MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

July 7, 1978

Mr. William S. Everard
Route #1
Wolverine, Michigan 49799

Dear Mr. Everard:

This is in response to your three separate requests of May 2, 1978, concerning the applicability of the identification requirements of the Campaign Finance Act ("the Act"), P.A. 388 of 1976, as amended, to various advertising specialties.

The first inquiry concerns the necessity of an identification on plastic discs commonly sold under the trade name of Frisbee. You state that copy is silk-screened on these discs and, therefore, small type sizes do not reproduce well. Further, imprint area is restricted to the center portion and ranges from 4" to 4 1/2" in diameter, depending on the size of the disc selected. According to the catalog sheet included in your request, three diameter sizes are offered - 7 1/4", 8 3/4", and 9 1/4". In addition, you mention an identification would force copy into curved lettering which increases the cost of the article.

Your second request involves cloth pot holders, 6" x 6" and 7" x 7", for which you state an identification would appear illegible because of the problem of printing on the rough surface of the cloth. You indicate in order for the identification to be readable, large size type would be necessary. Space limitations serve to make the use of large type impractical.

Your third request involves two samples of political advertising cards. One sample, which measures 3 3/4" x 2 1/4", has the picture of a candidate on the front side and the name and various campaign positions of the candidate printed on the reverse side. The second sample, similar in size, opens in the middle to display a monthly calendar of 1978.

Section 47 of the Act (MCLA § 169.247) requires printed matter having reference to a candidate to bear the name and address of the person paying for the matter. The provision states, however, that rules may be promulgated to exempt items from the required identification. Rule 169.36 of the General Rules, promulgated by the Secretary of State pursuant to authority conferred by Section 15 of the Act (MCLA § 169.215) and having the effect of law, exempts campaign items, the size of which makes it unreasonable to add an identification.

In its role as principal administrator of the Act, the Department determines it would be unreasonable to require printing of an identification on plastic discs of the type indicated in your request in instances where the orinting is done by a silk-screened process. Similarly, cloth pot holders of the type presented in your second inquiry are also exempted from the identification requirements for the same reason.

However, the political advertising cards described in your third query must bear the identification required by the Act. It is not unreasonable in this instance to require the printing of the identification.

Sincerely,

Richard H. Austin
Secretary of State

RHA:pk

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

July 7, 1978

Honorable Dana Wilson
State Representative
State Capitol
Lansing, Michigan 48909

Dear Representative Wilson:

This is in response to your request concerning the applicability of the identification requirements of the Campaign Finance Act ("the Act"), P.A. 388 of 1976, as amended, to 12-inch wooden rulers.

You state you are planning to use 12-inch wooden rulers as a novelty item in your primary election campaign. Further, you indicate it would be extremely difficult to put an identification on the ruler and higher costs would be incurred.

You ask whether rulers may be exempted from the identification requirements of Section 47 (MCLA § 169.247), and Rule 169.36 of the rules promulgated to implemen the Act.

Section 47 states the name and address of the person paying for printed material referring to an election, candidate, or ballot question must include the name and address of the person paying for the matter. Rule 36 states buttons, balloons, a similar campaign items, the size of which makes it unreasonable to add an identification, are exempted from those requirements.

The Department finds it would be unreasonable to demand the identification requirements on a 12-inch wooden ruler. Consequently, you need not print an identificat on the wooden rulers in question.

Sincerely,

Richard H. Austin
Secretary of State

RHA:pk

STATE OF MICHIGAN

FRANK J. KELLEY, ATTORNEY GENERAL

Opinion No. 5344

July 20, 1978

ELECTIONS:

Corporate contributions

Establishment of a 'separate segregated fund' by a corporation

CAMPAIGN FINANCE ACT:

Establishment of a 'separate segregated fund' by a corporation

A 'separate segregated fund' established by a corporation pursuant to section 55 of the campaign finance act is a committee that is required to comply with the registration and reporting requirements of the act.

A 'separate segregated fund' established by one corporation may not contribute to a 'separate segregated fund' established by another corporation.

A corporation may only establish one 'separate segregated fund'.

Honorable Richard H. Austin

Secretary of State

Treasury Building

Lansing, Michigan 48918

You have asked several questions concerning the Compaign Finance Act, 1976 PA 388, as amended by 1977 PA 314, MCLA 169.201 et seq; MSA 4.1703(1) et seq (hereinafter referred to as 'the Act'). Your letter of request indicated that several 'separate segregated funds' established by corporations have registered with the Department of State pursuant to provisions of the Act and that they have registered either as an independent committee, which is defined in section 8(2), or as a political committee, which is defined in section 11(2). Your questions are:

1. Is it necessary for a 'separate segregated fund' to register with the Department of State?

2. May a 'separate segregated fund' established by one corporation contribute to a 'separate segregated fund' established by a second corporation?

3. May a corporation establish more than one 'separate segregated fund'?

These questions will be addressed seriatim.

1. Is it necessary for a 'separate segregated fund' to register with the Department of State?

Section 55 of the Act states:

> '(1) A corporation or joint stock company formed under the laws of this or another state or foreign country 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, candidate committees, ballot question committees, political party committees, and independent committees.
>
> '(2) Contributions for a fund established by a corporation or joint stock company under this section may be solicited from any of the following persons or their spouses:
>
> '(a) Stockholders of the corporation.
>
> '(b) Officers and directors of the corporation.
>
> '(c) Employees of the corporation who have policy making, managerial, professional, supervisory, or administrative nonclerical responsibilities.
>
> '(3) Contributions for a fund established under this section by a corporation which is nonprofit may be solicited from any of the following persons or their spouses:
>
> '(a) Members of the corporation who are individuals.
>
> '(b) Stockholders of members of the corporation.
>
> '(c) Officers or directors of members of the corporation.
>
> '(d) Employees of the members of the corporation who have policy making, managerial, professional, supervisory, or administrative nonclerical responsibilities.
>
> '(4) Contributions shall not be obtained for a fund established under this section by use of coercion, physical force, or as a condition of employment or membership or by using or threatening to use job discrimination or financial reprisals.
>
> '(5) A person who knowingly violates this section is guilty of a felony and shall be punished by a fine of not more than $5,000.00 or imprisoned for not more than 3 years, or both, and if the person is other than an individual, the person shall not be fined more than $10,000.00.'

To appreciate fully the significance of section 55 of the Act, it is helpful to note that a corrupt practices act was first enacted as 1913 PA 109, and section 14 therefore provided:

> 'No officer, director, stockholder, attorney, agent or any other person, acting for any corporation or joint stock company, whether incorporated under the laws of this or any other state or any foreign country, except corporations formed for political purposes, shall pay, give or lend, or authorize to be paid, given or lent any money belonging to such corporation to any candidate or to any political committee for the payment of any election expenses whatever.'

This language was re-enacted in 1915 [1], 1925 [2], 1929 [3], 1948 [4] and, finally, by enactment of 1954 PA 116, became section 919 of the Elections Code [5]. By enactment of 1975 PA 227, the limitations on corporate involvement were relaxed by permitting the use of corporate funds for the 'establishment and administration of a separate segregated

corporate political education fund to be utilized for the sole purpose of making contributions to and expenditures on behalf of candidate committees.' 1975 PA 227, Sec. 95(2). Although 1975 PA 227 was declared unconstitutional for other reasons by the Michigan Supreme Court [6], 1976 PA 388, supra, Sec. 55 re-enacted the above-quoted language of 1975 PA 227, supra.

OAG, 1977-1978, No 5279, p ___ (March 22, 1978), held that a corporation may not use monies from its corporate treasury to make contributions to a committee which in turn supports state candidates, but that the corporation may make expenditures for establishment and administration of a fund to be used for political purposes, and that the contributions to the fund may only come from persons identified in section 55 of the Act, i.e., (1) stockholders of the corporation, (2) officers and directors of the corporation, and (3) employees of the corporation with policymaking, managerial, professional, supervisory or administrative nonclerical responsibilities.

Section 3(4) of the Act defines 'committee' as:

> '. . . 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.'

Section 11(1) defines 'person' as:

> '. . . a business, individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, labor organization, company, corporation, association, committee, or any other organization or group of persons acting jointly.'

As amended by 1977 PA 314, MCLA 169.211; MSA 4.1703(1), the Act now identifies five, rather than four, types of committees. Section 2(2) defines a ballot question committee, section 3(2) defines a candidate committee, section 8(2) defines an independent committee, and section 11(5) defines a political party committee. 1977 PA 314, supra, amended the Act to include a definition for 'political committee' in section 11(2), which states:

> "Political committee' means a committee which is not a candidate committee, political party committee, independent committee, or ballot question committee.'

Corporate involvement in the financing of elections is limited to activity authorized by sections 54 and 55 of the Act. Section 54 indicates the means by which a corporation may form a ballot question committee [7]. A 'separate segregated fund' is precluded from qualifying as a candidate committee or political party committee by their definitions. However, a 'separate segregated fund' may qualify and, in fact, must register as either a political committee or an independent committee, provided it meets the appropriate definition. Since the 'separate segregated fund,' once it exceeds $200.00 in contributions or expenditures, is a committee, it is my opinion that it must register with the Department of State either as a political committee or as an independent committee, as defined in the statute.

A 'separate segregated fund' functions as the result of joint action by an organization; consequently, it is a 'person' as defined in the statute. If a 'separate segregated fund' receives $200.00 or more in a calendar year, it is a 'committee' for purposes of the Act. As such, it is subject to the registration and reporting requirements set forth in the statute.

2. May a 'separate segregated fund' established by one corporation contribute to a 'separate segregated fund' established by a second corporation?

As noted above, a 'separate segregated fund' is restricted to contributions from the following sources: (1) shareholders of the corporations, (2) officers and directors of the corporation and (3) employees of the corporation with policymaking, managerial, professional, supervisory or administrative nonclerical responsibilities. No other person, except spouses of the foregoing individuals, may contribute to the 'separate segregated fund'.

