1) (MCL 169.203), an officeholder who is the subject of a recall vote is a "candidate" for purposes of the Act. Section 3(2) requires a candidate to form a candidate committee "when the individual becomes a candidate under subsection (1)."

Section 21(3) of the Act (MCL 169.221) provides that a candidate committee "shall have 1 account in a financial institution of this state as an official depository for the purpose of depositing all contributions which it receives . . . and for the purpose of making all expenditures." Section 21(5) states that "contributions received or expenditures made by a candidate or an agent of a candidate shall be considered received or made by the candidate committee." Thus, any contribution received by an officeholder/candidate for the purpose of influencing the voters at a recall election is considered to have been received by the officeholder's candidate committee and must be deposited into the committee's account.

You next ask whether contributions received by a state elective officeholder's candidate committee are subject to the contributions limitations found in section 52 of the Act. Section 52 provides in relevant part:

"Sec. 52. (1) A person other than an independent committee or a political party committee shall not make contributions to a candidate committee of a candidate for state elective office which, with respect to a single election, are more than the following:

(a) $1,700.00 in value for a candidate for state elective office other than the office of state legislator.
(b) $450.00 in value for a candidate for state senator.
(c) $250.00 in value for a candidate for state representative.

* * * * *

(3) An independent committee shall not make contributions to a candidate committee of a candidate for state elective office which, in the aggregate for that election, are more than 10 times the amount permitted a person other than an independent committee or political party committee in subsection (1).

(4) A political party committee other than a state central committee shall not make contributions to the candidate committee of a candidate for state elective office which are more than 10 times the amount permitted a person other than an independent committee or political party committee in subsection (1).

(5) A state central committee of a political party shall not make contributions to the candidate committee of a candidate for state elective office other than candidates for the legislature which are more than 20 times the amount permitted a person other than an independent committee or political party committee in subsection (1). A state central committee of a political party shall not make contributions to the candidate committee of a candidate for state senator or state representative which are more than 10 times the amount permitted a person other than an independent committee or political party committee in subsection (1)" (Emphasis supplied)

Pursuant to section 12(2) of the Act (MCL 169.212), a member of the Legislature is a candidate for "state elective office." However, "elective office" is defined in section 5(2) of the Act (MCL 169.205) as "a public office filled by an election, except for federal offices." Since a recall vote does not fill a public office, it must be concluded that the candidate committee of an officeholder subject to a recall vote is not a "candidate committee of a candidate for state elective office." Therefore, section 52 does not apply to contributions received by an officeholder who is being recalled, provided the contributions are designated for a recall election.

In an election to fill an office, the opponents are two or more candidates operating under the same restrictions. For example, in a state senatorial election, contributions to each candidate are limited by section 52(1) to $450.00, unless made by an independent committee, political party committee, or the state central

committee of a political party. Contributions from these committees, however, are subject to other restrictions.

Proponents of a recall measure are required to file a statement of organization as a political committee. Contributions to political committees are not subject to limitation under the Act. If section 52 were to apply to contributions received by the candidate committee of a state elective officeholder facing a recall, the opponents in a recall election would be operating under different sets of rules. Such an interpretation would undermine the open and fair election policy otherwise promoted by the Act by allowing the political committee advocating the recall to engage in unlimited fundraising, while severely limiting the officeholder's ability to raise money. This result, which is inconsistent with the Act's purpose, is both absurd and unfair and could not have been intended by the Legislature. Consequently, section 52 cannot be construed as applying to contributions received by the candidate committee of a state elective officeholder facing a recall election.

This analysis assumes, of course, that a political committee has been organized to gather petition signatures and to promote a particular officeholder's recall. An officeholder's candidate committee may accept contributions in excess of the section 52 contribution limitations only if the officeholder's recall is actively being sought. Moreover, if a special recall election is not called by the appropriate election official, a contribution designated for the recall election may not be retained unless otherwise designated by the contributor. In the event an election is not called, a contributor may indicate in writing that the portion of the contribution not exceeding the applicable limitation may be retained by the candidate committee for the next election in which the candidate is involved. The portion exceeding the limitation must be returned to the contributor. Any contribution, or portion of a contribution, not otherwise designated by a contributor in the instance where a recall election is not called, shall be given by the candidate committee to a political party committee or to a tax exempt charitable institution.

