



RICHARD H. AUSTIN
SECRETARY OF STATE

MICHIGAN
DEPARTMENT
OF STATE

LANSING, MICHIGAN 48918

April 9, 1991

Mr. Gary C. Peters
931 Standford Circle
Rochester Hills, Michigan 48309

Dear Mr. Peters:

This is in response to your request for a declaratory ruling concerning the applicability of the Michigan Campaign Finance Act (the Act), 1976 PA 388, as amended, to a refund owed to your dissolved candidate committee, Gary Peters for State Senate. Specifically, you ask how to accept the refund, whether the refund may be used to reimburse yourself for loans you had forgiven, and how you may dispose of the remaining funds.

On January 28, 1991, your request for a ruling 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 authorized by that section.

According to your letter and the records of the Department, during the 1990 election campaign you made loans of \$5,000, \$2,000 and \$1,300, or a total of \$8,300, to the Gary Peters for State Senate committee. Each loan was properly reported in campaign statements filed by the committee, and the outstanding balances were disclosed in separate schedules filed with subsequent campaign statements as required by section 28(2) of the Act (MCL 169.228). These statements indicate that the committee made no loan payments to you before December 24, 1990.

The committee's campaign statements further indicate that from October 4 through October 29, 1990, Gary Peters for State Senate paid Comcast Cable Advertising a total of \$15,486 for "cable spots". These expenditures were also reported in a timely and appropriate manner.

On January 2, 1991, Gary Peters for State Senate filed its final campaign statement. The campaign statement indicates that after paying its campaign workers, the committee had assets of \$5,451.17 and outstanding loans of \$8,300. Pursuant to rule 28(3) of the administrative rules promulgated to implement the Act (1982 AACS R 169.28), a committee may not dissolve if it has

Mr. Gary C. Peters
April 9, 1991
Page 2

assets or outstanding debts. Therefore, the \$5,451.17 was given to you as payment for the \$5,000 loan and in partial payment of the \$2,000 loan. The balance of that loan, or \$1,548.83, and the \$1,300 loan were forgiven, and the committee was dissolved.

Subsequently, a representative of Comcast Cable informed you that Gary Peters for State Senate was owed a refund because the company had failed to comply with certain federal regulations. Specifically, in a memorandum dated February 26, 1991, Lee Kanaan, a senior account executive, stated:

"Comcast Cablevision of Southeast Michigan, in accordance with Federal Regulations, will refund a total of \$4,942 to [Peters for Senate Committee] because of the lack of computer generated affidavits that would identify [the] number of specific commercials aired in our Pontiac/Waterford cable system."

"Somehow, these 'proofs of performance' affidavits did not appear on the computer discs. The other quantity of commercials did air and are documented."

Since the committee is dissolved, you ask how to accept the refund, whether the refund may be used to reimburse you for the \$2,848.83 in forgiven loans and, if so, what may be done with the remaining \$2,093.17.

If the refund in question had been paid to the committee before a dissolution statement was filed, the committee would have been required to deposit the refund in its official depository and report the \$4,942.00 as an "other receipt" when filing its next campaign statement. There is no question that the refund could then have been used to repay you for the outstanding loans. Upon filing a dissolution statement, disbursement of the unexpended \$2,093.17 would have been governed by section 45(2) of the Act (MCL 169.45). This section provides:

"Sec. 45(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."

Mr. Gary C. Peters
April 9, 1991
Page 3

The question raised by your inquiry is whether the Act permits or requires a different result where a candidate committee has been dissolved prematurely. While the statute does not specifically address this issue, a review of the Act and rules suggests that funds that are returned to a committee after the committee has dissolved must be reported and disposed of in the same manner as if the committee remained in existence.

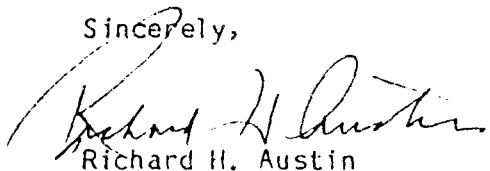
As stated previously, rule 28(3) prohibits a committee from dissolving if it has any remaining assets. With the refund from Comcast Cable, Gary Peters for State Senate has an asset which is subject to the Act's requirements.

The procedure for correcting errors and omissions in campaign statements is found in section 16 of the Act (MCL 169.16). Section 16(7) provides that a "filer shall make any corrections in the statement or report filed with the appropriate filing official" within nine business days after the filing deadline. Since the Act does not impose a filing deadline for dissolution statements, the Department interprets the Act as requiring corrections in a dissolution statement to be reported when they are discovered.

Thus, in answer to your questions, the \$4,942 refund from Comcast Cable may be used to reimburse you for the previously forgiven loan balance of \$2,848.83. Pursuant to section 45(2) of the Act, the remaining \$2,093.17 must be given to a political party committee or a charitable institution or returned to the committee's contributors. The receipt and disposition of the refund must be reported by filing an amended dissolution statement. The forms needed to amend that statement are enclosed for your convenience.

This response is a declaratory ruling concerning the specific facts and questions presented.

Sincerely,



Richard H. Austin



RICHARD H. AUSTIN
SECRETARY OF STATE

MICHIGAN
DEPARTMENT
OF STATE

LANSING, MICHIGAN 48918

May 23, 1991

Mr. Thomas Ritter, Vice President
Public Affairs/Industry Relations
Alexander Hamilton Life Insurance Company
33045 Hamilton Boulevard
Farmington Hills, Michigan 48018-4161

Dear Mr. Ritter:

This is in response to your request for a declaratory ruling concerning the applicability of the Michigan Campaign Finance Act (the Act), 1976 PA 388, as amended, to advertisements purchased by the Alexander Hamilton Life Insurance Company (Alexander Hamilton) prior to the Farmington School District election held on February 5, 1991, in which two related millage proposals appeared on the ballot. Copies of the advertisements in question are attached as Advertisements A, B, C and D.

Your questions generally concern whether the advertisements constitute expenditures under the Act. You also ask whether brochures produced and distributed by the Farmington Public Schools concerning the same election are subject to the Act's requirements. Copies of the schools' literature are attached as Brochures I, II and III.

Declaratory ruling procedure

On February 12, 1991, your request for a ruling was made available to the public as required by section 15(2) of the Act (MCL 169.215). Written comments concerning your request were submitted by Ms. Cynthia Williams Irwin on behalf of the Michigan Education Association (MEA). Comments were also received from Ms. Katrina Jensen, a Farmington Hills resident who had previously filed a complaint against Alexander Hamilton concerning the same advertisements. In a February 13, 1991, dismissal letter, the Department of State invited Ms. Jensen to submit written comments regarding the ruling request, after explaining that questions concerning the advertisements would be addressed through the declaratory ruling process.

Although not required by statute, the Department provided you with copies of the Irwin and Jensen comments. On April 8, 1991, you submitted a written response describing Alexander Hamilton's position on each of the questions

Mr. Thomas Ritter
May 23, 1991
Page 2

presented. All of the comments filed with regard to your request have been carefully considered and will be discussed as needed below.

While your ruling request concerns literature purchased by Alexander Hamilton and the Farmington School District (the School District), section 63 of the Administrative Procedures Act of 1969, 1969 PA 306, as amended (MCL 24.263), provides that a declaratory ruling binds only the agency and the person requesting the ruling. In addition, rule 6(1) (1979 AC R 169.6) of the administrative rules promulgated to implement the Michigan Campaign Finance Act states that the Secretary of State may issue a declaratory ruling to an interested person. "Interested person" is defined as a person whose course of action would be affected by the declaratory ruling.

The Farmington School District is not an interested person within the meaning of rule 6(1) and, pursuant to section 63 of the Administrative Procedures Act, will not be bound by the ruling you have requested. Therefore, this analysis will focus on the advertisements purchased by Alexander Hamilton.

