

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN

SECRETARY OF STATE

STATE TREASURY BUILDING



LANSING

MICHIGAN 48918

November 10, 1977

Mr. James R. Killeen
Wayne County Clerk
Office of the County Clerk
201 City-County Bldg.
Detroit, Michigan 48226

Dear Mr. Killeen:

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

In your letter of October 28, 1977, you raised several questions concerning the effective date of penalty provisions as provided in Section 82(1) of Act 388 of the Public Acts of 1976 ("the Act"). The thrust of your several questions is as follows:

- (1) Are all penalty provisions of the Act effective December 1, 1977?
- (2) Are reports due prior to December 1, 1977, subject to all penalty provisions of the Act?
- (3) Is the person who fails to file a report due prior to December 1, 1977, assessed the monetary penalty from the date the report was due or from December 1, 1977?
- (4) Is a person who has not filed a report required prior to December 1, 1977, subject to the criminal provisions of the Act prior to that date? For example, if a person has not filed a statement of organization due prior to November 1, 1977, is that person guilty of a misdemeanor as of December 1, 1977?
- (5) If more than one report is due from the same political committee, is each report due from that committee subject to the penalty provisions?

In view of the fact civil and criminal penalties are involved, these questions have been referred to the Attorney General for his opinion. It is anticipated his legal advice will be forthcoming in the near future.

Pending legal resolution of these questions by the Attorney General, the Department of State, as a filing official and principal supervisory authority under the Act, has interpreted the Act with respect to implementation of penalties. Permit me to indicate the Department's position as it relates to each of your questions in the order raised.

The penalty provisions of the Act are effective as of December 1, 1977. However, some reports will not be due until after December 1, e. g., annual campaign statements required pursuant to Section 35(1) of the Act. Consequently, the penalties in this instance will not be applicable until after the filing deadline.

With respect to the second question, reports due prior to December 1, 1977, are subject to the penalty provisions of the Act. However, penalties will be applied consistent with the responses given in the succeeding questions.

Concerning your third question, a person who fails to file a report due prior to December 1, 1977, will be assessed the monetary penalty from December 1, 1977.

In the case of the fourth question, a person who has not filed a report required prior to December 1, 1977, will not be subject to criminal provisions of the Act until the requisite number of days have elapsed after December 1. In the example cited in the question, a person who has not filed a statement of organization due prior to November 1, 1977, will be guilty of a misdemeanor as of December 31, 1977, if the report remains unfiled as of that date.

The fifth question is answered in the affirmative. The diverse reports are filed under various sections of the Act, e. g., Sections 24(1), 24(3), 33(3) and 34(3). Examination of these sections indicates that each provision sets forth a requirement, the violation of which may result in the imposition of prescribed penalties.

In addition to the above questions, you also asked the following query:
What is the full force and effect of the May 27, 1977, communication from the State Department of Treasury to all County Clerks and Treasurers?

The communication to which you refer is a written memorandum from Emil E. Tahvonen, Director of Local Government Audit Division, State Department of Treasury, to all County Clerks and Treasurers. The memorandum implements a procedure for the collection, accounting and disposition of late filing fees required by the Act. The procedure is established pursuant to R 169.4 of the General Rules promulgated by the Secretary of State pursuant to authority conferred by Section 15 of the Act. The administrative rule has the full effect of law. Therefore, the implementing procedure as outlined in Mr. Tahvonen's memorandum must be followed accordingly.

As indicated above, the final legal disposition to the matters raised in the first five questions will be provided by the Attorney General. The interpretation set forth in this response may be considered informational and not as constituting a declaratory ruling.

Very truly yours,



Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF:pk