STATE OF MICHIGAN

**FRANK J. KELLEY, ATTORNEY GENERAL**

Opinion No. 6710

February 13, 1992

MICHIGAN CAMPAIGN FINANCE ACT:

Preparation, circulation and filing of a petition to detach an area from a city

MUNICIPALITIES:

Use of public funds to prepare, circulate and file a petition to detach an area from a city

The Michigan Campaign Finance Act applies to activities of a group with regard to the preparation, circulation and filing of a petition for detachment of an area from a city pursuant to sections 6 and 8 of the home rule cities act.

A municipality may expend public funds to finance the preparation, circulation and filing of a petition seeking an election for detachment of an area from a city pursuant to sections 6 and 8 of the home rules cities act.

Honorable Richard H. Austin

Secretary of State

Treasury Building

Lansing, MI

You have asked my opinion on two separate questions regarding the Michigan Campaign Finance Act, 1976 PA 388, as amended, MCL 169.201 et seq; MSA 4.1703(1) et seq.

Your first question is whether the Michigan Campaign Finance Act applies to activities of a group with regard to the preparation, circulation and filing of a petition seeking an election for detachment of an area from a city pursuant to sections 6 and 8 of the home rule cities act, MCL 117.1 et seq; MSA 5.2071 et seq. These two statutory provisions set forth the process by which signatures may be obtained on a petition to incorporate cities or to detach territory from cities. [1] If a sufficient number of signatures in the affected area are collected and several other procedural steps occur, the question of detachment is then presented to the voters at a general or special election. Therefore, the answer to your first question depends on whether the preparation, circulation and filing of the petition for detachment is subject to the Michigan Campaign Finance Act, supra.

Section 2(1) of the Michigan Campaign Finance Act defines a ballot question as follows:

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

A petition for detachment ballot question is encompassed within the plain language of section 2(1) of the Michigan Campaign Finance Act, quoted above. The Act should be applied as plainly written. Collins v. Waterford Twp School Dist, 118 MichApp 798, 804; 325 NW2d 585 (1982). You also indicate in your letter that the actual language of the question to be presented to the electorate is not included on the petition itself. This fact has no bearing on the application of the Michigan Campaign Finance Act to the detachment committee. For example, it is the responsibility of the Board of State Canvassers to prepare ballot questions for referendums on legislation, for legislative initiatives, for constitutional amendments proposed by initiative petitions and for other propositions when the actual question may not appear on the petition. MCL 168.32; MSA 6.1032, MCL 168.474; MSA 61.1474. Nevertheless, the preparation, circulation and filing of the petitions leading to these ballot questions are subject to the Michigan Campaign Finance Act.

By contrast with detachment petitions, most annexation petitions and all incorporation petitions are filed with the State Boundary Commission (SBC), pursuant to the state boundary commission act and section 9 of the home rule cities act. Rather than seeking an election, these petitions request the statutorily required review and approval, by the SBC, of the proposed annexation or incorporation. Thus, activities in support of such petitions are not subject to the Michigan Campaign Finance Act. If, however, the SBC approves an annexation or incorporation and thereafter petitions are circulated for an election thereon, activities in support or in opposition to these election-seeking petitions would be subject to the Michigan Campaign Finance Act.

It is my opinion, therefore, that the Michigan Campaign Finance Act applies to activities of a group with regard to the preparation, circulation and filing of a petition for detachment of an area from a city pursuant to sections 6 and 8 of the home rules cities act.

Your second question is whether a municipality may expend public funds to finance the preparation, circulation and filing of a petition seeking an election for detachment of an area from a city pursuant to sections 6 and 8 of the home rule cities act. This office has consistently taken the position, through various formal and informal opinions, that governmental units may not expend funds to support or oppose ballot proposals or candidates. Recently, OAG, 1987-1988, No. 6423, p 33, 35 (February 24, 1987), stated:

> [I]t 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).

See, also, OAG, 1987-1988, No. 6446, p 131 (June 12, 1987).

However, municipalities have a public corporate concern in proceedings involving their boundaries. While their boundary concerns are not "vested right[s] or legally protected interest[s] in the boundaries of [these] ... governmental units," Midland Twp v. State Boundary Comm'n, 401 Mich 641, 664; 259 NW2d 326 (1977), nonetheless, it is historically commonplace for Michigan municipalities to allocate funds for litigation in support of or in opposition to boundary adjustment proceedings. For example, in both Kalamazoo Twp v. Kalamazoo County Supervisors, 349 Mich 273; 84 NW2d 475 (1957), and Williamston v. Wheatfield Twp, 142 MichApp 714; 370 NW2d 325 (1985), municipalities litigated boundary adjustment questions without challenge to their standing to do so. Similarly, there are at least two reported Michigan cases which provide instances of participation by a municipality in the petition process leading to annexation, again without any apparent challenge to the lawfulness of that activity. In Burton Twp v. Genesee County, 369 Mich 180, 183; 119 NW2d 548 (1963), the City of Flint had an employee collecting signatures for the annexation of a portion of a neighboring township under the then-existing statutory provisions. In Rutland Twp v. Hastings, 413 Mich 560, 563; 321 NW2d 647 (1982), the township collected the necessary signatures and filed a "blocking" petition with the State Boundary Commission. This "blocking" petition sought an annexation of township land to the City of Hastings but also had the effect of blocking the city's attempt to annex a smaller township parcel.

