

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN

SECRETARY OF STATE

STATE TREASURY BUILDING



2-84-CD

LANSING

MICHIGAN 48918

January 24, 1984

S. James Clarkson
4000 Town Center, Ste. 1470-A
Southfield, Michigan 48075

Dear Mr. Clarkson:

This is in response to your inquiry concerning the Campaign Finance Act (the "Act"), 1976 PA 388, as amended. You requested a Declaratory Ruling concerning literature you contemplate sending to other attorneys indicating that:

" . . . Many friends have asked me to run for re-election (to a judicial position). I thought it best to first ask the lawyers if enough share the same opinion."

You go on to advise that, based upon your experience, " . . . I feel that I can serve in a way that would make the practice of law more of an enjoyment than a tribulation. I hope that in the event I decide to 'throw my hat into the ring' I can have your support." You ask if circulating the literature described above requires that you "comply with the identification and disclaimer requirements of the . . . Act and establishes me as a candidate, or whether this represents a mere intention preliminary to determining whether to be a candidate" and therefore, compliance with the Act is not required.

A person becomes a candidate for purposes of the Act by falling within the definition of "candidate" found in the Act. Section 3(1) sets forth this definition as follows:

"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. Unless the officeholder is constitutionally or legally barred from seeking reelection or fails to file for reelection

to that office by the applicable filing deadline, an elected officeholder shall be considered to be a candidate for reelection to that same office for the purposes of this act only" (emphasis added)

The above definition must be read in conjunction with section 6(1), defining "expenditure" as meaning:

" . . . a payment, donation, loan, pledge, 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" (emphasis added)

It is the Department's position that, rather than simply "testing the water," by paying for and circulating a letter such as you enclosed you are in reality making an expenditure in assistance of your nomination or election as a candidate, even if you ultimately decide not to run for office. Therefore, you are a candidate and must file a statement of organization.

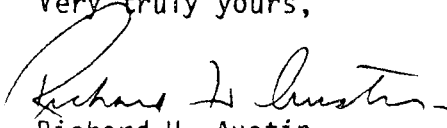
It is unclear from your letter whether the expenditure you are proposing to make comes from your personal funds, contributions received from other persons, or your law practice. If the latter is the source of the money spent, different provisions apply depending on the nature of your practice.

If the law practice is a sole proprietorship, then funds may be spent and reported as personal contributions to your campaign. If the law firm is a partnership, the firm will be required to file and report as a committee if \$200.00 or more is expended, unless the funds represent contributions from your partners as individuals. If the law firm is incorporated, no funds may be utilized in the campaign, since corporate contributions or expenditures on behalf of candidates are unlawful pursuant to section 54 of the Act (MCL 169.254).

The literature you propose to send is covered by section 47 of the Act (MCL 169.247) which requires printed matter to bear upon it the name and address of the person paying for it. These various requirements are explained in the enclosed manual designed to assist persons in complying with the Act.

This letter constitutes a declaratory ruling pursuant to section 63 of the Michigan Administrative Procedures Act (MCL 24.263) and the rules promulgated to implement the Act.

Very truly yours,


Richard H. Austin
Secretary of State

Enc.
RHA/cw