Statutory provisions

As a corporation, Alexander Hamilton is subject to the requirements of section 54 of the Act (MCL 169.254). Section 54 prohibits a corporation from making contributions or expenditures in candidate elections. However, in a departure from the longstanding prohibition against direct corporate involvement in political campaigns, section 54 permits a corporation to make expenditures for the qualification, passage or defeat of a ballot question. Specifically, section 54(3) states:

"Sec. 54. (3) 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 purposes of this act."

According to your request, Alexander Hamilton has filed a statement of organization as a ballot question committee with the Oakland County Clerk. Pursuant to section 24(4) of the Act (MCL 169.224), the company indicated in the statement of organization that it did not intend to receive or expend more than \$1,000.00 for any election. As a result, the committee organized by Alexander Hamilton was not required to file campaign statements unless it received contributions or made expenditures of more than \$1,000.00 to influence the outcome of the February 5 millage election (MCL 169.235).

You do not dispute that Alexander Hamilton paid more than \$1,000.00 for the advertisements in question. However, it is your position that the advertisements are not expenditures as defined in the Act.

Mr. Thomas Ritter
May 23, 1991
Page 3

The definition of "expenditure" is found in section 6 of the Act (MCL 169.206). This section states, in pertinent part:

"Sec. 6. (1) 'Expenditure' means a payment, donation, loan, 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."

With respect to a millage election, a payment is an "expenditure" if it assists or opposes the qualification, passage or defeat of a question which is submitted or intended to be submitted to a popular vote at an election. According to section 9(1) of the Act (MCL 169.209), a payment meeting this definition is an "independent expenditure" if it is not made at the direction or control of another person and it is not a contribution to a committee.

The test employed in section 6(1) is whether a payment is in assistance of or in opposition to the passage or defeat of a ballot question. A payment can assist or oppose a ballot question without directly advocating a position on the issue. For example, if a group campaigns against a ballot question and pays rent for a campaign office, fees to a consultant, and the cost of polls and surveys, the payments are clearly in opposition to the ballot proposal even though the payments do not communicate the group's position on the subject or issue.

Payments to communicate on a subject or issue are subject to a different standard under the Act. Specifically, section 6(3)(b) provides:

"(3) Expenditure does not include any of the following:

"(b) An expenditure for communication on a subject or issue if the communication does not support or oppose a ballot issue or candidate by name or clear inference."

An expenditure for a communication on a subject or issue is therefore excluded from the Act's regulation if it "does not support or oppose a ballot issue or candidate by name or clear inference." Conversely, if a communication supports or opposes a ballot question or candidate by name or clear inference, it is subject to the Act's requirements.

Mr. Thomas Ritter
May 23, 1991
Page 4

Interpreting section 6(3)(b)

You have asked for clarification regarding the meaning of section 6(3)(b). Specifically, you ask the following questions with respect to the advertisements purchased by Alexander Hamilton:

"1. What criteria separates advertisements that 'support' or 'oppose' a ballot question, from those that merely discuss the issue from an objective point of view, for the purposes of determining which expenditures must be reported under the Campaign Finance Act?

"3A. Specifically, do the advertisements purchased by Alexander Hamilton Life which discuss budget data from the Farmington Public Schools or those that present absentee voter information, constitute expenditures in support or opposition to a ballot question under the Campaign Finance Act?"

As your ruling request suggests, there is little, if anything, in the Act which assists in drawing the line between communications which merely inform and those which support or oppose a particular candidate or issue. In your April 8, 1991, comments, you suggest several examples of communications which, in your judgment, would meet the "support or oppose by name or clear inference" standard. These include a statement threatening a voter with dire consequences if a candidate or issue should win or lose, an emotional appeal based on desirable moral attributes, or a "highly-skewed presentation of alleged facts, which has the effect of leading a voter unrelentingly towards the support or opposition of a particular ballot issue or candidate."

These hypothetical examples may or may not be types of communications which would be subject to the Act's regulation, depending on the facts and circumstances of each case. However, they do not create a standard or test which can be used in determining whether a particular communication is excluded from the Act by section 6(3)(b).

Michigan courts have not been called upon to construe section 6(3)(b), nor is there anything in the Act's legislative history which is useful in this regard. However, federal jurists have on several occasions interpreted language found in the Federal Election Campaign Act which, like section 6(3)(b), is based upon the content of a communication.

While both statutes attempt to regulate constitutionally protected speech, 2 USC 431(17) differs from section 6(3)(b) in two important respects. First, it applies only to independent expenditures made in connection with a federal candidate election. Second, it does not distinguish between speech which "supports" or "opposes" a candidate by name or clear inference. Rather, it

Mr. Thomas Ritter
May 23, 1991
Page 5

applies to an expenditure "expressly advocating the election or defeat of a clearly identified candidate." While these standards may differ, the federal cases are useful in construing section 6(3)(b).

The concept of express advocacy derives from the United States Supreme Court decision in Buckley v Valeo, 424 US 1; 96 S Ct 612; 46 L Ed 2nd 659 (1976). At the time, section 608(e)(1) of the federal act prohibited expenditures of more than \$1,000.00 "advocating the election or defeat" of a candidate. In order to avoid declaring this provision overly vague and in violation of the First Amendment, the Court ruled the act could only apply to communications that "expressly advocate the election or defeat of a clearly identified candidate." The Court then gave examples of words of express advocacy, including "vote for," "elect," "support," "cast your ballot for," "Smith for Congress," "vote against," "defeat," and "reject."

Subsequently, the Ninth Circuit Court of Appeals determined that an advertisement urging readers to "Don't Let Him Do It" with respect to President Carter in the 1980 presidential election expressly advocated his defeat. The Court stated:

"We conclude that speech need not include any of the words listed in Buckley to be express advocacy under the Act, but it must, when read as a whole, and with limited reference to external events, be susceptible of no other reasonable interpretation but as an exhortation to vote for a specific candidate. This standard can be broken into three main components. First, even if it is not presented in the clearest, most explicit language, speech is 'express' for present purposes if its message is unmistakable and unambiguous, suggestive of only one plausible meaning. Second, speech may only be termed 'advocacy' if it presents a clear plea for action, and thus speech that is merely informative is not covered by the Act. Finally, it must be clear what action is advocated. Speech cannot be 'express advocacy of the election or defeat of a clearly identified candidate' when reasonable minds could differ as to whether it encourages a vote for or against a candidate or encourages the reader to take some other kind of action." Furgatch, supra, p 864.

While express advocacy is not the standard found in section 6(3)(b), the Michigan Supreme Court, in declaring a provision of an earlier political reform statute prohibiting corporations from participating in ballot question elections unconstitutional, agreed that "[p]olitical expression must be afforded the broadest protection in order 'to assure the unfettered interchange of ideas for the bringing about of political and social changes

Mr. Thomas Ritter
May 23, 1991
Page 6

desired by the people." Advisory Opinion on Constitutionality of 1975 Public Act 227, 396 Mich 465, 494 (1976). To insure this protection, the content of a communication on a subject or issue must be examined on a case by case basis to determine if that communication is subject to regulation.

There is no bright line criteria separating informational speech from speech which supports or opposes a candidate or ballot question by name or clear inference. Rather, as the case law suggests, section 6(3)(b) must be interpreted to mean that the Act does not apply to a communication on a subject or issue unless the communication, when read as a whole, unambiguously presents a distinct plea for a specific action with respect to a clearly identified candidate or ballot question. Your questions may therefore be answered by applying this test to each of the advertisements purchased by Alexander Hamilton.

Alexander Hamilton advertisements

The advertisements in question are attached as Advertisements A, B, C and D. Advertisement A is entitled "Just How Much Is Enough?" and, in smaller print, states "Farmington Schools propose to increase property taxes an additional 10%." The middle portion of the advertisement includes a chart showing changes in the Farmington Public Schools general fund expenditures, property taxes, inflation index, student enrollment and surplus funds from 1986 to 1991. Below that chart is a graph showing that "Spending Outstrips Inflation And Enrollments!" and, in a separate box, information explaining absentee voting procedures to senior citizens.

