MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

January 6, 1988

Pat Turner
Michigan Trucking Association
Suite 4, 5800 Executive Drive
Lansing, Michigan 48911

Dear Mr. Turner:

This is in response to your inquiry concerning the applicability of the Campaign Finance Act (the Act), 1976 PA 388, as amended, to a voluntary payroll deduction plan for collecting contributions to the Michigan Truck PAC. Specifically, you ask whether managerial employees of a corporate member of the Michigan Trucking Association, Inc. (MTA) may contribute to the Michigan Truck PAC through a voluntary payroll deduction program.

Your inquiry does not include a detailed statement of facts or a description of MTA or the Michigan Truck PAC. Therefore, the following discussion is general in nature and assumes that 1) MTA is a non-profit corporation, and 2) Michigan Truck PAC is a separate segregated fund established by the corporation pursuant to section 55 of the Act (MCL 169.255).

Corporate participation in the political process is governed by sections 54 and 55 of the Act. Section 54 (MCL 169.254) prohibits a corporation from using its treasury money to make contributions or expenditures in candidate elections. However, pursuant to section 55, a corporation may establish a separate segregated fund to be used for political purposes. Section 55 states, in relevant part:

> "Sec. 55. (1) A corporation or joint stock company formed under the laws of this or another state or foreign country may make an expenditure for the establishment and administration and solicitation of contributions to a separate segregated fund to be used for political purposes. A fund established under this section shall be limited to making contributions to, and expenditures on behalf of, candidate committees, ballot question committees, political party committees, and independent committees."
>
> * * *
>
> (3) Contributions for a fund established under this section by a

corporation which is nonprofit may be solicited from any of the following persons or their spouses:

(a) Members of the corporation who are individuals.

(b) Stockholders of members of the corporation.

(c) Officers or directors of members of the corporation.

(d) Employees of the members of the corporation who have policy making, managerial, professional, supervisory, or administrative nonclerical responsibilities.

(4) Contributions shall not be obtained for a fund established under this section by use of coercion, physical force, or as a condition of employment or membership or by using or threatening to use job discrimination or financial reprisals.

(5) A person who knowingly violates this section is guilty of a felony and shall be punished by a fine of not more than $5,000.00 or imprisoned for not more than 3 years, or both, and if the person is other than an individual, the person shall be fined not more than $10,000.00."

In an interpretive statement issued to William E. Hazel, Jr., dated August 1, 1978, the Department was asked whether the Act allowed a corporation to make disbursements or contributions for the establishment, administration or solicitation of contributions for a political action committee formed by a different corporation. After discussing an opinion rendered by the Attorney General in OAG, 1977-78, No 5344, p 549 (July 20, 1978), the Department answered in the negative:

"As noted previously, Section 55 is the exclusive statutory authorization for corporate involvement with a separate segregated fund. The Attorney General has decided: (1) one corporation may not contribute to another corporation's separate segregated fund, and (2) a corporation may only establish one separate segregated fund.

In view of the foregoing, it is concluded Section 55 does not permit a corporation to make disbursements or contributions for the establishment, administration or solicitation of contributions for a political action committee formed by another corporation."

Subsequently, the Department was asked whether corporate members of the Michigan State Chamber of Commerce (State Chamber) could occasionally offer the use of their facilities and personnel in connection with the administration of the State Chamber Political Action Committee (State Chamber PAC). The State Chamber PAC is the separate segregated fund of the State Chamber, a non-profit corporation whose members include other corporations. In a declaratory ruling issued to James Barrett, dated October 26, 1983, the Department stated:

"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."

The distinction between the Hazel and Barrett letters turns upon the definition of "contribution." As indicated previously, sections 54 and 55 prohibit a corporation from making contributions to another corporation's separate segregated fund. Pursuant to section 4(1) of the Act, "contribution" includes anything of ascertainable monetary value. The Barrett ruling holds that if the occasional, isolated or incidental use of a corporate member's facilities or personnel does not exceed one hour of activity per week, the activity does not have ascertainable monetary value. In these circumstances, use of a corporate member's facilities or staff will not result in an impermissible contribution to another corporation's separate segregated fund.

