



March 29, 1978

Mr. James R. Killeen  
Wayne County Clerk  
Detroit, Michigan 48226

Attention: Mr. Orville L. Tungate  
Chief Deputy County Clerk

Dear Mr. Killeen:

This is in response to your request for a declaratory ruling relative to several factual situations subject to the provisions of P.A. 388 of 1976 ("the Act"). Your questions are answered in the order asked.

I.

The city of Rockwood, Michigan held a primary on February 20, 1978, and will hold an election on April 3, 1978. Consistent with the schedule established by Section 33 of the Act (MCLA § 169.233) the post-primary report, which had a closing date of March 12, 1978, was due March 22, 1978. The pre-election report, which had a closing date of March 18, 1978, was due March 23, 1978.

You ask whether both the post-primary and pre-election reports must be filed by affected candidate committees since the filing dates of the reports fall on successive days, and to do so will "place an undue burden upon these candidates."

Section 33 requires filing of the post-primary report not later than the thirtieth day following the primary. It requires filing of the pre-election report not later than the eleventh day before the election.

If the post-primary report was replaced administratively with the pre-election report, candidate committees in Rockwood would not file a report within the statutory 30-day deadline. Conversely, if the pre-election report was replaced with the post-election report, candidate committees would be compelled to file a report sooner than the time allowed by the statute, i.e., the 11-day deadline. Consequently, it does not appear the filing requirements should be revised in the Rockwood situation, with one exception. The latter pertains to any candidate committee which files voluntarily a pre-election report between March 18, 1978 (the closing date of the pre-election report), and March 22, 1978 (the filing date for the post-primary report). In so doing, the committee could eliminate the post-primary report and replace it with a combined pre-election report.

Notwithstanding the foregoing conclusion, it seems members of the Department's staff indicated to you, prior to the issuance of this ruling, that it was anticipated a determination would be made whereby the post-primary report could be supplanted with the pre-election filing with respect to all candidate committees involved in both the primary and election in Rockwood. In reliance on this information, you advised affected candidates to act accordingly. A reversal in policy at this late date would expose the candidates to the stringent late filing fee and misdemeanor provisions of the statute. Since enforcement under these circumstances is unfair and dubious, the post-primary filing may be replaced with the pre-election filing in the case of all affected Rockwood committees.

## II.

The city of River Rouge, Michigan held a primary on March 6, 1978, and will hold an election on April 3, 1978. The post-primary report, which has a closing date of March 26, 1978, is due on April 5, 1978. The pre-election report, which had a closing date of March 18, 1978, was due on March 23, 1978.

You inquire whether in view of the fact the pre-election report is due 13 days prior to the due date of the post-primary report, must both reports be filed by affected candidate committees in River Rouge.

In this case, elimination of the post-primary report in favor of the pre-election report does no violence to the statute because a report will be filed by the candidate committee well before the prescribed 30-day deadline. The purpose of disclosure is served since the bulk of primary information on the post-primary report, which would not be available to the public until April 5 or two days after the election, would now become available on March 23. The candidate committee would suffer no hardship since it could eliminate one filing.

Thus, candidates in River Rouge who qualify for the election may eliminate the post-primary report in favor of the pre-election report. All other candidates will have to file the post-primary report as required by the Act.

## III.

The village of Grosse Pointe Shores will hold an election on May 16, 1978. The village charter does not provide for a primary and sets May 8, 1978, as the last filing date for the election. The pre-election report, which has a closing date of April 30, 1978, is due May 5, 1978, or three days prior to the last date an individual can qualify his or her name for the ballot. The statement of organization for individuals who become candidates by filing on the last day for qualifying will be due on May 28, 1978, or 12 days after the election.

You ask the following questions in conjunction with this factual situation:

- 1) Is the pre-election report necessary in view of the fact the due date for this report precedes the last date on which candidates qualify for the ballot?
- 2) What direction must the filing official take relative to the time for filing a statement of organization in view of the fact it may not be due until after the election?

In enacting this legislation, the Legislature could not have anticipated all the diverse problems presented in applying a general statute to unforeseen special elections or the many local elections, some of which have unique schedules. Since the Act by definition is applicable to all elections, an interpretation must be rendered which preserves the purposes of the Act wherever possible.

The principal purpose of the Act is disclosure of campaign finances. In addition, the provisions of the Act place a premium on accuracy of disclosure. The deadlines prescribed in Section 33 for the filing of campaign statements were established so as to permit sufficient time for the examination process provided in Section 16 (MCLA § 169.216). The process consists of the filing official reviewing the filed document and the candidate committee making corrections, where necessary, upon notice from the official.

It may be stated with some validity that disclosure should take place prior to any election so that the electorate may have the information relating to campaign finances available to them in order to consider it before casting their votes. However, it may also be stated with equal merit that disclosure serves the electorate by revealing any potential for influence that may arise from campaign finances and affect their elected officials. The statutory provision for post-election reports as well as pre-election reports indicates the process of disclosure is a continuing one.

Thus, in attempting to reconcile a statute to all the elections which it is intended to govern, as many of those concerns must be considered as is possible. As noted previously, however, this must be done in a manner which does not expose individuals through administrative action to the Act's severe penalty fee and misdemeanor provisions.

