

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN

SECRETARY OF STATE

STATE TREASURY BUILDING



LANSING

MICHIGAN 48913

March 29, 1978

Honorable James E. Defebaugh
Michigan House of Representatives
State Capitol
Lansing, Michigan 48909

Dear Representative Defebaugh:

This is in response to your letter concerning P.A. 388 of 1976 ("the Act"). Your four questions, all of which pertain to independent committees, are as follows:

- (1) What are the criteria for becoming an independent committee?
- (2) May a committee lose its status as an independent committee?
- (3) May a committee which meets the criteria for an independent committee function as another type of committee?
- (4) Must a committee which meets the criteria for an independent committee file as an independent committee?

"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."

"Political committee" is defined in Section 11 of the Act (MCLA § 169.211) as "a committee which is not a candidate committee, political party committee, independent committee, or ballot question committee."

Section 8 of the Act (MCLA § 169.208) defines "independent committee" as a committee other than a political party committee which "Filed a statement of organization as an independent committee at least 6 months before an election for which it expected to accept contributions or make expenditures in support of or in opposition to a candidate for nomination to or election to a state elective office; and received contributions from at least 25 persons and made expenditures in support of or in opposition to 3 or more candidates for nomination for or election to a state elective office in the same calendar year."

The possible advantage of status as an independent committee is obvious in Section 52 of the Act (MCLA § 169.252) which establishes limits for contributions to a candidate committee of a candidate for state elective office. An independent committee may contribute 10 times the amount permitted an individual or political committee.

The definition of independent committee quoted above establishes four prerequisites in order for an entity to function as an independent committee. First, it must file a statement of organization as an independent committee at least six months prior to an election for which it engages in the financing of campaigns. Second, it must receive contributions from at least 25 persons. Third, it must make expenditures with respect to at least three candidates for state elective office. "State elective office" includes the office of Governor, Lieutenant Governor, Secretary of State, Attorney General, Supreme Court Justice, State Senator, State Representative, member of the State Board of Education, and member of the governing boards of the University of Michigan, Michigan State University, and Wayne State University. Fourth, the prescribed contributions and expenditures must be made in the same calendar year prior to the entity functioning as an independent committee for the purpose of contribution limits.

An entity may file and operate for reporting purposes as an independent committee even though it has not received the requisite contributions and made the required expenditures. Indeed, it will have to do so in order to operate with respect to an election occurring six months subsequent to filing. Once it has filed, however, the entity may operate as an independent committee with respect to contribution limits for the election upon receiving contributions from 25 persons and making expenditures for or against three candidates for state elective office. As noted previously, the contributions and expenditures must be made in the same calendar year.

For example, a group of individuals desires to function as an independent committee with respect to the November, 1978, general election. On May 1, 1978, the group files a statement of organization with the Secretary of State pursuant to Section 36 of the Act (MCLA § 169.236). On September 15, 1978, the committee holds a fundraiser and receives contributions in the total amount of \$2500.00 from 25 individuals. On September 20, 1978, the committee makes an expenditure of \$1000.00 on behalf of a candidate for Governor. On September 21, 1978, the committee makes an expenditure of \$100.00 on behalf of a candidate for the State Senate. On September 25, 1978, the committee makes an expenditure of \$500.00 on behalf of a candidate for Attorney General. As of September 25, 1978, the committee may operate as an independent committee. In the period between May 1 and September 25, 1978, the committee will operate as a political committee with respect to contribution limits.

In response to your first question, therefore, an entity must file as an independent committee at least six months prior to the election for which it wishes to operate as an independent committee for contribution limit purposes. Additionally, in the same calendar year it must receive contributions from at least 25 persons and make expenditures with respect to three candidates for state elective office.

Your second question presupposes that an independent committee at some subsequent point in time does not receive contributions from 25 persons and make expenditures with respect to three candidates for state elective office in the same calendar year. In order to respond to the question, it is necessary to examine once again the definition of independent committee provided in Section 8. It is significant the statute uses the phrases "received contributions" and "made expenditures." Utilization of the past tense leads to the conclusion that once the contribution and expenditure requirements have been met in one calendar year, they need not be met in subsequent calendar years.

Consequently, the answer to your second question is that an independent committee may continue its status by meeting all reporting requirements of the Act. It does not, however, have to continue to meet the contribution and expenditure requirements in subsequent calendar years.

Concerning your third question, an independent committee may function as another type of committee. The principal advantage of the independent committee is the tenfold contribution limit available to it. The committee, however, may choose not to exercise this option.

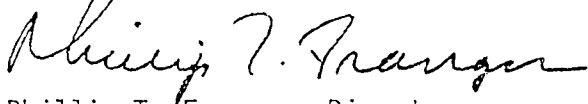
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Turning to your fourth question, a committee which meets the criteria of an independent committee except for the filing requirement, need not file as an independent committee. It may file as a political committee as defined in Section 8. In that instance, however, the committee will be subject to the same contribution limits as individuals.

This response may be considered as informational only and not as constituting a declaratory ruling. Your request did not present the precise statement of facts prescribed by Section 63 of the Michigan Administrative Procedures Act (MCLA § 24.263), which establishes the requirements for seeking a declaratory ruling.

Very truly yours,



Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF:pk