

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE
STATE TREASURY BUILDING



LANSING
MICHIGAN 48918

48918-2110

August 4, 1993

Mr. D. Joseph Olson, Treasurer
Michigan Insurance Federation
Political Action Committee
645 W. Grand River
Howell, Michigan 48843

Dear Mr. Olson:

This is in response to your letter with respect to the application of the Michigan Campaign Finance Act, 1976 PA 388, as amended, (the "Act"). The letter asks the Department to rule that an independent committee may invest the funds held by the committee in investment vehicles other than the account it has in an official depository.

The Michigan Insurance Federation Political Action Committee (MIFPAC) maintains an account in a bank as its official depository. Your letter states:

"All contributions received by MIFPAC are deposited into its official depository,, with all expenditures made out of that account. Consequently, MIFPAC's procedures comply with the provisions of section 21(6) of The Act.

MIFPAC's practice of investing its funds in another investment vehicle is not inconsistent with The Act or the public policy it serves. -The legislature's obvious intent was to create a regulatory scheme under which committee funds could be tracked and monitored; not to place restrictions on the types of investment vehicles in which committees may choose to invest their funds."

Since the Act first became effective the Department has responded to a number of inquiries regarding the establishment and use of an official depository. Among the previous communications from this Department on the permissible investments for committee funds was a letter issued to James Damstra the then chair of the Kent County Republican Committee.

The Damstra letter concluded that a committee could invest its funds in a certificate of deposit in a financial institution. The Damstra letter stated:

"Section 21(3) [now section 21(6)] of the Act requires a committee

to designate an account in a financial institution in this state as its official depository for the purpose of depositing all contributions which it receives and for the purpose of making all expenditures. The Act mandates that all contributions and expenditures pass through one account at the designated official depository.

However, the Act in Section 28(1) contemplates that a committee may receive interest on an account consisting of funds belonging to the committee. The mere transfer of funds deposited in the official depository to an interest bearing account for investment purposes is not an 'expenditure' as defined in Section 6 of the Act. Thus, the Act would not preclude a transfer from the official depository account to an interest bearing account in any financial institution if the committee retains complete control of the funds at all times and full disclosure is made."

Subsequently, Senator Michael O'Brien requested an interpretive statement with respect to the acceptable investments that could be made with committee funds. In the interpretive statement issued to Senator O'Brien the Department concluded that committee funds must be held in a financial institution and that they could not be used to purchase shares of stock or invested in the commodities markets. A copy of the O'Brien interpretive statement is enclosed.

In 1987 the Department once again responded to an inquiry regarding the use of committee funds to make investments in holdings other than accounts in a financial institution. The interpretive statement issued to Tom Brakenrich of the Michigan Taxpayers for Good Government quoted the previous letters to Damstra and O'Brien and reached the same conclusion. A copy of that letter is also enclosed.

In 1989 the Act was extensively amended. One of the sections of the Act that was substantially changed was section 21. It was modified to permit out of state committees to have a treasurer and a depository outside of Michigan. However, the amendments did not alter the requirement that a Michigan based committee such as MIFPAC shall have an account in a financial institution as its official depository.

Contacts by the staff of this Department with the Financial Institutions Bureau in the Department of Commerce indicate that the general understanding is that a financial institution is a federal or state chartered bank, savings and loan association or credit union.

For example, in MCL 129.122, the statute prescribing appropriate depositories for surplus funds of local governments the term financial institution is defined as follows:

"(b) 'Financial institution' means a bank, savings and loan association, or credit union which is insured by an agency or

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instrumentality of the federal government and which is eligible to be a depository of surplus funds belonging to the state under sections 5 and 6 of Act No. 105 of the Public Acts of 1855, as amended, being sections 21.145 and 21.146 of the Michigan Compiled Laws."

By limiting committees to investing in accounts in financial institutions the legislation is insuring that committee funds are available to be used for the purpose they have been raised, i.e. supporting or opposing candidates or ballot questions. The emphasis is on preserving and protecting contributor's funds so that these funds are available for use in the political process.

Pursuant to the Act a committee is required to hold assets only in a bank, savings and loan association or credit union. A committee is precluded from holding its assets in another investment vehicle and using an account in a financial institution for the purpose of depositing contributions and making expenditures.

This letter is informational only and does not constitute a declaratory ruling. The request does not include an actual statement of facts necessary to form the basis for a declaratory ruling.

Very truly yours,



Phillip T. Frangos
Deputy Secretary of State
State Services

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