You indicate a corporate member of MTA intents to initiate a voluntary payroll deduction program to collect contributions to Michigan Truck PAC from the corporation's "management employees." The Attorney General has previously indicated that the Act permits a voluntary payroll deduction plan as a form of collecting contributions to a separate segregated fund. OAG, 1977-78, No 5279, p 391 (March 22, 1978). Therefore, a corporate member of a non-profit corporation may institute a voluntary payroll deduction plan, if 1) the plan is limited to employees who have policy making, managerial, professional, supervisory, or administrative nonclerical responsibilities; 2) contributions collected through the plan are not obtained by threat, force or coercion, or as a condition of employment; and 3) use of the corporate member's facilities and personnel to collect and transmit contributions to the separate segregated fund has no ascertainable monetary value and does not result in a contribution to the separate segregated fund by the corporate member. These determinations can only be made 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
(517) 373-8252

PTF/cw

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

June 15, 1988

John A. Miller
17514 Wildemere
Detroit, Michigan 48221

Dear Mr. Miller:

This is in response to your request for an interpretive statement concerning the application of the Campaign Finance Act (the Act), 1976 PA 388, as amended, to the activities of the Michigan Republican Conservative Committee (MRCC), a group you propose to establish. Specifically, you ask if there is anything in the group's "Statement of Purpose" or proposed activities which would require the group to register as a committee under the Act.

Pursuant to section 24 of the Act (MCL 169.224), a committee must file a statement of organization within 10 days after it is formed. A person other than an individual becomes a committee upon meeting the definition set out in section 3(4) of the Act (MCL 169.203). This section states:

> "Sec. 3. (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."

"Contribution" and "expenditure" are defined in section 4(1) and section 6(1) (MCL 169.204 and 169.206), respectively, as follows:

> "Sec. 4. (1) 'Contribution' means a payment, gift, subscription, assessment, expenditure, contract, payment for services, dues, advance, forbearance, loan, donation, pledge or promise of money or anything of ascertainable monetary value, whether or not conditional or legally enforceable, or a transfer of anything of ascertainable monetary value to a person, made for the purpose of influencing the nomination or election of a candidate, or for the qualification, passage, or defeat of a ballot question. An offer or tender of a contribution is not a contribution if expressly and unconditionally rejected or returned.

* * *

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. An offer or tender of an expenditure is not an expenditure if expressly and unconditionally rejected or returned."

These definitions indicate that MRCC is a committee subject to the Act's registration and reporting requirements if it receives or spends $200.00 or more in a calendar year to influence the outcome of an election.

According to its "Statement of Purpose," MRCC is or will be established to promote conservative policies, to build coalitions, and to discourage single issue politics within the Michigan Republican Party. The statement further provides that MRCC "must not endorse, support or discourage specific candidates or ballot questions." In addition you indicate:

> "I want the group to be able to solicit personal and corporate funds for the following purposes:
>
> 1) Administrative, mailing and meeting/convention costs;
>
> 2) Promotion of conservative policies in the Republican Party by recruiting precinct delegates;
>
> 3. Donations to political action committees;
>
> 4. Publications of newsletters featuring members and their efforts or accomplishments, legislative updates from various members and legislators, informational 'pro and con' discussions of various issues designed to educate the reader and encourage voter participation in elections. Again, this newsletter would not endorse specific candidates, or support/take 'positions' on ballot questions.
>
> Further, if membership dues are received, I would like a percentage of dues to be given by this committee to various political action committees." (Emphasis added)

Although "political action committee" is not defined in the Act, it is frequently used to refer to corporate separate segregated funds, which are discussed in more detail below, and independent committees registered with the Secretary of State. By definition, a committee registered under the Act receives contributions and makes expenditures for the purpose of influencing an election. As indicated previously, "donation" is included in the definitions of "contribution" and "expenditure." Therefore, if MRCC donates funds to a "political action committee" which is a committee under the Act, the donation is

a contribution or expenditure and is governed by the Act's requirements. This is true even if MRCC does not support or oppose a specific candidate or ballot question. If MRCC's contributions to other committees total $200.00 or more in a calendar year, MRCC is itself required to register as a political committee and is subject to the Act's restrictions.

Finally, it should be noted that pursuant to section 55 of the Act (MCL 169.255), a corporate separate segregated fund may only receive contributions from a limited group of contributors, including stockholders, corporate officers and directors, and managerial, professional and policy making employees. Consequently, MRCC may not make contributions to independent or political committees which are separate segregated funds.