To summarize, contributions received and expenditures made by an officeholder subject to a recall vote are considered to have been made by the officeholder's candidate committee and must be deposited into or made from the officeholder's candidate committee account. However, contributions received by the candidate committee are not subject to the contribution limitations set out in section 52 of the Act, provided a political committee is actively promoting the officeholder's recall and the contributions are designated for the recall 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

5-83-CD

RICHARD H. AUSTIN
SECRETARY OF STATE

MICHIGAN
DEPARTMENT
OF STATE
LANSING, MICHIGAN 48918

October 14, 1983

Ms. Kathy Wilbur, Treasurer
Sederburg for Senate Committee
2819 Southwood
East Lansing, Michigan 48823

Dear Ms. Wilbur:

This is in response to your request for a declaratory ruling concerning the applicability of the Campaign Finance Act, 1976 PA 388, as amended (the "Act"), to the non-campaign use of objects purchased with campaign funds.

You indicate you are the treasurer of the Sederburg for Senate Committee, the candidate committee of William A. Sederburg, (the "Committee") which purchased a word processor in 1979 and replaced the word processor with a micro-computer in 1983. You indicate the Committee borrowed the purchase price of the word processor from a bank and repaid the loan with campaign funds. You further state these items have been used for the purpose of influencing or attempting to influence the actions of voters relating to the nomination and election of Senator Sederburg. However, the computer is not being used on a full time basis for the campaign activities of the Committee. The Committee is proposing to rent idle computer time to other persons with the rental fees being deposited in the Committee's account and reported on campaign finance statements as "other receipts, miscellaneous" with a description of the source and purpose of the receipt. The rental revenue will be reported to the Internal Revenue Service and other appropriate governmental authorities.

In addition, you are proposing to have the computer transmit and receive messages to and from Senator Sederburg's legislative office via a computer bulletin board service. In a telephone conversation Senator Sederburg indicated a computer bulletin board service does operate much like a bulletin board. People who belong to the service may call up the "central computer" and leave a message either for everyone in general or for another particular member of the service. Members may also contact the central computer and receive messages addressed to them or to the general membership. For example, a constituent might leave Senator Sederburg a message suggesting he vote for or against a particular bill. After the vote, the Senator could put a message in to the constituent explaining his vote. Additionally, the Senator could periodically post a legislative newsletter into the computer bulletin board which would be retransmitted to all members who ask for it. Senator Sederburg also indicated that he could transfer and receive messages for other Lansing area legislators and do this for free or for a fee. The cost of non-candidate campaign related communications would be reimbursed to the Committee by Senator Sederburg or his officeholder expense fund (the "OEF"). Relating to this set of facts are some assertions you have made which are set out below. These assertions are responded to as if they were questions.

1. "The Committee may own computer equipment including equipment permitting communication with a computer bulletin board service where the equipment is used, in part, in assistance of the nomination and election of William A. Sederburg to the Michigan State Senate and, in part, in constituent communications."

This assertion raises two issues, the first being whether the Committee may own computer equipment which is used in the assistance of the nomination and election of Senator Sederburg. Section 6 of the Act (MCL 169.206) expressly states in subsection (1): "'Expenditures' means a payment...for goods...in assistance of...the nomination or election of a candidate...." Purchase of a computer which is used to further the nomination or election of the candidate is an "expenditure" for that candidate's committee. Therefore, the Committee may own computer equipment as long as the equipment is used to further the nomination or election of Senator Sederburg.

The second issue raised by your first assertion is whether the Committee may own computer equipment which is used in constituent communications. For the purposes of this answer it will be assumed constituent communications which do not assist the nomination and election of the candidate are being made incidental to the candidate's office of Senator. Section 49 of the Act (MCL 169.249) provides an elected public official may set up an officeholder expense fund which may pay for expenses incidental to the office, but may not be used to further the nomination or election of the officeholder. While the officeholder expense fund may not contribute to the officeholder's candidate committee, the candidate committee may transfer funds into the officeholder expense fund. Rule 39(8) (1982 AACS R169.39) states:

"(8) Money may be transferred from the candidate committee of an elected public official to the officeholder expense fund of that public official in accordance with the provisions of the act."