Kenneth VerBurg, Managing the Modern Michigan Township (MSU, 2d ed, 1990), p 339, notes the active involvement of cities in the annexation process, in part, as follows:

> During the 1950s and 1960s, the principal annexation process was initiated by signature petitions. One percent of

> the registered voters in "the affected area"--the annexing city together with the entire township--had to sign to qualify a petition. But only a minimum of 10 signatures had to come from each unit. As you might guess, the main circulation effort was usually found in the area where support for annexation was strongest. At times, residents in areas near the city boundaries wanted annexation; on other occasions city leaders advocated extending city boundaries, and so initiated an annexation effort. [Emphasis added.]

Finally, the appellate courts in other states have consistently held that municipalities may support and participate in the petition process for boundary adjustments. In re Petition for Annexation to Westerville, 52 Ohio App3d 8; 556 NE2d 200, 204 (1988), Englewood v. Daily, 158 Colo 356; 407 P2d 325, 326-327 (1965), Morgan Hill v. San Jose, 13 CalRptr 441, 444-445; 192 CalApp2d 383 (1961), Swift v. Phoenix, 90 Ariz 331; 367 P2d 791, 792-793 (1961), and Tovey v. Charleston, 237 SC 475; 117 SE2d 872, 875 (1961). See, also, McQuillin, Mun Corp, section 7.30.30, pp 592-593, (3d Ed).

In answer to your second question, it is my opinion, therefore, that a municipality may expend public funds to finance the preparation, circulation and filing of a petition seeking an election for detachment of an area from a city pursuant to sections 6 and 8 of the home rule cities act. However, once the issue has been placed on the ballot, a municipality may not use public funds to influence the electorate in support of or in opposition to a proposal that is put on the ballot as a result of the petitions being filed.

Frank J. Kelley

Attorney General

(1 While sections 6 and 8 of the home rule cities act also describe annexations of territory to cities, annexations of territory to cities from townships are now governed by the provisions of section 9 of the home rule cities act, the state boundary commission act, MCL 123)1001 et seq; MSA 5.2242(1) et seq, and section 34 of the charter township act, MCL 42.1 et seq, MSA 5.46(1) et seq.

1-92-CI

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918
48918-2100

March 27, 1992

Honorable Robert L. Brackenridge
Committee to Elect Brackenridge
6200 Eidson Road
St. Joseph, Michigan 49085

Dear Representative Brackenridge:

This is in response to your request for an exemption from the identification requirements of section 47 of the Michigan Campaign Finance Act, 1976 PA 388, as amended. Your original request was received on February 4, 1992. On February 6, 1992, you submitted additional information concerning the requested exemption.

On February 4, 1992, 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.

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 Chinese fortune cookie messages which measure 1/2" by 2". The printer has informed you that a total of 90 characters and 3 lines of print are allowed on each message. You indicate that you are contemplating the following message which contains 89 characters: "You will find yourself with an opportunity to vote for Representative Robert Brackenridge."

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" and candy wrappers measuring 1 1/4" by 2 1/4". The fortune cookie messages which are the subject of your request are smaller than either the sticker or candy wrapper.

Given the limitation on the number of characters that can be printed, it would be unreasonable to include an identification statement or disclaimer on this item. Therefore, the Department has determined that fortune cookie messages measuring 1/2" by 2" are 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, Deputy
State Services

PTF/ac

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MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918
48918-2110

June 4, 1992

Alfred H. Hall
Senate Majority Counsel
Olds Plaza, 11th Floor
P.O. Box 30036
Lansing, Michigan 48909-7536

Dear Mr. Hall:

This is in response to your request for an interpretative statement concerning the applicability of the Michigan Campaign Finance Act (the Act), 1976 PA 388, as amended, to a political leaflet circulated by the Committee to Recall Engler.

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 pursuant to that section.

The facts giving rise to your request are as follows:

> "On or about March 5, 1992, the 'Committee to Recall Engler' distributed copies of a leaflet . . . The leaflet asked for supporters to collect signatures, urging Governor Engler's recall, outside polling places during the presidential primary held on March 17, 1992. The leaflet includes a disclaimer as required by MCL 169.247(1), but also includes the statement beneath the disclaimer, 'xerox this leaflet and pass it along to friends.'"

You ask whether a political committee may distribute leaflets asking recipients to duplicate and pass them on without violating the Act's provisions. Specifically, you suggest the statement "xerox this leaflet and pass it along to friends" violates section 41(2) and section 26(2) of the Act.

