

## MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING


 LANSING  
 MICHIGAN 48918

February 20, 1987

Mr. Kimbal R. Smith III  
 Atrium Center, Suite B  
 215 South Washington Square  
 Lansing, Michigan 48933

Dear Mr. Smith:

This is in response to your request for an interpretation concerning the applicability of the Campaign Finance Act ("the Act"), 1976 PA 338, as amended, to the campaign finance activities of a certain non-profit corporation.

The Michigan Institute for Political Action ("MIPA") is a non-profit corporation. You state:

"MIPA intends to operate as an independent committee and as a corporation organized for political purposes. The corporation was incorporated solely for the liability purposes and is limited by its Articles to engaging in lawful political activities."

You ask whether MIPA may register and operate as an independent committee pursuant to the Act.

Under the provisions of section 54(1) of the Act (MCL 169.254), a corporation is prohibited from making a contribution or expenditure or providing personal services, unless the corporation is excepted under sections 54(2) or (3) of the Act, or the corporation operates through a separate segregated fund in accordance with the provisions of section 55 of the Act (MCL 169.255).

Section 54(2) prohibits a corporation from making a contribution or expenditure or providing personal services, but excepts "corporations formed for political purposes" from its prohibition. (Emphasis added.)

Ever since corporations were first prohibited from making expenditures or contributions in Michigan elections by enactment of the corrupt practices act, 1913 PA 109, an exception was made for "corporations formed for political purposes". Section 14 of the corrupt practices act; 1 Comp. Laws 1915, §3841.

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Section 14 of the corrupt practices act was reenacted as section 919 of the Michigan election law, 1954 PA 116, §919; 1970 CL 168.919, which was eventually replaced by section 54 of the Act. Each of these provisions prohibited corporate involvement in election financing, but provided an exception for "corporations formed for political purposes". Although none of the statutory enactments or reenactments has explicitly defined the term, it must be kept clearly in mind that the subject matter of these laws is election campaign financing, and the prohibitions and exceptions of these laws must be interpreted within that context.

This response will consider whether MIPA is excepted from the prohibitions of section 54(1) of the Act as "a corporation formed for political purposes" as that term is used in section 54(2) of the Act. However, although it is presumed from your letter that MIPA does not intend to operate through a separate segregated fund, as provided in section 55 of the Act, consideration of that section will shed light on the meaning of the phrase "political purposes" as used in the Act.

Both sections 54 and 55 use the term "political purposes". Section 55 presents a recent innovation in campaign financing while section 54 presents a more traditional approach. The traditional exception (§54) did not define the term "political purposes"; however, the more recent exception to the prohibition against corporate involvement, allowing the use of separate segregated funds pursuant to section 55, manifests a clear indication of what the legislature intended by the term "political purposes".

Section 55(1) of the Act provides for corporate participation in election financing by means of a separate segregated fund. Pursuant to this section, a corporation

". . . may make an expenditure for the establishment and administration and solicitation of contributions to a separate segregated fund to be used for political purposes. A fund established under this section shall be limited to making contributions to, and expenditures on behalf of . . . committees." (Emphasis added.)

The statutory language of section 55(1) leads to the conclusion that "political purposes" as used in this section means the making of contributions and expenditures pursuant to the Act.

Such a limited interpretation of the term "political purposes" is reinforced by the long statutory history of excluding corporate involvement in campaign financing, except for those organizations whose only purpose and function is to make campaign contributions and expenditures and which incorporate for liability purposes only. The exception is meant to afford the corporate protection of limited liability to an organization whose only purpose and function is to make campaign contribution and expenditures.

Sections 54 and 55 are related by subject matter and proximity. Both sections deal with corporate involvement in election campaign financing. The term "political purposes" is a critical element in both sections and must be interpreted to mean the same thing in each section. There is no reason to suppose that this term should be given a different meaning in each section.

In fact, the opposite is true. Sections 54 and 55 provide complementary means of providing the corporate protection of limited liability to persons involved in election campaign financing. Separate segregated funds under section 55 are afforded this protection by virtue of being a part of the corporation which establishes it. Other organizations whose only purpose and function, like separate segregated funds, is to make contributions and expenditures under the Act, may incorporate for liability purposes only within the exception of section 54.

In a letter to Richard D. McLellan dated May 19, 1986, it was stated:

"In order to be deemed 'a corporation formed for political purposes' under the Act, two conditions must be met: (1) the organization must be incorporated for liability purposes only, and (2) the organization must be created solely to engage in political activities, i.e., the organization must be in its entirety a committee under the Act." (Emphasis added.)

"Committee" is defined in section 3(4) of the Act (MCL 169.203):

"(4) 'Committee' means a person who receives contributions or makes expenditures for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate, or the qualification, passage, or defeat of a ballot question, if contributions received total \$200.00 or more in a calendar year or expenditures made total \$200.00 or more in a calendar year. An individual, other than a candidate, shall not constitute a committee."

An organization which is in its entirety a committee under the Act is one whose only function is to receive "contributions" or make "expenditures" pursuant to the Act.