Neither the Act nor the rules specifically authorizes a candidate committee to transfer goods or services to an officeholder expense fund, but there is nothing to prohibit the Committee from transferring unlimited funds to the OEF. Since the Committee could transfer sufficient funds to the OEF to allow it to purchase a computer, the Committee may purchase the computer, then transfer the computer or a computer service directly to the OEF. This is consistent with the approach taken in the Act which recognizes candidacy and officeholding are inextricably intertwined.

Whether or not the computer may be used to communicate with the computer bulletin board service depends upon whether the communication is in assistance of the nomination or election of the candidate or is incidental to the office of an officeholder. If the former, the costs are Committee expenditures; if the latter, they are in-kind contributions to the OEF. It should be noted that transfers can go only from the candidate committee to the officeholder expense fund; they may not go the other direction because to do so would result in the officeholder expense fund making contributions or expenditures to further the nomination or election of the officeholder. Therefore, the OEF could not purchase a computer and make communications which further the nomination or election of Senator Sederburg.

To summarize, the Committee may purchase a computer and related equipment which are used in the assistance of the nomination or election of Senator Sederburg or are used incidental to his office as Senator. The computer equipment may be used for constituent communications if those communications either assist Senator Sederburg's nomination or election or are incidental to his office.

2. "The Committee may sell the computer when the committee determines it is no longer needed for committee purposes."

This is correct. The Committee may sell its assets for fair market value or may trade them in on replacement assets, but, as discussed in the answer to question 5 below, the Committee may not sell the computer to the OEF.

3. "The Committee may rent the computer to other persons when idle time is available and the computer is not required for Committee campaign purposes. The rental of the computer may be to any of the following persons:

A. Other candidate committees;
B. Private corporations or proprietorships;
C. Political party committees;
D. Officeholder expense funds;
E. Public officials."

4. "Rental charges for the computer may be above or below cost for all persons other than other candidate committees and the rental charges for candidate committees shall be equivalent to the amount usually received in the open market for rental of similar equipment."

Contrary to your assertion, it is impermissible for Committee funds to be expended or assets used other than to further the nomination or election of the candidate, except as provided by the Act and rules. The only exceptions are in section 49 and rule 39(8) providing for transfers to officeholder expense funds and section 45 of the Act (MCL 169.245) allowing transfers of unexpended funds to another candidate committee of the same candidate, a political party committee, a tax exempt charitable institution, or the contributors of the funds.

In a May 29, 1979, declaratory ruling to Senator Mitch Irwin the Department considered this question and, reading the Act as a whole, including the title, section 6, section 45, section 21(3) of the Act (MCL 169.221), and section 26(b) of the Act (MCL 169.226), declared:

"These provisions of the Act reinforce the conclusion that campaign money must be used to influence a campaign. The title makes it clear that one of the purposes of the Act is to restrict expenditures. The language in the title indicates an 'anything goes' policy with regard to spending is not contemplated statutorily. Section 21(3), which requires one account for deposit of all campaign monies to be used for making all expenditures, and Section 26(b), which requires the reporting of all expenditures together constrict the use of campaign

> funds for purposes which influence elections. It is particularly noteworthy that while the Act requires the reporting of 'receipts' such as interest paid by a bank for campaign funds on deposit, thereby acknowledging funds not given for the purpose of influencing elections, the Act requires only the reporting of 'expenditures', i.e., monies used to influence an election, rather than 'disbursements', a term which includes monies used for purposes other than influencing an election.
>
> In order to give full meaning to all the statutory provisions concerning permissible use of campaign funds, it must be concluded a candidate must use campaign funds for the purpose of influencing an election."

None of the legislative changes made in the Act since 1979 would cause the Department to view the question differently now. Candidate committees have but one purpose -- to achieve the candidate's nomination, election, or reelection. Candidate committees are not businesses and, except for interest earned by funds deposited in an interest bearing account or certificate of deposit, they do not generate income.

If Senator Sederburg desires to do what is proposed in questions 3 and 4, he may purchase the computer from the Committee (or obtain another computer). As the candidate he could make unlimited in-kind contributions to the Committee when the computer is used to further his nomination or election and to the OEF when it is used in a manner incidental to his office as Senator. In addition, Senator Sederburg could use the computer for his personal affairs and could open a sole proprietorship to sell computer services to other candidates and the public at large. (If he wishes to make unlimited contributions to the Committee or the OEF, he could not form a partnership with someone who is not in his "immediate family" as defined in section 8(1) of the Act (MCL 168.208). Of course, incorporating would prohibit contributions to any candidate committee, including his own.) Should Senator Sederburg give or sell computer services below fair market value to other candidate committees or other officeholder expense funds, those would be contributions subject to the limits in section 52 of the Act (MCL 169.252).

