

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING



LANSING

MICHIGAN 48916

February 6, 1980

Mr. Steven R. Bartholomew
5206 Sunrose Avenue
Lansing, Michigan 48910

Dear Mr. Bartholomew:

This is in response to your inquiry concerning the applicability of the Campaign Finance Act ("the Act"), 1976 PA 388, as amended, to the settlement of outstanding campaign debts by negotiating less than full payment agreements with various creditors, including corporations.

The McCollough-Michigan Committee ("MMC") incurred debts during the 1978 gubernatorial primary election. You state that some of those debts, which were qualified expenditures, remain unpaid. MMC does have some funds remaining which you believe are sufficient to allow MMC to negotiate settlements with all of the committee's creditors. Of those funds, \$2,030.50 are in MMC's public funding account:

You ask if MMC may negotiate settlements with creditors at less than the full amount of the debts without the creditors thereby making a contribution to the committee. You are particularly concerned about corporate creditors. Additionally, you ask if the money in MMC's public funding account may be used to pay these settlements:

Section 4 of the Act (MCLA § 169.204) defines "contributions" as follows:

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

(2) Contribution includes the purchase of tickets or payment of attendance fee for events such as dinners, luncheons, rallies, testimonials, and similar fund raising events; and individual's own money or property other than the individual's

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homestead used on behalf of that individual's candidacy; the granting of discounts or rebates not available to the general public; or the granting of discounts or rebates by broadcast media and newspapers not extended on an equal basis to all candidates for the same office." (Emphasis added)

This language indicates clearly a negotiated settlement of less than the full value of the debt is a contribution if the settlement is not available to the general public. In order that the discounting or writing off of a debt is not made a contribution, a committee must receive prior approval from the Department of State. This approval will be granted only when the Department is convinced all of the following conditions are met:

- 1) At the time the debt was incurred both the committee and the creditor expected the debt would be repaid in full within a reasonable time;
- 2) The committee has made a good faith effort to raise sufficient money to repay all outstanding debts;
- 3) The creditor has taken all the steps it normally takes against debtors in the same financial condition as the committee;
- 4) The proposed settlement agreement between the creditor and the committee is similar to previous settlements made by the creditor and other debtors;
- 5) The committee has treated all creditors equally since it became aware there would be difficulty in the repayment of all debts; and
- 6) The proposed settlement agreement between the creditor and the committee is similar to other settlements proposed or made by the committee.

A settlement approved by the Department is not "made for the purpose of influencing the nomination or election of a candidate" and is not, therefore, a "contribution." As long as the settlement is not a contribution, it may be made with a corporate creditor.

Your second question is partially answered by a declaratory ruling issued on September 29, 1978, to Mr. William R. Ralls. It is attached to and adopted as part of this declaratory ruling by reference. MMC is considered to have spent the money when the debt was incurred. You state MMC received money from the State Campaign Fund which was not credited to MMC's account until after January 1, 1979. MMC may apply money in its public funding account

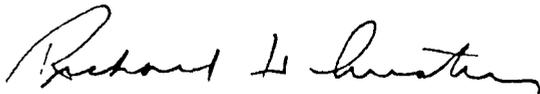
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to retire primary debts which are qualified expenditures. However, for the period subsequent to 60 days after the primary election, MMC must submit proof to the Department that the money being spent from the public funding account is directed to, and not in excess of, qualified campaign expenditures.

In conclusion, MMC may submit proposed debt settlements to Mr. John T. Turnquist, Deputy Director, Elections Division, for approval. State Campaign Fund money may be used for the settlement(s) if proof is submitted that the debts are qualified expenditures.

This response constitutes a declaratory ruling concerning the applicability of the Act to the specific factual situation described in your request.

Sincerely,



Richard H. Austin
Secretary of State

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Attachment