MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

April 20, 1990

Dean D. Alan
Committee to Elect Dean D. Alan
21900 Chalon
St. Clair Shores, Michigan 48080

Dear Mr. Alan:

This is in response to your request for an exemption from the identification requirements of section 47 of the Campaign Finance Act, 1976 PA 388, as amended. Your original request was received on February 22, 1990. On February 23, 1990, you were informed that additional information was needed to respond to your request. You submitted this information on March 2, 1990.

On March 5, 1990, your request for an exemption was made available to the public as required by section 15(2) of the Act (MCL 169.215). There have been no written comments submitted by interested persons as provided in that section.

Section 47 of the Act (MCL 169.247) states, in pertinent part:

> "Sec. 47. (1) A billboard, placard, poster, pamphlet, or other printed matter having reference to an election, a candidate, or ballot question, shall bear upon it the name and address of the person paying for the matter."

Rule 36(2) of the administrative rules promulgated to implement the Act provides the identification statement must include the words "Paid for by" followed by the name and complete address of the payor. However, section 47(3) of the Act authorizes the Secretary of State to exempt certain items if their size makes it unreasonable to add an identification statement.

You have requested an exemption for a mint candy wrapper which measures 1/2" by 1 1/4". (The sample wrapper included with your letter, however, is 1 1/4" by 2 1/4".) You indicate the outside of the wrapper will state "Alan for Judge", and the candy will often be passed out with printed campaign materials that include the identification statement required by the Act.

The Department has previously interpreted the Act as exempting a number of items due to their size, including campaign stickers measuring 2 3/4" by 1". The candy wrapper which is the subject of your request is of a comparable size or smaller. It would be unreasonable to include an identification statement or

disclaimer on such a small item. Therefore, the Department has determined that a candy wrapper which is no more than 1 1/4" by 2 1/4" is exempt from the requirements of section 47 of the Act.

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/ac

100784

2-90-CI

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

June 14, 1990

Mr. Daniel C. Krueger
Ottawa County Clerk
414 Washington Street
Room 301
Grand Haven, Michigan 49417

Dear Mr. Krueger:

This is in response to your letter regarding the applicability of the Michigan Campaign Finance Act (the Act), 1976 PA 388, as amended, to the following question:

> " . . . If a bulk mailing permit is purchased by a public body with public funds, is it permissible to lend the use of that bulk mailing permit to any group or person involved in a political campaign with regard to either a proposition issue or individual candidate campaign?"

You go on to state:

> "Since it is illegal to use public funds in support of a political question or a political candidate, the question arose in that the use of such bulk mailing permit would effectively reduce the cost for a committee or candidate in that campaign. Since that reduction in cost would be based solely on the utilization of a public purchased bulk mailing permit, would it then have the effectiveness of an in-kind contribution to that proposition committee or candidate."

The term "contribution" is defined in section 4 of the Act (MCL 169.204). The term "in-kind contribution or expenditure" is defined in section 9(2) of the Act (MCL 169.209). The relevant portions of these definitions are set forth below:

> "Sec. 4. (1) 'Contribution' means a payment, gift, subscription, assessment, expenditure, contract, payment for services, dues, advance, forbearance, loan, or donation of money or anything of ascertainable monetary value, 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."
>
> "Sec. 9. (2) 'In-kind contribution or expenditure' means a contribution as defined in section 4 or expenditure as defined in section 6 other than money."

Even though the use of the bulk mail permit is not a cash contribution it is possible to determine the value of any use of the permit. It thus has ascertainable monetary value. The use of the permit is not a direct contribution of money but is instead an in-kind contribution. The Act requires committees which receive contributions, whether direct or in-kind, to disclose such receipts in their campaign statements and reports.
However, as your letter suggests there is another issue which may precede the reporting requirements of the Act. That issue is the propriety of a public body making a contribution to a political campaign. This issue is not addressed by the Act. Over the years the Attorney General has issued many opinions regarding the authority of a governmental body to spend public funds on behalf of or in opposition to a candidate or ballot question.