Section 55 of the Act further indicates that the 'separate segregated fund' is limited to making contributions to or expenditures on behalf of candidate committees, ballot question committees, political party committees and independent

committees. Thus, a 'separate segregated fund' established by a corporation, even though registered as a political committee, may not make contributions to another corporation's 'separate segregated fund', because it may only make contributions to 'candidate committees, ballot question committees, political party committees and independent committees'. Section 55.

3. May a corporation establish more than one 'separate segregated fund'?

Section 55 of the Act states that 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. The use of the singular followed by language which strictly restricts contributions for a fund leads to the conclusion that the legislature intended that only one separate segregated fund may be created by a corporation. This conclusion is consistent with the legislative history of corporate involvement in elections noted above.

As noted in OAG, No 5279, supra, administration of the separate segregated fund and the authorization of expenditures from the fund must be by the board of directors of the corporation or by a committee authorized by the board of directors of the corporation.

The limitation of one 'separate segregated fund' for each corporation is consistent with other provisions of the Act. For example, a candidate may only have one candidate committee. Section 21(3) provides that all monies in the candidate committee must pass through one official depository of the committee. All contributions to the committee and expenditures by the committee must be made from the committee's official depository.

Section 11(5), in defining 'political party committee', limits each state central, district or county party to a single committee. Section 8(2), in defining 'independent committee', indicates that a separate level, subsidiary, subunit or affiliate of an organization which is an independent committee may create an independent committee only if the decisions or judgments for the subsidiary committee to make contributions or expenditures on behalf of candidates are independently exercised within the separate level, subsidiary, subunit or affiliate of the parent organization.

Thus, a corporation may make an expenditure for the establishment, administration and solicitation of contributions to only one 'separate segregated fund.'

Frank J. Kelley

Attorney General

(1) CL 1915, Sec. 3846.

(2) 1925 PA 351, Pt 5, c II, Sec. 19.

(3) CL 1929, Sec. 3324.

(4) CL 1948, Secs. 189.19 & 196.19.

(5) MCLA 168.919; MSA 6.1919.

(6) Request for Advisory Opinion on Constitutionality of 1975 PA 227, 396 Mich 123; 240 NW2d 193 (1976).

(7) It will be noted that, in addition, the United States Supreme Court held in First National Bank of Boston v Bellotti, ---- US ----; 98 S Ct 1407 (1978), that the First Amendment protects the right of a corporation to expend its funds to influence a vote on a referendum proposal.

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING

MICHIGAN 48918

August 1, 1978

Mr. William Parker
Uniserv Director
Michigan Education Association
3133 Union Lake Rd.
Union Lake, Michigan 48085

Dear Mr. Parker:

This is in response to your letter concerning the Campaign Finance Act ("the Act"), P.A. 388 of 1976, as amended.

Your question is posed with reference to language which appeared in the April, 1978, volume of CFR Bulletin. The relevant language provided:

> "To qualify for a reporting waiver a committee must (1) note on its original or amended statement of organization, item 10, that it does not expect to receive or spend more than $500 in a single election, and (2) the committee must not, in fact, receive or spend more than that amount in the election." (Emphasis supplied)

You indicate an education committee supported one candidate for a seat on the board of one school district, and two candidates for two seats on another local board of education. Contributions to each candidate were less than $500.00, although contributions received by the education committee exceeded $500.00. All candidates sought election at the annual school elections held on the second Monday in June.

You ask whether the candidacies constituted three separate elections or a single election?

The language in the CFR Bulletin is an interpretation of Section 24(4) of the Act (MCLA § 169.224) which states:

> "When filing a statement of organization a committee may indicate in a sworn statement that the committee does not expect for each election to receive an amount in excess of $500 or exceed an amount in excess of $500." (Emphasis supplied)

"Election" is defined in Section 5(1) (MCLA § 169.205) as a primary, general, special, or millage election held in this state or a convention or caucus of a political party held in this state to nominate a candidate.

If a committee desires to qualify for the "reporting waiver," the committee may support or oppose as many campaigns or candidates as it wishes, so long as it does not exceed $500 in contributions or expenditures for a particular election as defined in the Act. In your cited example, all of the candidates supported by the education committee would be within a "single election."

This response may be considered informational only and not as constituting a declaratory ruling.

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF:pk

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN ◎ SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

August 1, 1978

Mr. David A. Spencer
Michigan State Senate
Senator Huffman Committee
State Capitol
Lansing, Michigan 48909

Dear Mr. Spencer:

This is in response to your letter requesting an interpretation from the Department as to whether campaign stickers are exempt from the identification requirements of the Campaign Finance Act ("the Act"), P.A. 388 of 1976, as amended.

The campaign stickers measure approximately 2 3/4" x 1" and have printed on them a 1/2" x 3/4" likeness of Senator Bill S. Huffman. The following is also printed on the stickers:

Senator Bill S. Huffman
Sixteenth District
State Senate
State Capitol
Lansing, Mi. 48902

Section 47 of the Act (MCLA § 169.247) was amended by P.A. 348 of 1978 to the exempting from identification requirements of the Act, by Department rule, of any printed matter which is of a size as to make the identification requirements unreasonable. Rule 169.36 of the administrative rules provides for the exemption of material, the size of which makes it unreasonable to add an identification.

The Department determines that the stickers which are the subject of your inquiry are exempt from the identification requirements as stated in the legal provisions cited above.

Sincerely,

Richard H. Austin
Secretary of State

RHA:pk

MICHIGAN DEPARTMENT OF STATE

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STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

August 1, 1978

Honorable Edgar Geerlings
Honorable Alfred A. Sheridan
Michigan House of Representatives
State Capitol Building
Lansing, Michigan 48909

Dear Representatives Geerlings and Sheridan:

This is in response to your June 7, 1978, request for an interpretation of Section 82 of the Campaign Finance Act, P.A. 388 of 1976, as amended.

Section 82(1) of the Act (MCLA § 169.282(1)) was amended on June 7, 1978, to read as follows:

> "(1) The penalty provisions of this act shall not apply to an act or omission occurring before December 1, 1977, except that a late filing fee shall not be due or payable for an act or omission occuring (sic) before May 16, 1978, provided that act or omission is corrected before May 16, 1978. If a late filing fee has been paid before that date, it shall be returned by the person who collected the late filing fee upon written request of the person who paid the late filing fee."

You ask the following question concerning the amendment:

> "If a candidate who was delinquent in filing EITHER a statement of organization OR any subsequent report did not file such statement or report between December 1st, 1977 and May 16th of 1978, is that candidate liable for the maximum $300 and the misdemeanor charge called for under P.A. 388 after May 16th has passed?"

The Attorney General partially answered your question in a letter opinion issued to Representative Sheridan on June 9, 1978. The ruling stated (in part):

> "It is my opinion that the clear and unambiguous language of section 82, as amended, waives late filing fees for an act or omission occurring before May 16, 1978 only to those individuals who have corrected the act or omission before May 16, 1978."

Penalties other than late filing fees are unaffected by the amendatory legislation. Their applicability commenced on December 1, 1977, as provided in the Act.

This response may be considered informational only and not as constituting a declaratory ruling.

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF:pk

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

August 1, 1978

Ms. Betty J. Swanton
Midland County Clerk's Office
Midland County Court House
Midland, Michigan 48640

Dear Ms. Swanton:

This responds to your letter requesting an interpretation as to the meaning of the phrase "for each election" as used in Section 24(4) of the Campaign Finance Act ("the Act"), P.A. 388 of 1976, as amended.

Section 24(4) (MCLA § 169.224) states:

> "When filing a statement of organization a committee may indicate in a sworn statement that the committee does not expect for each election to receive an amount in excess of $500 or expend an amount in excess of $500." (Emphasis added)

You ask what is the length of time covered for each election? Is it each primary, each general, or is it to cover the entire time an office holder is in his respective office for each election?

Section 5(1) of the Act (MCLA § 169.205) provides:

> "Election means a primary, general, special, or millage election held in this state or a convention or caucus of a political party held in this state to nominate a candidate. Election includes a recall vote."

Accordingly, "for each election" as used in Section 24(4) means for each primary, general, or other type of election enumerated in Section 5(1), in which the candidate is involved.

This response may be considered informational only and not as constituting a declaratory ruling.

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF:pk

MICHIGAN DEPARTMENT OF STATE

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STATE TREASURY BUILDING

LANSING

MICHIGAN 489

August 1, 1978

Mr. Kenneth M. Weidaw III
c/o Buth, Wood & Weidaw
306 Federal Square Bldg.
Grand Rapids, Michigan 49503

Dear Mr. Weidaw:

This is in response to your request for an interpretive statement concerning the Campaign Finance Act ("the Act"), P.A. 388 of 1976, as amended. Since you seek an informational response, the facts in your letter have been revised for purposes of this response so as not to reflect actual names.

You state that certain political solicitations by an entity ("entity"), whose title indicated it to be a committee in support of an issue and a candidate, were received recently by a private citizen. The issue supported by the entity is not one which will appear on any state election ballot in the immediate future.

You indicate your review of the records maintained by the pertinent Register of Deeds revealed that the candidate has filed the documentation required under the Act for his candidate committee. You state that to your knowledge the enti has not filed as a committee with the County Clerk.

A careful review of the documents enclosed reveals the letter from the entity was paid for by the candidate committee. The soliciting materials bear the candidate committee's identification required by Section 47 of the Act (MCLA § 169.247). The letter essentially solicits contributions on behalf of the candidate with the request that contributions be forwarded to the candidate committee at its address.

Specifically, you inquire as to whether Section 44(1) of the Act (MCLA § 169.24 may have been violated.

