

October 14, 1983



RICHARD H. AUSTIN
SECRETARY OF STATE

MICHIGAN
DEPARTMENT
OF STATE

LANSING, MICHIGAN 48918

Ms. Kathy Wilbur, Treasurer
Sederburg for Senate Committee
2819 Southwood
East Lansing, Michigan 48823

Dear Ms. Wilbur:

This is in response to your request for a declaratory ruling concerning the applicability of the Campaign Finance Act, 1976 PA 388, as amended (the "Act"), to the non-campaign use of objects purchased with campaign funds.

You indicate you are the treasurer of the Sederburg for Senate Committee, the candidate committee of William A. Sederburg, (the "Committee") which purchased a word processor in 1979 and replaced the word processor with a micro-computer in 1983. You indicate the Committee borrowed the purchase price of the word processor from a bank and repaid the loan with campaign funds. You further state these items have been used for the purpose of influencing or attempting to influence the actions of voters relating to the nomination and election of Senator Sederburg. However, the computer is not being used on a full time basis for the campaign activities of the Committee. The Committee is proposing to rent idle computer time to other persons with the rental fees being deposited in the Committee's account and reported on campaign finance statements as "other receipts, miscellaneous" with a description of the source and purpose of the receipt. The rental revenue will be reported to the Internal Revenue Service and other appropriate governmental authorities.

In addition, you are proposing to have the computer transmit and receive messages to and from Senator Sederburg's legislative office via a computer bulletin board service. In a telephone conversation Senator Sederburg indicated a computer bulletin board service does operate much like a bulletin board. People who belong to the service may call up the "central computer" and leave a message either for everyone in general or for another particular member of the service. Members may also contact the central computer and receive messages addressed to them or to the general membership. For example, a constituent might leave Senator Sederburg a message suggesting he vote for or against a particular bill. After the vote, the Senator could put a message in to the constituent explaining his vote. Additionally, the Senator could periodically post a legislative newsletter into the computer bulletin board which would be retransmitted to all members who ask for it. Senator Sederburg also indicated that he could transfer and receive messages for other Lansing area legislators and do this for free or for a fee. The cost of non-candidate campaign related communications would be reimbursed to the Committee by Senator Sederburg or his officeholder expense fund (the "OEF"). Relating to this set of facts are some assertions you have made which are set out below. These assertions are responded to as if they were questions.

1. "The Committee may own computer equipment including equipment permitting communication with a computer bulletin board service where the equipment is used, in part, in assistance of the nomination and election of William A. Sederburg to the Michigan State Senate and, in part, in constituent communications."

This assertion raises two issues, the first being whether the Committee may own computer equipment which is used in the assistance of the nomination and election of Senator Sederburg. Section 6 of the Act (MCL 169.206) expressly states in subsection (1): "'Expenditures' means a payment...for goods...in assistance of...the nomination or election of a candidate..." Purchase of a computer which is used to further the nomination or election of the candidate is an "expenditure" for that candidate's committee. Therefore, the Committee may own computer equipment as long as the equipment is used to further the nomination or election of Senator Sederburg.

The second issue raised by your first assertion is whether the Committee may own computer equipment which is used in constituent communications. For the purposes of this answer it will be assumed constituent communications which do not assist the nomination and election of the candidate are being made incidental to the candidate's office of Senator. Section 49 of the Act (MCL 169.249) provides an elected public official may set up an officeholder expense fund which may pay for expenses incidental to the office, but may not be used to further the nomination or election of the officeholder. While the officeholder expense fund may not contribute to the officeholder's candidate committee, the candidate committee may transfer funds into the officeholder expense fund. Rule 39(8) (1982 AACCS R169.39) states:

"(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."

Neither the Act nor the rules specifically authorizes a candidate committee to transfer goods or services to an officeholder expense fund, but there is nothing to prohibit the Committee from transferring unlimited funds to the OEF. Since the Committee could transfer sufficient funds to the OEF to allow it to purchase a computer, the Committee may purchase the computer, then transfer the computer or a computer service directly to the OEF. This is consistent with the approach taken in the Act which recognizes candidacy and officeholding are inextricably intertwined.

Whether or not the computer may be used to communicate with the computer bulletin board service depends upon whether the communication is in assistance of the nomination or election of the candidate or is incidental to the office of an officeholder. If the former, the costs are Committee expenditures; if the latter, they are in-kind contributions to the OEF. It should be noted that transfers can go only from the candidate committee to the officeholder expense fund; they may not go the other direction because to do so would result in the officeholder expense fund making contributions or expenditures to further the nomination or election of the officeholder. Therefore, the OEF could not purchase a computer and make communications which further the nomination or election of Senator Sederburg.

To summarize, the Committee may purchase a computer and related equipment which are used in the assistance of the nomination or election of Senator Sederburg or are used incidental to his office as Senator. The computer equipment may be used for constituent communications if those communications either assist Senator Sederburg's nomination or election or are incidental to his office.

2. "The Committee may sell the computer when the committee determines it is no longer needed for committee purposes."

This is correct. The Committee may sell its assets for fair market value or may trade them in on replacement assets, but, as discussed in the answer to question 5 below, the Committee may not sell the computer to the OEF.