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

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings and Legislation
(517) 373-8141

PTF/AC/cw

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

June 22, 1988

Mr. James D. Irvine
14866 Greenbriar Court
Plymouth, Michigan 48170

Dear Mr. Irvine:

This is in response to your letter of June 6, 1988, requesting an exemption from the identification requirements set forth in the Campaign Finance Act (the Act), 1976 PA 388, as amended.

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."

Refrigerator Magnets

The first item you identify is a refrigerator magnet presumably with a plastic case or cover bearing the message:

Elect
Candidate Name
Office

This item would be of comparable size and construction to a button, coaster, cup or yo yo, each of which have been exempted in the past. Because of the size and difficulty in printing the disclosure on the item, refrigerator magnets are not required to bear the language required by section 47 of the Act.

Business Cards

Secondly, you ask if a business card is exempt from the required identification. The card you envision would contain printing on both sides. You suggest that it would be of similar size to a matchbook, which is exempt. However, the materials used in business cards make it possible to include the required identification without unduly limiting the size of the message.

In a July 7, 1978 letter to William A. Everard the Secretary of State concluded that it was reasonable to require the identification on a business card sized piece of campaign literature. There is no new development which would change that conclusion. Thus, the identification required by section 47 must be included on a business card sized piece of campaign literature.

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF:cw:rlp

4-88-CI

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING

MICHIGAN 48918

July 28, 1988

Bess Jordan
Calhoun County Democratic Party
20211 Collier Avenue
Battle Creek, Michigan 49017

Dear Ms. Jordan:

This is in response to your inquiry concerning the applicability of the Campaign Finance Act, 1976 PA 388, as amended, to a proposed resolution of the Calhoun County Democratic Party. The resolution states:

> "Resolved by the Executive Committee of the Calhoun County Democratic Party that any member, in good standing, may use the Calhoun County Democratic Party Building, 150 Riverside Drive, Battle Creek, Michigan, for fund raisers or any worthy cause, for a fee of $1.00."

There is nothing in the Campaign Finance Act (the Act) or in other statutes administered by the Secretary of State which would prevent the Calhoun County Democratic Party (the Party) from making its facilities available to party members at a nominal fee. However, if the building is used for the purpose of holding a "fund raising event" as defined in section 7(4) of the Act (MCL 169.207) or for other campaign activities regulated by the Act, the rental or use of the building is subject to the Act's reporting requirements and other restrictions.

Pursuant to section 7(4), a "fund raising event" is any event or affair through which contributions are solicited or received. "Contribution" is defined in section 4 of the Act (MCL 169.204). This section states, in relevant part:

> "Sec. 4. (1) 'Contribution' means a payment, gift, subscription, assessment, expenditure, contract, payment for services, dues, advance, forbearance, loan, donation, pledge or promise of money or anything of ascertainable monetary value, whether or not conditional or legally enforceable, or a transfer of anything of ascertainable monetary value to a person, made for the purpose of influencing the nomination or election of a candidate, or for the qualification, passage, or defeat of a ballot question. An offer or tender of a contribution is not a contribution if expressly and unconditionally rejected or returned.

> (2) Contribution includes the purchase of tickets or payment of an attendance fee for events such as dinners, luncheons, rallies, testimonials, and similar fund raising events; an individual's own money or property other than the individual's homestead used on behalf of that individual's candidacy; the granting of discounts or rebates not available to the general public; or the granting of discounts or rebates by broadcast media and newspapers not extended on an equal basis to all candidates for the same office.'

Section 4 indicates that anything of ascertainable monetary value which is for the purpose of influencing an election is a contribution. This includes granting a discount not available to the general public and other non-monetary or "in-kind" contributions made to a candidate or committee under the Act.

The reporting requirements for political party committees are set out in section 29 (MCL 169.229). According to section 29(1), a campaign statement filed by a political party committee must include:

> "(c) An itemized list of all expenditures, including in-kind contributions and expenditures and loans, made during the period covered by the campaign statement which were contributions to a candidate committee of a candidate for elective office or a ballot question committee; or independent committee; or independent expenditures in support of the qualification, passage or defeat of a ballot question or in support of the nomination or election of a candidate for elective office or the defeat of any of the candidate's opponents."