This factual information is in the middle of a letter from R.H. Headlee, chairperson and CEO of the company, to Farmington taxpayers. In the text of the letter, Mr. Headlee indicates that Alexander Hamilton is "very troubled" by "excessive spending growth," pointing out that "expenditures have increased 78% in the past five years while student enrollment has only increased 5% in the same time period." After restating the point, ("Property taxes and spending have increased almost four times faster than the rate of inflation") the first paragraph concludes by repeating the question "Just how much is enough?"

The second paragraph, appearing just above the charts, begins "We are also troubled" by reports of below average student test scores "in a school district that spends almost twice as much per student as the state average." The paragraph concludes by asking "Are we getting our money's worth and just how much is enough?"

Below the charts, the letter again asks "just how much is enough?", after stating that the school's General Fund contained a \$14.9 million surplus. The letter concludes:

Mr. Thomas Ritter
May 23, 1991
Page 7

"Please keep in mind your assessments will be raised one month from now, increasing your property taxes. This request for an additional over-10% property tax increase is unnecessary and excessive. Many homeowners and business taxpayers are already stretched to the limit. In addition to the substantial assessment increases that have hit businesses and homeowners alike, this is not the time to raise property tax rates for the third time in three years. Thomas Jefferson once said, 'The price of liberty is eternal vigilance.'" (emphasis in original)

"Be Vigilant! Be Informed! Vote Tuesday, February 5, 1991!"

Advertisement B is very similar to Advertisement A. It, too, is a letter from Mr. Headlee to taxpayers and includes the same charts on spending and enrollment. (The absentee voter information box is replaced by a drawing of Alexander Hamilton's headquarters.) The advertisement is titled "TAXPAYERS' ALERT" and states that "both yours and our tax burdens will increase if two proposed school millage proposals win voter approval on Tuesday, February 5, 1991."

Advertisement B includes a paragraph criticizing the School District's leadership, stating "that their spending priorities and management of resources is difficult, if not impossible, to defend." Like Advertisement A, the advertisement concludes with statements that the "request of an additional over-10% property tax increase is unnecessary and excessive" and that "this is not the time to raise property tax rates for the third time in three years." Appearing above Mr. Headlee's signature, is the same declaration: "Be Vigilant! Be Informed! Vote Tuesday, February 5, 1991!"

Neither advertisement specifically asks voters to cast a no vote. However, when either Advertisement A or Advertisement B is read as a whole, each unambiguously presents a distinct plea to School District residents to vote against the millage request. The advertisements do not refer to "Proposition I" or "Proposition II", as the two related proposals appeared on the ballot. However, by describing the proposals (a request to raise property taxes by 10%) and specifically referring to the date of the school election, each advertisement includes information clearly identifying the ballot question which is the subject of the communication.

The repeated question "just how much is enough?" in Advertisement A and statements in both advertisements that the company is "troubled" by "excessive spending growth" suggest that Alexander Hamilton is opposed to the ballot question. However, the advertisements go much further. The final paragraph of each advertisement states that the proposed tax increase is "unnecessary

Mr. Thomas Ritter
May 23, 1991
Page 8

and excessive" and that "this is not the time to raise property tax rates for the third time in three years." These statements are followed closely by the exhortation to "Vote Tuesday, February 5, 1991!" The message in these advertisements is therefore unmistakable. Both Advertisement A and Advertisement B clearly ask Farmington voters to reject the School District's request for a millage increase.

It must be concluded that the costs of purchasing Advertisement A and Advertisement B were not excluded from the definition of "expenditure" by section 6(3)(b). Each advertisement was a communication which opposed a specific ballot question by name or clear inference. Consequently, payments for the advertisements must be reported as expenditures under the Act.

A careful examination of Advertisement C leads to the same conclusion. This advertisement begins "ATTENTION ALL TAXPAYERS! Election - February 5, 1991." (All emphasis appears in the advertisement itself.) In somewhat smaller type, the advertisement continues "Farmington Schools propose to increase property taxes by an additional 10%." Following is a graph depicting spending and inflation rates since 1986, which also appears in Advertisements A and B. There are then five sentences of text which include: "This new request for an additional 10% property tax increase is unnecessary and excessive" and ". . . this is not the time to raise property taxes for the third time in three years." Again, the advertisement concludes "Be Vigilant! Be Informed! Vote February 5th!"

When read as a whole, Advertisement C also unambiguously presents a clear plea to voters that they reject the millage request appearing on the February 5 election ballot. The description of the millage proposal and the prominent mention of the February 5 election plainly refer to a specific ballot question. The information presented concerning spending, inflation and future raises in assessments is followed by the message that the "new request" - that is, the ballot question - is "unnecessary and excessive," and that "this is not the time to raise property taxes for the third time in three years." The "time" referred to is clearly the February 5 election, which is mentioned prominently in the advertisement. Once again, it must be concluded that Advertisement C opposes a clearly identified ballot question by name or clear inference, and as such the cost of the advertisement is a reportable expenditure under the Act.

Advertisement D, on the other hand, does not appear to be a communication which supports or opposes a ballot issue or candidate by name or clear inference. This advertisement states in large, bold type "Attention Senior Citizens!" and explains that there is an election on February 5, 1991, at which the Farmington Schools are proposing to increase property taxes by "an additional 10%". The advertisement criticizes the school board for not automatically sending absentee ballots to senior citizens and then explains how to vote absentee. The advertisement concludes: "VOTE FEBRUARY 5TH!"

Mr. Thomas Ritter
May 23, 1991
Page 9

Advertisement D informs senior citizens that a school millage election is about to occur, explains how to vote absentee, and encourages seniors to exercise their franchise. However, the advertisement does not in any way characterize the millage proposal, describe Alexander Hamilton's position on the ballot question, or otherwise suggest how a person ought to vote. Therefore, Advertisement D does not unambiguously present a clear plea for a specific action with respect to the pending ballot question, and the cost of this advertisement is excluded from the Act by section 6(3)(b).

To summarize, Advertisements A, B and C are communications which clearly opposed, by name or clear inference, the ballot proposal presented to voters in the February 5, 1991, Farmington School District election. These advertisements were therefore expenditures under the Act. If Alexander Hamilton paid a total of more than \$1,000.00 for the advertisements, the payments must be reported by Alexander Hamilton pursuant to section 34(4) of the Act.

Advertisements purchased by the School District

Your ruling request includes two additional questions concerning brochures paid for by the School District. Specifically, you ask if the criteria applied to the advertisements purchased by Alexander Hamilton applies equally to public bodies, such as school boards. You also ask whether the communications from the School District, attached as Brochures I, II and III, constitute expenditures under the Act.

As previously noted, the Farmington School District will not be bound by the declaratory ruling and is not an interested person within the meaning of rule 6(1) of the Department's administrative rules. However, because similar issues have been raised in the past, the Department's position regarding the Act's application to school districts is set out below.

It is your contention that the Act does not distinguish between public and private organizations and therefore applies to "any and all organizations and individuals," including public entities. However, as a general rule the State, its agencies and political subdivisions are not included within the purview of a statute unless an intention to include them is clear. Marquette County v Northern Michigan University, 111 Mich App 521 (1981); 1 OAG, 1955-1956, No 2242, p 692. A school district is a state agency created by the Legislature. Jones v Grand Ledge Public Schools, 349 Mich 1 (1957). Consequently, a school district is subject to regulation only if the Legislature intended that the Act apply to school districts.

As you point out, any person who receives contributions or makes expenditures to influence the action of voters may be subject to the Act's requirements. "Person" is defined in section 11(1) of the Act (MCL 169.211) as a "business, individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, labor organization, company, corporation, association,

Mr. Thomas Ritter
May 23, 1991
Page 10

committee, or any other organization or group of persons acting jointly." There is no mention of any state agency or school district which, contrary to your assertion, suggests they are excluded from the Act's regulation.

