MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

January 3, 1984

L. Brooks Patterson
Prosecuting Attorney
Courthouse Tower
Pontiac, Michigan 48053

Dear Mr. Patterson:

In your letter of November 17, 1983, you request that the Secretary of State issue a declaratory ruling on the question of whether the contribution limits of section 52 of the Campaign Finance Act, 1976 PA 388, as amended (the "Act"), are applicable to contributions made to an officeholder who is the subject of a recall election.

Your request was made subsequent to the dismissal of your action against Senator Mastin's candidate committee in Oakland County Circuit Court. The dismissal was based on your failure to seek a declaratory ruling from the Secretary of State prior to seeking declaratory relief from the Court.

Specifically you state the following:

> "I am requesting that you specifically rule whether Section 52 of the Campaign Finance Act applies to a candidate committee of an office holder subject to a recall vote. I am sure that you are aware of the October 7, 1983 letter from Mr. Philip T. Frangos, Director of Hearings and Legislation for your office, which advises that the provisions of Section 52 do not apply to a candidate for recall. I disagree with that ruling and request that you reconsider it and issue a formal declaratory ruling on that issue."

This review of the matter indicates that the letter issued by Phillip T. Frangos October 7, 1983, reaches the correct conclusion with respect to the applicability of section 52 of the Act (MCL 169.252). The basis for concluding that contributors are not bound by the contribution limits of section 52 is set forth in the letter as follows:

"Pursuant to section 12(2) of the Act (MCL 169.212), a member of the Legislature is a candidate for 'state elective office.' However, 'elective office' is defined in section 5(2) of the Act (MCL 169.205) as 'a public office filled by an election, except for federal offices.' Since a recall vote does not fill a public office, it must be concluded that the candidate committee of an officeholder subject to a recall vote is not a 'candidate commitee of a candidate for state elective office.' Therefore, section 52 does not apply to contributions received by an officeholder who is being recalled, provided the contributions are designated for a recall election.

In an election to fill an office, the opponents are two or more candidate committees operating under the same restrictions. For example, in a state senatorial election, contributions to each candidate are limited by section 52(1) to $450.00, unless made by an independent commitee, political party committee, or the state central committee of a political party. Contributions from these committees, however, are subject to other restrictions.

Proponents of a recall measure are required to file a statement of organization as a political committee. Contributions to political committees are not subject to limitation under the Act. If section 52 were to apply to contributions received by the candidate committee of a state elective officeholder facing a recall, the opponents in a recall election would be operating under different sets of rules. Such an interpretation would undermine the open and fair election policy otherwise promoted by the Act by allowing the political committee advocating the recall to engage in unlimited fundraising, while severely limiting the officeholder's ability to raise money. This result, which is inconsistent with the Act's purpose, is both absurd and unfair and could not have been intended by the Legislature. Consequently, section 52 cannot be construed as applying to contributions received by the candidate committee of a state elective officeholder facing a recall election."

One of the points made in the material submitted along with the request for a declaratory ruling is that the previous letter ignores section 5(1) of the Act (MCL 169.205). That section defines the term election. Recall elections are specifically included in the definition. This provision was not ignored in drafting the previous letter. It is clear that a recall vote is an election pursuant to the Act. As a result committees which participate in recall elections are required to meet all the registrations and disclosure requirements of the Act. It is not inconsistent to conclude that even though a recall vote is an election that the provisions of section 52 are not applicable since the officeholder who is the subject of the recall vote is not a "candidate for state elective office" which is a prerequisite to the application of the contribution limits set forth in section 52.

In upholding the contribution limits established in the Federal Election Campaign Act, the U.S. Supreme Court in Buckley v Valeo, 424 US 1 (1976) pointed

to the fact that the contribution limits applied equally to incumbents and challengers as follows:

> "Apart from these First Amendment concerns, appellants argue that the contribution limitations work such an invidious discrimination between incumbents and challengers that the statutory provisions must be declared unconstitutional on their face. In considering this contention, it is important at the outset to note that the Act applies the same limitations on contributions to all candidates regardless of their present occupations, ideological views, or party affiliations. Absent record evidence of invidious discrimination against challengers as a class, a court should generally be hesitant to invalidate legislation which on its face imposes evenhanded restrictions." (424 US 1 at 31)

The Secretary of State has an obligation to administer this law in a constitutional fashion and to implement the statute so as to avoid absurd results.

To implement the statute as you have suggested would treat contributors to the proponents of a recall differently than contributors to the committee of the state official who is the subject of the recall. Such a construction would subject the Act to a challenge on constitutional grounds. In addition it would create a result that clearly could not have been intended by the Legislature.

This response is a declaratory ruling as provided for in the Act, the Rules and the Michigan Administrative Procedures Act.

Very truly yours,

Richard H. Austin
Secretary of State

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