In 1987 the Attorney General issued an opinion which covers the use of public funds in political campaigns. The questions dealt with the use of school district or community college funds to assist an independent, political or ballot question committee. The following question and answer from OAG, 1987-88, No 6423, p 33 (February 24, 1987) summarizes the Attorney General's position:

> "2. Can an institution of public education give or loan to an independent political ballot or candidate committee paper, pencils, duplicating equipment, printing supplies, and other sundry items?"
>
> "QUESTION 2
>
> Turning to your second question, it has been the consistent position of this office that school districts and other public boards and commissions lack statutory authority to expend public funds to influence the electorate in support of or in opposition to a particular ballot proposal or candidate. OAG, 1965-1966, No 4291, p 1 (January 4, 1965; *Phillips v Maurer*, 67 NY2d 672; 490 NE2d 542 (1986). A public body, however, may expend public funds to objectively inform the people on issues related to the function of the public body. OAG, 1965-1966, No 4421, p 36 (March 15, 1965); OAG, 1979-1980, No 5597, p 482 (November 28, 1979). In light of these prior opinions and cited authority, the answer to your second question is no."

Subsequently, the Attorney General issued OAG 1987-88, No 6446, p 131 (June 12, 1987), which concluded that a county social services board was prohibited from using public funds to encourage a favorable vote on a ballot question. In a

letter opinion issued to State Representative Robert Emerson on May 26, 1982, the Attorney General concluded that a downtown development authority established pursuant to MCL 125.1651 et seq. is not authorized to spend public funds in support of a ballot question. The Attorney General went on to point out that without such authority the public body is prohibited from forming a committee under the Act.

In summary, the loan of a bulk mailing permit to a committee is an in-kind contribution, and governmental entities are generally without authority to make contributions or expenditures in a candidate or ballot question 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
(517) 373-8141

PTF/cw

101243

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

June 14, 1990

Carl L. Gromek
Research Director
Michigan Court of Appeals
P.O. Box 30022
Lansing, Michigan 48909

Dear Mr. Gromek:

This is in response to your request for an interpretive statement regarding the applicability of the Campaign Finance Act (the Act), 1976 PA 388, as amended, to a "trustee plan designed to facilitate individual contributions by the Judges [of the Michigan Court of Appeals] in state and local, non-federal, elections." On April 9, 1990, your request was made available to the public as required by section 15(2) of the Act (MCL 169.215). There have been no written comments submitted by interested persons as provided in that section.

The "trustee plan" you envision is described in your letter as follows:

> "The plan would consist of one bank account in the name of the Court's Administrative Officer. Periodically, the Chief Judge would request a $50 payment from each of the Judges to the account. The funds received would be recorded by the Administrative Officer and deposited into the account. Contributions from the account would be made in the name of the individual judge who has either directed or consented that the contribution be made in his or her name. No single contribution from any individual Judge would exceed $50 and the total would never reach $200 in any calendar year. However, a contribution of $100 to a campaign in the names of Judge A and B, located in Detroit, would enable Judge C, located in Lansing, to attend a fund-raiser in Lansing as a representative from the Court."

You ask whether the proposed plan is subject to the reporting and filing requirements of the Act.

The Campaign Finance Act requires a "committee" to file a statement of organization and periodic disclosure statements. "Committee" is defined in section 3(4) of the Act (MCL 169.203), which states in pertinent part:

> "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 $500.00 or more in a calendar year or expenditures made total $500.00 or more in a calendar year. An individual, other than a candidate, does not constitute a committee....."

"Person" is defined in section 11(1) of the Act (MCL 169.211) to include any organization or group of persons acting jointly.

You suggest that the "'trustee' relationship between the Judges of the Court of Appeals and the Administrative Officer" does not meet the definition of "committee" for two reasons. First, you point out that an individual such as the Court's Administrative Officer cannot constitute a committee. Second, you assert that the Judges who contribute to the proposed plan are analogous to partners who, pursuant to rule 35a of the administrative rules promulgated to implement the Act (1982 AACS R169.35a), are permitted to make contributions from a partnership account without registering as a committee if certain conditions are met.

Your reliance upon the Administrative Officer's status as an individual who is not subject to the Act's reporting requirements is misplaced. The exception for individuals who are not candidates applies to a person who contributes or expends his or her own money. It does not apply to an individual who opens an account for the sole purpose of depositing contributions received from other individuals and subsequently spending the accumulated funds to support or oppose candidates in state and local elections.