Section 41(2) (MCL 169.241) provides that "a person shall not accept or expend an anonymous contribution." While this prohibition includes a contribution other than money (MCL 169.209), it only extends to the actual receipt or use of an anonymous contribution. Merely asking another person to copy and pass along the leaflet does not result in the acceptance or expenditure of an anonymous contribution and is not proscribed by the Act.

Violations of the Act could potentially occur if a person actually copies and distributes the leaflet. For example, the committee is required to report the value of any leaflets copied and distributed as an in-kind contribution. Its failure to do so could result in a violation of section 26 (MCL 169.226) or, if the contributor's name and address is unknown, a violation of section 41(2). As another example, a violation of section 47 of the Act (MCL 169.247) could occur if the person paying for the copies failed to add an identification statement indicating the copies were "paid for by" that person and not the committee. These issues could be addressed by filing a complaint with the Secretary of State as provided in section 15(5) of the Act (MCL 169.215).

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

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3-92-CI

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918
48918-2110

July 15, 1992

Sandra M. Cotter
Dykema Gossett
800 Michigan National Tower
Lansing, Michigan 48933

Dear Ms. Cotter:

This is in response to your request for an interpretive statement under both the Michigan Campaign Finance Act, 1976 PA 388, as amended, and the Lobby Act, 1978 PA 472, as amended.

The Department has complied with the public notice and comment procedures described in section 15(2) of the Michigan Campaign Finance Act. These procedures and the Department's response to written comments are described below.

The facts giving rise to your request are as follows:

> "A Michigan corporation, ('Donor') proposes to take the following actions to assist a member of the Michigan Legislature in the legislator's campaign among the legislator's caucus members for a leadership position in the legislative body. If the legislator is successful, the legislator will be recommended by the political party caucus for a leadership position in the legislative body.
>
> The Donor proposes to provide the following assistance:
>
> - Host a dinner meeting with members of the Legislature to discuss the leadership caucuses.
> - Provide, at no cost to the legislator, printing and postage related to the caucus election.
> - Make a donation of money to the legislator or an ad hoc committee of legislators organized to support the legislator's candidacy in the caucus election.
>
> None of the money donated will be used for expenditures as defined in the Michigan Campaign Finance Act.
>
> The Donor corporation is not registered as a lobbyist or lobbyist agent pursuant to the Lobbyist Registration and Reporting Act."

You ask whether the Donor's proposed activities are subject to either the Michigan Campaign Finance Act or the Lobby Act.

Michigan Campaign Finance Act (the Act)

On August 21, 1979, the Secretary of State issued a declaratory ruling to Richard D. McLellan concerning corporate payments made for the purpose of influencing the election of party officials at a state convention. A copy of that ruling is enclosed for your convenience. The Secretary of State concluded that the corporation's payments were not subject to the Act's requirements because the offices at stake at the convention were not public offices.

As suggested in McLellan, the Act applies only to contributions and expenditures made for the purpose of influencing an election. "Election" is defined in section 5(1) of the Act (MCL 169.205) to include "a convention or caucus of a political party held in this state to nominate a candidate." However, a person in contention for a leadership position within a legislative caucus is not a "candidate" nominated by a "caucus of a political party" within the meaning of the Act.

"Candidate" is defined in section 3(1) of the Act (MCL 169.203). This section states, in pertinent part:

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

The term "elective office," specifically referenced in subdivisions (a), (b) and (c) of subsection (1), is defined in section 5(2) as "a public office filled by an election." Subdivision (d), on the other hand, expressly refers to a recall vote. Thus, it is clear the Act applies only to those individuals whose names may ultimately be placed on a ballot voted upon by the public.

With respect to party nominees, an individual nominated by a political party caucus and certified to the proper filing official is entitled to appear on an appropriate election ballot. A "political party" is a party "which has a right under law to have the names of its candidates listed on the ballot in a general election." (MCL 169.211) "Caucus" is not defined in the Act, but according to Black's Law Dictionary it is a "meeting of the legal voters of any political party assembled for the purpose of choosing delegates or for the

nomination of candidates for office." These definitions are further indications that the selection of legislative leaders by a "caucus" of one party's House or Senate members is not "a convention or caucus of a political party held in this state to nominate a candidate" within the meaning of the Act.

It is therefore concluded that the donation of money or services to a member of the Legislature to assist in the legislator's campaign for a leadership position within a legislative caucus is not a contribution or expenditure subject to the restrictions and reporting requirements of the Michigan Campaign Finance Act.

Lobby Act

The Lobby Act, on the other hand, applies to the "lobbying" of officials within the State's executive or legislative branches. As defined in section 5(2) (MCL 4.415), "lobbying" is "communicating directly with an official in the executive branch of state government or an official in the legislative branch of state government for the purpose of influencing legislative or administrative action." In your scenario, the Donor's participation in the selection of legislative leaders is subject to regulation under the Lobby Act if the Donor's direct communications with members of the Legislature are for the purpose of influencing legislative action.