The obvious reason for this exclusion is that school districts have no authority to spend public moneys to advocate a favorable vote on a millage proposal or to otherwise influence the electorate in support of or opposition to a ballot question. OAG, 1965-1966, No 4291, p 1 (January 4, 1965); OAG, 1987-1988, No 6423, p 33 (February 24, 1987); OAG, 1987-1988, No 6531, p 367 (August 8, 1988). The opinions of the Attorney General indicate, however, that a school district has implied power to make reasonable expenditures to give voters relevant facts to assist them in reaching an informed judgment on issues to be voted on at a school election. Therefore, communications by a school district concerning a ballot question must be examined to determine whether they constitute a prohibited use of taxpayer dollars - an examination the Secretary of State has no authority to conduct - and not whether they constitute expenditures under the Act.

If public funds have been improperly spent, OAG, 1987-1988, No 6423, supra, indicates there are three appropriate remedies. First, taxpayers may bring a lawsuit to enjoin the unlawful expenditure. Second, a board of education may begin an action against the school district to recover unlawfully expended funds. And third, the Attorney General may audit the records of the school district if requested to do so in writing by at least twenty-five percent of the districts registered voters. If taxpayer dollars have been spent improperly, the Attorney General or local prosecutor may then file a civil action to recover the money. (MCL 14.141 and 14.143)

The specific question of whether an agency's prohibited use of public funds to support a ballot question is subject to the Michigan Campaign Finance Act was addressed by the Attorney General in a letter opinion to State Representative Bob Emerson, dated May 26, 1982. The Attorney General, citing opinions stating that school districts, state commissions and boards, and a county board of supervisors lack statutory authority to spend money to influence the outcome of elections, reached the same conclusion with respect to a downtown development authority. Representative Emerson then asked the following questions:

"2. May a downtown development authority form a committee under the provisions of the Campaign Finance Act for the purpose of expending funds to influence the outcome of an election?

"3. If a downtown development authority cannot expend public funds to advocate a position on a ballot question, must a campaign statement and report required by 1976 PA 388 be filed?"

Mr. Thomas Ritter
May 23, 1991
Page 11

The Attorney General responded to these questions as follows:

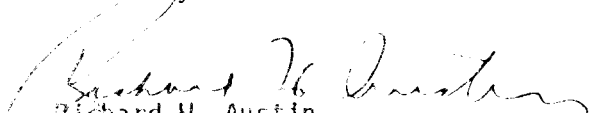
"Before a downtown development authority would be able to undertake the formation of a committee, it would first have to possess the power to do so under its grant of authority. Review of the various provisions of the downtown development authority statute does not reveal any express or implied authority for a downtown development authority to form a committee for the purpose of expending public funds to influence an election.

In response to your second and third questions, it is my opinion that a downtown development authority may not form a committee under 1976 PA 388, supra. It follows that the provisions of 1976 PA 388, supra, are not applicable to a downtown development authority."

A school district, like a downtown development authority, has no statutory authority to form a committee for the purpose of spending public moneys to influence an election. As the Attorney General indicates, it must therefore be concluded that a school district is not subject to the provisions of the Michigan Campaign Finance Act.

This response is a declaratory ruling concerning the applicability of the Act to the attached advertisements purchased by Alexander Hamilton with respect to the ballot questions voted upon in the February 5, 1991, Farmington School District election.

Sincerely,


Richard H. Austin

Enclosures

Just How Much Is Enough?

Farmington Schools propose to increase property taxes an additional 10%

Dear Taxpayers,

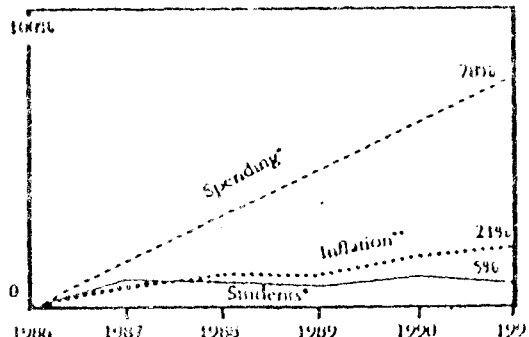
We support quality education, but are very troubled by the excessive spending growth in the Farmington School District. We are concerned when an administration and school board resort to baseless emotional threats of reduced busing, sports, and cultural activities. Particularly in a district where expenditures have increased 78% in the past five years while student enrollment has only increased 5% in the same time period. Property taxes and spending have increased almost four times faster than the rate of inflation. Just how much is enough?

We are also troubled by recent reports in this newspaper that SAT and ACT scores of Farmington students are at or below the state average in a school district that spends almost twice as much per student as the state average. Are we getting our money's worth and just how much is enough?

The facts speak for themselves:

Farmington Public Schools <small>(Based on millions of dollars, fiscal year ending June 30) Source: audited financial statements and 1991 adopted budget</small>	1986	1991	Change
General Fund Expenditures	\$51.8	\$92.0	+78%
Property Taxes	\$41.3	\$75.2	+82%
Inflation Index	112.7	135.7	+21%
Total Students Enrolled	10,323	10,861	+5%
Surplus Funds <small>(Fiscal Equity) beginning of fiscal year *1991 received for state aid capture.</small>	\$3.4	\$14.9*	+338%

Spending Outstrips Inflation And Enrollments!



* Source: Farmington Public Schools Financial Reports

** Source: U.S. Department of Labor

Attention Senior Citizens!

Vote absentee . . .

City officials automatically send absentee ballots to all senior citizens (60 years and older) for general elections. Unfortunately, the school board does not embrace this well intentioned philosophy for school millage ballot proposals.

Here's what to do to vote absentee:

1. Mail a request to the school board for a ballot to be mailed to your home.
2. Better yet, go to the school board office and vote absentee on the spot.
3. Board office location:

Farmington School Board
Absentee Ballots
32500 Shilohway (near Farmington Rd.)
Farmington, Idaho 83436
Ph: 489 3300

At the close of the 1990 fiscal year, total surplus funds in the General Fund alone were \$14.9 million. Regardless of how this surplus is or has been allocated, just how much is enough?

Please keep in mind your assessments will be raised one month from now. Increasing your property taxes. This request for an additional over 10% property tax increase is unnecessary and excessive. Many homeowners and business taxpayers are already stretched to the limit. In addition to the substantial assessment increases that have hit businesses and homeowners alike, this is not the time to raise property tax rates for the third time in three years. Thomas Jefferson once said, "The price of liberty is eternal vigilance."

Be Vigilant! Be Informed! Vote Tuesday, February 5, 1991!

R.H. Headlee
R.H. Headlee,
Chairman and CEO

TAXPAYERS' ALERT

Farmington Schools propose to increase property taxes by an additional 10%

Dear Taxpayers,

Alexander Hamilton Life shares your concern about rapidly rising property taxes. Our company pays \$585,000 in property taxes each year in Farmington Hills. That's over \$48,000 per month! Now, both yours and our tax burdens will increase if two proposed school millage increases win voter approval on Tuesday, February 5, 1991.

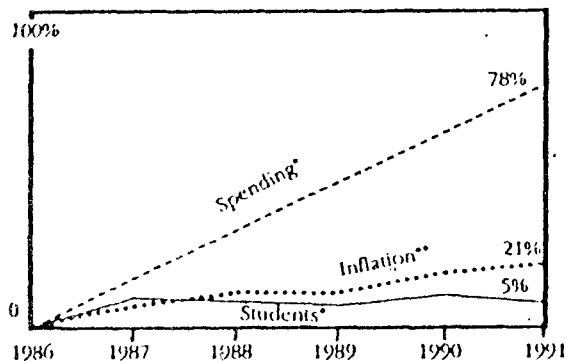
We support quality education, but are very troubled by the excessive spending growth in the Farmington School District. We are also troubled when an administration and school board resort to baseless emotional threats of reduced busing, sports, and cultural activities. Particularly in a district where expenditures have increased 78% in the past five years while student enrollment has only increased 5% in the same time period. It is more a matter of goodwill and sound management.

