

## MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN

SECRETARY OF STATE

STATE TREASURY BUILDING



*Colwell*  
 LANSING  
 MICHIGAN 48918

February 23, 1987

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 inquiry regarding the applicability of the Campaign Finance Act (the Act), 1976 PA 388, as amended, to an officeholder expense fund (OEF) which has no assets "but a debt that will not have been paid at the time the public official's term of office ends." You ask the following questions:

"1. Will additional OEF reports be required upon dissolution of the fund or annually if the fund remains in existence with an unpaid debt?

2. Is an OEF subject to the donation limits established in the Campaign Finance Act after the public official's term of office ends?"

OEF's are governed by the provisions of section 49 of the Act (MCL 169.249) and rule 39, 1982 AACS R159.39. Section 49 states:

"Sec. 49. (1) An elected public official may establish an officeholder expense fund. The fund may be used for expenses incidental to the person's office. The fund may not be used to make contributions and expenditures to further the nomination or election of that public official.

(2) The contributions and expenditures made pursuant to subsection (1) are not exempt from the contribution limitations of this act but any and all contributions and expenditures shall be recorded and shall be reported on forms provided by the secretary of state and filed not later than January 31 of each year and shall have a closing date of January 1 of that year.

(3) A person who knowingly violates this section is guilty of a misdemeanor and shall be punished by a fine of not more than \$1,000.00 or imprisoned for not more than 90 days, or both."

Rule 39 establishes certain record keeping and reporting requirements. A copy of the rule is attached for your convenience.

Mr. Richard D. McLellan  
February 23, 1987  
Page 2

There is nothing in section 49 or rule 39 relating to the termination of officeholder accounts. However, other entities created under the Act (committees and separate segregated funds) are terminated by filing dissolution statements. Section 24(5) of the Act provides:

"Sec. 24. (5) Upon the dissolution of a committee, a statement indicating dissolution shall be filed with the filing officials with whom the committee's statement of organization was filed. Dissolution of a committee shall be accomplished in accordance with rules promulgated by the secretary of state subject to section 15."

Rule 28, 1982 AACS R169.28, further describes the dissolution process:

"Rule 28. (1) A committee which determines it will no longer receive contributions or make expenditures may dissolve by filing a form prescribed by the secretary of state.

(2) A dissolution shall consist of a campaign statement that covers the period from the closing date of the last report filed to the date of dissolution and shall include a statement as to the disposition of residual funds.

(3) A committee may not dissolve if it has assets, outstanding debts, or unpaid late filing fees."

"Dissolution" is not defined anywhere in the Act. However, according to The American Heritage Dictionary of the English Language, "dissolution" means the "extinction of life" or the "annulment or termination of a formal or legal bond, tie, or contract." Black's Law Dictionary states that "dissolution" is the "act or process of dissolving; termination; winding up." Thus, dissolution may be viewed as a process through which an entity winds up its affairs. Under the Act, a committee or OEF can wind up its affairs only by disposing of its assets and paying outstanding debts and late filing fees, where applicable.

Section 24(5) and rule 28 do not specifically apply to OEF's. However, in an interpretive statement issued to Mr. Maurice Kelman, dated July 18, 1986, the Department stated:

"The only persons authorized to establish OEF's are elected public officials. An official who leaves office has no authority to maintain an officeholder account. Thus, a public official must dissolve his or her OEF upon leaving office . . . ."

Rule 39(5) provides that receipts to and disbursements from an OEF "shall be reported pursuant to the provisions of the act." Final activities which result in dissolution are reported in accordance with the provisions of section 24(5) and rule 28. It follows that dissolution of an OEF is accomplished by disposing of the OEF's assets, paying outstanding debts, and filing a dissolution statement.

Mr. Richard D. McLellan  
February 23, 1987  
Page 3

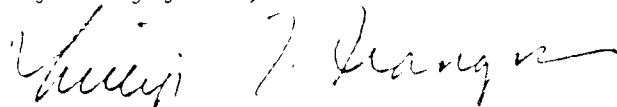
Turning to your first question, a public official is required to dissolve his or her OEF when the official's term of office expires. However, the dissolution process is not complete until the OEF's assets are dispersed, its debts are paid, and a dissolution statement is filed. During the winding up phase, an OEF remains subject to the Act's requirements. Thus, an OEF which is in the process of dissolving but has not yet filed an acceptable dissolution statement must continue to file annual disclosure statements pursuant to section 49(2) of the Act.

You next ask whether an OEF established by a retiring public official is subject to the Act's "donation limits" after the official's term of office ends. Pursuant to section 49(2), contributions to an OEF are not exempt from the contribution limitations established in section 52 of the Act (MCL 169.252). Section 52(1) states that a person other than an independent or political party committee shall not contribute, with respect to a single election, more than \$250 to a candidate for state representative, more than \$450 to a candidate for state senator, or more than \$1,700 to a candidate for other state elective offices. As stated previously, an OEF which has unpaid debts is governed by the Act's restrictions until the dissolution process is completed. Therefore, an OEF remains subject to the limitations found in section 52 after a public official's term of office has ended.

Finally, it should be noted that an OEF may only be used "for expenses incidental to the person's office." An ex-official can no longer incur expenses incidental to office. Accordingly, an OEF maintained during the dissolution process by a retired public official is limited to accepting donations and making disbursements for the purpose of satisfying debts incurred prior to the expiration of the official's term of office. Any new activity is strictly prohibited.

This response is informational only and does not constitute a declaratory ruling because none was requested.

Very truly yours,



Phillip T. Frangos  
Director  
Office of Hearings and Legislation

PTF/AC/bk

Attachment

Rule 39. (1) An elected officeholder shall indicate on the statement of organization, or on an amendment thereto, filed by the officeholder's candidate committee, the existence of an officeholder's expense fund.

(2) Money given specifically to an officeholder's expense fund shall be designated for that purpose by the donor.

(3) Money received by an officeholder's expense fund shall be kept in a depository account separate from the candidate committee's funds.

(4) The treasurer of an officeholder's expense fund shall keep records of all receipts to, and disbursements from, the fund for a period of 1 year longer than the officeholder's term of office.

(5) Receipts to, and disbursements from, the officeholder's expense fund shall be reported pursuant to the provisions of the act.

(6) The officeholder's expense fund report shall be signed by the treasurer of the fund and by the officeholder on the lines indicated following the verification statement.

(7) The officeholder's expense fund report shall be filed with the filing official designated by the act to receive the officeholder's candidate committee campaign statements.

(8) Money may be transferred from the candidate committee of an elected public official to the officeholder expense fund of that public official in accordance with the provisions of the act.