An in-kind contribution must be reported at its fair market value and cannot be assigned an arbitrary or nominal cost. The value of using a building is readily ascertainable. In the case of the Calhoun County Democratic Party, it is the fee charged to non-members for use of the Party's building for a given period of time. If the building is not available to non-members or is available free of charge, the value of the in-kind contribution is the rental fee generally charged in the community for the use of a similar facility.

Thus, in answer to your question, the Party may make its building available to party members for a fee of $1.00 or no charge at all. However, if a member uses the building for a fund raising event or activity regulated by the Act, the Party must report the fair market value of the building's use as an in-kind contribution to the candidate or committee which holds the fund raiser. Similarly, the person conducting the fund raising event must report the fair market value of the use of the building as an in-kind contribution from the Party, as required by section 26 of the Act (MCL 169.226).

Finally, it should be noted that pursuant to section 52 of the Act (MCL 169.252), a district or county political party committee is prohibited from making contributions of more than $2,500 to a candidate for state representative, $4,500 to a candidate for state senate, or $17,000 to a candidate for a state elective office other than the office of state legislator. Any in-kind

contribution made by the Calhoun County Democratic Party to a candidate for state elective office, including the use of the Party's facilities, must be counted toward these contribution limitations.

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

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings and Legislation
(517) 373-8141

PTF/cw

5-88-CI

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

August 31, 1988

Corinne M. Price
50625 Barber
Paw Paw, Michigan 49079

Dear Ms. Price:

This is in response to your recent letter to Representative James Mick Middaugh questioning the propriety of a political contribution made by the Michigan Education Association (MEA), to which you belong. Specifically, it appears that MEA made a $30,000 contribution from membership dues to the Committee for the Protection of Michigan Lives, a ballot question committee formed to oppose 1987 PA 59. You object to the use of "dues I am forced to pay . . . to support a cause I oppose."

The use of money to influence Michigan elections is regulated by the Campaign Finance Act (the Act), 1976 PA 388, as amended. Contributions and expenditures made by corporations are specifically governed by sections 54 and 55 of the Act (MCL 169.254 and 169.255). MEA, as a non-profit corporation, is subject to the restrictions imposed by these sections.

Section 54 of the Act prohibits a corporation from making a contribution or expenditure to support or oppose a candidate for elective office. However, a corporation is specifically authorized to make contributions to a ballot question committee. In addition, corporate money may be used to administer and solicit contributions to a separate segregated fund established by the corporation, as provided in section 55. A separate segregated fund established under this section may receive contributions from a limited group of persons and may make contributions to, and expenditures on behalf of, candidate committees, ballot question committees, political party committees, and independent committees.

MEA has, in fact, established a separate segregated fund, known as the Michigan Education Association Political Action Council (MEA-PAC). MEA-PAC is funded through the voluntary contributions of its members with the

express understanding that the funds collected will be used for political purposes. The MEA-PAC contribution system, which operates as a reverse-checkoff, is described in detail in a declaratory ruling issued to Mr. Peter F. McNenly on August 4, 1987. A copy of the McNenly ruling is enclosed for your convenience.

According to your letter and supporting documentation, MEA's contribution to the Committee for the Protection of Michigan Lives was not made with PAC funds but from membership dues. However, there is nothing in the Act which requires MEA to support or oppose a ballot question through its PAC account. Similarly, there is nothing in section 54 or section 55 which prevents MEA from using its dues money to make a contribution or expenditure to a ballot question committee. Consequently, MEA's contribution to the Committee for the Protection of Michigan Lives is not prohibited by the Act.

