

M I C H I G A N   D E P A R T M E N T   O F   S T A T E

RICHARD H. AUSTIN

SECRETARY OF STATE

STATE TREASURY BUILDING



LANSING

MICHIGAN 489-8

September 15, 1980

Mr. Patrick C. Hancock, Jr.  
1625 Meadow Lane  
Wolverine Lake, Michigan 48088

Dear Mr. Hancock:

This is in response to your request for a declaratory ruling concerning the applicability of the Campaign Finance Act, 1976 PA 388, as amended ("the Act") to an individual who is nominated as a candidate by the village council pursuant to the village charter.

You state that you gave a written authorization to the filing officer to have your name appear on the ballot since an insufficient number of nominating petitions were filed.

Specifically, you ask if under these circumstances you qualify as a "candidate" subject to the reporting requirements of the Act.

Section 3(1) (MCL 169.203(1)) states in pertinent part:

"'Candidate' means an individual: (a) who files a fee, affidavit of incumbency, or nominating petition for an elective office; (b) whose nomination as a candidate for elective office by a political party caucus or convention is certified to the appropriate filing official; (c) who receives a contribution, makes an expenditure, or gives consent for another person to receive a contribution or make an expenditure with a view to bringing about the individual's nomination or election to an elective office, whether or not the specific elective office for which the individual will seek nomination or election is known at the time the contribution is received or the expenditure is made; or (d) who is an officeholder who is the subject of a recall vote. Unless the officeholder is constitutionally or legally barred from seeking reelection or fails to file for reelection to that office by the applicable filing deadline, an elected officeholder shall be considered to be a candidate for reelection to that same office for the purposes of this act only."

According to the information in your letter, you did not file a fee, affidavit of incumbency or nominating petition for elective office; nor were you nominated by a party caucus or convention and certified to the appropriate filing official; nor did you receive a contribution or make an expenditure to influence your election to public office; nor were you appointed to an elective office.

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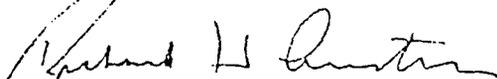
A persuasive argument could be made that you became a "candidate" when you authorized the village clerk to place your name on the ballot. Such an authorization could be considered to be equivalent to filing a nominating petition. Reading the Act in this way would certainly correspond to the common sense belief that a person whose name is on the ballot is a candidate.

As you point out, however, section 3 does not specifically include your fact-situation in the definition of the term "candidate." A failure to file a statement of organization not only involves late filing fees but also includes the possibility of a criminal prosecution if it extends for more than 30 days. The general rule is that penal provisions of a statute are to be read strictly.

In the fact situation you present there is no language in section 3 which specifically requires a candidate appointed by the village council to run for village office to file a statement of organization. However, section 3 does mandate the filing of a statement of organization when a contribution is received, an expenditure is made or the person becomes an officeholder.

This response constitutes a declaratory ruling concerning the applicability of the Act to the facts enumerated in your request.

Sincerely,



Richard H. Austin  
Secretary of State

RHA:lr