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SECRETARY OF STATE

MICHIGAN
DEPARTMENT
OF STATE

LANSING, MICHIGAN 48918

October 22, 1992

The Honorable Howard Wolpe
Wolpe for Congress
P.O. Box 751
Kalamazoo, Michigan 49005

Dear Congressman Wolpe:

This is in response to your request for a declaratory ruling under the Michigan Campaign Finance Act (the Act), 1976 PA 388, as amended.

Specifically, you indicate that you are contemplating a transfer of funds from your congressional campaign committee to a committee organized to support your candidacy for the office of governor. You ask whether the Act permits such a transfer and, if so, whether the transfer is subject to any conditions or restrictions.

Transfers between candidate committees are governed by section 45(1) of the Act [MCL 169.245(1)]. This section states:

"Sec. 45. (1) A person may transfer any unexpended funds from 1 candidate committee to another candidate committee of that person if the contribution limits prescribed in section 52 for the candidate committee receiving the funds are equal to or greater than the contribution limits for the candidate committee transferring the funds and if the candidate committees are simultaneously held by the same person. The funds being transferred shall not be considered a qualifying contribution regardless of the amount of the individual contribution being transferred."

In a 1978 letter to Mr. Phillip J. Arthurhultz, the Department indicated that a candidate committee for state senate could not receive a transfer of funds from a congressional campaign committee because the contribution limits for the federal committee exceeded the contribution limits for the state committee. Similarly, a gubernatorial candidate committee cannot accept a transfer unless the contribution limits for the gubernatorial committee are equal to or greater than the contribution limits for the congressional campaign committee.

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Prior to 1989, contributions to both state and federal committees were limited on a per election basis. For the office of governor, a person other than an independent committee could contribute a maximum of \$1,700 for the primary election and \$1,700 for the general election. Independent committees, which are similar to federal multi-candidate committees, could contribute ten times that amount, or \$17,000, for each election.

In 1989, section 52 of the Act [MCL 169.252] was amended to require contribution limits to be calculated with respect to an election cycle. "Election cycle" is defined as "the period beginning the day following the last general election in which the office appeared on the ballot and ending on the day of the next general election in which the office next appears on the ballot." At the same time, the dollar amount of the contribution limit for individuals was doubled. As a result, a person who is not an independent committee can now contribute a total of \$3,400 to a candidate for governor at any time during the four year cycle between gubernatorial candidate elections, and an independent committee can contribute a maximum of \$34,000 over the same period. The maximum contribution can be directed solely towards the primary election, solely towards the general election or spread out equally over the four year period.

Contribution limits for federal campaign committees continue to be calculated on a per election basis. Pursuant to section 315 of the Federal Election Campaign Act of 1971 [2 USC 441a], contributions to congressional campaign committees are limited to \$1,000 for each election if the contributor is not a multi-candidate committee. For multi-candidate committees, the limit is \$5,000 for each election. If calculated over the election cycle for the United States House of Representatives, the corresponding contribution limits would be \$2,000 and \$10,000.

When the contribution limits for gubernatorial candidate committees and congressional campaign committees are compared on either a per election or election cycle basis, the contribution limits for the gubernatorial committee are greater than the contribution limits prescribed in the Federal Election Campaign Act for federal campaign committees. Therefore, in answer to your first question, section 45(1) of the Michigan Act does not preclude you from transferring funds raised by your congressional campaign committee to a candidate committee organized to support your candidacy for the office of Governor, provided the federal and state committees are simultaneously held.

You also ask whether there are any conditions or restrictions that apply to such a transfer. The last sentence of section 45(1) states that funds transferred to a gubernatorial candidate committee "shall not be considered a qualifying contribution regardless of the amount of the individual contribution being transferred."

A "qualifying contribution" is money raised by a candidate for governor for purposes of receiving matching funds from the state campaign fund.

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"Qualifying contribution" is defined in section 12(1) of the Act [MCL 169.212(1)] as follows:

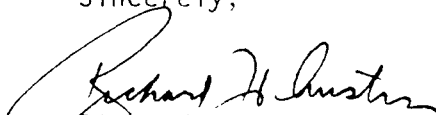
"Sec. 12. (1) "Qualifying contribution" means a contribution of money made by a written instrument by a person other than the candidate or the candidate's immediate family, to the candidate committee of a candidate for the office of governor which is \$100.00 or less and made after April 1 of the year preceding a year in which a governor is to be elected. Not more than \$100.00 of a person's total aggregate contribution may be used as a qualifying contribution in any calendar year. Qualifying contribution does not include a subscription, loan, advance, deposit of money, in-kind contribution or expenditure, or anything else of value except as prescribed in this act."

A candidate becomes eligible to receive money from the state campaign fund by indicating in a statement of organization filed for a candidate committee for the office of governor that the candidate intends to seek qualifying contributions and accept public funding for his or her campaign [MCL 169.262]. Pursuant to section 45(1), contributions made to your congressional campaign committee that are transferred to a gubernatorial candidate committee are not considered qualifying contributions and cannot be matched with public funds from the state campaign account.

It should be noted that if a candidate chooses to accept public funds, the candidate's expenditures for each election are limited to \$1,500,000, as stated in section 67 of the Act [MCL 169.267]. (A separate \$300,000 limit applies to expenditures for the solicitation of contributions.) "Expenditure" is defined in section 6(1) of the Act [MCL 169.206(1)] as the payment of anything of value in assistance of or in opposition to the nomination or election of a candidate. This definition is broad enough to include testing the water expenditures. Therefore, if you accept public funds, money spent before you have formally declared your candidacy that assists your nomination or election to the office of governor will be included when calculating the \$1,500,000 expenditure limitation for the 1994 primary election.

This response is a declaratory ruling concerning the specific facts and questions presented.

Sincerely,


Richard H. Austin