However, as the cases cited in the McNenly letter indicate, the federal courts have held that the use of union dues to support ideological positions may have constitutional implications. For example, in Abood v Detroit Board of Education, 431 US 209; 97 S Ct 1782; 52 L Ed 2d 261 (1977), the Supreme Court considered the validity of an agency shop clause negotiated by the Detroit Federation of Teachers and the Detroit Board of Education pursuant to the Michigan Public Employment Relations Act. The agency shop provision required non-members to pay to the union, as a condition of employment, a service fee equal to the amount of union dues. The Court ruled that service fees could be used to finance union expenditures for purposes of collective bargaining, contract administration and grievance procedures. However, they could not be used to support ideological causes:

> "We do not hold that a union cannot constitutionally spend funds for the expression of political views, on behalf of political candidates, or toward the advancement of other ideological causes not germane to its duties as collective-bargaining representative. Rather, the Constitution requires that such expenditures be financed from charges, dues, or assessments paid by employees who do not object to advancing those ideas and who are not coerced into doing so against their will by the threat of loss of governmental employment." Abood, supra, pp 235-236.

It must be emphasized that the Abood decision applied only to agency fee payers and not to members of the Detroit teachers' union. The extent to which members may be constitutionally protected from their union's expression of political views, however, is outside the authority of this office to determine.

This response is informational only and does not constitute a declaratory ruling. If you have any questions or comments regarding this matter, please contact the Department's Compliance and Rules Division at 517/373-8252.

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF:cw:rlp
attachment
cc w/att: Representative James M. Middaugh

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STATE OF MICHIGAN

FRANK J. KELLEY, ATTORNEY GENERAL

Opinion No. 6541

September 28, 1988

CONSTITUTIONAL LAW:

US Const, Am I--protection of religious activities of churches and church organizations

ELECTIONS:

Application of campaign financing and practices act to churches and church organizations

The filing and reporting requirements of the campaign financing and practices act, 1976 PA 388, do not apply to churches and church organizations which permit proponents of a ballot question to gather petition signatures or proponents or opponents of a ballot question to solicit and receive contributions during religious services or meetings of church members.

Honorable Michael Griffin

State Representative

The Capitol

Lansing, Michigan 48909

You have requested my opinion on a question which may be restated as follows:

> Whether the filing and reporting requirements of the campaign financing and practices act apply to churches and church organizations which permit proponents or opponents of a ballot question to gather petition signatures or solicit contributions in support of or in opposition to a ballot question from persons attending church services or at scheduled meetings of church members.

You advise that the petitions are circulated by members of a ballot question committee at church religious services or at scheduled meetings of church members, and the solicitation by the members of the ballot committee of contributions for support of or in opposition to the ballot proposal committee are solicited and received at church religious services or at scheduled meetings of church members.

The campaign financing and practices act, 1976 PA 388, MCL 169.201 et seq; MSA 4.1703(1) et seq, in part, regulates ballot question committees.

Act 388, Sec. 34, in pertinent part, provides:

"(1) A ballot question committee shall file a campaign statement as required by this act according to the following schedule:

(a) A preelection campaign statement, of which the closing date shall be the sixteenth day before the election, shall not be filed later than the eleventh day before the election.

(b) A postelection campaign statement, the closing date of which shall be the twentieth day following the election shall not be filed later than the thirtieth day following an election. If all liabilities of the committee are paid before the closing date and additional contributions are not expected, the campaign statement may be filed at any time after the election, but not later than the thirtieth day following the election.

"(2) A ballot question committee supporting or opposing a statewide ballot question 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 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."

This section provides for certain late filing fees and imposes criminal penalties for violating its provisions.

The term "ballot question committee" is defined in Act 388, Sec. 2(2), as follows:

" '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."

In Act 388, Sec. 3(4), the Legislature has defined the term "committee" to mean

"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 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."

The Legislature has defined the term "contribution" in Act 388, Sec. 4(1) to mean

"a payment, gift, subscription, assessment, expenditure, contract, payment for services, dues, advance, forbearance, loan, donation, pledge or promise of money or anything of ascertainable monetary value, whether or not conditional or legally enforceable, or a transfer of anything of ascertainable monetary value to a person, made for the purpose of influencing the nomination or election of a candidate, or for the qualification, passage, or defeat of a ballot question. An offer or tender of a contribution is not a contribution if expressly and unconditionally rejected or returned."

"Expenditure" is defined in Act 388, Sec. 6, as follows:

"(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 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 qualification, passage, or defeat of a ballot question.

"(3) Expenditure does not include:

"....

> "(b) An expenditure for communication by a person strictly with the person's paid members or shareholders.
>
> "...."

The Secretary of State, pursuant to Act 388, Sec. 15(e), has promulgated 1982 AACS, R 169.34, to define the value of "in-kind contributions" as "the amount which could usually be received in the open market for goods and services."