The definition of "legislative action" is found in section 5(1) of the Lobby Act:

> "Sec. 5. (1) 'Legislative action' means introduction, sponsorship, support, opposition, consideration, debate, vote, passage, defeat, approval, veto, delay, or an official action by an official in the executive branch or an official in the legislative branch on a bill, resolution, amendment, nomination, appointment, report, or any matter pending or proposed in a legislative committee or either house of the legislature. Legislative action does not include the representation of a person who has been subpoenaed to appear before the legislature or an agency of the legislature."

Thus, "legislative action" includes any type of action on any matter which is pending or proposed in either a legislative committee or an entire house of the Legislature.

Floor leaders, whips and certain other leadership positions are selected by legislative caucus and do not require any action on the part of a committee or house of the Legislature. Therefore, the selection of leaders to fill these positions is not "legislative action" and is not regulated under the Lobby Act.

However, the selection of three leadership positions in the Senate and three leadership positions in the House are matters considered by and voted upon by the full membership of each respective house. While the nominee supported by

the majority party may inevitably prevail, the election of the President Pro Tempore, Assistant President Pro Tempore and Associate President Pro Tempore requires action by the full Senate, and the election of the Speaker of the House, Speaker Pro Tempore and Associate Speaker Pro Tempore requires action by the full House. Consequently, the selection of leaders to fill these positions is a "matter pending or proposed in . . . either house of the legislature" subject to the Lobby Act's requirements.

In answer to your question, expenditures made by the Donor corporation to communicate directly with legislators to influence the selection of a leadership position presented to the full Senate or House for consideration must be included when calculating whether the Donor has become a "lobbyist" under the Act. In 1992, a "lobbyist" is a person whose expenditures for lobbying exceed $1,425.00 in a twelve month period (section 5(2)). Upon reaching this threshold, the Donor must register as a lobbyist within fifteen days (section 7(1); MCL 4.417). The Act does not apply, however, to leadership positions which are not presented to the full Senate or House for consideration.

Finally, it should be noted that the gift prohibition found in section 11(2) of the Lobby Act (MCL 4.421) prohibits a registered lobbyist or lobbyist agent from donating money or services to a public official if the value of the money or services exceeds $36.00 in any one month period.

Notice and Public Comment

While not required under the Lobby Act, section 15(2) of the Michigan Campaign Finance Act (MCL 169.215) requires the Secretary of State to make a request for a declaratory ruling available for public inspection within forty-eight hours of its receipt. The Department has chosen to follow this procedure when receiving a request for an interpretive statement. A member of the public then has ten business days to submit written comments regarding the request.

Your request for an interpretive statement was made available to the public on February 26, 1992. However, no written comments were submitted by interested persons during the ten business day period.

On May 21, 1992, the Department made a proposed response available to the public, as required by section 15(2). Interested persons were required to submit written comments regarding the proposal within five business days, or by May 29, 1992. The Department did not receive any comments concerning the response proposed under the Campaign Finance Act.

However, on June 11, 1992, Richard McLellan and Mark Brewer submitted comments concerning the Department's interpretation of the Lobby Act. Although not required to do so, the Department has chosen to consider and respond to those comments.

Mr. McLellan indicated that the response did "not include the application, if any, of the Lobby Act to the situation where a Donor corporation merely donates money to an ad hoc committee of legislators where there is no

communication by the corporation." After reviewing the response, the Department has concluded that this issue is adequately addressed.

Mr. Brewer disagreed with the Department's interpretation of "legislative action." The Department's response interprets section 5(1) of the Lobby Act to include any type of action on any matter which is pending or proposed in either a legislative committee or an entire house of the legislature. Mr. Brewer argued that the definition of "legislative action" also includes a matter pending before a caucus in either house of the legislature.

The Department is not persuaded that the Legislature intended to include caucus activity within the definition of "legislative action." Therefore, the response does not adopt Mr. Brewer's position. The Legislature is the appropriate forum for expanding this definition to include matters considered by a caucus.

Finally, Mr. Brewer suggested that the proposed response "should also indicate the other laws and legislative rules which regulate the assistance at issue." The Department's response is limited to interpretations of the Michigan Campaign Finance Act and the Lobby Act. Any person contemplating making donations to members of the Legislature should, of course, consider whether bribery, conflict of interest, or other statutes or legislative rules prohibit the proposed donation.

