MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

June 13, 1983

Nina F. Collins
Running, Wise and Wilson
326 State Street
P.O. Box 686
Traverse City, Michigan 49586

Dear Ms. Collins:

This is in response to your inquiry concerning applicability of the Campaign Finance Act (the "Act"), 1976 PA 388, as amended, to the donation of billboard space to a ballot question committee.

Specifically, on July 22, 1982, Dingeman Advertising, Inc., provided billboard space valued at $3,610 to the Upper Peninsula Citizens for the Freeze, a ballot question committee organized to support a proposal appearing on the 1982 general election ballot. You do not dispute that donation of the billboard space was an in kind expenditure by the corporation and an in kind contribution to the committee. However, you assert that the space was provided "purely as a public service" and not for the purpose of influencing or attempting to influence the action of the voters. Therefore, it is your position that the corporation did not become a ballot question committee by contributing billboard space to the committee. Alternatively, you argue that even if the expenditure was for the purpose of influencing the voters, section 54(3) of the Act (MCL 169.254) permits a corporation to contribute up to $40,000 to a ballot question committee without the corporation itself becoming a committee.

"Committee" is defined in section 3(4) of the Act (MCL 169.203) as follows:

> "(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 $200.00 or more in a calendar year or expenditures made total $200.00 or more in a calendar year. An individual, other than a candidate, shall not constitute a committee."

Pursuant to section 2(2) (MCL 169.202), a committee acting in support of or in opposition to the qualification, passage or defeat of a ballot question is a ballot question committee.

You appear to have concluded that the sole test for determining whether a particular expenditure is "for the purpose of influencing or attempting to influence the action of the voters" is the subjective intent of the person making the expenditure. However, the extent to which an expenditure is actually used to influence voters is equally important in determining the expenditure's purpose.

A committee's sole reason for acquiring billboard space is to promote the committee's views on a particular candidate or ballot proposal. A person who contributes that space to a committee is certainly aware that the billboard will be used to persuade the public to vote in accordance with the committee's position. Thus, the expenditure's purpose -- which must be attributed to the person making the expenditure -- is to influence or attempt to influence the voters. As such, a person other than an individual who donates billboard space which is used for political advertising to a committee has made an in kind expenditure (and an in kind contribution) for the purpose of influencing or attempting to influence the voters. If the expenditure totals $200.00 or more in a calendar year, the person must file a statement of organization as a committee within 10 days after the expenditure is made, as required by section 24 of the Act (MCL 169.224).

Pursuant to section 11(1) of the Act (MCL 169.211), a corporation is a person subject to the Act's requirements. However, section 54 prohibits corporations from making contributions or expenditures to candidates. Therefore, a corporation may only contribute billboard space to committees supporting or opposing ballot questions. If that contribution is valued at $200.00 or more, the corporation must file a statement of organization as a ballot question committee.

It is your contention, however, that section 54(3) exempts corporations from the definition of committee found in section 3(4). As noted previously, you argue that section 54(3) allows a corporation to contribute up to $40,000 to a ballot question committee without the corporation itself becoming a committee. You maintain that a corporation becomes a ballot question committee only if it makes independent expenditures pursuant to section 54(4).

Subsections (3) and (4) of section 54 provide:

> "Sec. 54. (3) A corporation or joint stock company, whether incorporated under the laws of this or any other state or foreign country, except a corporation formed for political purposes, shall not make a contribution or provide volunteer personal services which services are excluded from the definition of a contribution pursuant to section 4(3)(a), in excess of $40,000.00, to each ballot question committee for the qualification, passage, or defeat of a particular ballot question.

> (4) Nothing in this section shall preclude a corporation or joint stock company from making an independent expenditure in any amount for the qualification, passage, or defeat of a ballot question. A corporation making an independent expenditure under this subsection shall be considered a ballot question committee for the purpose of this act."

Unlike subsection (4), subsection (3) does not specifically require a corporation to organize as a ballot question committee. You therefore conclude that a corporation does not become a committee when it makes contributions authorized by section 54(3).

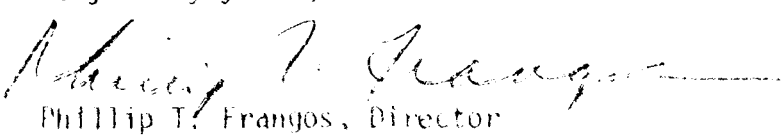
Section 54 must be interpreted with reference to the Act as a whole. Although section 54(3) does not specifically require a corporation to become a ballot question committee, section 3(4) defines committee as any person who contributes $200.00 or more in a calendar year to influence voters. Section 3(4) specifically excludes individuals -- but not corporations -- from this definition. Therefore, a corporation which contributes $200.00 or more to a ballot question committee in a calendar year becomes a ballot question committee and must file a statement of organization with the appropriate filing official.

This interpretation of the Act was brought to the legislature's attention in 1981, when the Department sought to collect late filing fees from corporations which made contributions of more than $200.00 to a ballot question committee but failed to file statements of organization. The legislature responded by enacting 1981 PA 102, which provided that late filing fees "shall neither be enforceable nor due or payable as a result of a person making expenditures of $200.00 or more as a contribution to a ballot question committee before October 15, 1981." If the legislature agreed with your interpretation of the Act, it presumably would have amended section 54(3) to "clarify" that corporations making contributions of $200.00 or more to ballot question committees should not be considered committees.

To summarize, a corporation which contributes billboard space to a ballot question committee has made an expenditure for the purpose of influencing or attempting to influence the voters. If the expenditure totals $200.00 or more in a calendar year, the corporation must file a statement of organization as a ballot question committee within 10 days after making the expenditure. Failure to do so will result in the assessment of late filing fees, as provided in section 24, and possible criminal penalties.

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/cw