First, an interpretive statement issued by the Department is a general interpretation of the provisions of the Act. It is not a declaratory ruling issued by the Department in response to a factual situation raised by an affected part Further, it should be stressed the committee or committees involved did not request this statement. Finally, no inferences of illegal activity should be associated with the committee(s) since a formal complaint has not been submitt nor has any committee been given the opportunity to give its interpretation of the facts as to the issue presented.

Section 44(1) of the Act states a contribution shall not be made by a person to another person with the agreement or arrangement that the person receiving the contribution will then transfer the contribution to a particular candidate committee. As mentioned previously, it appears the solicitation letter was distributed by the entity and paid for by the candidate committee. The letter clearly stated in the last paragraph that the solicitation included an enclosed envelope, a copy of which you also sent to the Department, which could be used to send a check to the candidate committee. The envelope is addressed to the candidate committee; it is not addressed to the entity.

Accordingly, it appears any contribution solicited by the entity will be sent knowingly by the contributor directly to the candidate committee. The contribution is not made to the entity with the agreement or arrangement that the latter will transfer the contribution to the candidate committee. Consequently, there does not appear to be a violation of Section 44(1) of the Act in the situation you describe.

With respect to the reporting status of a committee similarly situated to the entity, the governing provision is Section 3(4) of the Act (MCLA § 169.203). This statutory provision defines "committee" as "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 expenditu made total $200.00 or more in a calendar year." If a person falls within this definition, it must register and report pursuant to the Act.

This response may be considered informational only and not as constituting a declaratory ruling.

Very truly yours,

Phillip T. Frangos

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF:pk

APR 19 1978

LAW OFFICES
BUTH, WOOD & WEIDAW
ATTORNEYS AT LAW
306 FEDERAL SQUARE BLDG
GRAND RAPIDS, MICHIGAN 49503
(616) 458-9967

GEORGE S. BUTH
THOMAS H. WOOD
KENNETH M. WEIDAW III

BELDING OFFICE
420 COVERED VILLAGE MALL
BELDING, MICHIGAN 48809
616/794-3900

April 17, 1978

Michigan Department of State
Office of Hearings & Legislation
Compliance and Rules Division
Mutual Building - Third Floor
208 N. Capitol
Lansing, Michigan 48933

Gentlemen:

Please consider this letter a request for an interpretative statement pursuant to Act 388 of 1976.

The facts relating to this case are as follows: During March, 1978, the enclosures were received by a resident of the City of Grand Rapids. The enclosures were forwarded to me for examination in order to determine whether there had been a violation of the Campaign Finance Act. My review of the Kent County Register of Deeds Office revealed that Steven Monsma, a State Representative, has filed the documentation required under the act to commence his campaign committee, entitled, Friends of Steve Monsma. The question arose however as to whether the Pro-Life Committee for Monsma is in fact another candidate committee organized for the purpose of raising money. A careful review of the documents enclosed shows that the letter from Lynn E. DeGraaf appears to have been paid for by the "Friends of Steve Monsma" Committee. The letter essentially solicits funds in behalf of Mr. Monsma requesting that the funds be forwarded to the campaign committee at its address.

In late March this matter was discussed with Mr. John T. Turnquist, Deputy Director of the Elections Division. In my conversation with Mr. Turnquist, there was a question as to whether or not there had been a violation under Section 44(1) of the Act.

We do not at this time request a declaratory ruling under Section 63 of the Administrative Procedures Act. We merely ask that the facts and the enclosures be reviewed and that a interpretative statement be rendered concerning this matter.

Your prompt response is requested. If you have any additional questions, please feel free to contact me at your convenience.

Very truly yours,

Kenneth M. Weidaw III

Kenneth M. Weidaw III

KMW:dc

Enclosures

P.S. Incidently, it should be noted that the Pro-Life Committee has not filed with the Kent County Clerk.

PRO-LIFE COMMITTEE FOR MONSMA

Dear Friend:

Most persons have not given much thought to the fact that 1978 is an election year. But those of us fighting for the protection of human life and its rights must look ahead if we are to elect persons who share our dedication.

One of the crucial races in the Grand Rapids area will be for the 32nd senatorial seat which is being vacated by Senator John Otterbacher. We are delighted that Steve Monsma, who has been one of the strongest pro-life Representatives, has indicated to us his intention to run for this seat.

Steve Monsma has not only stood by the unborn on vote after vote, but has also been one of our key leaders in the House. He is leading the fight to require the reporting of abortions in Michigan; he co-sponsored the resolution passed by the House calling for a constitutional convention to initiate the Human Life Amendment; he has served as the legislative liaison person for Michigan Citizens for Life.

One key ingredient of a successful campaign is money. Steve's campaign does not necessarily need big donations: it does need many small ones. If each one receiving this letter would send in just $3.00, Steve would have almost enough money for his entire campaign! Maybe you can give more than that - maybe less. How much you give is not so important. Even $1.00, if everyone gives, will be a big help.

Steve also needs volunteers who can work this summer and fall on his campaign doing those numerous busy tasks, which are the heart of a winning political campaign.

We have enclosed an envelope which you can use to send Steve a check or to indicate your willingness to work on his campaign. Please do. Steve needs your help - and so do the persons of our land unable to speak for themselves.

Sincerely yours,

Lynne DeGraaf

Paid for by Friends of Steve Monsma,
829 N. Kalamazoo NE, Grand Rapids, MI 49505

☐ I am willing to work as a volunteer on Steve's campaign.

☐ Enclosed is a check for: ☐ $1.00 ☐ $3.00

☐ $5.00 ☐ $10.00 ☐ $25.00 ☐ $_____

(Make checks payable to "Friends of Steve Monsma")

NOTE: Political contributions may be deducted on your Federal Income Tax each year up to $50 per person or $100 per couple.

Name _____

Address _____

_____

Phone _____

Paid for by Friends of Steve Monsma,
829 N. Kentview NE., Grand Rapids, MI 49505

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48

August 1, 1978

Mr. William F. McLaughlin, Chairman
Michigan Republican State Committee
223 North Walnut
Lansing, Michigan 48933

Dear Mr. McLaughlin:

This is in response to your letter of April 3, 1978, concerning the applicability of the Campaign Finance Act ("the Act"), P.A. 388 of 1976, as amended, to a loan received by an elected official.

In that letter you acknowledged the Department's letter of March 29, 1978, which informed you of the correct manner for requesting an investigation concerning an alleged loan from an individual to an elected official. You stated the alleged loan was reported in the printed media on March 25, 1978.

The Department's letter indicated the proper method for requesting an investigati necessitated the filing of a complaint which conformed with the requirements of t Act and administrative rules promulgated pursuant to the Act. In your April 3 le you stated: "I do not know if a violation of Act No. 388 has occurred or not. . . I have no hard evidence with which to sign a complaint."

In your letter, however, you also asked several questions which relate to a singl issue. These questions have been restated to better reflect the pertinent issue for which you seek clarification. The questions to which this statement is addressed are as follows:

1. Are all loans to all elected officials considered contributions for purposes of the Act?

2. May a candidate commingle loans with his or her personal funds and then give these monies to his or her candidate committee as a personal contribution?

The first question is raised because implicit to your letter of April 3 is the assumption that all loans to elected officials are contributions for purposes of the Act. It is necessary to address the validity of this assumption.

Section 4(1) of the Act (MCLA § 169.204) defines a contribution as "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." Included in the definition of contribution is a loan made for that purpose. However, a loan which is not made for the purpose of influencing an election does not constitute a contribution as defined in the Act. Additionally, loans made in the ordinary course of business by a corporation, pursuant to Section 54 of the Act (MCLA § 169.254), do not constitute a contribution.

Accordingly, the question as to whether all loans to elected officials are contributions is answered in the negative; all loans to incumbent officials are not contributions. A loan could be made to an official for any number of purposes.

The answer to the second question is dependent on whether the loan is made for the purpose of influencing the election of the candidate. If the loan is made for the latter purpose, it is a contribution and subject to the Act's provisions. Section 21(8) of the Act (MCLA § 221) prohibits the commingling of contributions with any other funds including the candidate's personal funds.

If the loan is made for a purpose not contemplated by the Act, monies received by an individual pursuant to the loan will undoubtedly be treated by the person as part of his or her personal finances. Any question as to whether the candidate diverted a portion of the loan's proceeds to his or her candidate committee in violation of the Act must be raised through a documented complaint filed in accordance with the Act and related rules.

It should be stressed this letter does not address the issue of the propriety of an elected official obtaining a loan, whatever the purpose, from a particular lender. That issue is not within the purview of the Department's responsibilities as defined by the Act or any other statute.

In view of the fact your letter was general in nature and lacked the specificity required by Section 63 of the Michigan Administrative Procedures Act (MCLA § 24.263) which establishes the criteria for requesting and issuing a declaratory ruling, this response may be considered as informational only and not as constituting a declaratory ruling.

Very truly yours,

Phillip T. Frangos

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF:pk

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 4891

August 1, 1978

Ms. Beverly Hunt, Clerk
Township of Flint
1490 South Dye Road
Flint, Michigan 48504

Dear Ms. Hunt:

This is in response to your inquiry concerning the applicability of the Campaign Finance Act ("the Act"), P.A. 388 of 1976, as amended, to an "Anti-Annexation Campaign."

You state in your letter that the public officials and residents of Flint Township are conducting an "Anti-Annexation Campaign" in an effort to prevent the City of Flint from "Strip Annexing" properties in Flint Township. As part of this campaign, the residents and officials will be soliciting funds for advertising which will be kept in an account and used only for that purpose. You indicate the campaign is not directed toward an election or ballot question, but for the purpose of building support to be reflected at State Boundary Commission hearings and in the State Legislature.

Your question is whether the above activities must be recorded or reported under the Act?

