

RICHARD H. AUSTIN

SECRETARY OF STATE

STATE TREASURY BUILDING



LANSING

MICHIGAN 48918

February 13, 1984

Mr. Richard D. McLellan  
Dykema, Gossett, Spencer, Goodnow & Trigg  
800 Michigan National Tower  
Lansing, Michigan 48933

Dear Mr. McLellan:

This is in response to your request for an interpretation of the Campaign Finance Act (the "Act"), 1976 PA 388, as amended, regarding the payment of legal fees by a candidate committee or an officeholder expense fund.

You indicated you recently performed legal work for an officeholder, his campaign committee, and his officeholder expense fund ("OEF") with respect to a proposed recall of the officeholder and to complaints filed under the Act against the officeholder, the candidate committee, and the OEF. You indicated it is impossible for you to allocate the time spent in providing legal services among the officeholder, his candidate committee, and his OEF, and ask whether the candidate committee and/or the OEF may pay your legal fees.

In order for the candidate committee to pay part or all of these legal fees, the payment must be an expenditure as defined in section 6 of the Act, MCL 169.206, in the assistance of the nomination or election of the candidate. Section 49 of the Act, MCL 169.249, provides the OEF may pay legal fees, if they are incidental to the office and are not furthering the nomination or election of the officeholder. Consistent with the declaratory ruling issued to Ms. Kathy Wilbur on October 14, 1983, it would be proper for the candidate committee to pay for legal fees incurred by or on behalf of the OEF, but the OEF could not pay the candidate committee's fees.

Your legal services can be divided into three sections: the complaint against the candidate committee, the complaint against the OEF, and the proposed recall. In this particular instance, the complaint against the officeholder was directed equally to his actions as a candidate and an officeholder. Therefore, to the extent your legal services were on behalf of the officeholder as an individual, those fees can be divided equally between the candidate committee and the OEF.

A recall is an election as defined in section 5(1) of the Act, MCL 169.205. Section 3(1)(d) of the Act, MCL 169.203, indicates an officeholder subject to a recall vote is a candidate. Therefore, expenses attendant to opposing a

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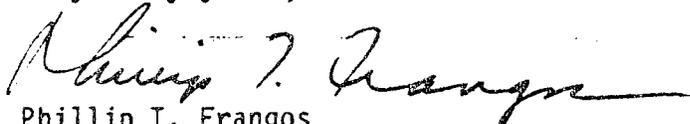
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recall are legitimate campaign expenditures which may be paid with candidate committee funds. Additionally, a recall is an election to determine whether an officeholder will remain in office. As such, use of OEF money would be improper because the OEF may not be used in an election in which the officeholder is involved.

In conclusion, all these legal expenses may be paid by the candidate committee, the OEF may pay expenses arising from the complaint against the OEF, and the OEF may not pay expenses arising from the complaint against the candidate committee or arising from the recall effort. If it is truly impossible to make a good faith estimate of the legal fees incurred because of the complaint against the OEF, then the OEF may not pay any of your fees.

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

Very truly yours,



Phillip T. Frangos  
Director  
Office of Hearings and Legislation

PTF/cw