Michigan's appellate courts have not had occasion to rule on the application of the Act's reporting requirements to religious groups. However, in 1983 the Michigan Court of Appeals did consider the constitutionality of applying 1975 PA 227; MCL 4.411 et seq; MSA 4.1704(1) et seq, the lobby law, to religious groups in Pletz v Secretary of State, 125 Mich App 335; 336 NW2d 789, lv den 417 Mich 1100.20 (1983). The court considered a claim by "church groups ... that the act violates the First Amendment's freedom of religion clause. Specifically, ... that if church institutions were required to comply with the act, it would constitute an infringement upon the exercise of religious freedom and privacy, both as to religious institutions and their members." Pletz, 125 Mich App at 373. The court held:

> "In our view, continuing observation and review of religious organizations' documents and records would be necessary for the government to review for evidence of possible lobbying activities. Additionally, determination of which records are for lobbying and which are for religious purposes would be a continuing difficult chore.
>
> "... The Michigan Constitution recognizes that religious groups traditionally have been granted special status. We conclude that, insofar as applied to churches and religious institutions, the act violates the First Amendment by creating excessive and enduring entanglements between state government and religious institutions. Consequently, in order to preserve the constitutionality of the act, we interpret it to except churches and religious institutions from its coverage and application." Pletz, 125 Mich App at 373-374.

The court in Pletz was, of course, simply applying one part of the three-part test set forth in Lemon v Kurtzman, 403 US 602; 91 S Ct 2105; 29 L Ed 2d 745 (1971), namely that state action that creates an excessive entanglement of government and religious is prohibited by the First Amendment. As the United States Supreme Court said in Aguilar v Felton, 473 US 402, 413; 105 S Ct 3232; 87 L Ed 2d 290 (1975), quoting Lemon, 403 US at 614:

> "We have long recognized that underlying the Establishment Clause is 'the objective ... to prevent, as far as possible, the intrusion of either [church or state] into the precincts of the other.' "

While no Michigan appellate court has addressed the application of Michigan's campaign financing and practices act to churches and religious institutions, the Tennessee court did so in Bemis Pentecostal Church v State, 731 SW2d 897 (Tenn 1987), app dis ____ US ____; 108 S Ct 1102; 99 L Ed 2d 264 (1988), where TCA, Sec. 2-10-101 et seq, a campaign financial disclosure statute comparable to the Michigan campaign financing and practices act, was challenged as unconstitutional by a group of churches.

In Bemis the Tennessee Supreme Court first concluded that Tennessee's reporting act did apply to "any group that wishes to participate in the process through the financing of election outcome specific advocacy...." 731 SW2d at 904. The court went on to hold, however, that Tennessee's campaign reporting act did not apply to the "financing of generalized discussion of public issues...." 731 SW2d at 905. Specifically, the Tennessee Supreme Court said:

> "Plaintiffs' regular and continuing programs of broadcasting their religious services on radio or television or of publishing and distributing church newsletters are not and cannot be considered campaign contributions or expenditures, regardless of whether they advocate a particular election result or not in the course of such activities, as these activities are protected by the First Amendment and are expressly excluded from the operation of the Act under T.C.A. Sec. 2-10-102(3)(B). Only the financing of their direct participation in the campaign, through activities in which Plaintiffs would not otherwise have engaged but for an impending election, trigger the Act.... [However,] the predominantly religious activities of Plaintiffs are not within the scope of the Act and would not result in Plaintiffs being considered political campaign committees for any purpose under the Act...." 731 SW2d at 905.

It is my opinion, therefore, that the filing and reporting requirements of the campaign financing and practices act, 1976 PA 388, do not apply to churches and church organizations which permit proponents of a ballot question to gather

petition signatures or proponents or opponents of a ballot question to solicit and receive contributions from persons attending church services or at scheduled meetings of church members.

Frank J. Kelley

Attorney General

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State of Michigan, Department of Attorney General
Last Updated 05/23/2005 10:27:41

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

October 10, 1988

Mr. John R. Monaghan
Monaghan for Probate Judge Committee
604 Lincoln
Port Huron, Michigan 48060

Dear Mr. Monaghan:

This is in response to your letter of September 14, 1988, 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 have a message favoring your candidacy printed on "grippers," which are used to assist in removing jar lids.