Ms. Cindy Sage, Treasurer of the Republican Women's Federation of Michigan ("the RWFM"), asked whether the RWFM was obligated to report under the Act. In a response contained in a letter issued on March 29, 1978, the Department stated:

> "The determination of whether the RWFM is subject to the Act's provisions is contingent on whether the state organization or any of the local organizations is a 'committee' as defined in the Act. Section 3 of the Act (MCLA § 169.203) defines a 'committee' as 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. 'Person' is defined in the Act as including an association, committee, or any other organization or group of persons acting jointly." (Emphasis added)

Accordingly, since the residents and officials of the Township of Flint are not receiving contributions or making expenditures for the purpose of influencing the nomination or election of a candidate, or the qualification, passage or defeat of a ballot question, reporting is not required by the Act.

However, in the event any proposal addressed by your group becomes the subject of an election, the requirements of the Act will be applicable. Monies in the fund will have to be reported as is the case for any other ballot question.

In view of the fact your letter was general in nature and lacked the specificity required by Section 63 of the Michigan Administrative Procedures Act (MCLA § 169.2[illegible] which establishes the criteria for requesting and issuing a declaratory ruling, this response may be considered as informational only and not as constituting a declaratory ruling.

Very truly yours,

Phillip T. Frangos

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF:pk

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

August 1, 1978

448-1

Mr. William E. Hazel, Jr.
Life Underwriters Political Action Committee-Michigan
P.O. Box 14193
Lansing, Michigan 48901

Dear Mr. Hazel:

This is in response to your request for an interpretation concerning the applicability of the Campaign Finance Act, P.A. 388 of 1976 ("the Act"), to certain corporate activity. Specifically, you inquire whether a corporation is permitted to make disbursements or contributions for the establishment, administration or solicitation of contributions for a political action committee not formed by the corporation.

The statutory provisions which govern corporate involvement in the financing of campaigns are Sections 54 and 55 of the Act (MCLA §§ 169.254-169.255). These provisions state:

> "Sec. 54. (1) Except with respect to the exceptions and conditions in subsections (2) and (3) and section 55, and to loans made in the ordinary course of business, a corporation may not make a contribution or expenditure or provide volunteer personal services which services are excluded from the definition of a contribution pursuant to section 4 (3) (a).
>
> (2) An officer, director, stockholder, attorney, agent, or any other person acting for a corporation or joint stock company, whether incorporated under the laws of this or any other state or foreign country, except corporations formed for political purposes, shall not make a contribution or expenditure or provide volunteer personal services which services are excluded from the definition of a contribution pursuant to section 4 (3) (a).
>
> (3) A corporation or joint stock company, whether incorporated under the laws of this or any other state or foreign country, except a corporation formed for political purposes, shall not make a contribution or provide volunteer personal services which services are excluded from the definition of a contribution pursuant to section 4 (3) (a), in excess of $40,000.00, to each ballot question committee for the qualification, passage, or defeat of a particular ballot question.

(4) Nothing in this section shall preclude a corporation or joint stock company from making an independent expenditure in any amount for the qualification, passage, or defeat of a ballot question. A corporation making an independent expenditure under this subsection shall be considered a ballot question committee for the purposes of this act.

(5) A person who knowingly violates this section is guilty of a felony and shall be punished by a fine of not more than $5,000.00 or imprisoned for not more than 3 years, or both, and if the person is other than an individual, the person shall be fined not more than $10,000.00.

Sec. 55 (1) A corporation or joint stock company formed under the laws of this or another state or foreign country 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, candidate committees, ballot question committees, political party committees, and independent committees.

(2) Contributions for a fund established by a corporation or joint stock company under this section may be solicited from any of the following persons or their spouses:

(a) Stockholders of the corporation.
(b) Officers and directors of the corporation.
(c) Employees of the corporation who have policy making, managerial, professional, supervisory, or administrative nonclerical responsibilities.

(3) Contributions for a fund established under this section by a corporation which is nonprofit may be solicited from any of the following persons or their spouses:

(a) Members of the corporation who are individuals.
(b) Stockholders of members of the corporation.
(c) Officers or directors of members of the corporation.
(d) Employees of the members of the corporation who have policy making, managerial, professional, supervisory, or administrative nonclerical responsibilities.

(4) Contributions shall not be obtained for a fund established under this section by use of coercion, physical force, or as a condition of employment or membership or by using or threatening to use job discrimination or financial reprisals.

(5) A person who knowingly violates this section is guilty of a felony and shall be punished by a fine of not more than $5,000.00 or imprisoned for not more than 3 years, or both, and if the person is other than an individual, the person shall be fined not more than $10,000.00."

A corporation is restricted from making a contribution or expenditure unless it qualifies for an exception pursuant to Section 54 or proceeds within the provisions of Section 55. Since your question is concerned with activity governed by Section 55, this interpretation is limited to a consideration of Section 55, and not to activities contemplated by Section 54.

Section 55 permits a corporation to make an expenditure for the establishment, administration and solicitation of contributions to a separate segregated fund to be used for political purposes. The statute expressly relates persons who may be solicited for contributions to a fund to the corporation which established the fund.

The Attorney General discussed the establishment of a separate segregated fund by a corporation in Opinion of the Attorney General, OAG No. 5344, issued July 20, 1978. Among the questions he addressed were the following:

1. May a separate segregated fund established by one corporation contribute to a separate segregated fund established by a second corporation?

2. May a corporation establish more than one separate segregated fund?

The Attorney General responded to the first question by ruling a separate segregated fund established by one corporation may not contribute to a separate segregated fund established by another corporation. This conclusion was based on the statutorily restricted sources of contributions to a fund, i.e., shareholders, officers and directors, and managerial and supervisory employees of the corporation which establishes the fund. The Attorney General stated: "No other person, except spouses of the foregoing individuals, may contribute to the 'separate segregated fund'."

In response to the second question, the Attorney General stated that a corporation may only establish one separate segregated fund. In support of this conclusion, he cited specific provisions of the Act and made references to the legislative history of corporate involvement in elections.

As noted previously, Section 55 is the exclusive statutory authorization for corporate involvement with a separate segregated fund. The Attorney General has decided: (1) one corporation may not contribute to another corporation's separate segregated fund, and (2) a corporation may only establish one separate segregated fund.

In view of the foregoing, it is concluded Section 55 does not permit a corporation to make disbursements or contributions for the establishment, administration or solicitation of contributions for a political action committee formed by another corporation.

This response may be considered as informational only and not as constituting a declaratory ruling.

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF:pk

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

August 1, 1978

Mr. Donald Hilligoss
P.O. Box 725
Madison Heights, Michigan 48071

Dear Mr. Hilligoss:

This is in response to your letter concerning the Campaign Finance Act ("the Act"), P.A. 388 of 1976, as amended. You ask for a definition of "campaign expenses" within the context of the Act.

"Campaign expenses" is not specifically defined in the statute. However, Rule 169.1 of the administrative rules promulgated to implement the Act defines "campaign" or "candidate's campaign" as the candidate committee's activities for a specific election. In addition, Section 6(1) of the Act (MCLA s 169.206) defines "expenditure" as anything of ascertainable monetary value spent, donated, loaned, pledged or promised for goods or services to influence a state election. Consequen "campaign expenses" may be construed to mean those expenditures which are made for the purpose of influencing a particular election.

Please note the Act considers the primary to be an election separate from the gener election. Therefore, it is more accurate to say "primary election expenditures" an "general election expenditures" as contrasted to using the term "campaign expenses."

This response may be considered informational only and not as constituting a declaratory ruling.

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF:pk

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 489

August 1, 1978

Honorable Jack L. Gingrass
Michigan House of Representatives
State Capitol
Lansing, Michigan 48909

Dear Representative Gingrass:

This is in response to your letter concerning the applicability of the Campaign Finance Act, P.A. 388 of 1976 ("the Act"),to a testimonial dinner held in your honor.

You state that on September 17, 1977, persons in your district held a "Birthday Party" testimonial in your honor. You indicate the affair was not a fundraiser but rather a dinner at which tribute was given to you.

You accompanied your letter with a statement indicating all sources of income and all disbursements. The latter were made in conjunction with the affair. Income was generated through the sale of tickets. The statement indicates all the net proceeds were donated to Bay de Noc Community College.

Section 7 of the Act (MCLA § 169.207) defines "fund raising event" as a "testimonial...through which contributions are solicited or received by purchase of a ticket..." "Contribution" is defined in Section 4 of the Act (MCLA § 169.204) as a "payment...made for the purpose of influencing the nomination or election of a candidate..."

The Department determines the purchase of tickets to the September 17, 1977, "Birthday Party" testimonial did not constitute a contribution. The net proceeds from ticket sales were donated in their entirety to the local community college and did not benefit your candidate committee. The affair, although an occasion to pay tribute to you, was not a fundraiser for reporting purposes of the Act.

You now report an additional development. Three checks were received on March 20, 1978, for the "Birthday Party." You indicate that these checks are listed on your candidate committee campaign receipt list and that they will be reported in the committee's campaign statements.

The three checks and any similar donations to the "Birthday Party" which are subsequently transferred to your candidate committee shall be considered contributions made directly to your candidate committee by the original donors and must be reported as such. Notice should be given to the original donors as to the amount of contribution to be reported by your candidate committee as having been made by each donor. This will insure that any subsequent contributions do not exceed applicable contribution limitations in the Act.

It should be made clear that although the Department views donations to the testimonial as not constituting contributions in the context of the facts presented in your original inquiry, the transfer of these donations to the candidate committee will be considered reportable contributions, particularly when the non-political testimonial was held in September and the three checks in question were received in late March.

This response constitutes a declaratory ruling concerning the applicability of the Act to the facts enumerated in your request.