The unwillingness of the district's leadership to discuss and debate these issues with the citizens of Farmington and Farmington Hills only reinforces the conclusion that their spending priorities and management of resources is difficult, if not impossible, to defend. Their arrogance is quite improper and most unbecoming.

The facts speak for themselves:

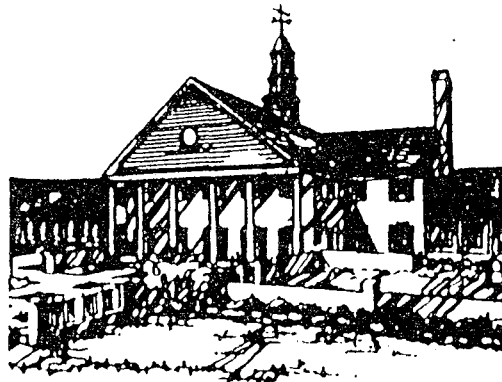
Farmington Public Schools (Stated in millions of dollars, fiscal years ending June 30) Sources: audited financial statements and 1991 adopted budget	1986	1991	Change
General Fund Expenditures	\$51.8	\$92.0	+78%
Property Taxes	\$41.3	\$75.2	+82%
Inflation Index	112.1	135.7	+21%
Total Students Enrolled	10,323	10,861	+5%
Surplus Funds (Fund Equity), beginning of fiscal year \$4.3 reserved for state aid recapture.	\$3.4	\$14.9*	+338%

Spending Outstrips Inflation And Enrollments!



* Source: Farmington Public Schools Financial Reports

** Source: U.S. Department of Labor



Alexander Hamilton Life, Farmington Hills, Michigan

The district has healthy reserves. At the close of the 1990 fiscal year, total surplus funds in the General Fund alone were \$14.9 million, of which \$4.3 million was reserved for state aid recapture in the fiscal 1991 budget.

The request of an additional over-10% property tax increase is unnecessary and excessive. Many homeowners and business taxpayers are already stretched to the limit. In addition to the substantial assessment increases that have hit businesses and homeowners alike, this is not the time to raise property tax rates for the third time in three years. Thomas Jefferson once said, "The price of liberty is eternal vigilance."

Be Vigilant! Be Informed! Vote Tuesday, February 5, 1991!

R.H. Headlee
R.H. Headlee,
Chairman and CEO

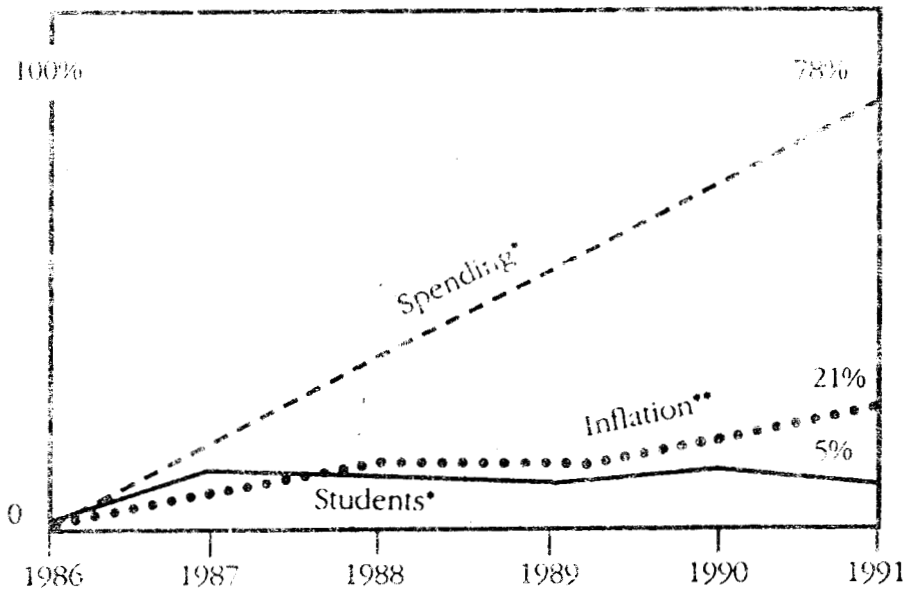
Alexander Hamilton Life
A Hamilton International Company

Attention All Taxpayers!

Election – February 5, 1991

Farmington Schools propose to increase
property taxes by an additional 10%

Spending Outstrips Inflation and Enrollments!



* Source: Farmington Public Schools Financial Reports.

** Source: U.S. Department of Labor.

Please keep in mind your assessments will be raised one month from now, automatically increasing your property taxes. This new request for an additional 10% property tax increase is unnecessary and excessive. Many homeowners and business taxpayers are already stretched to the limit. In addition to the substantial assessment increases that have hit businesses and homeowners alike, this is not the time to raise property tax rates for the third time in three years. Thomas Jefferson once said, "The price of liberty is eternal vigilance."

Be Vigilant! Be Informed!

VOTE FEBRUARY 5th!

Thomas H. Ritter, Vice President
Public Affairs and
Industry Relations

A public service announcement from
Alexander Hamilton Life Insurance Company of America

Attention Senior Citizens!

Election – February 5, 1991

Farmington Schools propose to increase
property taxes by an additional 10%

Vote absentee . . .

City officials automatically send absentee ballots to all senior citizens (60 years and older) for general elections. Unfortunately, the school board does not embrace this well-intentioned philosophy for school millage ballot proposals.

Here's what to do to vote absentee:

1. Mail a request to the school board for a ballot to be mailed to your home.
2. Better yet, go to the school board office and vote absentee on the spot.
3. Board office location:
Farmington School Board
Absentee Ballots
32500 Shiawasee (near Farmington Rd.)
Farmington Hills 48336
Ph: 489-3300

VOTE FEBRUARY 5th!

Thomas H. Ritter, Vice President
Public Affairs and
Industry Relations

A public service announcement from
Alexander Hamilton Life Insurance Company of America

LARKSHIRE ELEMENTARY SCHOOL

23800 Tuck Road
Farmington Hills, Michigan 48336-2769
(313) 489-3722
FAX: (313) 489-3728



January 31, 1991

Dear Parents,

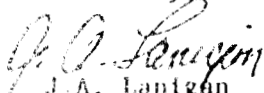
There has been very much written regarding the effect the loss of the school millage will have on the Farmington Schools. It is important that you consider carefully before making your decision.

It is important that you are aware how your children at Larkshire will be effected.

Cuts made at all schools, such as staff and technology budgets will, of course, effect Larkshire. However, we will also lose our transition room, an effective place for students who are not ready to proceed into first grade. We will lose our fourth grade outdoor education, a very special learning opportunity that provides two nights and three days of concentrated science learning. Our fifth grade field trip to Point Pelee culminating the children's unit on Canada and migration will also be eliminated. We will also find it more and more difficult to provide classroom space for our students. The bond issue, which is connected to the millage will provide funds for more classrooms at Larkshire.

Please consider the facts carefully. Programs, teachers, and construction will be eliminated if the millage fails. Is this your choice for your children?

Sincerely,


J.A. Lanigan
Principal

JAL:ch



Election Update

Informational Meeting on Millage Election

An informational meeting has been scheduled for all interested citizens and staff.

Monday, January 28, 1991

7:30 p.m.

Harrison High School Auditorium



CHIPS

CHIPS - "Child Care for Involved Parents"

Child care will be provided at Harrison for elementary age children.

- | | |
|---------------------------|------------------------------------------------------------|
| Time: | 7:15 p.m. - until meeting ends |
| Cost: | \$3 - one child
\$2 - each additional child in family |
| Registration: | Call Farmington Community School to register
(489-3333) |
| Registration
Deadline: | 4:00 p.m. day of meeting |



Millage Election Fact Sheet

1. What are the two proposals?

Proposition I

2.7 operating mill increase. Approval of Proposition I will allow us to continue all direct services to students.

Proposition II

1.0 operating mill increase. Approval of Proposition II will allow us to add to, renovate and repair many of the district's buildings as recommended in the Facility Study report of September 1990.

