

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN

SECRETARY OF STATE

STATE TREASURY BUILDING



LANSING

MICHIGAN 48918

February 6, 1985

Mark J. Bertler
 Public Affairs Coordinator
 Planned Parenthood Affiliates of Michigan
 217 Townsend
 P.O. Box 19104
 Lansing, Michigan 48901

Dear Mr. Bertler:

This is in response to your letter regarding the use of statements filed pursuant to the Campaign Finance Act, 1976 PA 388, as amended (the "Act"), in solicitation conducted by Planned Parenthood Affiliates of Michigan.

You state that your review of the Act fails to disclose any definitions for the terms "commercial solicitation" and "commercial purpose" used in section 16(3) of the Act (MCL 169.216). That subsection provides in relevant part:

"(3) A statement open to the public under this act shall not be used for purposes of commercial solicitation or any commercial purpose."

A civil penalty of up to \$1,000.00 is provided for a violation. Before the Act became law in Michigan, Congress enacted a provision similar to section 16(3). The relevant language is found at 2 USC §438(4) which states:

" . . . information copied from such reports or statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee."

The Federal Election Commission subsequently promulgated regulations which contained a provision which interprets the statutory language. That interpretation is currently found at 11 CFR §104.15, which provides:

"§104.15 Sale or use restriction 2 U.S.C. 438(1)(4)).

(a) Any information copied, or otherwise obtained, from any report or statement, or any copy, reproduction, or publication thereof, filed with the Commission Clerk of the House Secretary of the Senate, or any

Secretary of State or other equivalent State officer, shall not be sold or used by any person for the purpose of soliciting contributions or for any commercial purpose, except that the name and address of any political committee may be used to solicit contributions from such committee.

(b) For purposes of 11 CFR 104.15 'soliciting contributions' includes soliciting any type of contribution or donation, such as political or charitable contributions.

(c) The use of information, which is copied or otherwise obtained from reports filed under 11 CFR Part 104, in newspapers, magazines, books or other similar communications is permissible as long as the principal purpose of such communications is not to communicate any contributor information listed on such reports for the purpose of soliciting contributions or for other commercial purposes."

The Federal and Michigan statutes differ in terminology. The Act bans the use of information from the report for "commercial solicitation" and "commercial purpose." The Federal law on the other hand prohibits use of information from reports for "the purpose of soliciting contributions or for commercial purposes."

The significant difference is that in the Federal law the term commercial does not modify "soliciting contributions." The Federal regulations make clear that Federal reports cannot even be used for charitable solicitations.

The limitation in section 16(3) applies only to commercial activities. The common ordinary meaning of "commercial" indicates activity which is carried on for a profit. A dictionary definition of "commercial" provides in relevant part:

"'Commercial' 1. of or connected with commerce or trade. 2. of or having to do with stores, office buildings, etc. . . . 4. a) made, done, or operating primarily for profit" Webster's New World Dictionary, Second College Edition. Simon and Schuster 1980.

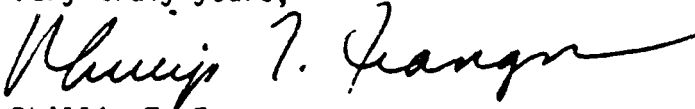
Similarly, there is Michigan case law which construes the term "commercial activity" to include "any type of business or activity which is carried on for a profit" Lanski v Montealegre, 361 Mich 44 (1960).

This discussion leads to the conclusion that the prohibitions of section 16(3) apply to activities which are carried on for a profit. An organization which is not organized for the purpose of making a profit may, therefore, use lists of names gleaned from statements filed pursuant to the Act for solicitations it conducts. A nonprofit organization utilizing the list must confine its use to noncommercial purposes and may not sell or loan the data to another organization which intends to use the information in a commercial endeavor.

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This letter is informational only and is not a declaratory ruling, since no actual statement of facts was presented.

Very truly yours,

A handwritten signature in cursive script, reading "Phillip T. Frangos". The signature is written in black ink and is positioned above the typed name.

Phillip T. Frangos
Director
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PTF/WB/cw