

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN

SECRETARY OF STATE

STATE TREASURY BUILDING



LANSING

MICHIGAN 48918

February 6, 1980

Mr. William H. Butler  
Clark, Klein, Winter, Parsons & Prewitt  
1600 First Federal Building  
1001 Woodward Avenue  
Detroit, Michigan 48226

Dear Mr. Butler:

This is in response to your letter objecting to an assessment of late filing fees imposed against your client, the Michigan Truck PAC, pursuant to the Campaign Finance Act ("the Act"), 1976 P.A. 388, as amended.

You state your client's committee has received notices of late filing fees. These notices allege late receipt of the statement of organization, annual campaign statement, and post-primary campaign statement, and attempt to assess late filing fees of \$300.00, \$300.00, and \$40.00 respectively.

Your objection to imposition of these fees rests on your assertion that the Act was unclear as to whether your client's committee had to file initially. It is your contention the Michigan Attorney General, in OAG, 1977-78, No. 5279 (March 22, 1978), expressly prohibited a corporation from establishing a committee. Consequently, based on that contention you believe the Michigan Truck PAC was not required to file since the Act only requires a committee to file. You assert the foregoing opinion was diametrically reversed subsequently in OAG, 1977-78, No. 5344 (July 20, 1978).

You state the following:

"In that opinion, it was held for the first time that separate, segregated funds constitute 'committees' and must register with the Department of State. Opinion of Attorney General 5344, page 5. Although the Michigan Truck PAC continues to disagree with this conclusion, it observed this later opinion and promptly took steps to properly register as a committee including the filing of all required Statements of that time. All of these Statements were submitted to the Secretary by our letter of August 24, 1978 within a reasonable time after the publication and circulation of the foregoing opinion.

The attempted collection of late filing fees, therefore constitutes, in substance, an attempt at imposing an ex post facto law which we consider improper."

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In the present case, there is no effort to create an ex post facto law. The Attorney General did not reverse his opinion as articulated in OAG No. 5279, since the Attorney General never stated a separate segregated fund is not a committee in that ruling. The pertinent language from OAG No. 5279 reads as follows:

"The act, therefore, prohibits a corporation from establishing a political committee for the support of state candidates. This section does, however, permit a corporation to make expenditures for the establishment, administration and solicitation of contributions for a separate, segregated fund to be used for political purposes, but does not authorize the corporation to contribute its funds to the separate, segregated fund or to establish a political committee for the support of state candidates."

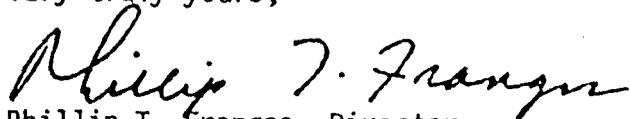
The Attorney General stated simply that a corporation is prohibited from establishing a committee to support state candidates in the same sense that a corporation is permitted to form a committee to support a ballot question as provided by section 54(4) of the Act (MCLA §169.254). He did not say a separate segregated fund is not a committee. Subsequently, in OAG No. 5344, the Attorney General clarified how a separate segregated fund may operate if it meets the definition of "committee" as provided in the Act.

In defining "committee," section 3(4) of the Act (MCLA §169.203) clearly includes within the scope of the term any "person" who receives contributions or makes expenditures in the amount of \$200.00 or more in a calendar year to influence certain state elections. The broad definition of "person" in section 11(1) of the Act (MCLA §169.211) includes a separate segregated fund by virtue of listing a number of entities including "any other organization or group of persons acting jointly."

Accordingly, the late filing fees in question were properly assessed since separate segregated funds have always been considered committees by the express language of the Act and have been so considered since the effective date of the Act.

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

Very truly yours,

  
Phillip T. Frangos, Director  
Office of Hearings and Legislation

PTF/s