

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

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September 24, 1992

Mr. Carl L. Gromek
State of Michigan Court of Appeals
109 West Michigan Avenue
P.O. Box 30022
Lansing, Michigan 48909

Dear Mr. Gromek:

This is in response to your letter requesting an interpretive statement pursuant to the Michigan Campaign Finance Act (the Act), 1976 PA 388, as amended, regarding the viability of a proposed procedure for making contributions to candidates in Michigan elections.

Your letter outlines a process proposed to be implemented by the Judges of the Michigan Court of Appeals for making contributions to candidates for public office as follows:

"The procedure now contemplated would again enlist the assistance of the Court's Administrative Officer. He would keep a list of the Judges and periodically contact the Judge whose name came up next on the list to determine whether that Judge was willing to make an election contribution. The Judge would then write a check to the organization or committee conducting the fund-raiser. If a Judge declined to contribute to a particular candidate, the Administrative Officer would move down the list to the next Judge until he found one willing to contribute. That Judge would then go to the bottom of the list."

The issue presented is whether the activity you have outlined triggers the filing and reporting provisions of the Act. Pursuant to the Act, "committees" that participate in the election process by supporting or opposing candidates or ballot questions are required to file a statement of organization. Subsequently, committees must submit reports detailing the funds they have received and spent in the election process.

Section 3(4) of the Act (MCL 169.203) defines the term "committee" as follows:

"Sec. 3. (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 \$500.00 or more in a calendar year or expenditures made total \$500.00 or more in a calendar year. An individual, other than a candidate, does not constitute a committee. A person, other than a committee registered under this act, making an expenditure to a ballot question committee shall for that reason not be considered a committee for the purposes of this act unless the person solicits or receives contributions for the purpose of making an expenditure to that ballot question committee."

"Person" is defined in section 11(1) of the Act (MCL 169.211) as follows:

"Sec. 11. (1) 'Person' means a business, individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, labor organization, company, corporations, association, committee, or any other organization or group of persons acting jointly."

The key question presented by the procedure you outline is whether the contributions result from joint activity by the individuals who participate in the scheme. If the proposed procedure constitutes joint action then the group is a committee required to file a statement of organization when contributions or expenditures are \$500.00 or more in a calendar year.

The procedure outlined goes beyond a suggestion to a member of the group that he or she may wish to purchase tickets to a particular fundraiser. Here there is communication within the group with a view toward making contributions on behalf of the group.

The Administrative Officer would contact a number of Judges for contributions if one or more Judges declined to purchase a ticket to a candidate's fundraiser. The procedure appears to be designed to insure that one of the Judges attends selected fundraisers representing the group. However, each member of the group would have the opportunity (obligation?) to pay a share of the overall cost of the group's contributions.

As described in your request, the plan is structured to function only if there is joint activity among the participants. Every potential contribution will result in communications between the Administrative Officer and one or more of the members of the Court. The Administrative Officer will keep records of contributions made and will distribute fundraiser tickets to Judges who wish to attend an event.

While designed to present the appearance that the contributions are made by individuals, the procedure relies on coordinated activity by the members of the group. Such group activity means that the Judges are a committee pursuant to section 3(4) when their contributions or expenditures total \$500.00 or more in a calendar year.

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When a group of individuals becomes a committee pursuant to the Act there are a number of provisions of the Act which become operative. First the committee is required to file a statement of organization pursuant to section 24 of the Act (MCL 169.224). Subsequently, the committee will be required to file campaign statements pursuant to section 33 of the Act (MCL 169.233).

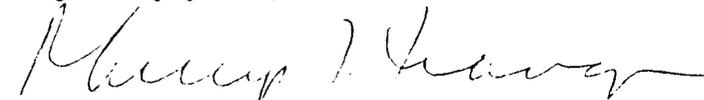
The Act also contains provisions that govern the internal workings of committees. Section 21 of the Act (MCL 169.221) in particular sets forth requirements for the operation of a committee. In order to comply with section 21 the Judges committee will have to make significant changes in its structure. Enclosed is a copy of the Manual for Independent and Political Committees that explains what a committee must do to comply with the Act.

There are some other potential issues suggested by your letter. The first of these is the pivotal role played in the process by the Court's Administrative Officer. While this role would have to be modified to conform to the Act there may also be other problems. In particular, Canon 7 of the Michigan Code of Judicial Conduct appears to limit participation of Judges and public employees under their control in political solicitations.

In addition you should also note that the Attorney General has, over the years, issued numerous opinions discussing the use of public resources to support or oppose candidates or ballot proposals. These opinions have generally concluded that it is improper to use government resources, including employees, to support or oppose candidates or ballot proposals. OAG, 1987-1988. No 6423. p 33 February 24, 1987, references a number of these published opinions.

The foregoing response is an interpretive statement of the Act's provisions and does not constitute a declaratory ruling.

Very truly yours,



Phillip T. Frangos
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