

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN

SECRETARY OF STATE

STATE TREASURY BUILDING



5-81-CI

LANSING  
MICHIGAN 48918

September 4, 1981

Honorable James DeSana  
P.O. Box 30036  
Lansing, Michigan 48909

Dear Senator DeSana:

You have requested an "update" on a declaratory ruling issued to Mr. John L. Damstra, Treasurer of the Kent County Republican party on September 2, 1977. That ruling involved the transfer of funds by a political party committee from its official depository account to a certificate of deposit or other interest bearing account in the same or another financial institution. The Department stated that "the (Campaign Finance) Act would not preclude a transfer from the official depository account to an interest bearing account in any financial institution if the committee retains complete control of the funds at all times and full disclosure is made." To assure compliance with the Act, certain specific procedures were required. They are:

- (1) That all funds transferred out of the designated official depository account to any savings account, certificate of deposit, or other interest bearing account be eventually transferred back into the official account.
- (2) That no expenditures be made from any funds transferred to an account other than the official depository account.
- (3) That any interest earned from an account consisting of funds belonging to the committee be reported timely on the required reports of the committee pursuant to section 28(1).
- (4) That the committee's supporting records for cash on hand reflect the cash balances in all accounts and all transfers of funds between these accounts.
- (5) That the committee's required reporting for cash on hand reflect the cash balances in all accounts consisting of funds belonging to the committee.

Honorable James DeSana  
Page two

You have asked that the above ruling be reconsidered and pose three questions concerning the use of draft accounts from credit unions. First, you ask whether a credit union draft account may be used as the official depository pursuant to the Act. It is understood such drafts, although not "checks" as that term is generally defined in the Uniform Commercial Code (at MCL 440.3104), are treated as checks in commercial usage. They are generally payable on demand and backed by funds on account. So long as funds of the depositor back the draft, it may be treated for purposes of the Act as if it were a check. The credit union may be considered a "financial institution" consistent with section 21(3) of the Act and may serve as the official depository. In the event there are no funds of the depositor in the account, the account becomes a continuing or open loan, and is to be treated (and reported) as such.

You have also inquired about guidelines with respect to reporting interest from draft and regular share accounts. Pursuant to section 28(1) of the Act, such interest is to be reported as "interest" rather than a contribution, and interest paid by a committee shall be reported as an expenditure. This is true with respect to both accounts - even though only one may be the official depository.

In the event of an overdraft, the automatic transferring of funds from one account to the other will be promptly and completely reported on the first campaign statement required after the transfer.

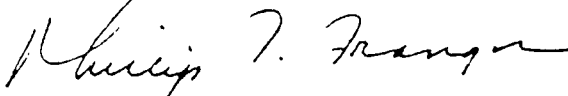
Your final question concerns the opening by the committee of a special deposit interest bearing account. It would appear that your inquiry is answered by the ruling addressed to Mr. Damstra as follows:

" . . . The mere transfer of funds deposited in the official depository to an interest bearing account for investment purposes is not an 'expenditure' as defined in Section 6 of the Act. Thus, the Act would not preclude a transfer from the official depository account to an interest bearing account in any financial institution if the committee retains complete control of the funds at all times and full disclosure is made."

In an interpretative statement addressed to Senator Michael O'Brien on May 30, 1979, it was pointed out that funds in a certificate of deposit account are always subject to the complete control of the investor - even though a substantial interest penalty might be extracted for early withdrawal of the funds. It would appear, therefore, so long as the account remains the official depository of committee funds and the funds are under the complete control of the committee at all times, the committee may utilize such an account. Interest should be treated as required by section 28 of the Act and as discussed in the Damstra ruling.

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

Very truly yours,



Phillip T. Frangos, Director  
Office of Hearings & Legislation

PTF/cw