Therefore, in addressing your first question, the pre-election report for the Grosse Pointe Shores election should be considered in the context of those candidate committees which can provide it as contemplated by the Act. Pre-election reports must be filed by committees which are in a position to file accurate reports in a timely manner. This would be true only in the case of candidate committees in existence on April 30, 1978, the statutory closing date for the pre-election report.

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Although an individual might not become a candidate for purposes of the Act until May 8, many persons will be candidates before that date. An individual might not wait until the last day to file the papers necessary to qualify his or her name for the ballot. Moreover, Section 3 of the Act (MCLA § 169.203) prescribes several means other than filing by which an individual may become a candidate. For example, officeholders are candidates by virtue of their incumbency. Others who have received contributions or made expenditures are candidates for purposes of the Act. Thus, a number of candidate committees will be in existence on April 30, and some will have reportable contributions and expenditures.

Therefore, in response to your first question, any candidate committee in existence on April 30 should file a pre-election report. Any committee which is created subsequent to that date need not file the pre-election report but may consolidate all financial information concerning the election in the post-election filing.

In passing, it should be noted Section 33 of the Act permits elimination of the pre-election report when a candidate indicates on the statement of organization filed pursuant to Section 24 of the Act (MCLA § 169.224) that an amount in excess of \$500.00 will not be received or expended by the candidate committee in the election. Many local candidate committees will be able to eliminate the pre-election filing by virtue of this provision.

Your second question is concerned that some statements of organization will be filed after the election. Implicit in its asking is the desire for a ruling which disposes of the matter with some degree of uniformity.

One suggestion would require all statements to be filed prior to the election. This may be ruled out as it would severely reduce in some cases the amount of time available to the candidate committee under the statute for filing the statement.

A second suggestion would eliminate the need to file the statement of organization in all cases. However, this would be in direct conflict with the statute. A statement of organization is necessary, even after the election, because it provides information, not available in other reports, by which the candidate committee is brought into the reporting system.

The third suggestion permits the filing of a statement of organization in accordance with the schedule established in the Act, i.e., an individual must form a committee within 10 days after becoming a candidate, and a committee must file a statement of organization within 10 days after its creation. Thus, in the Grosse Pointe Shores election, some statements may not be due until May 28, 1978. However, as in the case of the pre-election reports, many statements will be filed prior to the election because the candidate committees will have been formed well before the election.

Therefore, responding to your second question, candidate committees in the Grosse Pointe Shores election shall file statements of organization as required by the Act.

IV.

Annual school elections will be held on June 12, 1978. The last day for filing petitions is May 12, 1978. The last day for filing a statement of organization, depending on the means by which an individual becomes a candidate for purposes of the Act, is June 1, 1978. The pre-election report is due on June 1, 1978. The post-election report is due on July 12, 1978. Finally, the annual report required of candidates by Section 35 of the Act (MCLA § 169.235) is due on June 30, 1978.

You ask whether all the campaign reports are necessary in view of the fact the foregoing schedule requires their filing in a relatively short span of time.

For reasons stated in the preceding rulings, it is determined the statement of organization, pre-election report, and post-election report must be filed for the annual school election as per the indicated schedule.

In regard to the annual report, consideration of legislation presently pending before the Legislature has given vent to legislative intent which cannot be ignored by the Department in responding to your question. Specifically, reference is made to the legislation which would delay from June 30, 1978, to January 31, 1979, the filing of the annual report. The legislation, in its present form would permit elimination of the post-election report for the 1978 election in favor of the annual report.

As of the writing of this ruling, the Legislature has not enacted the proposed legislation. There appears to be a preponderance of support for maintaining the 1978 annual report. Given the expression of legislative intent, the Department determines the 1978 annual report must be filed by affected candidate committees in the 1978 annual school election.

Your attention is directed to the language in Section 35 which frees candidate committees from filing the annual report provided the committee indicates on its statement of organization that it will not receive or expend more than \$500.00 in an election, and in fact does not do so within the period covered by the annual report. In addition, Section 35 exempts from the annual report filing requirement an officeholder who holds an election office for which the salary is less than \$100.00 a month, and who does not receive any contribution or make any expenditure during the period covered by the annual report.

V.

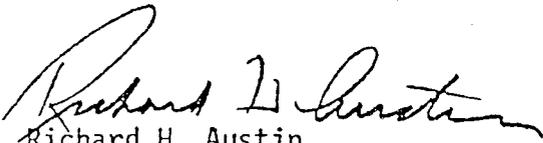
The state and county primary election will be held on August 8, 1978. The last filing date for candidates will be June 6, 1978. The last day for filing a statement of organization, depending on the means by which an individual becomes a candidate for purposes of the Act, is June 26, 1978. The pre-primary report, which has a closing date of July 23, 1978, is due on July 28, 1978. The annual report, which has a closing date of June 20, 1978, is due on June 30, 1978.

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You ask whether the pre-primary and annual reports must both be filed in view of the relatively short span of time in which they must be filed.

For reasons stated in the preceding rulings, it is determined the pre-primary and annual reports must be filed for the August 8, 1978, primary as per the indicated schedule.

Sincerely,



Richard H. Austin  
Secretary of State

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