

RICHARD H. AUSTIN • SECRETARY OF STATE  
STATE TREASURY BUILDING



LANSING  
MICHIGAN 48913

May 29, 1979

Honorable Mitch Irwin  
Michigan State Senate  
State Capitol Building  
Lansing, Michigan 48902

Dear Senator Irwin:

This is in response to your request for a declaratory ruling concerning the applicability of the Campaign Finance Act ("the Act"), P.A. 388 of 1976, as amended, to expense payments made by your campaign committee for certain personal living expenses incurred by you during the course of the 1978 primary and general election campaigns.

Your question is whether personal living expenses of a candidate in the course of a campaign may be paid by the candidate's committee.

Specifically, during your campaign for the State Senate, several expenses were paid by your candidate committee. These payments were made after June 9, 1978, the date you went on a non-paid leave status with your employer. The payments enumerated below were made ostensibly for the reasons indicated while you were on leave without pay:

<u>Payment</u>	<u>Purpose</u>
Mortgage payments	Shelter and part-time campaign office for candidate.
Lot rent for trailer	Shelter and part-time campaign office for candidate.
Car payments	Transportation in lieu of a leased vehicle for candidate.
Babysitting expense	Expenditure allowing candidate and wife to campaign jointly.
Candidate car insurance	Transportation in lieu of a leased vehicle for candidate.
Dental expense	Necessary dental work with an emphasis for television exposure.
Clear eyeglass lenses	Replacement of candidate's photogray lenses with clear lenses for television image.

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As an explanation of the above expenses you add:

"While these expenditures are for the personal maintenance of the candidate, they also were 'Payments...in assistance of... the nomination or election of a candidate.' The committee made the expenditures for the single purpose of influencing the primary and general election.

"The purpose of the expenditure must be viewed from the perspective of the committee. By making these payments, the committee made it possible for the candidate to devote his full-time efforts to the campaign for the Senate. The judgment that was made insured that the candidate would not be devoting his personal energies to anything but winning the election. This full-time effort was thought to be necessary because of the geographical size of the District, the stiff competition for the office, and the fact that the candidate was not well known throughout the District when the campaign began.

"It should be noted that the Federal Election Commission has issued numerous Advisory Opinions concluding that a committee's funds may be used for payment of personal subsistence payments for candidates. Such expenditures are also permissible in other States."

You mention the Federal Election Commission has issued numerous advisory opinions concerning the use of campaign funds. However, the Federal legislation and regulations do not contain a provision similar to that in Michigan's statute which requires particular disposition of residual funds which may affect permissible use of funds as explained below. This fact serves to illustrate the point that candidates and committees should exercise care in using exclusively the Federal Campaign Act and supplementary materials as guidance for committee conduct in this state. Each provision under the Federal legislation must be viewed in total context and not in isolation. The Federal statute is similar but not identical to the Act.

However, a review of permissible uses in the Federal law and in the statutes of other states will assist in interpretation of the pertinent provisions of the Act. Succinctly stated, in the Federal system a candidate may make expenditures from his or her campaign fund for any lawful purpose. It does not make any difference whether the disbursement is political or non-political so long as every disbursement is reported.

The relevant advisory opinions and informational letters, and telephone conversations with the Federal Election Commission, also reveal that excess campaign funds are treated the same as campaign funds. Consequently, the question of the use of excess campaign funds is pertinent in this case.

Honorable Mitch Irwin  
May 29, 1979  
page 3

Under the Federal law, the time of disbursement before, during, or after an election, or after termination, makes no difference as to possible use of the funds.

Under Section 45(2) of the Act (MCLA §169.245), a candidate is clearly restricted as to possible expenditures from the campaign fund upon termination of the committee. A candidate must give excess funds to a political party committee, a tax exempt charity, or to the original contributors. However, the Act or rules are not clear as to expenditures permissible prior to termination, i.e., whether the candidate can make non-political expenditures.

Section 6 of the Act (MCLA §169.206) defines "expenditure" as anything of ascertainable monetary value transferred out for the purpose of influencing an election. Interestingly, the Federal system defines "expenditure" similarly.

The title of the Act states:

"An ACT to regulate political activity; to regulate campaign financing; to restrict campaign contributions and expenditures; to require campaign statements and reports; to regulate anonymous contributions; to regulate campaign advertising and literature; to provide for segregated funds for political purposes; to provide for the use of public funds for political purposes; to create a state campaign fund; to provide for reversion of or refunding of, unexpended balances; to require reports; to provide appropriations; to prescribe penalties; and to repeal certain acts and parts of acts." (Emphasis supplied)

Section 21(3) of the ACT (MCLA §169.221) provides (in pertinent part):

"Except as provided by law, a committee shall have 1 account in a financial institution in this state as an official depository for the purpose of depositing all contributions which it receives in the form of or which are converted to money, checks, or other negotiable instruments and for the purpose of making all expenditures."