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

Very truly yours,

Phillip T. Frangos
Deputy Secretary of State
State Services

Enclosure

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918
48918-2110

July 20, 1992

Eric E. Doster
Foster, Swift, Collins & Smith. P.C.
313 South Washington Square
Lansing, MI 48933-2193

Re: Request for Declaratory Ruling: Corporate Donations to Building Fund

Dear Mr. Doster:

You have requested a declaratory ruling concerning the applicability of the Campaign Finance Act (the Act), 1976 PA 388, as amended, to corporate donations to be used to purchase or construct a headquarters building for the Michigan Republican State Committee (the MRSC). You state the MRSC is engaged in state election activity. You state,

> "Consequently, even though the federal law expressly preempts the application of the Michigan Campaign Finance Act to the MSRC's proposed building fund, we respectfully request your interpretation as to whether the Michigan Campaign Finance Act is applicable to donations to the MSRC's proposed building fund. In other words, please verify that the Michigan Campaign Finance Act would not apply to the MSRC's proposed building fund even without the preemption of the Michigan Campaign Finance Act by federal law." (Emphasis added.)

You question has been previously answered in an interpretive statement issued to David A. Lambert on October 31, 1984. A copy of the interpretive statement is enclosed. The letter states:

> "The second issue you have raised is whether corporate funds may be used by political party committees in certain identified instances. Specifically, you asked:
>
> > 'I would also like to know if a political party committee may use corporate contributions for any of the following:
>
> * * *

3. For the rental of or purchase of a party office/headquarters?'

Corporate funds may be used for office supplies and expenses, if the supplies and expenses (telephone, heat, lights, etc.) are used or incurred exclusively for non-campaign purposes. Similarly, the rental or purchase of office space and the payment of attendant insurance premiums and property taxes may be made with corporate funds, provided the space is used only for non-campaign purposes. However, an office, a telephone or stationery which is used even occasionally for campaign purposes, such as soliciting support for a candidate or fundraising, which will be used for campaigning may not be purchased or rented with funds commingled with corporate money.

* * *

In summary, political parties may receive and spend money from corporations for activity which is exclusively outside the Act."

Since your inquiry specifically requests the issue of federal preemption not be addressed in this response, your question is answered by the interpretive statement issued to David A. Lambert on October 31, 1984. Therefore, this response does not constitute a declaratory ruling or an interpretive statement.

Very truly yours,

Phillip T. Frangos
Deputy Secretary of State
State Services
(517) 373-8141

Enc.

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MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918
48918-2110

July 27, 1992

Karen Holcomb-Merrill
Executive Director
Common Cause in Michigan
109 East Oakland
Lansing, Michigan 48906

Dear Ms. Holcomb-Merrill:

This is in response to your request for an interpretive statement under the Michigan Campaign Finance Act (the Act), 1976 PA 388, as amended.

Your request was made available to the public as required by section 15(2) of the Michigan Campaign Finance Act (MCL 169.215). There have been no written comments submitted by interested persons pursuant to that section.

You ask the following questions:

> "Is it a violation of the Act when a trade association, corporation, or school reimburses an employee for campaign contributions made by the employee?
>
> Is it a violation of the Act when a trade association, corporation, or school gives an employee additional salary for the purpose of making campaign contributions?
>
> Is it a violation of the Act when a lobbyist charges his or her client(s) for campaign contributions made by the lobbyist?"

Section 41(6) (MCL 169.241) is one of several anti-laundering provisions found in the Act. This section prohibits a person from making a contribution in another person's name. Specifically, section 41(6) provides:

> "Sec. 41. (6) A contribution shall not be made, directly or indirectly, by any person in a name other than the name by which that person is identified for legal purposes. A person who violates this subsection is guilty of a misdemeanor and shall be punished by a fine of not more than $1,000.00, or imprisoned for not more than 90 days, or both, and if the person is other than an individual the person shall be fined not more than $10,000.00."

An employer who reimburses an employee for contributions made by the employee or who pays additional salary to an employee for the purpose of making

contributions is actually making an indirect contribution to the committee receiving the contribution. The indirect contribution is not disclosed, however, because it was made in the employee's name. Section 41(6) prevents this circumvention of the Act's reporting requirements by prohibiting the employer from making a contribution in a name other than its own, including a contribution in an employee's name.

A client who is charged by a lobbyist for contributions made by the lobbyist is also making indirect contributions "in a name other than the name by which [the client] is identified for legal purposes." Section 41(6) prohibits such contributions. Therefore, a lobbyist or lobbyist agent may not seek reimbursement or additional fees from a client for contributions made by the lobbyist or lobbyist agent.

While section 41(6) applies to trade associations, corporations, schools and other entities, corporations and their employees are subject to additional restrictions. Pursuant to section 54(1) of the Act (MCL 169.254), a corporation is prohibited from making a contribution or expenditure with respect to candidate elections. In addition, section 54(2) prohibits contributions or expenditures by any person acting on behalf of a corporation. Section 54 states, in pertinent part:

> "Sec. 54. (1) Except with respect to the exceptions and conditions in subsection (2) and section 55, and to loans made in the ordinary course of business, a corporation may not make a contribution or expenditure or provide volunteer personal services which services are excluded from the definition of contribution pursuant to section 4(3)(a).
>
> (2) An officer, director, stockholder, attorney, agent, or any other person acting for a corporation or joint stock company, whether incorporated under the laws of this or any other state or foreign country, except corporations formed for political purposes, shall not make a contribution or expenditure or provide volunteer personal services which services are excluded from the definition of contribution pursuant to section 4(3)(a)."