Sincerely,

Richard H. Austin
Secretary of State

RHA:pk

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

August 7, 1978

Mr. William R. Lukens
Milliken for Michigan Committee
P.O. Box 40078
Lansing, Michigan 48901

Dear Mr. Lukens:

On June 28, 1978, you wrote to Secretary of State Richard H. Austin requesting a declaratory ruling as to whether the costs of a contract between the Milliken for Michigan Committee and a firm specializing in direct mail fund solicitation are "expenditures" for the purpose of the expenditure limitation set forth in Section 67 of the Campaign Finance Act ("the Act"), P.A. 388 of 1976, as amended.

On the same day, you also forwarded a memorandum identifying several types of solicitation costs in order to assist the Department of State in determining which expenditures are "made by a candidate committee solely for the solicitation of contributions." Such expenditures are not included in the aggregate $1,000,000.00 limit for each election for a gubernatorial candidate committee. This exclusion of expenditures of not more than 20% of the candidate committee's expenditure limit is set forth in Section 67(2) of the Act (MCLA § 169.267).

Section 67(2) is applicable to those expenditures made by a candidate committee solely for the solicitation of contributions. To understand its application it is necessary to understand the meaning of "solely" and "solicitation" as used in the Act. The ordinary meaning of "solely" is expressed in The American Heritage Dictionary of the English Language, (New College Edition 1976) as "alone; singly, entirely; exclusively." "Solicit" is defined in Black's Law Dictionary (4th Edition 1968) as follows:

> "To appeal for something; to apply to for obtaining something; to ask earnestly; to endeavor to obtain by asking or pleading; to entreat, implore, or importune; to make petition to; to plead for; to try to obtain; and though the word implies a serious request, it requires no particular degree of importunity; entreaty, imploration or supplication; the term implies personal petition and importunity addressed to a particular individual to do some particular thing. Golden & Co. v Justices Ct. of Woodland Tp., Yolo County, 23 Cal App. 778, 140 p. 49, 58." (Emphasis supplied)

Applying the ordinary meaning to the words illustrates the personal and limited nature of the appeals which may be paid for with funds excluded from the expenditure limitation by Section 67(2). A candidate committee in determining whether an expenditure falls within the 20% exclusion must examine the content of the message as well as evaluating the audience to whom the message is directed. A message

which is excludable when delivered through a particular medium may not be excluded when another medium is used. It is clear, however, a message delivered by radio, television or a newspaper of general circulation reaches the audience in such an unselective way that it cannot be determined to be solely for the solicitation of contributions; therefore, its cost is not to be excluded from the expenditure limitation.

A message which requests contributions may be included within the 20% exclusion if it is aimed at a limited, particular audience, i.e., persons sharing a common limited interest, goal, or concern.

These principles are best understood if applied to specific examples of expenditures. I will, therefore, use the list you supplied in your June 28, 1978, memorandum.

I. General

A. Accounting fees and other costs associated with receipting and processing contributions.

These fees and costs will not be included in the 20%. Section 67(2) reads "solely for the solicitation . . . ." As used in the Act, "solicitation" connotes the reaching out, outgoing request from someone (the candidate committee) to someone else, and not that individual's response to the solicitation.

B. Fees or salaries paid to person whose sole campaign responsibilities are to solicit campaign contributions.

These fees or salaries will be included in the 20%, but only to the extent that the particular committee can establish and document this "sole" campaign responsibility. The burden will be upon the committee to provide documentation upon request.

C. Fees or salaries paid to persons whose duties include the solicitation of contributions provided the actual time spent on such duties can be determined and only that portion of the fee or salary is considered a fund raising cost.

Those expenditures which fall outside the $1,000,000.00 and within the 20% will be so treated only upon receipt of documentation that the "actual time spent" upon soliciting contributions may be established with reasonable certainty. Only that portion so documented will be considered a "fund raising cost" by the department.

D. Reimbursement for costs of office use, telephone, travel, and the like, incurred by persons whose only campaign function is to solicit contributions.

See answers to "B" and "C" above. Such reimbursements will be treated as a "fund raising cost" only to the extent that they may be segregated from other expenditures and documented.

II. Fund Raising Costs

A. Dinners and receptions where an entrance fee is charged and the candidate is present.

"Fund raising events" are defined in Section 7(4) of the Act (MCLA § 169.207). Events meeting that definition will be so treated by the Department and included in the 20% whether the candidate is present or not.

B. Entertainment provided for potential contributors who are being solicited to make campaign contributions (including receptions for large groups).

If the "entertainment" falls within the definition of "fund raising event" as provided in Section 7(4) of the Act, it will be treated as set forth above, as will expenditures incidental to such events.

C. Costs associated with sales of political merchandise when the profits are treated as contributions.

These costs will not be included in the 20%. The purpose of such promotional items is to generate political support for the candidate whose name, message, etc., appears thereon through dissemination of the merchandise, regardless of how the profits are used.

III. Advertising

A. Broadcast

1. Radio and T.V. ads promoting the candidate and asking for financial support.

2. Short ads consisting solely of a fund raising request, i.e., "John Doe needs your help. Please send contributions to . . . ."

For the reasons set forth above, the pervasive nature of the media chosen precludes the selectivity of the audience or the direction of a particular message toward a particular segment of that audience. All who happen to be watching or listening receive the same message. Therefore, regardless of content, all expenditures on radio or television are outside the exclusion provided by Section 67(2) of the Act and, therefore, within the $1,000,000.00 expenditure limit.

It must also be pointed out that the nature of the media makes it difficult, if not impossible, to differentiate between a request for "support" and a plea for funds - by the audience, the candidate or the Department.

B. Printed Media

1. General circulation newspaper

For the same reasons as were set forth with respect to broadcast media, papers of general circulation reach far too braod an audience to fall within the 20% limit - again, regardless of message content.

2. Limited circulation media such as political party journals and campaign newsletters.

These types of printed materials may be included within the 20% exclusion depending upon the message (the content must be a plea for contributions) and the audience (must be a limited, select audience).

The content of the ad is significant in the case of papers of limited or selective circulation, but has no significance in the case of mass media presentations. As indicated above, the type of circulation, both as to audience and area, is significant. A campaign newsletter which includes materials other than a solicitation for contributions or which is distributed to a large untargeted audience cannot be included in the 20%.

C. Circulars and Handouts.

1. Is anything other than a request for campaign contributions permissible?

Circulars and handouts are excluded from the 20% because of the "mass media" principles stated previously, unless limited to a specific audience (other than geographic area, with common interests and goals, etc.) and limited solely to a plea for funds.

The addition to a plea for funds of "Doe also needs your vote" will move a "message" from within to outside of the 20% (or from outside to inside the $1,000,000.00).

D. Direct Mail

1. Costs of letters soliciting financial support which are sent to:

a. General population
b. General population only within elective district
c. General population only outside elective district

The three examples above are outside of the 20% exclusion due to lack of specificity of audience to whom addressed. The examples below are included, however, because a greater specificity of audience.

d. Categories selected on the basis of the likelihood to contribute:

1) prior contributors to that candidate
2) prior contributors to candidates of the same party
3) prior contributors to candidates generally
4) party members
5) members of groups though to be friendly to that candidate
6) individuals who indicated support of the candidate
7) group identified with a certain issue explaining a candidate's stand on that issue and soliciting funds.

The subjective purpose of the mailing is a consideration in determining whether it is solely to solicit funds, but certainly not the only consideration. The above guidelines should be used for guidance and direction. Despite hardships to candidates, a case by case analysis may be unavoidable. Because of the delay that this may cause, it is hoped that the above information may be helpful in most cases.

Since your request did not include sufficient facts to apply the provisions of Section 67(2), this response has been limited to a general discussion of the issues and is not a declaratory ruling. Hopefully, however, you will find the information provided in this interpretive statement helpful in complying with the provisions of the Act.

Very truly yours,

Phillip T. Frangos

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF:pk

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

August 11, 1978

Mr. Anthony C. Penta, Jr.
3166 City National Bank Building
Detroit, Michigan 48226

Dear Mr. Penta:

This is in response to your request for an interpretation of the Campaign Finance Act ("the Act"), P.A. 388 of 1976, as amended, concerning filing locations.

As a candidate for judicial office, you are required by Section 36(1) of the Act (MCLA s 169.236) to file candidate committee reports with the Secretary of State. You question whether "Secretary of State" means any office of the Secretary of State, regardless of location in the state.

Rule 169.2 of the General Rules, promulgated by the Secretary of State pursuant to authority conferred by Section 15 of the Act (MCLA s 169.215) and having the effect of law, provides the duties and requirements imposed upon the Secretary of State by the Act and rules may be performed by an agent, and at a place, designated by the Secretary of State.

The Secretary of State has designated the Elections Division, Campaign Finance Reporting, Mutual Building, First Floor, P.O. Box 20126, Lansing, Michigan 48901, as the agent and place for receiving statements and reports required by the Act to be filed with the Secretary of State.

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF:pk

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING

MICHIGAN 48918

August 11, 1978

Mr. Robert C. Kelly, Treasurer
Friends of John Kelly
10306 Harvard
Detroit, Michigan 48226

This is in response to your recent letter in which several questions were raised concerning provisions of the Campaign Finance Act ("the Act"), P.A. 388 of 1976, as amended, as they impact on a candidate committee. Your questions are answered in the order they were asked.

1. Must a candidate committee, in filing a statement or organization, indicate the office sought by the candidate if it is unknown at the time the statement is filed?

A candidate committee does not have to indicate the office sought by a candidate if the office has not been identified as of the date the statement of organization is filed. The statement has to be amended when the office is selected.

2. What is the effect of maintaining a candidate committee for the purpose of placing a person in political office if a statement of organization cannot be filed until the office sought is known?

Your second question indicates you are operating under the incorrect interpretation that a statement of organization cannot be filed by a candidate committee until the office sought is identified. Section 3 of the Act (MCLA § 169.203) states an individual is considered a candidate when he or she receives a contribution or makes an expenditure even though the specific elective office is unknown at the time the contribution is received or the expenditure is made. Section 21 of the Act (MCLA § 169.221) requires an individual to form a candidate committee within 10 days after becoming a candidate. Section 24 of the Act (MCLA § 169.224) requires the candidate committee to file a statement of organization within 10 days after it is formed.