Proposition II can pass only if Proposition I passes.

2. Why is Proposition II contingent on Proposition I?

In the most simple terms, it does not make sense to add to, renovate or repair schools when services to students have to be cut.

3. Why do we need additional operating millage?

In June of 1990 the State legislature changed the funding formula for out-of-formula districts. This surprise move meant a loss of \$5.8 million dollars to Farmington (largest amount of revenue lost statewide) and impacted about 55 other districts in Michigan. Because Farmington planned ahead and has maintained a ten percent fund equity, we were able to be relatively unaffected for 1990-91. The fund equity has been depleted and in order to deal with the reduction in our operating money, we will either have to generate additional operating millage or cut approximately 5.8 million dollars in programs and services from our budget for 1991-92.

4. Can the State take more of our money?

The State cannot take local voted millage. However, Farmington receives a total of \$10 million in state aid (categorical funding). At this point, the State is "recapturing" (not paying us) \$5.8 million of that state-aid money. It is possible for them to withhold the total amount.

5. Will the State come and take more money because we vote to increase our millage rate?

If the State changes the formula and takes more of our money, it will happen whether or not we increase our millage. One action will NOT insure the other action.

6. What is at stake?

High quality education — the standard that Farmington residents have come to expect.

7. What is our current operating millage rate? How does that compare to other Oakland County districts?

Our current millage rate is
32.05 operating mills
.80 debt levy

In 1989-90 Farmington was 20th out of 28 districts in operating millage rate levied.

The 1990-91 figures are not yet available from Oakland Schools Intermediate School District.

8. Are we able to levy our entire voted millage?

No. Farmington taxpayers have voted to approve 37.29 operating mills. We are unable to levy our full authorized millage because of the limitations of the Headlee Amendment.

9. Why not go for a Headlee override?

A Headlee override would give the district over 5 mills for operating expenses. This is more money than the district needs at this time.

10. What projects were identified by the facilities report?

- Elementary classrooms (Gill and Larkshire)
- Middle school classrooms (number of classrooms contingent on boundary-line decision)
- High school classrooms (and related space)
- Renovations to Alameda, Fairview, ITC, Farmington Community School, Ten Mile, Flanders and Eagle
- Completion of renovations initiated at Wooddale, Kenbrook, Highmeadow, Longacre, Wm. Grace, O.E. Dunkel and Farmington High

11. Why are so many facility improvements needed?

The average age of our present facilities is 32 years old. In addition to the average age of the buildings, there have been curriculum changes that have taken place over these years that required building alterations. Enrollment increases have and will require additional classroom space.

12. Why is our budget \$92 million—what does it contain?

\$92 million is a deceiving amount. Items that are contained in our budget include:

\$92,053,930	General Operating Budget (1990-91)
- 7,078,008	Capital Budget
- 1,358,875	Food Service Budget (self-supporting)
- 8,895,622	Special Education Center Program Budget (County reimbursed)
- 482,214	Boys Republic Budget (State reimbursed)
- 533,072	Community Education & Preschool (Tuition based and self-supporting)
- 122,310	Adult Education (State funding)
- <u>935,736</u>	Federal Grants and Reimbursements
\$72,648,093	BUDGET EXCLUDING CAPITAL PROJECTS AND REIMBURSED PROGRAMS

13. What is Fund Equity?

Fund Equity is a "savings account" for emergencies. Several years ago the Board of Education set a goal of a 10% fund equity and worked to save that amount of money to prepare for State financial reform. Because we had a Fund Equity when state funding changed in late June 1990, we have been able to continue programs this year (1990-91) without cuts even though we lost \$5.8 million. That Fund Equity will be depleted this year — the money is being used to maintain programs.

The concept of Fund Equity sometimes becomes distorted and confusing. Our year-end financial statement contains 2 kinds of Fund Equity:

- DESIGNATED FUND EQUITY- Money set aside to pay for things already purchased — we're just waiting for the bills.
- UNDESIGNATED FUND EQUITY- "Savings account" for emergencies.

As of June 30, 1990 (Year-end financial report total F.E. \$14.9 million)

DESIGNATED FUND EQUITY \$ 8,427,863 (committed money, i.e., open purchase orders, building repairs and improvements in progress, etc.)

UNDESIGNATED FUND EQUITY \$ 6,469,310 (most of this will be used during 1990-91 to compensate for money lost in state aid cuts.)

14. What costs have risen dramatically and impacted the budget?

- Insurance costs have skyrocketed. This is a problem nationwide, not just for Farmington Schools. Each year over the last 5 years we have experienced increases. (One year was close to a 30% increase.) In 1989-90 insurance benefit costs for all employees totalled \$8,883,378.
- Capital expenditures - When the bond issue was defeated in September 1988, the district began to use a designated yearly amount of operating money for much needed building repairs and renovations (ceilings, asbestos removal, windows, lighting, floors, roofs, etc.)
- Two additional elementary schools - Highmeadow and Hillside. The operating costs required to run these two elementary schools increased the budget. Costs (excluding teacher salaries) include administration, secretarial, heat, light, maintenance, media, cafeteria, teaching supplies, student supplies, transportation, etc.
- Technology - The Technology Advisory Committee (TAC) has developed and begun to implement a plan to bring appropriate hardware and software to teachers and students.

15. What has the district done to tighten its belt before asking voters for more money?

The district has already cut OVER \$1 million from the operating budget in an attempt to be fiscally responsible while maintaining a quality program.

Positions already not filled: (\$561,187)

- Deputy Superintendent
- Psychologist -- .5 position
- Staff development -- .5 position
- Administrative assistant -- high school
- Secretary -- gifted office
- Special education teacher
- Elementary counselors
- Administrative intern
- Media specialist -- early childhood

Additional reductions for 1991-92: (\$639,610)

- Professional staff (5 non-classroom positions)
- Support staff (3 positions)
- Food service reduction
- Transportation streamlining

The district has also:

- Frozen all capital expenditures including instructional technology
- Reduced the number of subs used for illness except for classrooms or direct student support services

16. What will happen if the millage doesn't pass?

If Proposition I does not pass, we will see many changes:

- Increase in class size (minimum 35 classroom teachers eliminated)
- Increase in student-counselor ratio

Many programs will be reduced or eliminated:

- Secondary elective classes - number of offerings decreased
- Elementary art, instrumental and vocal music
- Physical education offerings
- Low enrollment advanced placement classes
- Basic classes
- Instructional supplies and textbooks
- Bilingual education services

16. (continued)

Transportation
Athletics
Staff training
Administrative services
Secretarial services
Gifted services
Maintenance and custodial services
Science consultant program and outdoor education programs
Teacher on TV classes (German, Latin)
Instructional technology
Field trips
Extra-curricular programs (drama, musicals, debate, secondary intramurals, etc.)
Middle school reading specialists
Paraprofessionals (K-1, learning centers, non-mandated special education programs)
Scheduled building improvements and equipment replacement
...Over 100 staff positions will have to be eliminated.

17. What will happen if the millage passes?

Programs and services will continue to be offered at the current level. In an effort to be fiscally responsible, the district will implement over \$1 million in reductions that will not directly affect the classrooms regardless of the election outcome.

18. What is the status of the lawsuit brought by Out of Formula districts against the State of Michigan?

This action may take several years to resolve. At this time we are not hopeful of the outcome. The money that we have lost and will continue to lose will most likely be irretrievable.

19. Have any other school districts in our area held elections to compensate for the loss of revenue?

Yes, Southfield Public Schools, Northville Public Schools and Taylor Public Schools held successful elections to increase operating millage. Warren Consolidated was unsuccessful in its attempt to increase operating millage.

20. What happens if the State gives us back the recaptured money?

It is highly unlikely that this would happen given the information we have received from the State. In the unlikely event that this were to happen, it would be the Board of Education's prerogative to levy less than the available millage. This reduction in levied millage has happened many times in the past in this community. The Board of Education has an excellent track record of being prudent and fiscally responsible with taxpayers' dollars.

