

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING



LANSING

MICHIGAN 48918

October 23, 1981

Mr. Jon K. Jenkins
 Attorney at Law
 740 Michigan National Tower
 Lansing, Michigan 48933

Dear Mr. Jenkins:

This is in response to your inquiry concerning the Campaign Finance Act ("the Act"), 1976 PA 388, as amended. You indicate that you and other individuals are interested in Mr. Michael F. Walsh becoming a candidate for Ingham County Prosecuting Attorney but because of the substantial expense involved in conducting a county-wide campaign, you doubt that Mr. Walsh will become a candidate unless he is assured of sufficient financial support.

In this context you ask several questions which will be answered as presented:

- (1) Can we proceed to raise money for Mr. Walsh without his proceeding to become a candidate for Prosecutor?

You may raise money for a prospective candidate before the individual announces an intention to seek a particular office. However, you should note that section 3(1) of the Act (MCL 169.203(1)) defines "candidate," in relevant part, as follows:

"Sec. 3(1) '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 of 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 office-

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holder 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 the same office for the purposes of this act only." (emphasis added)

Under the Act a person may become a candidate even though the individual has not announced as a candidate, filed for office, campaigned or otherwise become a candidate in the ordinary sense of the word. When contributions are received with an individual's consent a candidate committee must be formed pursuant to section 21 of the Act (MCL 169.221).

If you raise money without the candidate's consent, you must form a committee pursuant to sections 11(2) and 24 of the Act (MCL 169.211 and 169.224). This is discussed further in the answers to questions 2, 7, and 8 below.

(2) If the answer to question one is "yes," then is it necessary to form a committee as defined in MCL 169.208(2) or any other type of committee? If so, what kind of committee needs to be formed?

If contributions are received with an individual's consent, section 21 requires the individual to form a candidate committee within 10 days after becoming a candidate.

If a candidate committee is not formed, a political committee or an independent committee must be formed. The Act's provisions with respect to political committees are discussed in answers to subsequent questions. An independent committee as defined in section 8(2) of the Act (MCL 169.208) may be formed instead. This type of committee must support at least three candidates for state elective office. Since you indicate an interest only in a local election, this letter will not elaborate on independent committees and their obligations.

(3) If a committee is formed and receives contributions can they be transferred to the individual's candidate committee, or hopefully, to his officeholder's account?

Section 3(2) (MCL 169.203) provides that "'candidate committee' means the committee designated in a candidate's filed statement of organization as that individual's candidate committee. A candidate committee shall be presumed to be under the control and direction of the candidate named in the same statement of organization." Section 21(1) provides, in part, that "a candidate shall not form more than 1 candidate committee for each office for which the person is a candidate." Thus, when contributions are received, the committee formed is the candidate committee for the duration of the campaign and, if elected, throughout the individual's term in office. Upon the candidate's election the committee may transfer funds to his officeholder's expense fund in accordance with Rule 39 (1979 AC R169.39).

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A political committee, on the other hand, may make contributions to a candidate committee or an officeholder expense fund. The Act does not limit the amount of contributions which can be made to candidates for local office. Consequently, a political committee may contribute to a candidate committee or an officeholder expense fund by transferring its funds to these entities. It should be noted, however, that section 49 of the Act (MCL 169.249) does not allow an official to make contributions or expenditures from an officeholder expense fund to further his or her nomination or election.

(4) Is there any prohibition against a committee receiving funds if it is not required to register and formally exist?

A committee other than a candidate committee must be created when contributions received total \$200.00 or more or expenditures made total \$200.00 or more in a calendar year. A candidate committee is required to be formed within 10 days of an individual becoming a candidate as defined in section 3(1). In keeping with the disclosure purpose of the Act, a committee is required to report its existence by filing a statement of organization and to report its activities through periodic reports required by various sections of the Act.

A committee is not prohibited from receiving funds when it is not required to organize and file as a committee under the Act. In other words, a group of people can legally receive and spend less than \$200.00 in a calendar year without filing any reports.

(5) If a committee is formed and registered which receives contributions, is the disposition of these funds limited by MCL 169.246 if the individual does not become a candidate or what disposition(s) could be made of these funds in that event?

Your question cites section 46 of the Act (MCL 169.246) but from its context it appears your references should be to section 45 (MCL 169.245). Section 45 controls the disposition of any unexpended funds of a campaign committee and establishes the only method by which these funds may be disbursed, with the exception that in event of election, funds may be transferred to an officeholder's expense fund pursuant to section 49 (MCL 169.249) and rule 39 (1979 AC R169.39). Disposition of political committee funds is discussed in the answer to question 8.

(6) Could the unexpended contributions be given to another candidate if the individual does not become a candidate?

Unexpended funds of a candidate committee can only be disbursed as provided by section 45 and may not be given to another candidate. The only narrow exception is contained in section 45(1) wherein they may be transferred to another candidate committee of the same candidate if he has candidate committees for different offices simultaneously and the other provisions of this subsection are met. A political committee would not be subject to this restriction.

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(7) Can a committee be formed to seek a candidate for this (or any other) office which the committee believes to be competent and the contribution then released to that candidate's committee?

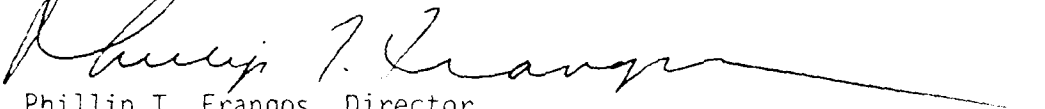
Pursuant to section 11(2) of the Act (MCL 169.211), political committees may be established to accept contributions or make expenditures in support of or in opposition to candidates for office. If a political committee has been receiving contributions and a person it supports then becomes a candidate forming his own candidate committee, the political committee may make contributions to his committee or to his officeholder fund if established. Assuming the individual is running for a local office, there is no limitation on the size of the contribution.

(8) If a committee is formed to seek a qualified candidate but believes they are unsuccessful, what disposition must be made of the contributions, if any, which are received by the committee?

As indicated in the response to your question 5, the disposition of unexpended funds of a candidate committee is governed by section 45 of the Act. Political committees are not limited by section 45 in disposing of unexpended funds upon dissolution of the committee. Rule 1(c) (1979 AC R169.1) defines the terms "campaign" or "candidate's campaign" to mean "the candidate committee's activities for a specific election." Section 45(2) of the Act clearly applies to unexpended funds in a campaign committee. Section 45 as clarified by Rule 1(c) does not include within its ambit the regulation of committees other than candidate committees. Such a committee may dispose of unexpended funds in any lawful way. Although the Act does not limit the use of such funds, there may, of course, be other limitations on their use including the imposition of local, state, and federal taxes.

Since your letter does not set forth a precise statement of facts as required by section 62 of the Michigan Administrative Procedures Act with respect to a request for a declaratory ruling, this response should be considered informational only.

Very truly yours,


Phillip T. Frangos, Director
Office of Hearings and Legislation