3. Does the term "political committee" enable formation of a committee to raise funds for a candidate who has not identified the office he or she is seeking?

Section 11 of the Act (MCLA § 169.211) defines "political committee" as a committee which is not a candidate committee, or ballot question committee. A committee which is clearly functioning as a candidate committee cannot register as a political committee even though the office sought is not known.

4. If the office sought is unknown, may the name of a candidate be deleted from a committee statement required by the Act?

As indicated previously, the lack of an identified office does not relieve a candidate committee from filing a required committee statement. However, a committee may not delete the name of any individual it is supporting merely because the office sought is unknown.

5. If a candidate seeks an office other than the one for which his or her candidate committee filed a statement of organization, must a new statement be filed?

If the office sought by a candidate is changed, the candidate committee only has to amend the original statement of organization. The committee does not have to submit a new statement of organization. It should be noted, however, Section 21 of the Act requires an individual who is a candidate for more than one office to form a candidate committee for each office provided at least one of the offices is a state elective office.

6. Would a candidate who amends his or her statement of organization to reflect a change in the office sought be precluded from receiving public funds provided the office was one for which funds were available?

Your question is raised because of Section 62 of the Act (MCLA § 169.262) which states that "only a candidate who established a single candidate committee which submitted a statement of organization according to procedures established by law may receive moneys under this act." Presently, the only moneys available under the Act are for gubernatorial candidates under prescribed conditions. Under normal circumstances, an amendment to a candidate committee's statement of organization indicating a change of office sought will not be construed as constituting more than a single candidate committee.

This response may be considered informational only and not as constituting a declaratory ruling.

Very truly yours,

Phillip T. Frangos

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF:pk

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

August 11, 1978

Honorable Warren N. Goemaere
Michigan House of Representatives
72nd District
Capitol Building
Lansing, Michigan 48909

Dear Representative Goemaere:

This is in response to your request for a declaratory ruling concerning the applicability of the Campaign Finance Act ("the Act"), P.A. 388 of 1976, as amended, to unspent funds in your candidate committee.

You state you will not be a candidate for re-election to the House of Representatives, and you would like to dissolve your candidate committee as soon as possible after June 6, 1978. The committee has a balance of $549.56 in its account.

You ask whether you can retain this money and declare it as taxable income. You also would like to know any other means available to dispose of these funds.

Section 45 of the Act (MCLA § 169.245) provides that unexpended funds in a candidate committee which are not eligible for transfer to another candidate committee of the person shall be given to a political party committee, a tax exempt charitable institution, or returned to the contributors of the funds upon termination of the candidate committee. Since you are at the point of terminating your candidate committee, one of the statutorily prescribed means must be used in disposing of the funds in question. The moneys may not be retained and declared as taxable income.

This response constitutes a declaratory ruling concerning the applicability of the Act to the facts enumerated in your request.

Sincerely,

Richard H. Austin
Secretary of State

RHA:pk

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

August 11, 1978

Mr. Zolton Ferency
Ferency Campaign Committee
P.O. Box 20
East Lansing, Michigan 48823

Dear Mr. Ferency:

This is in response to your request for a declaratory ruling concerning the applicability of the Campaign Finance Act ("the Act"), P.A. 388 of 1976, as amended, to interest earned on public funds received from the state campaign fund.

You state that on June 3, 1978, the Ferency Campaign Committee received state campaign moneys in the amount of $102,103.08. This sum was subsequently deposited in a separate account in a financial institution previously designated as the official depository of the campaign in accordance with the Act. The nature of the account allows deposited moneys to earn interest attributable to the candidate committee.

You request a ruling as to whether interest earned on moneys received from the state campaign fund may be retained by the candidate committee and, if so, what restrictions are placed upon the use of the interest.

Section 21(3) of the Act (MCLA § 169.221) requires a committee to establish an official depository for all contributions and expenditures of the committee. Section 66(3) of the Act (MCLA § 169.266) requires a separate account for public moneys received from the state campaign fund. Section 66(3) states:

> "A candidate shall keep those moneys received under this act in a separate account. The candidate's qualified expenditures may be paid from this account unless the account does not have a balance. An unexpended balance in this account shall be refunded and credited to the general fund within 60 days after the election for which the moneys were received. Payment received from the state campaign fund for expenditures in 1 election shall not be used for expenditures in a subsequent election." (Emphasis supplied)

Any unspent moneys in the public account must be returned to the general fund within 60 days of an election; in short, unspent moneys belong to the people of the state. Interest will accrue only on those unspent moneys in the separate account. Any interest earned must be returned to the state and may not be spent by the candidate even after exhausting all public moneys originally granted.

Section 28(1) of the Act (MCLA § 169.228) states interest received by a committee on an account consisting of funds belonging to the committee shall not be considered a contribution to the committee but shall be reported as interest. Although the interest on public moneys does not belong to the candidate committee, nevertheless it is not a contribution and must still be reported in the candidate committee's statements as interest. However, interest on public moneys should be distinguished in the report from interest earned by the candidate committee.

This response constitutes a declaratory ruling concerning the applicability of the Act to the facts enumerated in your request.

Sincerely,

Richard H. Austin
Secretary of State

RHA:pk

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

August 11, 1978

Honorable Robert F. Brang
District Judge
Seventeenth District
15126 Beech-Daly Road
Redford, Michigan 48239

Dear Judge Brang:

This is in response to your request for an interpretation concerning the making of certain payments from a petty cash fund in accordance with the Campaign Finance Act ("the Act"), P.A. 388 of 1976, as amended. You ask the following questions:

1. May a candidate committee make small cash payments of approximately $3.00 to youngsters who deliver political literature to homes?

2. May a candidate committee make cash payments from its petty cash fund of $10.00 to $15.00 each to a high school student who delivers political literature on election day?

In response to your first question, payments to individuals for the delivery of political literature constitute expenditures as defined in Section 6 of the Act (MCLA s 169.206). Consequently, a candidate committee may pay young people to distribute campaign materials.

With respect to your second question, Section 23 of the Act (MCLA s 169.223) provides the Secretary of State shall promulgate rules for the withdrawal of funds from a committee account for petty cash expenditures and for keeping records of the withdrawals. It states further a single expenditure from a petty cash fund shall not exceed $50.00.

Rule 169.38 of the General Rules, promulgated by the Secretary of State pursuant to authority conferred by Section 15 of the Act (MCLA s 169.215) and having the effect of law, provides a petty cash fund shall not be used for payment of salaries and wages. "Wages" is defined in Black's Law Dictionary (4th Edition 1968) as follows (in part):

"In its legal sense, the word 'wages' means the price paid for labor, reward of labor, specified sum for a given time of service or a fixed sum for a specified piece of work. In re Hollingsworth's Estate, 37 Cal. App. 2d 432, 99 P.2d 599." (Emphasis supplied)

A payment made for services rendered by an employee or worker, regardless of the age of the individual or of the amount of the payment, is a wage as provided in Rule 169.38, and cannot be made, therefore, from the petty cash fund.

This response may be considered informational only and not as constituting a declaratory ruling.

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF:pk

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING

MICHIGAN 4891[illegible]

August 11, 1978

Mr. Arthur Cartwright
2901 Oakman Boulevard
Detroit, Michigan 48238

Dear Mr. Cartwright:

This is in response to your request for a declaratory ruling concerning the applicability of the Campaign Finance Act ("the Act"), P.A. 388 of 1976, as amended, to unspent funds in your candidate committee.

You ask whether you may treat your candidate committee's unspent funds as personal income, subject to payment of appropriate taxes, since you will not be seeking re-election and have no campaign debts..

Section 45 of the Act (MCLA § 169.245) provides that unexpended funds in a candidate committee which are not eligible for transfer to another candidate committee of the person shall be given to a political party committee, or a tax exempt charitable institution, or returned to the contributors of the funds upon termination of the candidate committee. Since you are at the point of terminating your candidate committee, one of the statutorily prescribed means must be used in disposing of the funds in question. The moneys may not be retained and declared as personal income.

This response constitutes a declaratory ruling concerning the availability of the Act to the facts enumerated in your request.

Sincerely,

Richard H. Austin
Secretary of State

RHA:pk

MICHIGAN DEPARTMENT OF STATE

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STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

August 14, 1978

Mr. Monte Geralds
28162 Lorenz
Madison Heights, Michigan 48071

Dear Mr. Geralds:

This is in response to your request for a declaratory ruling concerning the applicability of the Campaign Finance Act ("the Act"), P.A. 388 of 1976, as amended, to a legal defense fund.

You state you have incurred, and will continue to incur, substantial legal fees and costs in defending yourself in respect to bar, criminal, and legislative matters. Some friends wish to establish a legal defense fund, the proceeds of which will not be used for any election purpose.

You ask whether a legal defense fund is subject to the provisions of the Act since the fund may benefit either a member of the House or a candidate.

In responding on March 29, 1978, to Ms. Cindy Sage, Treasurer of the Republican Women's Federation of Michigan ("the RWFM"), as to whether the RWFM must register and report pursuant to the Act, the Department stated:

> "The determination of whether the RWFM is subject to the Act's provisions is contingent on whether the state organization or any of the local organizations is a 'committee' as defined in the Act. Section 3 of the Act (MCLA § 169.203) defines a 'committee' as 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. 'Person' is defined in the Act as including an association, committee, or any other organization or group of persons acting jointly."

Similarly, unless your legal defense fund receives contributions or makes expenditures to influence an election, it is not subject to the reporting provisions of the Act. However, if any of this money should become utilized in

influencing or attempting to influence an election, the legal defense fund shall be subject to registering and reporting pursuant to the Act.