An employee who receives reimbursement from a corporation or who is paid additional salary by a corporate employer for the purpose of making contributions is clearly a "person acting for a corporation." In these circumstances, the employee is prohibited from making a contribution to a committee authorized to support or oppose candidates, including a candidate committee, an independent committee (often referred to as a "PAC"), a political committee or a political party committee.

Section 54(1) also prohibits a corporation from paying or reimbursing an employee for a contribution or expenditure in a candidate election, regardless of the application of section 54(2). Section 54(1) continues the longstanding prohibition in Michigan law against corporate involvement in candidate elections. This section cannot be avoided by allowing a corporation to indirectly make a contribution that it is directly prohibited from making. A

corporation is therefore precluded by section 41(6) and section 54(1) from paying additional salary or a reimbursement to an employee for a contribution made to influence the nomination or election of a candidate.

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

Very truly yours,

Phillip T. Frangos
Deputy Secretary of State
State Services

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

48918-2170

September 24, 1992

Mr. Carl L. Gromek
State of Michigan Court of Appeals
109 West Michigan Avenue
P.O. Box 30022
Lansing, Michigan 48909

Dear Mr. Gromek:

This is in response to your letter requesting an interpretive statement pursuant to the Michigan Campaign Finance Act (the Act), 1976 PA 388, as amended, regarding the viability of a proposed procedure for making contributions to candidates in Michigan elections.

Your letter outlines a process proposed to be implemented by the Judges of the Michigan Court of Appeals for making contributions to candidates for public office as follows:

> "The procedure now contemplated would again enlist the assistance of the Court's Administrative Officer. He would keep a list of the Judges and periodically contact the Judge whose name came up next on the list to determine whether that Judge was willing to make an election contribution. The Judge would then write a check to the organization or committee conducting the fund-raiser. If a Judge declined to contribute to a particular candidate, the Administrative Officer would move down the list to the next Judge until he found one willing to contribute. That Judge would then go to the bottom of the list."

The issue presented is whether the activity you have outlined triggers the filing and reporting provisions of the Act. Pursuant to the Act, "committees" that participate in the election process by supporting or opposing candidates or ballot questions are required to file a statement of organization. Subsequently, committees must submit reports detailing the funds they have received and spent in the election process.

Section 3(4) of the Act (MCL 169.203) defines the term "committee" as follows:

> "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. A person, other than a committee registered under this act, making an expenditure to a ballot question committee shall for that reason not be considered a committee for the purposes of this act unless the person solicits or receives contributions for the purpose of making an expenditure to that ballot question committee."

"Person" is defined in section 11(1) of the Act (MCL 169.211) as follows:

> "Sec. 11. (1) 'Person' means a business, individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, labor organization, company, corporations, association, committee, or any other organization or group of persons acting jointly."

The key question presented by the procedure you outline is whether the contributions result from joint activity by the individuals who participate in the scheme. If the proposed procedure constitutes joint action then the group is a committee required to file a statement of organization when contributions or expenditures are $500.00 or more in a calendar year.

The procedure outlined goes beyond a suggestion to a member of the group that he or she may wish to purchase tickets to a particular fundraiser. Here there is communication within the group with a view toward making contributions on behalf of the group.

The Administrative Officer would contact a number of Judges for contributions if one or more Judges declined to purchase a ticket to a candidate's fundraiser. The procedure appears to be designed to insure that one of the Judges attends selected fundraisers representing the group. However, each member of the group would have the opportunity (obligation?) to pay a share of the overall cost of the group's contributions.

As described in your request, the plan is structured to function only if there is joint activity among the participants. Every potential contribution will result in communications between the Administrative Officer and one or more of the members of the Court. The Administrative Officer will keep records of contributions made and will distribute fundraiser tickets to Judges who wish to attend an event.

While designed to present the appearance that the contributions are made by individuals, the procedure relies on coordinated activity by the members of the group. Such group activity means that the Judges are a committee pursuant to section 3(4) when their contributions or expenditures total $500.00 or more in a calendar year.

When a group of individuals becomes a committee pursuant to the Act there are a number of provisions of the Act which become operative. First the committee is required to file a statement of organization pursuant to section 24 of the Act (MCL 169.224). Subsequently, the committee will be required to file campaign statements pursuant to section 33 of the Act (MCL 169.233).

The Act also contains provisions that govern the internal workings of committees. Section 21 of the Act (MCL 169.221) in particular sets forth requirements for the operation of a committee. In order to comply with section 21 the Judges committee will have to make significant changes in its structure. Enclosed is a copy of the Manual for Independent and Political Committees that explains what a committee must do to comply with the Act.

