

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN

SECRETARY OF STATE

STATE TREASURY BUILDING



LANSING

MICHIGAN 48918

October 28, 1988

Harold Dunne
Harold Dunne and Associates
37677 Professional Center Drive
Suite 110-C
Livonia, Michigan 48154

Dear Mr. Dunne:

This is in response to your request for an interpretive statement concerning the application of the Campaign Finance Act (the Act), 1976 PA 388, as amended, to the elected official who wishes to use either the official's candidate committee or officeholder fund to pay for legal representation.

The legal expenses would be incurred in a dispute with other elected officials over expenditures of funds pursuant to a city charter. You go on to state:

"The corporation counsel represents the city as an entity and cannot represent both sides in the dispute. Therefore, the question is, 'Would the expense qualify as incidental to holding office and be accordingly proper under Public Act 388 of 1976?'"

Clearly payment of the expenses you describe would not be appropriately made from a candidate committee because the proposed expenses are not a part of the candidate's election expenditures. However, it appears that the expenses may more appropriately be made from an officeholder expense fund (OEF) established pursuant to section 49 of the Act (MCL 169.249) which provides:

"Sec. 49. (1) 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.

"(2) The contributions and expenditures made pursuant to subsection (1) are not exempt from the

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contribution limitations of this act but any and all contributions and expenditures shall be recorded and shall be reported on forms provided by the secretary of state and filed not later than January 31 of each year and shall have a closing date of January 1 of that year.

"(3) A person who knowingly violates this section is guilty of a misdemeanor and shall be punished by a fine of not more than \$1,000.00 or imprisonment for not more than 90 days, or both."


The question of the payment of legal expenses by an OEF has been dealt with in a previous letter issued by the Department. The question raised at that time was whether an OEF could be used to pay the expenses of bringing a libel action by the public official. In a February 1, 1980 letter to Senator Jack Welborn the Department concluded that such expenses could not be paid from the OEF if the disbursement was for expenses in a suit for personal money damages. The letter to Senator Welborn is enclosed.

In a telephone conversation on October 11, 1988 with Webster Buell of this office you elaborated on the facts provided in your letter. The legal action involved includes two lawsuits by your client against the City of Livonia and other elected officials. Your client is the city treasurer. In one action he is seeking a declaratory judgment with respect to the application of the city charter. In the other action he is suing the other officials and demanding that certain funds be returned to the city. In neither case is he seeking money damages for himself.

Based upon the nature of the actions and the relief sought it appears that payment of the legal expenses outlined is incidental to your client's office and that payment of legal expenses under these circumstances may be properly made from your client's OEF.

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:rlp
attachment