Since your letter does not set forth a precise statement of facts as required by Section 63 of the Michigan Administrative Procedures Act with respect to a request for a declaratory ruling, this response should be considered informational as to the interpretation relied upon by the Department in its enforcement of the Act.

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF:pk

MICHIGAN DEPARTMENT OF STATE

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STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

September 20, 1978

Mr. Michael W. Hutson
Hutson, Sawyer, and Chapman
4086 Rochester Road
Troy, Michigan 49098

Dear Mr. Hutson:

You have requested on behalf of three candidates a ruling from the Department concerning the propriety and manner of conducting a joint fundraising event between or among the three candidates pursuant to the Campaign Finance Act, P.A. 388 of 1976, as amended ("the Act").

In addition, you pose a situation where a beneficiary of a joint fundraiser terminates his or her candidacy during or subsequent to the fundraising activity. You propose a method whereby this individual may transfer his or her portion of the fundraising proceeds to any other candidate committee(s) benefitting from the joint fundraiser, and seek the Department's interpretation as to the appropriateness of this method.

A joint fundraising event for candidates is permissible under the Act if candidates planning such an event adhere to the following guidelines.

A. Prior to the event, an agreement between or among the candidates must be drafted in writing indicating the following information:

   1. The exact share of contributions to be assigned to each committee from contributions received from the event.

   2. The proportional share of expenditures to be delegated to each committee. The share of expenditures must be the same as the share of contributions.

   3. Designation of a joint account in a proper depository for deposit of all contributions from the joint fundraising event. This account will constitute a "secondary depository."

   4. The manner of payment for expenses attributable to the event. For example, one committee may be designated to pay all expenses for the event; subsequently, within a designated time, the paying committee will be reimbursed by the other committee(s). Alternatively, each committee may pay its proportionate share, as agreed previously, of each expense as it arises.

B. All advertising, either before or at the event, must inform contributors of the following:

1. The event is a joint fundraiser.

2. The names of the committees and candidates involved.

3. The office sought by each candidate.

4. The agreed share of each contribution to be allocated to each candidate.

5. The manner of writing checks or other written instruments by the contributors to the event. For example, the name of each candidate receiving a contribution should appear on a written instrument.

C. Recording and reporting of activities relating to a joint fundraiser must meet all requirements of the Act, including provisions governing the reporting of contributions and expenditures. The following must also be performed:

1. Each committee must record the name and address of each contributor as well as the portion of the contribution received from the contributor. The date of the contribution must also be recorded.

2. Each committee must report the name and address of each contributor whose portion to the candidate committee exceeds $20.00, including the date the contribution was made. For example, if two candidate committees agree to divide contributions equally, each committee will report information concerning its half of a contribution received from the fundraising event.

3. If the agreement designates a committee to pay all expenses for which reimbursement will be provided at a later time by the other participating committee(s), the designated committee must itemize all expenditures over $50.00 associated with the event. The committee must indicate the expenditure was made for a joint fundraising event. When the committee making the expenditure receives reimbursement, it must report the reimbursement as "other receipts" in connection with a joint fundraiser. If a committee is obligated to make reimbursement, it must report the total reimbursement as an expenditure. In addition, each expenditure over $50.00 that is included within the total reimbursement must be itemized.

4. If it is agreed in writing that each committee will pay its proportionate share as each expenditure arises, each committee shall itemize its share of the expenditure if that share exceeds $50.00.

5. Each committee must complete a fundraiser schedule, which reports only the amounts received by each committee and not the total amount. The schedule should clearly identify the event as a joint fundraiser with the other named candidates.

6. Each committee must amend its statement of organization to reflect establishment of the secondary depository.

It should be stated that Section 44(2) of the Act (MCLA § 169.244) prohibits a candidate committee from making a contribution to another candidate committee. Consequently, it is imperative that no candidate bear a disproportionate share of the expenses for an event. Such a disproportionate share could constitute an illegal contribution to each of the participating candidate committees. Reimbursement must be made promptly within the period specified in the written agreement.

All persons making a contribution in connection with the event must make a contribution to each of the participating candidate committees in the ratio publicized to the contributors. Those individuals who chose to allocate their contributions differently may not do so in connection with the joint fundraiser. The above requirements will assure that each contributor knows exactly where his or her contribution is directed, thereby avoiding possible commingling of contributions and avoiding violation of any applicable contribution limits.

Each candidate committee must treat the gross amount of each proportionate share of a contribution as a reportable contribution and not merely the net proceeds after deducting expenses.

The previously mentioned joint bank account must meet the requirements of a secondary depository, i.e., it must be used for the sole purpose of depositing contributions with their prompt transferral to each committee's official depository pursuant to Section 21(3) of the Act (MCLA § 169.221). Expenditures may not be made from the secondary depository.

In your letter, you indicated that one of the candidates benefitting from the joint fundraiser may decide not to run for reelection after the affair or in the course of raising funds for the event. You suggest the possibility of that individual creating an officeholder expense fund, with the intention of transferring to it all funds raised by that individual's candidate committee. Subsequently, all moneys in the officeholder expense fund would be contributed, under your proposal, to the two other candidate committees.

This proposal does not meet the requirements of the statute. Employing the subterfuge of first passing the moneys through an officeholder expense fund violates the prohibition in Section 44(2) against transferring moneys from one person's candidate committee to another person's candidate committee. Funds in a terminated candidate committee's account can be transferred only as provided in Section 45 of the Act (MCLA § 169.245), i.e., they shall be given to a political party committee, or to a tax exempt charitable institution, or returned to the contributors of the moneys.

Since your inquiry was not supported by the precise statement of facts required by Section 63 of the Michigan Administrative Procedures Act (MCLA s 24.263) which establishes the criteria for requesting the issuing a declaratory ruling, this response may be considered as informational only and not as constituting a declaratory ruling.

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF:pk

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN o SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

September 27, 1978

Mr. E. James Barrett, Treasurer
Michigan Business Political Action Committee
501 South Capitol Avenue
Lansing, Michigan 48933

Dear Mr. Barrett:

This is in response to your request for a declaratory ruling concerning the applicability of the Campaign Finance Act, P.A. 388 of 1976, as amended ("the Act"), to receipt by a separate segregated fund of an unsolicited contribution from another separate segregated fund.

You state the following factual situation:

> "On January 19, 1978, the Michigan Business Political Action Committee, a separate segregated fund of the Michigan State Chamber of Commerce, 501 South Capitol Avenue, Lansing, Michigan 48933, deposited into its campaign depository a $500 contribution from the JSJ Political Action Committee, a separate segregated fund of the JSJ Corporation, 715 Robbins Road, Grand Haven, Michigan 49417. This contribution has since been reported on the campaign statements required of both committees under the provisions of the Act."

You indicate you are aware that on July 20, 1978, Attorney General Frank J. Kelley in OAG No. 5344 stated: "A separate segregated fund established by one corporation may not contribute to a separate segregated fund established by another corporation." However, you disagree with the Attorney General's interpretation and request the Department to issue a declaratory ruling which reaches a conclusion opposite to that stated by the Attorney General.

Section 55 of the Act (MCLA § 169.255) provides:

> "(1) A corporation or joint stock company formed under the laws of this or another state or foreign country 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, candidate committees, ballot question committees, political party committees, and independent committees.
>
> (2) Contributions for a fund established by a corporation or joint stock company under this section may be solicited from any of the following persons or their spouses:

(a) Stockholders of the corporation.

(b) Officers and directors of the corporation.

(c) Employees of the corporation who have policy making, managerial, professional, supervisory, or administrative nonclerical responsibilities.

(3) Contributions for a fund established under this section by a corporation which is nonprofit may be solicited from any of the following persons or their spouses:

(a) Members of the corporation who are individuals.

(b) Stockholders of members of the corporation.

(c) Officers or directors of members of the corporation.

(d) Employees of the members of the corporation who have policy making, managerial, professional, supervisory, or administrative nonclerical responsibilities.

(4) Contributions shall not be obtained for a fund established under this section by use of coercion, physical force, or as a condition of employment or membership or by using or threatening to use job discrimination or financial reprisals.

(5) A person who knowingly violates this section is guilty of a felony and shall be punished by a fine of not more than $5,000.00 or imprisoned for not more than 3 years, or both, and if the person is other than an individual, the person shall be fined not more than $10,000,00.

You maintain a strict reading of Section 55 of the Act (MCLA § 169.255) clearly indicates a separate segregated fund is not prohibited from making a contribution to another separate segregated fund provided the recipient fund did not solicit the contribution and is an "independent committee" under the provisions of the Act. You argue the limitations found in Section 55(2) and (3) are on solicitations made by a separate segregated fund beyond the persons or spouses enumerated in the Act.

In your letter it is indicated that at no time prior to receiving the contribution did the Michigan Business Political Action Committee solicit a contribution on its behalf from the JSJ Political Action Committee. The Michigan Business Political Action Committee, in addition to being a separate segregated fund, was a fully registered and qualified "independent committee" under the provisions outlined in Section 8(2) of the Act (MCLA § 169.208) as of January 19, 1978. Therefore, you argue the JSJ Political Action Committee was clearly operating under the provisions of Section 55(1) when it made a contribution to the Michigan Business Political Action Committee.

It is your contention the Attorney General in his opinion confuses the limits on solicitation with an ability to contribute. You ask the Department to issue a declaratory ruling to the effect that as a separate segregated fund, the Michigan Business Political Action Committee was operating within the law when it accepted the unsolicited contribution of the JSJ Political Action Committee.

The Michigan Supreme Court in Traverse City School District v. Attorney General, 185 N.W. 2d 9, 384 Mich 390 (1971), stated that "Although an opinion of the Attorney General is not a binding interpretation of the law which courts must follow, it does command the allegiance of state agencies." Consequently, concerning the specific factual situation you present, the Michigan Business Political Action Committee must return the $500 contribution to the JSJ Political Action Committee, since a separate segregated fund is prohibited from contributing to another separate segregated fund.