Contribution is defined in section 4(1) of the Act (MCL 169.204), which states:

"Sec. 4. (1) 'Contribution' means a payment, gift, subscription, assessment, expenditure, contract, payment for services, dues, advance, forbearance, loan, donation, pledge or promise of money or anything of ascertainable monetary value, whether or not conditional or legally enforceable, or a transfer of anything of ascertainable monetary value to a person, made for the purpose of influencing the nomination or election of a candidate, or for the qualification, passage, or defeat of a ballot question."

Section 4(3) of the Act provides that contribution does not include: 1) uncompensated volunteer personal services, or unreimbursed travel costs voluntarily incurred (section 4(3)(a) of the Act); 2) amounts received which were previously reported as a contribution (section 4(3)(b) of the Act), and 3) food and beverage under \$50.00 donated by an individual (section 4(3)(c) of the Act).

Section 4(3) refers to amounts provided for the purpose of influencing elections because amounts not provided for this purpose would not meet the definition of a contribution and would not require an exception. This becomes even more clear when we consider the exclusions under section 6 of the act (below).

Consideration of section 4 of the Act leads to the conclusion that amounts provided under sections 4(3)(a), (b) and (c) of the Act are contributions, but are not subject to the reporting and limitation provisions of the Act. As a matter of fact, amounts received under section 4(3)(b) of the Act must have already been reported and this section merely prevents double reporting.

Expenditure is defined in section 6 of the Act (MCL 169.206), which provides in part:

"Sec. 6. (1) 'Expenditure' means a payment, donation, loan, pledge, or promise of payment of money or anything of ascertainable monetary value for goods, materials, services, or facilities in assistance of, or in opposition to, the nomination or election of a candidate, or the qualification, passage, or defeat of a ballot question."

Section 6(3) of the Act provides that expenditure does not include: 1) amounts paid which were previously reported as an expenditure (section 6(3)(a) of the Act); 2) an expenditure for communication with the person's paid members or shareholders (section 6(3)(b) of the Act); 3) an expenditure for communication which does not support a candidate or ballot question by name or clear inference, or an expenditure for establishment, administration or sollicitaion of contribution to a fund or independent committee; 4) an expenditure by a media company in the regular course of its publication or broadcasting, and 5) an expenditure for nonpartisan voter registration and get-out-the-vote activities. Here the Legislature chose to use the word expenditure as shorthand rather than reiterate the entire definition. The purpose is to make clear that it is referring to amounts expended for the purpose of influencing elections.

In order to be deemed "a corporation formed for political purposes", an organization must be incorporated for liability purposes only, and its only function must be to receive "contributions" or make "expenditures" for the purpose of influencing an election. For purposes of a corporation "formed for political purposes", contributions or expenditures are amounts received or expended which are included within the definitions of sections 6(1) and 4(1) of the Act including amounts received or expended which are specifically excluded under sections 6(3) and 4(3) of the Act.

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Article II of MIPA's Articles of Incorporation states:

"The purpose of the corporation is to organize the corporation's members for liability purposes only in order to engage in political activities, including:

1. To receive contributions and make expenditures in support of or in opposition to the nomination or election of individuals to public office or to influence the passage or defeat of ballot question proposals;
2. To advocate and speak out on political issues;
3. To participate in political party activities;
4. To participate in non-partisan voter registration and get-out-the-vote campaigns; and
5. To promote the cause of democracy by opposing excessive governmental regulation of citizen political activity."

As stated in a letter to Richard D. McLellan dated October 22, 1985:

"In order to be deemed a corporation 'formed for political purposes' under the Act, such corporation must be formed solely for political purposes and must be incorporated for liability purposes only, as shown not only by its articles of incorporation or by-laws, but also by the manner in which the corporate enterprise is conducted." (Emphasis added.)

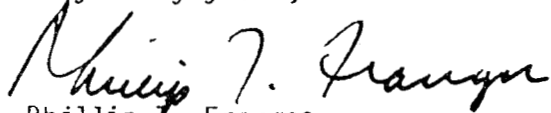
The only purpose and function of a corporation "formed for political purposes" as contemplated by the Act is reflected in part 1 of Article II. The purposes enumerated in parts 2 through 5 of Article II are acceptable only in so far as they are coincidental with part 1. That is to say, parts 2 through 5 may be pursued only by receiving contributions or making expenditures. If in receiving contributions and making expenditures, MIPA coincidentally pursues the purposes of parts 2 through 5, this does not violate the concept of a corporation formed for political purposes. However, if MIPA pursues part 5 by lobbying, this would not be consistent with the concept of a corporation formed for political purposes.

Since your letter fails to disclose any detailed information describing the manner in which MIPA conducts its operations, it is not possible to determine whether MIPA conducts its corporate enterprise in a manner consistent with a corporation formed for political purposes. Obviously, additional information must be provided before a more specific response can be rendered.

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

Very truly yours,

A handwritten signature in cursive script, reading "Phillip T. Frangos". The signature is written in dark ink and is positioned above the typed name.

Phillip T. Frangos  
Director  
Office of Hearings and Legislation

PTF/bk