The role you have described for the Administrative Officer is that of a committee treasurer or individual designated as responsible for a committee's record keeping. A treasurer or designated individual is required by section 22 of the Act (MCL 169.222) to keep detailed accounts, records, bills and receipts of contributions received and expenditures made by a committee. The Act's reporting requirements cannot be avoided simply by opening an account in the name of the treasurer or Administrative Officer.

With respect to your second assertion, rule 35a provides:

> "Rule 35a. (1) A contribution drawn on a partnership account shall be attributed to the partners as individuals, and not to the partnership, if the contribution is accompanied by a written statement containing the name and address of each contributing partner and the amount of each partner's contribution. The statement shall include the occupation, employer, and principal place of business of each individual who is a member of the partnership and contributed $200.01 or more for that election."

> "(2) A committee which receives a written statement attributing a partnership contribution the partners as individuals shall report the contribution as if the committee had received a separate contribution from each individual."

You state that under the proposed plan, contributions from the joint account to state and local candidates would be made in the name of individual Judges. The check drawn by the Administrative Officer would be accompanied by a written statement identifying the Judge's name, address, date and amount being contributed. You conclude that this procedure is analogous to contributions received from partners and "seems to obviate the need to register as a committee."

This argument ignores the fact that the purpose of establishing the "trustee account" is to receive and expend jointly accumulated funds for the purpose of influencing elections. In contrast, a partnership is an association of two or more persons formed to conduct business for profit. This unique relationship is specifically recognized and controlled by the Uniform Partnership Act, 1917 PA 72, as amended.

Typically, a partner may access partnership assets by executing a check drawn on the partnership account, which is then deducted from his or her share of the partnership's profits. Rule 35a was promulgated to prevent any confusion in cases where a partner uses a partnership check to make a contribution of his or her own funds to a committee. If, instead, a group of partners agreed to contribute a certain amount to a separate account for the purpose of purchasing fund raiser tickets or making other campaign expenditures, rule 35a would not apply and the partners would be required to register as a committee. Disclosure of the individual partners' contributions would then appear in the committee's campaign statements which, pursuant to section 26 of the Act (MCL 169.226), must include the name and address of each partner who contributed $20.01 or more to the committee.

The participants in the plan you describe are not involved in a profit making venture but are acting jointly to influence elections. They are contributing money to a separate account for the express purpose of making expenditures to support or oppose candidates. Therefore, if contributions to the proposed joint account total $500.00 or more in a calendar year, or if the account is used to purchase fund raiser tickets or make other expenditures which total $500.00 or more, a statement of organization as a committee must be filed within 10 days, as provided in section 24 of the Act (MCL 169.224).

However, it should be noted that arranging to transfer contributions to designated candidates may violate section 44(1) of the Act (MCL 169.244)). This section states:

> "Sec. 44. (1) A contribution shall not be made by a person to another person with the agreement or arrangement that the person

receiving the contribution will then transfer that contribution to a particular candidate committee."

According to your letter, individual Judges would contribute $50.00 to a joint account. A Judge could then direct the Administrative Officer to make a contribution in his or her name to a state or local candidate. By so doing, it appears that a contribution would be made by one person to another with the agreement or arrangement to transfer that contribution to a particular candidate. Such earmarked contributions are prohibited by section 44(1).

To summarize, if a group of individuals contribute to a joint account for the purpose of making expenditures or purchasing fund raiser tickets to support or oppose candidates, the group must file a statement of organization as a committee within 10 days after receiving or spending $500.00 in a calendar year. This requirement cannot be avoided by establishing an account in the name of the individual responsible for administering the account or by attributing subsequent expenditures from the account to one of the original contributors. Moreover, if an individual contributes to the joint account with the agreement or arrangement that the contribution will be transferred to a particular candidate committee, a violation of section 44(1) of the Act may occur.

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

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF/ac

101224

4-90-CI

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

July 17, 1990

Joan E. Wilson, Treasurer
Ronald C. Wilson Campaign Committee
P.O. Box 266
Scottville, Michigan 49454

Dear Ms. Wilson:

This is in response to your request for an exemption from the identification requirements of section 47 of the Campaign Finance Act, 1976 PA 388, as amended.

Section 47 of the Act (MCL 169.247) states, in pertinent part:

> "Sec. 47. (1) A billboard, placard, poster, pamphlet, or other printed matter having reference to an election, a candidate, or ballot question, shall bear upon it the name and address of the person paying for the matter."