In short, a computer may be purchased with campaign funds and used exclusively for campaign and officeholder purposes or the computer can be purchased by Senator Sederburg and used for a variety of purposes.

> 5. "The Committee may make available to William A. Sederburg or his officeholder expense fund, with reimbursement for costs, the computer for use in non-candidate campaign related communication with a computer bulletin board service."

As indicated above, the Committee may make the computer available to the OEF without charge for uses which are incidental to Senator Sederburg's office. To the extent that William A. Sederburg is different from the OEF, the computer may not be made available to him for any price (other than outright purchase of the equipment for not less than fair market value).

The final issue raised with this assertion is whether the OEF may pay the Committee either the Committee's costs or fair market value for the computer services it receives. It would be improper for the OEF to purchase a service or asset from the Committee because that is not an arms length transaction and the OEF could use that mechanism to transfer funds to the Committee. The funds could then be used for campaigning by the Committee, resulting in a violation of section 49 by the OEF.

In conclusion, the Campaign Finance Act contemplates that campaign funds will be used for campaigning and officeholding. The funds are raised for those purposes and contributors certainly believe their contributions will be used to support the candidate's election efforts. The authors of the Act never expected candidate committees to become businesses, earning money with contributed capital. However, the Act does not place an express penalty on this prohibited conduct except regarding the candidate to candidate prohibition in section 44(2) or the corporate to candidate prohibition in section 54(1). The failure to provide a penalty for the sale of computer services to entities other than candidates and corporations does not mean they are permitted.

This response constitutes a declaratory ruling concerning the applicability of the Act to the facts set out above.

Sincerely,

Richard H. Austin
Secretary of State

3-83-66

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN o SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48910

October 26, 1983

Mr. Robert S. LaBrant
Vice-President
Michigan State Chamber of Commerce
200 North Washington Square
Lansing, MI 48933

Dear Mr. LaBrant:

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 operation of out-of-state political action committees in Michigan elections.

In making your request, you state the following facts:

1) You are a qualified elector of the State of Michigan.

2) You propose to serve as the treasurer of a committee or committees to be established in Michigan as affiliates of out-of-state political action committees which (1) are registered with the Federal Election Commission and (2) do not solicit or accept contributions from persons other than those specified in section 55(2) and 55(3) of the Act (MCL 169.255).

3) The Michigan committees will maintain a Michigan depository on which you will serve as treasurer.

4) The Michigan committees intend to receive transfers of funds from their affiliated out-of-state committees and to make expenditures in Michigan elections.

5) The Michigan committees will receive detailed information on contributors, as required by the Act, from their out-of-state affiliates in accordance with the so-called LIFO method. The Michigan committees will then report the information as required in the reporting sections of the Act for those persons contributing more than $20.00 and $200.00.

6) The Michigan committees will also report expenditures made in Federal elections or elections in other states in a lump amount.

Based upon the facts stated, the establishment and operation of Michigan affiliates of out-of-state political action committees is permissible under the Act.

An out-of-state political action committee, which (1) is registered with the Federal Election Commission and (2) does not solicit or accept contributions from persons other than those specified in section 55(2) and 55(3) of the Michigan Campaign Finance Act may transfer funds to an affiliated committee which has a Michigan depository and treasurer and makes expenditures in Michigan state elections.

The out-of-state committee must provide detailed information on contributions, as required by the Act, to its Michigan affiliate. This information is to be provided by the so-called LIFO method. The Michigan affiliate will then be able to report detailed information as required in the reporting sections of the Act for those contributing more than $20.00 and $200.00.

Like all committees, the Michigan affiliate must file a statement of organization within 10 days of receiving contributions or making expenditures in excess of $200.00 in a calendar year. A Michigan affiliated committee may receive contributions from qualified persons no matter where they reside.

A Michigan affiliated committee may report expenditures made in Federal elections or elections in other states in a lump sum or may report such expenditures in detail.