21. What is the district's track record of levying voted millage?

Farmington Public Schools -- Taxes			
Year	Operating	Debt	Total
1980-81	33.53	2.75	36.28
1981-82	33.25	2.00	35.25
1982-83	31.80	1.90	33.70
1983-84	31.80	1.90	33.70
1984-85	33.00	1.70	34.70
1985-86	32.50	1.50	34.00
1986-87	32.50	1.30	33.80
1987-88	31.75	1.20	32.95
1988-89	30.65	1.20	31.85
1989-90	32.39	0.90	33.29
1990-91	32.05	0.80	32.85

21 (continued)

* Farmington levied significantly less than its allowable rate until 1989. With the loss of a bond election in 1988, the district began levying its full authorized amount in order to address building renovations needs and other capital projects.

* In 1989-90 we were able to LOWER the debt millage while building a new elementary school. The approval of the bond actually resulted in a lowered tax rate.

22. What is a mill?

Rate of taxation. One mill is \$1.00 per \$1,000.00; or 1/1000 of a dollar, and is generally written as .001.

23. What does the proposed millage increase mean to the average home owner?

	Market Value (\$50,000) S.E.V. (\$25,000)	Market Value (\$100,000) S.E.V. (\$50,000)
Proposition I \$\$ per year Cents per day	\$67.50 per year 18 Cents per day	\$135 per year 37 Cents per day
Proposition II \$\$ per year Cents per day	\$25 per year 7 Cents per day	\$50 per year 14 Cents per day
Proposition I and II \$\$ per year Cents per day	\$92.50 per year 25 Cents per day	\$185 per year 51 Cents per day
* S.E.V. -- State Equalized Valuation		

24. Will I feel the full impact of the tax increase?

The impact of the proposed tax increase may be reduced by a taxpayer's ability to claim property tax on their Federal Income Tax Itemized Deduction form and a Michigan Homestead Property Tax Credit on form MI 1040 CR.

25. What percentage of our tax base is residential? commercial?

Currently 62% of Farmington's tax base is residential; 38% is commercial and industrial. Because of the high percentage of commercial and industrial property, Farmington has been able to maintain a relatively low operating millage rate while benefiting from the tax revenue of the businesses in our community.

26. Where does the lottery money go?

Michigan taxpayers were the victims of a "shell game" when the idea of a state lottery was first proposed. The State does give lottery revenue to our schools, however, at the same time, they reduce an amount from State Aid for Schools. We all lose in this little game.

27. If the millage fails, will it be placed on the ballot again?

It is doubtful. The community is being given an opportunity to voice its opinion on the school program and facilities. The district has a history of respecting the opinion of the community.

28. Why should I support the millage, I don't have any kids in school?

Property values are affected by the quality of the community's school system. People move to Farmington and maintain the value of area homes because of the quality school system.

29. Would the loss of revenue have any effect on private schools?

Yes -- private school students may have to be transported from the public school in their attendance area, rather than their existing bus stop.

30. I don't register to vote because I do not want to be called for jury duty.

People are called for jury duty from driver license and State ID card lists, not from voter registration lists.

31. How do I get and use an absentee ballot?

Absentee ballots are available in person or by mail (include signature, address and birth date on request) at the Schulman Administrative Center, 32500 Shiawassee. Voters may request an absentee ballot if they are: (1) out of town on February 5; (2) incarcerated awaiting trial or arraignment; (3) 60 years of age or older; (4) physically unable to attend the polls. Absentee ballots are available Monday through Friday, January 16 - February 4, 7:30 a.m. - 4:30 p.m. The office will also be open from 10:00 a.m. - 2:00 p.m. Saturday, February 2, to accept absentee ballots.

32. Will there be an opportunity for parents and citizens to get more information or ask questions?

Yes, an informational meeting is scheduled for Monday, January 28, 7:30 p.m., at Harrison High School.

Also, interested citizens can ask questions and get information by calling:
Farmington Public Schools, School/Community Relations - 489-3349
Farmington MEA Office - 553-7125 or Union Presidents

33. How do I get involved?

A group of parents and citizens called "Friends of Farmington Schools" is supporting this effort. They welcome donations and volunteers. Call Carol Luckscheiter, 478-6158, Bobbi Feldman, 553-6152, or Jayne Wochomurka, 478-3113, for more information.

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

MUTUAL BUILDING
208 N. CAPITOL AVENUELANSING
MICHIGAN 48918

48918-9902

December 20, 1991

William J. O'Neil
Wayne County Commission
County Building, Suite 450
600 Randolph Street
Detroit, Michigan 48226

Dear Mr. O'Neil:

This is in response to your request for information concerning the applicability of the Michigan Campaign Finance Act (the Act), 1976 PA 388, as amended, to the payment of legal fees and court costs incurred to review an apportionment plan approved by a county apportionment commission. Specifically, you ask whether an elected official may pay such expenses from the official's officeholder expense fund or candidate committee. If not, you ask whether the official may receive "contributions" to pay apportionment related legal fees and court costs without violating the Act's requirements.

Disbursements from an officeholder's expense fund are governed by section 49 of the Act (MCL 169.249) and rule 62, 1989 AACS R169.62, of the administrative rules promulgated to implement the statute. Section 49 provides that an elected public official may use his or her officeholder's expense fund "for expenses incidental to the person's office." Pursuant to rule 62(1), an expense is incidental to office if it is "traditionally associated with, or necessitated by, the holding of a particular public office" and is included within 1 or more of the 17 categories listed in the rule.

Under current law, a county commissioner has no role in the apportionment of county commissioner districts. As a consequence, an expense related to the apportionment of county commissioner districts is not an expense 'traditionally associated with, or necessitated by' the office.

Moreover, apportionment related legal fees and court costs do not fall within any of the categories described in rule 62(1). Therefore, an officeholder expense fund may not be used to pay legal fees and court costs incurred to review an apportionment plan.

Similarly, the Act does not permit an elected official to pay apportionment expenses from his or her candidate committee. In a May 29, 1979, declaratory ruling issued to Senator Mitch Irwin, the Secretary of State ruled that funds held by a candidate committee may only be used for the purpose of influencing an election. Since that ruling, the Department of State has consistently interpreted the Act as limiting a candidate committee to receiving

contributions and making expenditures as defined, respectively, in sections 4 and 6 (MCL 169.204 and 169.206). If apportionment related legal fees and court costs fall outside these definitions, they cannot be paid with candidate committee funds.

In an interpretive statement issued to Phillip Van Dam, dated April 12, 1982, the Department was asked whether the Michigan Republican Party's (MRP) efforts to influence the State Commission on Legislative Apportionment were subject to the Act. The letter to Mr. Van Dam stated, in pertinent part:

" Whether or not MRP activity to influence the State Commission on Legislative Apportionment (the Commission) is subject to the Act depends on the definitions of 'contribution' and 'expenditure' in sections 4 and 6 of the Act (MCL 169.204, MCL 169.206). A contribution is a payment, etc., 'made for the purpose of influencing the nomination or election of a candidate, or for the qualification, passage, or defeat of a ballot question.' Similarly, an expenditure is a payment, etc., 'in assistance of, or in opposition to, the nomination or election of a candidate, or the qualification, passage, or defeat of a ballot question.' Since redistricting has nothing to do with ballot questions, it must be determined if MRP's reapportionment activity influences, assists, or opposes the nomination or election of a candidate.

It is quite clear the Commission's decisions (or the Supreme Court's decisions) affect the outcome of elections to be held in this decade; otherwise, MRP would not be attempting to influence those decisions. However, affecting the outcome of future elections in which the candidates are not identified, and influencing the election or nomination of a candidate are two different things."

The interpretive statement concluded that disbursements to influence the Commission or the Supreme Court were not expenditures subject to the Act. In reaching this conclusion, the letter cited a previous interpretive statement issued on September 4, 1981, to Olivia Maynard, which stated that apportionment activity "is entirely independent of supporting the election of candidates and opposing or supporting the enactment of ballot questions, and is not reportable under the Act."