Rule 36(2) of the administrative rules promulgated to implement the Act provides the identification statement must include the words "Paid for by" followed by the name and complete address of the payor. However, section 47(3) of the Act authorizes the Secretary of State to exempt certain items if their size makes it unreasonable to add an identification statement.

You have requested an exemption for a 2" x 6" paper bookmark. One side of the bookmark carries a patriotic slogan and pictures of the American flag and various institutions in Washington, D.C. On the reverse side is the message "Elect Ron Wilson 51st Circuit Court Judge" and, at the top, a 6" ruler.

The Department has previously determined that it would be unreasonable to require an identification statement on a 12" wooden ruler. On the other hand, in a letter to

Senator David S. Holmes, Jr., dated March 24, 1978, the Department indicated that a fund raiser ticket measuring 2-1/2" x 6-1/2" was not excluded from the requirements of section 47.

Although the bookmark you propose includes a 6" ruler, it more closely approximates a fund raiser ticket in both size and material. In addition, the sample bookmark you have provided contains ample space for the identification statement required by the Act. Therefore, the Department has determined that a 2" x 6" paper bookmark is not exempt from the requirements of section 47 and must include a complete identification statement or disclaimer.

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF:rlp

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

5-90-CI

July 17, 1990

Mr. Charles A. Anglin
5101 Arden
Warren, Michigan 48092

Dear Mr. Anglin:

This is in response to your request for an interpretation concerning the applicability of the Campaign Finance Act ("the Act"), 1976 PA 388, as amended, to a campaign advertisement for election to the School Board of the Warren Consolidated School District.

You indicate that a direct mail advertisement promoting your candidacy for the School Board is produced by Copy Center USA, Inc., and inserted in local newspapers for distribution. Your letter states:

> "The Committee To Elect Chuck Anglin pays Copy Center USA, Inc. for the advertising space the same way the other advertisers pay Copy Center USA, Inc. for their advertisement."

You further indicate that Jets Pizza purchased advertisements from Copy Center USA, Inc., for its business. Its advertisement appeared in the same newspaper insert with your campaign advertisement. Jets Pizza is owned by Jet's Pizza, Inc., a corporation.

One of the purposes of the Act is to regulate the financing of campaigns for "elective office". Subsection 5(2) of the Act (MCL 169.205) was amended by 1989 PA 95, and provides, in pertinent part:

> "(2) 'Elective office' . . . Except for the purposes of sections 54 and 55, elective office does not include a school

> board member in a primary or fourth class school district." (Emphasis added.)

The Warren Consolidated School District is a fourth class district. As such, the district's School Board elections are generally excluded from the Act's requirements. However, sections 54 and 55 of the Act (MCL 169.254 and 169.255) remain applicable to school board elections in a fourth class district. These sections prohibit a corporation from making a contribution to a candidate committee.

Section 4 of the Act (MCL 169.204) defines a campaign "contribution" as follows:

> "Sec. 4. (1) 'Contribution' means a payment, gift, subscription, assessment, expenditure, contract, payment for services, dues, advance, forbearance, loan, or donation of money or anything of ascertainable monetary value, 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 . . .
>
> (2) Contribution includes . . . 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."

Assuming that Jets Pizza was merely purchasing commercial advertising from Copy Center USA, Inc., for its business and was not making a "contribution" to your campaign, as defined in section 4 of the Act, nothing in your letter would lead to the conclusion that Jets Pizza has violated the Act or its rules. The Act does not prohibit a corporation from purchasing advertising from the same company which produces and distributes campaign advertising for a candidate committee, provided the advertisements are purchased at fair market value.

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:rlp

6-90-CI

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

August 13, 1990

Joan M. Older
Citizens for Joan Older
582 Cedardale Drive
Rose City, Michigan 48654

Dear Ms. Older:

This is in response to your request for an exemption from the identification requirements of section 47 of the Campaign Finance Act, 1976 PA 388, as amended.

Section 47 of the Act (MCL 169.247) states, in pertinent part:

> "Sec. 47. (1) A billboard, placard, poster, pamphlet, or other printed matter having reference to an election, a candidate, or ballot question, shall bear upon it the name and address of the person paying for the matter."

Rule 36(2) of the administrative rules promulgated to implement the Act provides the identification statement must include the words "Paid for by" followed by the name and complete address of the payor. However, section 47(3) of the Act authorizes the Secretary of State to exempt certain items if their size makes it unreasonable to add an identification statement.