There are some other potential issues suggested by your letter. The first of these is the pivotal role played in the process by the Court's Administrative Officer. While this role would have to be modified to conform to the Act there may also be other problems. In particular, Canon 7 of the Michigan Code of Judicial Conduct appears to limit participation of Judges and public employees under their control in political solicitations.

In addition you should also note that the Attorney General has, over the years, issued numerous opinions discussing the use of public resources to support or oppose candidates or ballot proposals. These opinions have generally concluded that it is improper to use government resources, including employees, to support or oppose candidates or ballot proposals. OAG, 1987-1988. No 6423. p 33 February 24, 1987, references a number of these published opinions.

The foregoing response is an interpretive statement of the Act's provisions and does not constitute a declaratory ruling.

Very truly yours,

Phillip T. Frangos
Deputy Secretary of State
State Services
(517) 373-8141

RICHARD H. AUSTIN
SECRETARY OF STATE

MICHIGAN
DEPARTMENT
OF STATE
LANSING, MICHIGAN 48918

October 13, 1992

Mr. Peter E. Meagher, III
Friends of L. Brooks Patterson
26200 American Drive #500
P.O. Box 5004
Southfield, Michigan 48086-5004

Dear Mr. Meagher:

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 the proposed establishment of an Employee Suggestion Program to be paid for by disbursements from an officeholder's expense fund.

Specifically, you indicate that L. Brooks Patterson is running for the office of Oakland County Executive. If elected, he will establish an officeholder's expense fund as authorized by section 49 of the Act (MCL 169.249.)

Mr. Patterson has proposed establishing an Employee Suggestion Program. The program would encourage county employees to submit suggestions for cutting the cost of county government. The following prizes would be awarded to those employees whose suggestions save taxpayers the greatest amount of money:

> "First prize is a trip to Hawaii for the county employee making the best cost-saving suggestion, and spouse. The prize includes limousine service to and from Metro Airport, round-trip airfare to Maui, and hotel accommodations for one week.
>
> "Additional awards include vacations, television sets and cash awards. . . ."

You ask whether Mr. Patterson may use his officeholder's expense fund to pay for these prizes.

Disbursements from an officeholder's expense fund are limited by section 49 of the Act and Rule 62 of the Department of State's Administrative Rules (1989 AACS R 169.62). Section 49 states that an officeholder's expense fund may be used for "expenses incidental to the person's office". This restriction is clarified by Rule 62(1), which states in pertinent part:

> "Rule 62. (1) An officeholder's expense fund shall be used only for disbursements which are incidental to the office of the elected public official who established the fund. A disbursement is incidental to the office of the official 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 following categories:
>
> * * *
>
> "(b) Reasonable and necessary disbursements which are directly related to assisting, serving, or communicating with constituents."

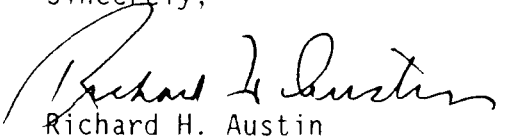
You assert that disbursements for prizes awarded under the Employee Suggestion Program are directly related to assisting, serving, or communicating with constituents and thus authorized by Rule 62(1)(b). However, Rule 62(1) establishes a two part test for determining whether a disbursement is incidental to office. First, the disbursement must be traditionally associated with, or necessitated by, the holding of a particular office. Second, it must be included in one of the seventeen categories listed in subrule (1).

Disbursements for the prizes in question fail to meet the first part of this test. Rewarding employees for cost-saving suggestions by paying for vacations, television sets and other prizes is neither traditionally associated with nor necessitated by holding the office of Oakland County Executive. It is also questionable whether these disbursements are "reasonable and necessary" to serving constituents, as required to meet the second criteria. Consequently, disbursements for these prizes are not incidental to the office of County Executive, and they may not be paid from the executive's officeholder's expense fund.

Award programs of the type you suggest are not uncommon. For example, the State of Michigan pays its employees cash awards under the Grand Idea Employee Suggestion Award Program administered by the Department of Civil Service. Oakland County may wish to consider funding a similar program from its treasury.

This response is a declaratory ruling concerning the applicability of the Act to the facts and question presented.

Sincerely,



Richard H. Austin

RICHARD H. AUSTIN
SECRETARY OF STATE

MICHIGAN
DEPARTMENT
OF STATE
LANSING, MICHIGAN 48918

October 22, 1992

The Honorable Howard Wolpe
Wolpe for Congress
P.O. Box 751
Kalamazoo, Michigan 49005

Dear Congressman Wolpe:

This is in response to your request for a declaratory ruling under the Michigan Campaign Finance Act (the Act), 1976 PA 388, as amended.

Specifically, you indicate that you are contemplating a transfer of funds from your congressional campaign committee to a committee organized to support your candidacy for the office of governor. You ask whether the Act permits such a transfer and, if so, whether the transfer is subject to any conditions or restrictions.