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 rules 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 inspection of the sample you provided shows that the size and makeup of the gripper makes it unreasonable to add an identification or disclaimer.

Based on the above, the Department of State finds that a waiver is appropriate in the fact situation presented for grippers which are 5 inches or less in diameter.

Very truly yours,

Phillip T. Frangos

Phillip T. Frangos, Director
Office of Hearings and Legislation

(517) 373-8141

PTF/cw

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

October 19, 1988

The Honorable Ed Giese
State Representative
State Capitol Building
Room L
Lansing, Michigan 48909

Dear Representative Giese:

This is in response to your recent letter regarding the applicability of the Campaign Finance Act, 1976 PA 388, as amended (the "Act"), to the lawn signs being used in your campaign for re-election.

Previously you asked in a telephone call if it was necessary to change the identification portion of signs that have been used previously in your campaign when the committee's address is changed. The Department staff person you spoke with told you that it was not necessary to change the identification since it was correct when the signs were purchased, and the committee has filed an amended Statement of Organization with its new address.

Section 47 of the Act (MCL 169.247) contains the identification requirements for printed matter used in election campaigns. The rules promulgated to implement the Act also include a rule relating to the identification requirement at R 169.236. Neither the Act nor the rules include any provision covering the issue you raise. However, neither is there a requirement that a committee re-label all materials when the committee address changes. Absent such a requirement, a committee which has filed an amendment to its Statement of Organization showing the change of address is not required to note the change of address on printed matter it has previously purchased, provided that the printed matter contains an identification statement that was correct when originally purchased.

This response is provided for informational purposes and is not a declaratory ruling.

Very truly yours,

Phillip T. Frangos

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF:cw:rlp

8-88-CI

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

October 28, 1988

Harold Dunne
Harold Dunne and Associates
37677 Professional Center Drive
Suite 110-C
Livonia, Michigan 48154

Dear Mr. Dunne:

This is in response to your request for an interpretive statement concerning the application of the Campaign Finance Act (the Act), 1976 PA 388, as amended, to the elected official who wishes to use either the official's candidate committee or officeholder fund to pay for legal representation.

The legal expenses would be incurred in a dispute with other elected officials over expenditures of funds pursuant to a city charter. You go on to state:

> "The corporation counsel represents the city as an entity and cannot represent both sides in the dispute. Therefore, the question is, 'Would the expense qualify as incidental to holding office and be accordingly proper under Public Act 388 of 1976?'"

Clearly payment of the expenses you describe would not be appropriately made from a candidate committee because the proposed expenses are not a part of the candidate's election expenditures. However, it appears that the expenses may more appropriately be made from an officeholder expense fund (OEF) established pursuant to section 49 of the Act (MCL 169.249) which provides:

> "Sec. 49. (1) 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.
>
> "(2) The contributions and expenditures made pursuant to subsection (1) are not exempt from the

> contribution limitations of this act but any and all contributions and expenditures shall be recorded and shall be reported on forms provided by the secretary of state and filed not later than January 31 of each year and shall have a closing date of January 1 of that year.
>
> "(3) 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 imprisonment for not more than 90 days, or both."

The question of the payment of legal expenses by an OEF has been dealt with in a previous letter issued by the Department. The question raised at that time was whether an OEF could be used to pay the expenses of bringing a libel action by the public official. In a February 1, 1980 letter to Senator Jack Welborn the Department concluded that such expenses could not be paid from the OEF if the disbursement was for expenses in a suit for personal money damages. The letter to Senator Welborn is enclosed.

In a telephone conversation on October 11, 1988 with Webster Buell of this office you elaborated on the facts provided in your letter. The legal action involved includes two lawsuits by your client against the City of Livonia and other elected officials. Your client is the city treasurer. In one action he is seeking a declaratory judgment with respect to the application of the city charter. In the other action he is suing the other officials and demanding that cetain funds be returned to the city. In neither case is he seeking money damages for himself.

Based upon the nature of the actions and the relief sought it appears that payment of the legal expenses outlined is incidental to your client's office and that payment of legal expenses under these circumstances may be properly made from your client's OEF.

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:rlp
attachment