

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN SECRETARY OF STATE

STATE TREASURY BUILDING



LANSING
MICHIGAN 48

August 1, 1978

Mr. William F. McLaughlin, Chairman
Michigan Republican State Committee
223 North Walnut
Lansing, Michigan 48933

Dear Mr. McLaughlin:

This is in response to your letter of April 3, 1978, concerning the applicability of the Campaign Finance Act ("the Act"), P.A. 388 of 1976, as amended, to a loan received by an elected official.

In that letter you acknowledged the Department's letter of March 29, 1978, which informed you of the correct manner for requesting an investigation concerning an alleged loan from an individual to an elected official. You stated the alleged loan was reported in the printed media on March 25, 1978.

The Department's letter indicated the proper method for requesting an investigation necessitated the filing of a complaint which conformed with the requirements of the Act and administrative rules promulgated pursuant to the Act. In your April 3 letter you stated: "I do not know if a violation of Act No. 388 has occurred or not. . . I have no hard evidence with which to sign a complaint."

In your letter, however, you also asked several questions which relate to a single issue. These questions have been restated to better reflect the pertinent issue for which you seek clarification. The questions to which this statement is addressed are as follows:

1. Are all loans to all elected officials considered contributions for purposes of the Act?
2. May a candidate commingle loans with his or her personal funds and then give these monies to his or her candidate committee as a personal contribution?

The first question is raised because implicit to your letter of April 3 is the assumption that all loans to elected officials are contributions for purposes of the Act. It is necessary to address the validity of this assumption.

Section 4(1) of the Act (MCLA § 169.204) defines a contribution as "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." Included in the definition of contribution is a loan made for that purpose. However, a loan which is not made for the purpose of influencing an election does not constitute a contribution as defined in the Act. Additionally, loans made in the ordinary course of business by a corporation, pursuant to Section 54 of the Act (MCLA § 169.254), do not constitute a contribution.

Accordingly, the question as to whether all loans to elected officials are contributions is answered in the negative; all loans to incumbent officials are not contributions. A loan could be made to an official for any number of purposes.

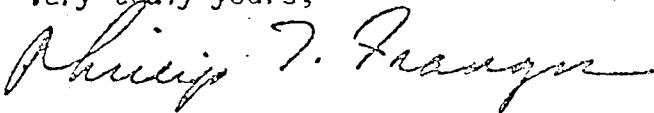
The answer to the second question is dependent on whether the loan is made for the purpose of influencing the election of the candidate. If the loan is made for the latter purpose, it is a contribution and subject to the Act's provisions. Section 21(8) of the Act (MCLA § 221) prohibits the commingling of contributions with any other funds including the candidate's personal funds.

If the loan is made for a purpose not contemplated by the Act, monies received by an individual pursuant to the loan will undoubtedly be treated by the person as part of his or her personal finances. Any question as to whether the candidate diverted a portion of the loan's proceeds to his or her candidate committee in violation of the Act must be raised through a documented complaint filed in accordance with the Act and related rules.

It should be stressed this letter does not address the issue of the propriety of an elected official obtaining a loan, whatever the purpose, from a particular lender. That issue is not within the purview of the Department's responsibilities as defined by the Act or any other statute.

In view of the fact your letter was general in nature and lacked the specificity required by Section 63 of the Michigan Administrative Procedures Act (MCLA § 24.263) which establishes the criteria for requesting and issuing a declaratory ruling, this response may be considered as informational only and not as constituting a declaratory ruling.

Very truly yours,



Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF:pk