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

Very truly yours,

Richard H. Austin
Secretary of State

RHA/jcp

4-83-CD

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48911

October 26, 1983

Mr. Robert P. Duff, Treasurer
NBD Good Citizenship Committee
National Bank of Detroit
611 Woodward Avenue
Detroit, MI 48226

Dear Mr. Duff:

This letter is in response to the request submitted on behalf of NBD Good Citizenship Committee (the "Committee") and National Bank of Detroit (the "Bank"), dated September 29, 1983. A declaratory ruling was requested concerning applicability of the Campaign Finance Act (the "Act"), 1976 PA 388, as amended, to a separate segregated fund established pursuant to Section 55 of the Act (MCL 169.255) which is registered under the Act and also under the Federal Election Campaign Act of 1971 (the "Federal Act"), 2 USC 431 et seq.; 90 Stat 11, as amended.

Your request presents the following factual situation:

The Committee is an independent committee which has registered with the Campaign Finance Reporting Office of the Michigan Department of State pursuant to the Act. The Committee is also a political committee which has registered with the Federal Election Commission pursuant to the Federal Act. The Bank makes expenditures for the establishment, administration and solicitation of contributions to the Committee in accordance with Federal and Michigan law.

You state that since 1977, as an independent committee registered under the Act and a political committee registered under the Federal Act, the Committee has complied with the Act and contributions and expenditures in connection with both Michigan and Federal elections. You indicate the Committee has fully disclosed and reported its contribution and expenditure activities to the respective state and Federal regulatory agencies as required by applicable law.

As evidenced by the foregoing, the course of conduct of the Committee and the Bank will be affected by the issuance of the requested declaratory ruling.

Your question is:

> "Is it permissible for a separate segregated fund established and operating pursuant to the Michigan Act to be registered and operated at the same time as a federal separate segregated fund pursuant to the Federal Election Campaign Act of 1971, as amended, and to make contributions to and expenditures in connection with both Michigan and federal elections as authorized under both Acts?"

The Department has determined that a Michigan separate segregated fund may also be registered with the Federal Election Commission or in other states, and may participate in elections in these jurisdictions. Such a committee may solicit and accept contributions from persons named in Section 55 of the Act. When reporting expenditures made in other than Michigan state elections, a joint Michigan/Federal PAC may report such expenditures in detail or as a lump sum.

A joint Michigan/Federal PAC must operate with a single Michigan depository and treasurer who is a qualified Michigan elector.

Based upon the foregoing analysis and subject to the foregoing requirements, the Committee may operate as a joint Michigan/Federal Political Action Committee in connection with Federal elections as well as Michigan elections. Therefore, your question is answered in the affirmative.

This response constitutes a declaratory ruling concerning the applicability of the Michigan Act to the statement of facts set forth in your request.

Very truly yours,

Richard H. Austin
Secretary of State

RHA/jep

7-83-CI

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

October 26, 1983

Mr. Lee Schwartz
Barcia for State Senate
State Capitol
Lansing, Michigan 48909

Dear Mr. Schwartz:

You have requested an interpretation of the Campaign Finance Act, 1976 PA 388, as amended, (the "Act") regarding the transfer of funds at the conclusion of a joint fundraiser which was operated differently from the method previously approved by the Department.

You indicated the Barcia for State Senate Committee (the "Committee") and the Huron County Democratic Party (the "Party") held a summer cookout. The Committee and the Party agreed, apparently verbally, the Committee would pay for the major expenses, the Party would pay for some minor expenses, and the receipts from the event would go to the Party. Most of the contributions which were made by check or draft were made out to the Committee, but a few were made out to the Party. The event was advertised as "Jim Barcia's 1st Annual Summer Cookout" with Lt. Governor Martha Griffiths as the guest speaker. The flyer you provided stated at the bottom, "SPONSORED BY THE HURON COUNTY DEMOCRATIC PARTY" and below that in type about half as large, "Paid for by Barcia for State Senate 4027 Dover Lane Bay City, Michigan". You indicate the Committee and the Party are each holding the money they received and ask:

> "[What is] the most prudent method of transferring to the Huron County Democratic Party both the profits from the event and an additional contribution."