Transfers between candidate committees are governed by section 45(1) of the Act [MCL 169.245(1)]. This section states:

> "Sec. 45. (1) A person may transfer any unexpended funds from 1 candidate committee to another candidate committee of that person if the contribution limits prescribed in section 52 for the candidate committee receiving the funds are equal to or greater than the contribution limits for the candidate committee transferring the funds and if the candidate committees are simultaneously held by the same person. The funds being transferred shall not be considered a qualifying contribution regardless of the amount of the individual contribution being transferred."

In a 1978 letter to Mr. Phillip J. Arthurhultz, the Department indicated that a candidate committee for state senate could not receive a transfer of funds from a congressional campaign committee because the contribution limits for the federal committee exceeded the contribution limits for the state committee. Similarly, a gubernatorial candidate committee cannot accept a transfer unless the contribution limits for the gubernatorial committee are equal to or greater than the contribution limits for the congressional campaign committee.

Prior to 1989, contributions to both state and federal committees were limited on a per election basis. For the office of governor, a person other than an independent committee could contribute a maximum of $1,700 for the primary election and $1,700 for the general election. Independent committees, which are similar to federal multi-candidate committees, could contribute ten times that amount, or $17,000, for each election.

In 1989, section 52 of the Act [MCL 169.252] was amended to require contribution limits to be calculated with respect to an election cycle. "Election cycle" is defined as "the period beginning the day following the last general election in which the office appeared on the ballot and ending on the day of the next general election in which the office next appears on the ballot." At the same time, the dollar amount of the contribution limit for individuals was doubled. As a result, a person who is not an independent committee can now contribute a total of $3,400 to a candidate for governor at any time during the four year cycle between gubernatorial candidate elections, and an independent committee can contribute a maximum of $34,000 over the same period. The maximum contribution can be directed solely towards the primary election, solely towards the general election or spread out equally over the four year period.

Contribution limits for federal campaign committees continue to be calculated on a per election basis. Pursuant to section 315 of the Federal Election Campaign Act of 1971 [2 USC 441a], contributions to congressional campaign committees are limited to $1,000 for each election if the contributor is not a multi-candidate committee. For multi-candidate committees, the limit is $5,000 for each election. If calculated over the election cycle for the United States House of Representatives, the corresponding contribution limits would be $2,000 and $10,000.

When the contribution limits for gubernatorial candidate committees and congressional campaign committees are compared on either a per election or election cycle basis, the contribution limits for the gubernatorial committee are greater than the contribution limits prescribed in the Federal Election Campaign Act for federal campaign committees. Therefore, in answer to your first question, section 45(1) of the Michigan Act does not preclude you from transferring funds raised by your congressional campaign committee to a candidate committee organized to support your candidacy for the office of Governor, provided the federal and state committees are simultaneously held.

You also ask whether there are any conditions or restrictions that apply to such a transfer. The last sentence of section 45(1) states that funds transferred to a gubernatorial candidate committee "shall not be considered a qualifying contribution regardless of the amount of the individual contribution being transferred."

A "qualifying contribution" is money raised by a candidate for governor for purposes of receiving matching funds from the state campaign fund.

"Qualifying contribution" is defined in section 12(1) of the Act [MCL 169.212(1)] as follows:

> "Sec. 12. (1) "Qualifying contribution" means a contribution of money made by a written instrument by a person other than the candidate or the candidate's immediate family, to the candidate committee of a candidate for the office of governor which is $100.00 or less and made after April 1 of the year preceding a year in which a governor is to be elected. Not more than $100.00 of a person's total aggregate contribution may be used as a qualifying contribution in any calendar year. Qualifying contribution does not include a subscription, loan, advance, deposit of money, in-kind contribution or expenditure, or anything else of value except as prescribed in this act."

A candidate becomes eligible to receive money from the state campaign fund by indicating in a statement of organization filed for a candidate committee for the office of governor that the candidate intends to seek qualifying contributions and accept public funding for his or her campaign [MCL 169.262]. Pursuant to section 45(1), contributions made to your congressional campaign committee that are transferred to a gubernatorial candidate committee are not considered qualifying contributions and cannot be matched with public funds from the state campaign account.

It should be noted that if a candidate chooses to accept public funds, the candidate's expenditures for each election are limited to $1,500,000, as stated in section 67 of the Act [MCL 169.267]. (A separate $300,000 limit applies to expenditures for the solicitation of contributions.) "Expenditure" is defined in section 6(1) of the Act [MCL 169.206(1)] as the payment of anything of value in assistance of or in opposition to the nomination or election of a candidate. This definition is broad enough to include testing the water expenditures. Therefore, if you accept public funds, money spent before you have formally declared your candidacy that assists your nomination or election to the office of governor will be included when calculating the $1,500,000 expenditure limitation for the 1994 primary election.

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

Sincerely,

Richard H. Austin