

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 48918

June 14, 1990

Mr. Daniel C. Krueger
 Ottawa County Clerk
 414 Washington Street
 Room 301
 Grand Haven, Michigan 49417

Dear Mr. Krueger:

This is in response to your letter regarding the applicability of the Michigan Campaign Finance Act (the Act), 1976 PA 388, as amended, to the following question:

" . . . If a bulk mailing permit is purchased by a public body with public funds, is it permissible to lend the use of that bulk mailing permit to any group or person involved in a political campaign with regard to either a proposition issue or individual candidate campaign?"

You go on to state:

"Since it is illegal to use public funds in support of a political question or a political candidate, the question arose in that the use of such bulk mailing permit would effectively reduce the cost for a committee or candidate in that campaign. Since that reduction in cost would be based solely on the utilization of a public purchased bulk mailing permit, would it then have the effectiveness of an in-kind contribution to that proposition committee or candidate."

The term "contribution" is defined in section 4 of the Act (MCL 169.204). The term "in-kind contribution or expenditure" is defined in section 9(2) of the Act (MCL 169.209). The relevant portions of these definitions are set forth below:

"Sec. 4. (1) 'Contribution' means a payment, gift, subscription, assessment, expenditure, contract, payment for services, dues, advance, forbearance, loan, or donation of money or anything of ascertainable monetary value, or a transfer of anything of

ascertainable monetary value to a person, made for the purpose of influencing the nomination or election of a candidate, or for the qualification, passage, or defeat of a ballot question."

"Sec. 9. (2) 'In-kind contribution or expenditure' means a contribution as defined in section 4 or expenditure as defined in section 6 other than money."

Even though the use of the bulk mail permit is not a cash contribution it is possible to determine the value of any use of the permit. It thus has ascertainable monetary value. The use of the permit is not a direct contribution of money but is instead an in-kind contribution. The Act requires committees which receive contributions, whether direct or in-kind, to disclose such receipts in their campaign statements and reports. However, as your letter suggests there is another issue which may precede the reporting requirements of the Act. That issue is the propriety of a public body making a contribution to a political campaign. This issue is not addressed by the Act. Over the years the Attorney General has issued many opinions regarding the authority of a governmental body to spend public funds on behalf of or in opposition to a candidate or ballot question.

In 1987 the Attorney General issued an opinion which covers the use of public funds in political campaigns. The questions dealt with the use of school district or community college funds to assist an independent, political or ballot question committee. The following question and answer from OAG, 1987-88, No 6423, p 33 (February 24, 1987) summarizes the Attorney General's position:

"2. Can an institution of public education give or loan to an independent political ballot or candidate committee paper, pencils, duplicating equipment, printing supplies, and other sundry items?"

"QUESTION 2

Turning to your second question, it has been the consistent position of this office that school districts and other public boards and commissions lack statutory authority to expend public funds to influence the electorate in support of or in opposition to a particular ballot proposal or candidate. OAG, 1965-1966, No 4291, p 1 (January 4, 1965; *Phillips v Maurer*, 67 NY2d 672; 490 NE2d 542 (1986)). A public body, however, may expend public funds to objectively inform the people on issues related to the function of the public body. OAG, 1965-1966, No 4421, p 36 (March 15, 1965); OAG, 1979-1980, No 5597, p 482 (November 28, 1979). In light of these prior opinions and cited authority, the answer to your second question is no."

Subsequently, the Attorney General issued OAG 1987-88, No 6446, p 131 (June 12, 1987), which concluded that a county social services board was prohibited from using public funds to encourage a favorable vote on a ballot question. In a

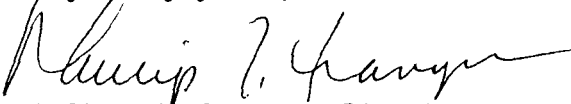
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letter opinion issued to State Representative Robert Emerson on May 26, 1982, the Attorney General concluded that a downtown development authority established pursuant to MCL 125.1651 et seq. is not authorized to spend public funds in support of a ballot question. The Attorney General went on to point out that without such authority the public body is prohibited from forming a committee under the Act.

In summary, the loan of a bulk mailing permit to a committee is an in-kind contribution, and governmental entities are generally without authority to make contributions or expenditures in a candidate or ballot question election.

This response is informational only and does not constitute a declaratory ruling.

Very truly yours,



Phillip T. Frangos, Director
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