The initial issue raised by these facts is whether the Committee may simply transfer funds in any amount it desires to the Party. Candidate committees are single purpose entities--they are limited to furthering the nomination or election of their respective candidates. In a declaratory ruling issued to Senator Mitch Irwin on May 29, 1979, the Department reviewed the title of the Act and sections 45(2) (MCL 169.245), 6 (MCL 169.206), 21(3) (MCL 169.221), and 26(b) (MCL 169.226) of the Act and indicated:

> "These provisions of the Act reinforce the conclusion that campaign fund money must be used to influence a campaign. The title makes it clear that one of the purposes of the Act is to restrict expenditures. The language in the title indicates an 'anything goes' policy with regard to spending is not contemplated statutorily. Section 21(3), which requires one account for deposit of all campaign monies to be used for making all expenditures, and Section 26(b), which requires the reporting of all expenditures together constrict the use of campaign funds for purposes which influence elections. It is particularly noteworthy that while the Act requires the reporting of 'receipts' such as interest paid by a bank for campaign funds on deposit, thereby acknowledging funds not given for the purpose of influencing elections, the Act requires only the reporting of 'expenditures', i.e., monies used to influence an election, rather than 'disbursements', a term which includes monies used for purposes other than influencing an election.
>
> In order to give full meaning to all the statutory provisions concerning permissible use of campaign funds, it must be concluded a candidate must use campaign funds for the purpose of influencing an election."

Section 45 expressly limits to whom unexpended funds in a candidate committee account may be transferred when the committee dissolves. Read as a whole, the Act expresses a legislative intent that candidate committees shall only influence the nomination or election of the candidate. Purchasing a ticket to a political party fundraiser so the candidate may attend, be seen, and campaign, or purchasing a "vote for" advertisement in a political party ad book do further the candidate's nomination or election and may be made with committee funds. Consequently, a political party committee may receive monies from a candidate committee provided the candidate receives an identifiable benefit, product, or service which furthers his or her nomination or election.

In the present fact situation, however, there is no evidence as to how the transfer of the committee's receipts from the fundraiser to the Party would further the nomination or election of Senator Barcia. The record is devoid of any benefit, product, or service accruing to the Senator and his committee that would influence his nomination or election.

Additionally, an officeholder expense fund created under section 49(1) of the Act (MCL 169.249) is limited to paying for expenses which are incidental to office, but do not further the nomination or election of the officeholder. The purchase of a ticket to a political party fundraiser and the purchase of an advertisement in a political party ad book, as long as the advertisement does not seek support for the officeholder, can be incidental to office and may be made with an officeholder expense fund. In the situation you asked about, however, the transfer of a sum of money equal to the receipts of the fundraiser from Senator Barcia's officeholder expense fund to the Party would not seem to be incidental to office.

Since outright transfers from the Committee or Senator Barcia's officeholder expense fund to the Party do not appear to be proper, a transfer may be made only if a joint fundraiser was held. In a September 20, 1978, letter to Mr. Michael W. Hutson, a copy of which is attached, the Department set out the method for holding a joint fundraiser without running afoul of the Act. The Hutson letter used the more common example of two or more candidate committees holding a joint fundraiser, but the requirements set out in parts A, B, and C and their subsections of the Hutson letter do also apply to candidate/party fundraisers. In your event part A was not followed, but part B was partially followed.

As the event is now over, it is most prudent to disburse the profits as if you had a written agreement which complied with part A as closely as possible. It is too late to create a secondary depository, but you can distribute the contributions in the same proportion as the expenditures which were made. Since the Committee paid most of the expenses, it must keep most of the receipts. The concept you agreed to--the Committee putting on a fundraiser for the benefit of the Party--is impermissible.

Finally, since last summer's cookout was the "1st Annual", some discussion regarding the proper way to conduct next year's cookout is in order. Obviously, the Committee and the Party can set up a joint fundraiser as outlined in the Hutson letter. The percentage split does not need to be 50-50, but the split for expenses and the split for receipts must be the same. Alternatively, the Party could put on the entire event and Senator Barcia could be a guest (his supporters and staff could volunteer their time and expertise).

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/jep

Attachment

8-83-CI

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

October 26, 1983

Mr. Timothy Downs
Craig, Farber, Downs & Dise
1217 First National Building
Detroit, Michigan 48226

Dear Mr. Downs:

You have requested an interpretation concerning the applicability of the Campaign Finance Act, 1976 PA 388, as amended, (the "Act") to certain disbursements made from an officeholder expense fund (the "OEF").

In essence, you ask if an OEF makes a legitimate disbursement for an expense incidental to the office and the federal Internal Revenue Service determines the disbursement is to be treated as personal income to the officeholder, may OEF funds be used to pay the income tax obligation incurred by the earlier disbursement.

