

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN

SECRETARY OF STATE

STATE TREASURY BUILDING



LANSING

MICHIGAN 48918

February 6, 1980

Mr. John W. Northrup
2622 Thomas Street
Flint, Michigan 48504

Dear Mr. Northrup:

This is in response to your request for a declaratory ruling concerning the applicability of the reporting requirements of the Campaign Finance Act ("the Act"), 1976 PA 388, as amended, to the John W. Northrup Election Committee.

You question whether an annual campaign statement must be filed by a committee when:

- 1) The committee filed a statement of organization pursuant to section 24(4) of the Act (MCLA §169.224(4)) indicating it did not expect to receive or expend more than \$500.00 per election;
- 2) The committee subsequently did actually receive or expend more than \$500.00 for one election;
- 3) The committee filed both preelection and postelection campaign statements reporting those receipts and expenditures; and
- 4) The committee neither received nor expended \$500.00 subsequent to the postelection campaign statement (and the election for which the \$500.00 limit was exceeded).

In answering your question, it will be helpful to analyze the filing requirements of the Act using the specific data you provided for illustrative purposes. On June 2, 1977 you filed a statement of organization pursuant to section 24(4) which states:

"(4) When filing a statement of organization a committee may indicate in a sworn statement that the committee does not expect for each election to receive an amount in excess of \$500.00 or expend an amount in excess of \$500.00."

Your preelection and postelection reporting requirements were governed by section 33(2) of the Act (MCLA 169.233(2)) which provides:

"(2) A candidate committee or a committee other than a candidate committee which files a sworn statement pursuant to section 24(4) need not file a campaign statement under subsection (1)(a) unless it did not receive or expend an amount in excess of \$500.00. If the committee did receive

or expend an amount in excess of \$500.00 on behalf of the campaign, the committee shall file a campaign statement under subsection (1)(b) stating that the committee did not receive or expend an amount in excess of \$500.00. If the committee receives or expends an amount in excess of \$500.00 during a period covered by a filing, the committee is then subject to the campaign filing requirements under this act."

The first sentence of this statutory provision indicates a committee with a reporting waiver need not file a preelection campaign statement unless more than \$500.00 was received or expended. The time period during which that amount must have been received or expended would appear to be the "for each election" referred to in section 24(4) above. The second sentence provides for the filing of a short postelection statement if not more than \$500.00 was received or expended "on behalf of the campaign." While campaign is not a term defined in the Act, it is defined in Rule 1(c) (1977 AACRS R169.1(c)):

"(c) 'Campaign' or 'candidate's campaign' means the candidate committee's activities for a specific election."

Therefore, "on behalf of the campaign" has the same meaning as "for each election." The third sentence of section 33(2) uses another period of time, "a period covered by a filing," to determine whether the committee becomes subject to the filing requirements of the Act. Section 25 of the Act (MCLA §169.225) defines that period as beginning the day after the closing date for the most recently filed statement, and ending on the closing date for the statement in question. The language, "a period covered by a filing," is inconsistent with the "for each election" and "on behalf of the campaign" language used in the rest of section 33(2) and in section 24(4). That is because, in its original form in 1976 PA 388, section 24(4) read:

"(4) A candidate when filing a statement of organization for a candidate committee may indicate in a sworn statement that the committee does not expect for each election to receive an amount in excess of \$500.00 or expend an amount in excess of \$500.00 on behalf of the candidate's campaign. A committee other than a candidate committee may indicate in a sworn statement that the committee does not expect in a calendar year to receive or expend an amount in excess of \$500.00."

When this section was amended to its present form by 1977 PA 311, section 33(2) was not changed to make the language consistent. The language "a period covered by a filing" referred in large part to the calendar year limitation in the original section 24(4). Since noncandidate committees are now limited to the period "for each election" instead of "in a calendar year," and the amendment to section 24(4) was made after the passage of the language in section 33(2), the time period in the third sentence of section 33(2) should be understood as being "for each election." This reconciles section 24(4) with section 33(2).

Since you exceeded your expected receipts or expenditures, you filed a preelection campaign statement on October 31, 1977 and a postelection campaign statement on December 9, 1977. Since you exceeded the \$500.00 limit for the election, you were required to make those two filings. Having once received or expended more than \$500.00 on one election, you were "then subject to the campaign filing requirements under this act."

This language indicates the section 24(4) reporting waiver is lost once the \$500.00 limitation per election is exceeded.

The next filing requirement of the Act was the annual campaign statement due June 30, 1978 pursuant to section 35 (MCLA §169.235). In view of section 33(2), you were required to make the annual filing unless you amended your statement of organization to reassert your expectation that more than \$500.00 would not be received or expended for each election. If you had amended your statement of organization on or before the due date of the annual campaign statement, you would have been exempted by section 35(4) from the annual campaign statement due on June 30, 1978. Section 35(4) provides:

"(4) A committee filing a sworn statement pursuant to section 24(4) need not file a statement in accordance with section 35(1). If a committee receives or expends more than \$500.00 during a period covered by a filing, the committee is then subject to the campaign filing requirements under this act."

This exemption does not apply if the reporting waiver has been lost by exceeding the limitation sometime after filing the sworn statement under section 24(4). The final sentence of section 35(4) is identical to the final sentence of section 33(2) and should be given the same reading. Thus had you refiled your statement of organization with a new sworn statement, you would not need to file an annual campaign statement until \$500.01 had been received or expended for one election.

It should be noted that in determining whether more than \$500.00 has been received for one election, rule 37 (1977 AACCS 169.37) must be taken into account:

"A committee which has filed with its statement of organization a sworn statement as provided in section 24(4) of the Act and which, following an election, has cash or cash equivalents on hand shall, for the next ensuing election, report the same as 'cash on hand at beginning of account period.' The 'cash on hand at beginning of accounting period' shall be a part of the aggregate receipts for the next ensuing election, but need not be further itemized."

Therefore, a surplus carried over from a prior election is "part of the aggregate receipts" for the next election and will be counted toward the \$500.00 limitation.

In conclusion, an annual campaign statement must be filed by a committee with a reporting waiver once the committee has received or expended more than \$500.00 for an election. In order to regain a lost reporting waiver, a committee must refile the sworn statement pursuant to section 24(4). Your committee was required to file an annual campaign statement on June 30, 1978. This is consistent with the instructions published on page five of the April, 1978 issue of BULLETIN, the informational publication prepared by the Department of State's Campaign Finance Reporting Section. Attached you will find a copy of this publication.

John W. Northrup
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This response constitutes a declaratory ruling concerning the applicability of the Act to the facts presented in your request.

Sincerely,



Richard H. Austin
Secretary of State

PHA:lr

Attachment

cc: Janet McKenzie
Deputy Clerk
Genesee County