

## MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN

SECRETARY OF STATE

STATE TREASURY BUILDING



LANSING

MICHIGAN 48918

October 26, 1983

Mr. Timothy Downs  
Craig, Farber, Downs & Dine  
1217 First National Building  
Detroit, Michigan 48226

Dear Mr. Downs:

You have requested an interpretation concerning the applicability of the Campaign Finance Act, 1976 PA 398, as amended, (the "Act") to certain disbursements made from an officeholder expense fund (the "OEF").

In essence, you ask if an OEF makes a legitimate disbursement for an expense incidental to the office and the federal Internal Revenue Service determines the disbursement is to be treated as personal income to the officeholder, may OEF funds be used to pay the income tax obligation incurred by the earlier disbursement.

Section 49(1) of the Act, MCL 169.249, states:

"An elected public official may establish an officeholder expense fund. The fund may be used for expenses incidental to the person's office. The fund may not be used to make contributions and expenditures to further the nomination or election of that public official."

Disbursements from the OEF must be incidental to the office without also furthering the nomination or election of the officeholder. The Department has previously considered which expenses are incidental to office. Several approaches to making this determination were discussed in an April 24, 1981 letter to Senator James DeSana:

"The Department has previously indicated that section 49 permits a public official to purchase a ticket to another candidate's fundraiser with monies from an officeholder expense fund. In a letter to Senator Gary Corbin, dated March 21, 1978, the Department stated:

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' . . . it has been custom and tradition for incumbent public officials to purchase tickets to the fundraisers of other candidates for political office. Indeed, it may be stated the expenditure of monies for this purpose by an elected official is often necessitated by, and therefore incidental to, the person's office. In enacting language authorizing the establishment of an officeholder's expense fund, the Legislature was cognizant of this political tradition.'

It was noted in a January 23, 1989, letter to Mr. Edward Chmielewski that the common theme in permitting a disbursement from an officeholder expense fund is that 'the expense is traditionally associated with or necessitated by, and therefore incidental to, the holding of public office.'

Applying the above principles to the questions you have raised, it is apparent that a state legislator would traditionally be expected to purchase advertising space in a testimonial book for a member of Congress who represents that legislator's district. Indeed, it may be presumed that the legislator would not have been asked to purchase such space but for his status as officeholder. Consequently, the purchase of advertising space in a Congressional testimonial book by a state legislator is incidental to office and may be charged to the legislator's officeholder expense fund."

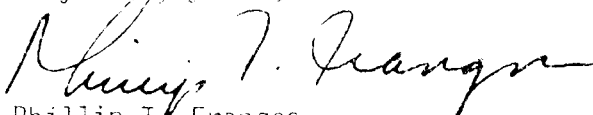
An expense may be incidental to office if it fits a "custom or tradition" for officeholders, if it is "necessitated by" the person's office, or if it is "traditionally associated with or necessitated by" the holding of public office. The additional tax liability cannot be termed customary or traditional and is not necessitated by the public office. However, once the officeholder has created the OEF, the additional tax liability is similar to a bank service charge on an OEF checking account or an accountant's fees for auditing an OEF--the additional tax liability is necessitated by the existence of the OEF.

The Legislature created the OEF to provide officeholders with a method of financing expenses incidental to office other than using their personal funds. It would be inconsistent if the OEF could not pay an expense which was incurred by the officeholder solely because of the OEF. Therefore, an OEF may pay an additional tax liability created because of a legitimate disbursement from the OEF.

Your second question regarding the actions of other officeholders is not an appropriate subject of this letter. You may inspect public records filed on OEFs if you wish to determine what other officeholders are doing.

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

Very truly yours,



Phillip T. Frangos  
Director  
Office of Hearings and Legislation