Section 49(1) of the Act, MCL 169.249, states:

> "An elected public official may establish an officeholder expense fund. The fund may be used for expenses incidental to the person's office. The fund may not be used to make contributions and expenditures to further the nomination or election of that public official."

Disbursements from the OEF must be incidental to the office without also furthering the nomination or election of the officeholder. The Department has previously considered which expenses are incidental to office. Several approaches to making this determination were discussed in an April 24, 1981 letter to Senator James DeSana:

> "The Department has previously indicated that section 49 permits a public official to purchase a ticket to another candidate'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 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, 1989, 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."

An expense may be incidental to office if it fits a "custom or tradition" for officeholders, if it is "necessitated by" the person's office, or if it is "traditionally associated with or necessitated by" the holding of public office. The additional tax liability cannot be termed customary or traditional and is not necessitated by the public office. However, once the officeholder has created the OEF, the additional tax liability is similar to a bank service charge on an OEF checking account or an accountant's fees for auditing an OEF--the additional tax liability is necessitated by the existence of the OEF.

The Legislature created the OEF to provide officeholders with a method of financing expenses incidental to office other than using their personal funds. It would be inconsistent if the OEF could not pay an expense which was incurred by the officeholder solely because of the OEF. Therefore, an OEF may pay an additional tax liability created because of a legitimate disbursement from the OEF.

Your second question regarding the actions of other officeholders is not an appropriate subject of this letter. You may inspect public records filed on OEFs if you wish to determine what other officeholders are doing.

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

2-83-CD

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

October 26, 1983

Mr. James Barrett, Treasurer
State Chamber Political Action Committee
Michigan State Chamber of Commerce
200 North Washington Square
Lansing, MI 48933

Dear Mr. Barrett:

This is in response to your request for a declaratory ruling concerning applicability of the Campaign Finance Act (the "Act"), as amended, to the payment of certain costs incurred in connection with the establishment, administration and solicitation of contributions to the State Chamber Political Action Committee.

In making your request, you state the following facts:

1) The State Chamber Political Action Committee ("State Chamber PAC") is a separate segregated fund established and administered by the Michigan State Chamber of Commerce (the "Chamber"), a nonprofit Michigan corporation.

2) In the administration of the State Chamber PAC, the Chamber incurs and pays for various expenses of the PAC, including the cost of office space, phones, salaries, utilities, supplies, legal and accounting fees, fund-raising and other expenses.

3) Several of the directors of the State Chamber PAC are employees of member corporations of the Chamber. The travel expenses of such directors for PAC-related business are sometimes paid by their corporate employers.

4) In addition, corporate members of the Chamber occasionally offer the use of their facilities and personnel in connection with the administration of the State Chamber PAC.

A corporation may pay for the cost of office space, phones, salaries, utilities, supplies, legal and accounting fees, fundraising and other expenses incurred in setting up and running a separate segregated fund established by the corporation.

The travel expenses of the officers or directors of a separate segregated fund established by a trade association, may be paid by the officer or director's corporation or by the incorporated trade association which established the separate segregated fund.

The Department position is that a corporation, which is a member of a non-profit corporation, may have its officers and directors or employees authorized by an officer or director make occasional, isolated use of facilities of the corporation for activity in connection with the establishment, administration or solicitation of contributions to a separate segregated fund established by the non-profit corporation of which that corporation is a member.

Occasional, isolated, or incidental use of corporate facilities or personnel by or as authorized by an officer or director of the corporation is limited to one hour of activity per week or four hours of activity per month, regardless of whether the activity is undertaken during or after normal working hours.

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

Very truly yours,

Richard H. Austin
Secretary of State

RHA/jep

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

December 7, 1983

Mark A. Weigand
Attorney at Law
690 Allen Avenue
Muskegon, MI 49442

Dear Mr. Weigand:

This is in response to your letter of October 21, 1983, requesting an exemption from the identification requirements set forth in the Campaign Finance Act (the "Act"), 1976 PA 388, as amended. As stated in your letter, you intend to use an aerial banner to be towed by an airplane in an election.

Section 47(3) of the Act, MCL 169.247, states that "printed matter having reference to an election, . . . shall bear upon it the name and address of the person paying for the matter." This section goes on to state:

> "The size and placement of the disclaimer shall be determined by rules promulgated by the secretary of state. The rules may exempt printed matter and certain other items such as campaign buttons or balloons, the size of which makes it unreasonable to add an identification or disclaimer, from the identification or disclaimer required by this section."