3. "The Committee may rent the computer to other persons when idle time is available and the computer is not required for Committee campaign purposes. The rental of the computer may be to any of the following persons:

- A. Other candidate committees;
- B. Private corporations or proprietorships;
- C. Political party committees;
- D. Officeholder expense funds;
- E. Public officials."

4. "Rental charges for the computer may be above or below cost for all persons other than other candidate committees and the rental charges for candidate committees shall be equivalent to the amount usually received in the open market for rental of similar equipment."

Contrary to your assertion, it is impermissible for Committee funds to be expended or assets used other than to further the nomination or election of the candidate, except as provided by the Act and rules. The only exceptions are in section 49 and rule 39(8) providing for transfers to officeholder expense funds and section 45 of the Act (MCL 169.245) allowing transfers of unexpended funds to another candidate committee of the same candidate, a political party committee, a tax exempt charitable institution, or the contributors of the funds.

In a May 29, 1979, declaratory ruling to Senator Mitch Irwin the Department considered this question and, reading the Act as a whole, including the title, section 6, section 45, section 21(3) of the Act (MCL 169.221), and section 26(b) of the Act (MCL 169.226), declared:

"These provisions of the Act reinforce the conclusion that campaign money must be used to influence a campaign. The title makes it clear that one of the purposes of the Act is to restrict expenditures. The language in the title indicates an 'anything goes' policy with regard to spending is not contemplated statutorily. Section 21(3), which requires one account for deposit of all campaign monies to be used for making all expenditures, and Section 26(b), which requires the reporting of all expenditures together constrict the use of campaign

October 14, 1983

Page 4

funds for purposes which influence elections. It is particularly noteworthy that while the Act requires the reporting of 'receipts' such as interest paid by a bank for campaign funds on deposit, thereby acknowledging funds not given for the purpose of influencing elections, the Act requires only the reporting of 'expenditures', i.e., monies used to influence an election, rather than 'disbursements', a term which includes monies used for purposes other than influencing an election.

In order to give full meaning to all the statutory provisions concerning permissible use of campaign funds, it must be concluded a candidate must use campaign funds for the purpose of influencing an election."

None of the legislative changes made in the Act since 1979 would cause the Department to view the question differently now. Candidate committees have but one purpose -- to achieve the candidate's nomination, election, or reelection. Candidate committees are not businesses and, except for interest earned by funds deposited in an interest bearing account or certificate of deposit, they do not generate income.

If Senator Sederburg desires to do what is proposed in questions 3 and 4, he may purchase the computer from the Committee (or obtain another computer). As the candidate he could make unlimited in-kind contributions to the Committee when the computer is used to further his nomination or election and to the OEF when it is used in a manner incidental to his office as Senator. In addition, Senator Sederburg could use the computer for his personal affairs and could open a sole proprietorship to sell computer services to other candidates and the public at large. (If he wishes to make unlimited contributions to the Committee or the OEF, he could not form a partnership with someone who is not in his "immediate family" as defined in section 8(1) of the Act (MCL 168.208). Of course, incorporating would prohibit contributions to any candidate committee, including his own.) Should Senator Sederburg give or sell computer services below fair market value to other candidate committees or other officeholder expense funds, those would be contributions subject to the limits in section 52 of the Act (MCL 169.252).

In short, a computer may be purchased with campaign funds and used exclusively for campaign and officeholder purposes or the computer can be purchased by Senator Sederburg and used for a variety of purposes.

5. "The Committee may make available to William A. Sederburg or his officeholder expense fund, with reimbursement for costs, the computer for use in non-candidate campaign related communication with a computer bulletin board service."

As indicated above, the Committee may make the computer available to the OEF without charge for uses which are incidental to Senator Sederburg's office. To the extent that William A. Sederburg is different from the OEF, the computer may not be made available to him for any price (other than outright purchase of the equipment for not less than fair market value).

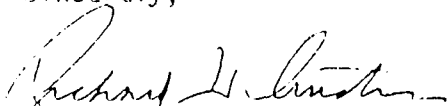
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The final issue raised with this assertion is whether the OEF may pay the Committee either the Committee's costs or fair market value for the computer services it receives. It would be improper for the OEF to purchase a service or asset from the Committee because that is not an arms length transaction and the OEF could use that mechanism to transfer funds to the Committee. The funds could then be used for campaigning by the Committee, resulting in a violation of section 49 by the OEF.

In conclusion, the Campaign Finance Act contemplates that campaign funds will be used for campaigning and officeholding. The funds are raised for those purposes and contributors certainly believe their contributions will be used to support the candidate's election efforts. The authors of the Act never expected candidate committees to become businesses, earning money with contributed capital. However, the Act does not place an express penalty on this prohibited conduct except regarding the candidate to candidate prohibition in section 44(2) or the corporate to candidate prohibition in section 54(1). The failure to provide a penalty for the sale of computer services to entities other than candidates and corporations does not mean they are permitted.

This response constitutes a declaratory ruling concerning the applicability of the Act to the facts set out above.

Sincerely,



Richard H. Austin
Secretary of State