Section 26(b) of the Act (MCLA §169.226) provides (in part):

"A campaign statement of a committee shall contain the following information: Under the heading 'receipts', the total amount of contributions received during the period covered by the campaign statement; under the heading 'expenditures', the total amount of expenditures made during the period covered by the campaign statement, and the cumulative amount of those totals for that election."

These provisions of the Act reinforce the conclusion that campaign fund money must be used to influence a campaign. The title makes it clear that one of the purposes of the Act is to restrict expenditures. The language in the title indicates an "anything goes" policy with regard to spending is not contemplated statutorily. Section 21(3), which requires one account for deposit of all campaign monies to be used for making all expenditures,

Honorable Mitch Irwin  
May 29, 1979  
page 4

and Section 26(b), which requires the reporting of all expenditures together constrict the use of campaign funds for purposes which influence elections. It is particularly noteworthy that while the Act requires the reporting of "receipts" such as interest paid by a bank for campaign funds on deposit, thereby acknowledging funds not given for the purpose of influencing elections, the Act requires only the reporting of "expenditures", i.e., monies used to influence an election, rather than "disbursements", a term which includes monies used for purposes other than influencing an election.

In order to give full meaning to all the statutory provisions concerning permissible use of campaign funds, it must be concluded a candidate must use campaign funds for the purpose of influencing an election.

Addressing your query as to whether campaign funds may be used for personal expenses of a candidate, it appears since a candidate must use campaign funds for political expenses, the fact an expenditure is also personal makes no difference so long as the expense may in good faith be interpreted as influencing an election. For example, if a candidate purchases a trip to Mexico and that trip in good faith is purchased for the purpose of influencing his or her election, e.g., to enhance the candidate's image as an individual familiar with Michigan's foreign trade policy, the expenditure is permissible.

The above interpretation concerning permissible use of campaign funds finds support in the statutes of other states. Illinois has a statute which reads very much like Michigan's law. Illinois Statutes §9-5 provides (in part):

"In the event that a political committee dissolves, all contributions in its possession, after payment of the committee's outstanding liabilities, including staff salaries, shall be refunded to the contributors in amounts not exceeding their individual contributions, or transferred to other political or charitable organizations consistent with the positions of the committee or the candidates it represented. In no case shall these funds be used for the personal aggrandizement of any committee member or campaign worker."

According to the Illinois State Board of Elections, Division of Public Disclosure, the above statute is interpreted to mean that before, during and after an election, a candidate must spend campaign funds for the purpose of influencing an election; all other uses are prohibited. A candidate may make personal use of the funds only if the expenditure is also made to influence an election. Thus, a candidate could theoretically purchase satin sheets with campaign funds if the use of satin sheets served to influence the candidate's renomination or election. If a candidate can in good faith substantiate that an expenditure shall influence an election, the expenditure can also serve any other purpose including a personal purpose. However, an expenditure may not solely be a personal expenditure.

Honorable Mitch Irwin  
May 29, 1979  
page 5

In California there are no limits as to how campaign funds may be used. The time before, during, or after an election makes no difference as to permissible uses. However, there is also no requirement, as in Michigan's statute, that excess funds be given to charity, a political party committee, or to the original contributors, upon dissolution of the committee.

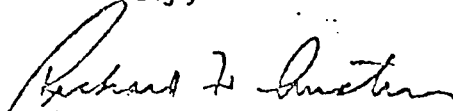
Minnesota has no regulation or limitation on the use of private contributions received by candidates. Nonetheless, the Ethical Practices Board which regulates campaign finance has recommended in the 1977-78 Annual Report that the Minnesota law be amended so that unused or expended campaign funds be returned to the contributors, or donated to a political party committee or charitable organization.

In summary, a reading of Sections 6, 21, 26, and 45 of the Act, for the reasons enumerated above, leads to the conclusion that campaign funds must be used to influence an election. All of the expenditures which you have listed in your request, even though made for personal living expenses, were intended to influence an election. Consequently, all of the enumerated expenditures were proper and within the parameters of the Act.

In support of this opinion, it should be noted there is a bill presently before the Legislature which would restrict the expending of campaign funds solely for the purpose of influencing an election.

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/PTF/smh