Pursuant to this provision in the Act, the Department has promulgated Rule 36(3), 1979 AC R169.36(3):

> '(3) A campaign item, the size of which makes it unreasonable to add an identification or disclaimer, or both, as designated by the secretary of state, is exempted from this rule."

An aerial banner poses a unique situation when considering the identification or disclaimer normally required as part of printed matter covered by the Act. The size, shape and distance from an observer all enter into consideration as to whether an identification or disclaimer would be visible to and readable by the observer. To include an identification or disclaimer of sufficient size to be visible and readable would require that it be as large or perhaps even larger than the campaign message itself. Clearly such a requirement would be unreasonable and not contemplated by the Act.

The fundamental purpose of the identification and disclaimer requirements of the Act is to provide a method whereby interested parties can determine the person paying for the matter. In the unique situation of an aerial banner, disclosure is satisfied by meeting the other reporting requirements of the Act.

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

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF/jep

MICHIGAN DEPARTMENT OF STATE

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STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

10-83-CI

December 14, 1983

Mr. Gary W. Rapp
Attorney at Law
255 Clay Street
Lapeer, MI 48446

Dear Mr. Rapp:

This is in response to your inquiry concerning the formation of a candidate committee as defined in the Campaign Finance Act, 1976 PA 388, as amended (the "Act"). You indicate you are currently a resident of, and registered to vote, in Lapeer County. You state you intend to change your residency in May, 1984, and run for Prosecuting Attorney of Iosco County.

You raise two questions concerning this proposed activity. First, when may you form a candidate committee so that you may seek contributions in 1983 for your campaign. Second, must you be a resident of the county in which you seek election before you may form a candidate committee. These questions are discussed below.

Section 21 of the Act (MCL 169.21) requires a candidate to form a candidate committee within 10 days of becoming a candidate, while section 24 requires a statement of organization to be filed within 10 days after formation of a candidate committee. A person may become a candidate, as that term is used in the Act, by any of the ways specified in section 3(1) of the Act (MCL 169.203). Thus, at the time you receive your first contribution or make your first expenditure, or give consent for another to engage in these activities with a view to bringing about your nomination or election, you become a candidate and must form a candidate committee within 10 days. In response to your specific question, you may form your candidate committee and begin to seek contributions at any time. The Act requires only that your committee be formed within 10 days of your receiving a contribution or making an expenditure and that a statement of organization be filed within 10 days thereafter.

Your second question concerns the issue of residency. The Act is essentially silent as to this issue, except that section 21 (MCL 169.221) requires a committee treasurer to be a "qualified elector of this state." As indicated in response to your first question, the Act requires only that a candidate committee be formed and a statement of organization be filed within certain

time limitations. It is the Department's position that the place of one's residence is irrelevant to when one becomes a candidate or must file with filing officials. Therefore, whenever one meets the definition of "candidate" as defined in the Act, the requirements attach, no matter where one resides at that particular point in time.

While you did not raise the specific issue, the question you did ask generated an inquiry into where you should file, i.e., whether you file where you actually live or where you intend to run for office.

The Act is silent with respect to resolving this particular issue, providing only in section 24 (MCL 169.224(1)) that the statement of organization and other documents are to be filed "with the filing officials designated in section 36 to receive the committee's campaign statements." Section 36(1) (MCL 169.236(1)) provides (in pertinent part):

> ". . . A copy of the campaign statement of candidate committees of candidates for all other offices (except state elective office or judicial office) shall be filed with the clerk of the county of residence of the candidate."

Therefore, your statement of organization and campaign statements should be filed with the clerk of the county where you reside.

In the event you change your residence, section 24(3) (MCL 169.224(3)) requires that you file an amended statement of organization within 10 days of the change. It provides:

> ". . . A person who fails to file a change under this subsection, shall pay a late filing fee of $10.00 for each day the change remains not filed. . . not to exceed $300.00. A person who is in violation of this subsection by failing to file a required amendment for more than 30 days is guilty of a misdemeanor. . ."

Thus, you would have to file with the filing official in your new county of residence and also transfer your filings from the first county to the second. In this way compliance with the disclosure and tracking mechanisms of the Act would be effected.

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

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF/jep