While the Van Dam and Maynard letters addressed the payment of apportionment expenses by political party committees, the determination that such expenses were not governed by the Act depended upon the definitions of "contribution" and "expenditure." These definitions do not depend upon the nature of the committee receiving or spending the funds but apply equally to all types of committees.

Legal fees and court costs related to the review of an apportionment plan may be incurred for the purpose of protecting an elected official's political interests, but they are not for the purpose of assisting or opposing the nomination or election of a candidate. Consequently, apportionment expenses

are not contributions or expenditures as defined in the Act, and they cannot be paid by a candidate committee.

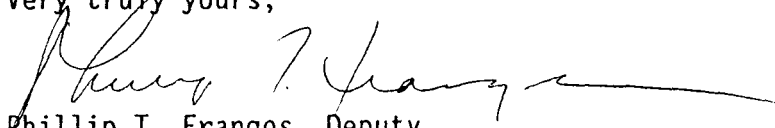
It is interesting to note that the Federal Election Commission (the F.E.C.) has also concluded that reapportionment expenses, including legal fees, are not expenditures under the Federal Election Campaign Act. "Expenditure" is defined in 2 USC §431(9)(A) as "any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office." The F.E.C. has repeatedly stated that this definition does not include the influencing of reapportionment decisions or the financing of litigation which relates to reapportionment decisions. Advisory Opinion 1981-35 (September 28, 1981); Advisory Opinion 1981-58 (January 25, 1982); Advisory Opinion 1982-14 (April 9, 1982); Advisory Opinion 1982-37 (May 27, 1982).

While the Michigan and federal acts define "expenditure" in similar terms, the statutes differ in one significant respect. As previously noted, a candidate committee organized under the Michigan statute is limited to making election related expenditures. The committee of a federal candidate is not subject to a similar restriction but is authorized to make disbursements for any lawful purpose. Therefore, Advisory Opinion 1990-23 (November 5, 1990) held that a federal committee may choose to pay redistricting expenses and legal fees from contributed funds, provided they are reported as disbursements. The opinion reiterated, however, that redistricting expenses are not for the purpose of influencing an election and are not subject to the requirements of the Federal Election Campaign Act.

In response to your final question, please be advised that it would not be violative of the Michigan Campaign Finance Act to accept donations or use personal funds to pay for legal fees and court costs incurred to review an apportionment plan as the Act does not regulate such expenses as explained in this letter.

This response is informational only and does not constitute a declaratory ruling because none was requested.

Very truly yours,


Phillip T. Frangos, Deputy
State Services

The following opinion is presented on-line for informational use only and does not replace the official version. (Mich Dept of Attorney General Web Site - www.ag.state.mi.us)

STATE OF MICHIGAN

FRANK J. KELLEY, ATTORNEY GENERAL

Opinion No. 6704

October 22, 1991

ELECTIONS:

Use of public funds to pay expenses of city commissioners who are the subject of a recall petition

RECALL:

Use of public funds to pay expenses of city commissioners who are the subject of a recall petition

A municipality may not use its funds for the purpose of paying expenses incurred by city commissioners in the defense of a recall petition arising out of their performance of their duties as elected officials.

Honorable R. Robert Geake

State Senator

The Capitol

Lansing, MI 48913

You have asked my opinion on a question which may be phrased as follows:

May a municipality use its funds for the purpose of paying expenses incurred by city commissioners in the defense of a recall petition arising out of their performance of their duties as elected officials?

In the city in question, the city charter provides that elected city officials may be recalled pursuant to state law. All elected officials with the exception of judges are subject to recall pursuant to MCL 168.951; MSA 6.1951. A recall petition, however, may not be filed against an elected officer until the officer has been in office for a period of at least six months. *Id.*

A Letter Opinion of the Attorney General to Representative William L. Jowett, dated July 16, 1979, addressed the issue of whether a township board of trustees may pay legal fees for filing a court action that were incurred on behalf of certain township board members who were the subject of recall petitions. The opinion concluded that the township board of trustees lacked authority to pay the legal fees, stating:

[I]t is a general principle that the employment of an attorney by a municipal corporation for a particular purpose must be within the express or implied authority of the corporation. In order to bind the municipal corporation to pay for legal services, it must appear that the services were rendered with regard to a matter in which the corporation was interested. *Toebe v. City of Munising*, 281 Mich 1; 274 NW 688 (1937); *McQuillan, Municipal Corporations*, Sec. 29.14., 3rd Ed.; 130 ALR 737.

One of the civil matters in which the township attorney may be employed to represent the township is in regard to election law....

However, it is the duty of the county clerk under Section 961 of the Election Law, MCL 168.961; MSA 6.1961 to determine whether the recall petitions are in proper form.

If the petitions, when filed and certified, do not clearly contain a statement of reasons for recall based upon the conduct of the elected officials, a court may enjoin the recall election. However, no township officer, in his or her official capacity, has any duties regarding the certification of recall petitions or outcome of a recall election.

Therefore, I am of the opinion that a township may not expend public funds to challenge the sufficiency of recall petitions involving township officers. [Emphasis added.] [Footnote omitted.]

A Letter Opinion of the Attorney General to Representative Charles M. Mueller, dated May 24, 1985, reached the same result.

In a similar vein, it is the duty of the county clerk, pursuant to MCL 168.960(1); MSA 6.1960(1), and MCL 168.961; MSA 6.1961, to determine whether recall petitions involving city commissioners are in proper form. The city clerk compares the names on the recall petitions with the city registration lists pursuant to MCL 168.961; MSA 6.1961. City commissioners, however, have no duties regarding the recall petitions or the recall election.

This office has consistently opined that state and local governmental bodies may not expend public funds to support or oppose a particular candidate or ballot proposal. OAG, 1965-1966, No 4291, p 1 (January 4, 1965); OAG, 1979-1980, No 5597, p 482 (November 28, 1979); OAG, 1987-1988, No 6423, p 33, 35 (February 24, 1987). The rationale of these opinions is that governmental bodies lack constitutional or statutory authority to expend public tax moneys to influence the outcome of an election.

In *Mosier v. Wayne County Board of Auditors*, 295 Mich 27; 294 NW 85 (1940), the Michigan Supreme Court addressed the question of whether the Wayne County Board of Supervisors had authority to appropriate public funds for the purpose of securing legislative reapportionment. The Court concluded that the county lacked such power, holding:

The matter of representation in the legislature does not have enough relation to the property and business of the county to require a holding that the action of the board of supervisors in the instant case was within its constitutional and statutory power. If appellees are right in their contention, then by the same token any or all of the other counties of the State might with equal propriety appropriate any sum of money considered proper from the public funds of the county to finance a counteractivity. And further, such expenditure of county funds might be contrary to the desire and even subject to the disapproval of a large portion of the county taxpayers who were firmly of the conviction that refusal to reapportion representation in Michigan in accord with constitutional mandate is decidedly detrimental to our general governmental welfare. And we think it can safely be said that it was never contemplated under the Constitution and statutes of this State that our boards of supervisors should function as propaganda bureaus. [Emphasis added.]

295 Mich at 31.

Under the same reasoning, the expenditure of city funds for the purpose of paying city commissioner expenses incurred in opposing a recall petition "might be contrary to the desire and even subject to the disapproval of a large portion of the ... taxpayers...." *Mosier v. Wayne County Board of Auditors*, supra, 295 Mich at 31. Clearly, a municipality lacks

authority to expend money for such a purpose.

It is my opinion, therefore, that a municipality may not use its funds for the purpose of paying expenses incurred by city commissioners in the defense of a recall petition arising out of their performance of their duties as elected officials.

Frank J. Kelley

Attorney General

<http://opinion/datafiles/1990s/op06704.htm>

State of Michigan, Department of Attorney General

Last Updated 05/23/2005 10:29:52