You have requested an exemption for a wooden nickel, which presumably is similar in size to a five cent coin. According to your printer, there is insufficient space to include an identification statement or disclaimer on the wooden nickel.

The Department has previously interpreted the Act as exempting a number of items due to their size, including bingo chips, buttons, clothespins and wooden rulers. The wooden nickel which is the subject of your request is of a comparable size or smaller.

It would be unreasonable and, according to your printer, perhaps impossible to include an identification statement or disclaimer on such a small item. Therefore, the Department has determined that a wooden nickel which is the approximate size of a five cent coin is exempt from the requirements of section 47 of the Act.

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF:rlp

7-90-CI

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

October 8, 1990

Mr. Dick M. Jacobs
1016 Forest Hills Drive
Holland, Michigan 49423

Dear Mr. Jacobs:

This is in response to your request for a declaratory ruling regarding running a "write-in" campaign for governor and lieutenant governor. In your letter you ask for rulings pursuant to both the Michigan Election Law, 1954 PA 116, as amended, and the Michigan Campaign Finance Act (the "Act"), 1976 PA 388, as amended.

The questions you raise with respect to the Election Law will be responded to, under separate cover, by the Department of State's Bureau of Elections. The remainder of this letter will be limited to a discussion of the questions you raise regarding the application of the Act to write-in candidates for the offices of governor and lieutenant governor.

The fundamental question you raise is whether write-in candidates running as a team for governor and lieutenant governor are required by the Act's provisions to each form a candidate committee.

The Act requires an individual to file a statement of organization within 10 days of becoming a candidate (MCL 169.221). Section 20(2) of the Act (MCL 169.220) specifically sets forth the circumstances under which a write-in candidate becomes a candidate pursuant to the Act, as follows:

> "Sec. 20. (2) An individual who receives votes at an election solely by the write-in method as provided by law is considered a candidate under this act as follows:
>
> (a) An individual who receives a contribution, makes an expenditure, or gives consent for another person to receive a contribution or make an expenditure with a view to bringing about the individual's receiving write-in votes at an election is a candidate under this act at the time of receiving the contribution or making the expenditure or giving consent to another person to receive the contribution or make the expenditure.
>
> (b) An individual who is not a candidate by reason of subdivision (a), but who is certified as a nominee as a result of write-in votes received at a primary election and does not withdraw as a nominee as provided by law is a candidate under this act as of 5 days following the certification of the nomination by the board of canvassers canvassing the primary.
>
> (c) An individual who is not a candidate by reason of subdivision (a) or (b), but who is elected to an office by receiving write-in

> votes in an election is a candidate under this act at the time the individual qualifies for the office."

A person running for either governor or lieutenant governor as a write-in candidate is required to file a Statement of Organization when he or she receives a contribution, makes an expenditure or allows another person to do so on their behalf.

As you indicated, candidates for governor and lieutenant governor run as a team. This is specifically recognized in section 3(1) of the Act (MCL 169.203), which provides in relevant part:

> "For purposes of sections 61 to 71, 'candidate' only means, in a primary election, a candidate for the office of governor and, in a general election, a candidate for the office of governor or lieutenant governor. However, the candidates for the office of governor and lieutenant governor of the same political party in a general election shall be considered as 1 candidate."

The reference to sections 61 to 71 clarifies that candidates for governor and lieutenant governor are considered to be a single candidate for purposes of public funding. The last sentence of this subsection extends this principle to other provisions of the Act. Thus, even though candidates for governor and lieutenant governor are required to form separate candidate committees, each committee may make expenditures on behalf of the ticket in a general election without regard to section 44(2) of the Act (MCL 169.244), which otherwise prohibits one candidate committee from contributing to or making expenditures on behalf of another candidate committee.

Although write-in candidates for governor and lieutenant governor who are running together are not party nominees, it is reasonable to treat them as 1 candidate for the general election. Therefore, in answer to your question, write-in candidates for the office of governor and lieutenant governor must form separate candidate committees as required by section 20(2). However, pursuant to section 3(1), expenditures supporting both members of the write-in team may be made from either candidate committee.

This response is informational only and does not constitute a declaratory ruling because your request for a ruling does not include an actual statement of facts.

Very truly yours,

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

PTF/cw

102401