This response constitutes a declaratory ruling concerning the applicability of the Act to the specific factual situation enumerated in your request.

Sincerely,

Richard H. Austin
Secretary of State

RHA:pj

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING

MICHIGAN 48918

September 27, 1978

Mr. Carl Smith, Jr.
LAW-PAC
P.O. Box 489
Bay City, Michigan 48707

Dear Mr. Smith:

This is to respond to your June 30, 1978, request for a ruling concerning the applicability of the Campaign Finance Act, P.A. 388 of 1976, as amended ("the Act"), to a separate segregated fund of a nonprofit corporation.

You state the following factual situation:

> "The State Bar of Michigan maintains a duly registered political action committee. It is a non-profit corporation segregated fund.
>
> "There are some 75 to 100 local bar associations within Michigan which are unincorporated associations. Lawyers belong to these local bar associations and the dues money collected by those local bar associations consist mainly of non-corporate checks, but there are a few professional corporation checks.
>
> "The question which we have is, can these local bar associations make contributions in their own name to the State Bar segregated fund using the monies from their treasury? If there is pollution of the local bar association revenues by the professional corporation checks, can this pollution be cured by segregating into two bank accounts the dues money? In other words, bank account #1 will have deposited into it only professional corporation checks and bank account #2 will have deposited into it only non-corporate checks. The contributions will be made by the association to the State Bar of Michigan's segregated fund only from the non-corporate check funds."

Section 55 of the Act (MCLA § 169.255) provides (in part):

> (1) A corporation of joint stock company formed under the laws of this or another state or foreign country 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, candidate committees, ballot question committees, political party committees, and independent committees.

(2) Contributions for a fund established by a corporation or joint stock company under this section may be solicited from any of the following persons or their spouses:

(a) Stockholders of the corporation.

(b) Officers and directors of the corporation.

(c) Employees of the corporation who have policy making, managerial, professional, supervisory, or administrative nonclerical responsibilities.

(3) Contributions for a fund established under this section by a corporation which is nonprofit may be solicited from any of the following persons or their spouses:

(a) Members of the corporation who are individuals.

(b) Stockholders of members of the corporation.

(c) Officers or directors of members of the corporation.

(d) Employees of the members of the corporation who have policy making, managerial, professional, supervisory, or administrative nonclerical responsibilities."

Section 55 permits a corporation to make an expenditure for the establishment, administration and solicitation of contributions to a separate segregated fund to be used for political purposes. The statute expressly relates persons who may be solicited for contributions to a fund to the corporation which established the fund.

The Attorney General discussed the establishment of a separate segregated fund by a corporation in Opinion of the Attorney General, OAG No. 5344, issued July 20, 1978. In addressing the question as to whether a separate segregated fund established by one corporation may contribute to a separate segregated fund established by a second corporation, the Attorney General ruled in the negative. This conclusion was based on the statutorily restricted sources of contributions to a fund, i.e., shareholders, officers and directors, and managerial and supervisory employees of the corporation which establishes the fund. The Attorney General stated: "No other person, except spouses of the foregoing individuals, may contribute to the 'separate segregated fund'." In the instance of a fund established by a nonprofit corporation, contributions may be received from members of the corporation who are individuals and their spouses.

Consequently, it is possible that local bar associations may not contribute any funds, regardless of their source, to LAW-PAC. The latter is statutorily restricted as to its source of funds to those provided in Section 55(3) of the Act. However, before answering this question definitively, additional information, which was not provided in your letter, is necessary.

This response may be considered as informational only and not as constituting a declaratory ruling.

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF:pj

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING

MICHIGAN 48918

September 28, 1978

Mr. William F. McLaughlin
Michigan Republican State Committee
223 N. Walnut
Lansing, Michigan 48933

Dear Mr. McLaughlin:

This is in response to your request for an interpretation of the Campaign Finance Act, P.A. 388 of 1976, as amended ("the Act").

Specifically, your question is:

> "What is the limitation for each election on contributions by a state committee of a political party of a candidate for the office of governor who has elected to receive public funds pursuant to sections 61 to 71 of the Act? (You ask the same question as it relates to congressional district and county committees of political parties)."

Your question was answered in the June, 1978, edition of Bulletin. Your attention is directed to page 5 of the pamphlet, a copy of which is enclosed.

The applicable contribution limits with respect to a gubernatorial candidate who has received public funds under the Act are set forth in Section 69 of the Act (MCLA § 169.269). Thus the state central political party committee may contribute a maximum of $250,000.00, and a district or county political party committee may contribute a maximum of $10,000.00, in the primary election to a gubernatorial candidate who has accepted public funds. In the general election, the state central political party committee may contribute $250,000.00, and a local political party committee may contribute $10,000.00 to the party's candidates for Governor and Lt. Governor, who are treated as one candidate for purposes of the general election.

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF:pj

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48913

September 29, 1978

Mr. Wallace G. Long
Fitzgerald for Governor
2000 First Federal Building
Detroit, Michigan 48226

Dear Mr. Long:

This is in response to your inquiry of August 14, 1978, concerning transfer by a gubernatorial candidate committee of debts and assets from the primary to the general election consistent with the provisions of the Campaign Finance Act, P.A. 388 of 1976, as amended ("the Act").

You are aware the Department issued guidelines to the several gubernatorial candidate committees prior to the August, 1978, primary election concerning the impact of reporting requirements and expenditure limitations on goods and services purchased prior to the primary election but used also for the general election. The guidelines stated goods and services, with a value of $100.00 or more, purchased prior to the primary election but used or distributed after the primary election are goods or services attributable to the general election. In addition, the guidelines provided that if the expenditure was reported previously as a primary election expenditure, it should be reported subsequently as an expenditure for the general election at the market value on August 9, 1978, and expenditures for the primary election reduced by the same amount.

In view of these guidelines, you ask whether the candidate committee may use general election moneys to purchase for use in the general election assets which were purchased prior to the primary. You indicate actual purchases may include the takeover of telephone deposits made during the primary for telephones kept in activity through the general election, office space security deposits, surplus posters or buttons used in both the primary and general elections, and commercial film or tapes to be used for broadcast in the general election.

The Department permits purchases of this type pursuant to the following guidelines:

1) Assets may only be bought and sold at the market value prevailing on August 9, 1978. Market value is the amount which could usually be received in the open market for the goods.

2) The purchase and sale of assets must be reported accordingly and attributed to the appropriate election spending limits. Adjustment must be made for the value of assets used in both the primary and general elections.

3) Payment for the assets may not exceed legitimate debts.

4) If an asset being liquidated was purchased with public funds, the proceeds must be deposited in the public fund account of the committee.

5) If an asset being liquidated was purchased with private funds, the proceeds must be deposited in the official account of the committee.

Section 66(3) of the Act (MCLA § 169.266) provides "Payment received from the state campaign fund for expenditures in 1 election shall not be used for expenditures in a subsequent election." This provision restricts a gubernatorial candidate involved in a prior election where that candidate received public funds from transferring those funds to a subsequent election thereby creating an unfair advantage in the amount of public funds available to the candidate. The procedure outlined above will not create an unfair advantage since an equal exchange in value has been provided between the primary and general elections.

In view of the fact your letter was general in nature and lacked the specificity required by Section 63 of the Michigan Administrative Procedures Act (MCLA § 24.263) which establishes the criteria for requesting and issuing a declaratory ruling, this response may be considered as informational only and not as constituting a declaratory ruling.

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF:pj

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

September 29, 1978

Mr. William R. Ralls
Kemp, Klein, Endelman & Ralls
3000 Town Center, Suite 2700
Southfield, Michigan 48075

Dear Mr. Ralls:

This is in response to your request for a ruling by the Department concerning the deadline before which a gubernatorial committee may file an application for public funds available under the Campaign Finance Act, P.A. 388 of 1976, as amended ("the Act"), to retire a debt incurred in the primary election.

Section 61(4) of the Act (MCLA § 169.261) provides (in part):

> "An amount equal to the cumulative amounts designated under subsection (2) each year shall be appropriated annually from the general fund of the state to the state campaign fund to be available beginning January 1 and continuing through December 31 of each year in which a governor is elected. The amounts appropriated under this section shall not revert to the general fund but shall remain available to the state campaign fund for distribution without fiscal year limitation except that any amounts remaining in the state campaign fund on December 31 immediately following a gubernatorial general election shall revert to the general fund." (Emphasis supplied)

Section 61(4) indicates the moneys in the State Campaign Fund are available from January 1, 1978, through December 31, 1978, when moneys remaining in the State Campaign Fund revert to the General Fund. The Act does not contain language limiting application during this period to a candidate in either the primary or general election. It appears a gubernatorial candidate committee in either the primary or general election may validly apply for public funds and receive moneys throughout 1978 provided the committee is eligible for funds.

Section 66(3) of the Act (MCLA § 169.266) states "an unexpended balance in this account shall be refunded and credited to the general fund within 60 days after the election for which the moneys were received." The "account" to which reference is made is the separate account a gubernatorial candidate committee must maintain for moneys received from the State Campaign Fund.

The impact of Section 66(3) is upon funds received by the gubernatorial candidate committee from the State Campaign Fund, which remain unspent 60 days after the election for which the moneys were received. Money is considered spent upon incurrence of a debt pursuant to the making of an expenditure as defined in Section 6 of the Act (MCLA § 169.206). Consequently, a candidate who has debts incurred in an election may continue to apply for public moneys, even after the 60-day period, provided the funds in the State Campaign Fund have not reverted to the General Fund because of the December 31 deadline. The gubernatorial candidate committee must provide proof of qualifying contributions (in the case of the primary election) and must apply the moneys received only against qualified campaign expenditures. The committee may receive funds only to the limits authorized by the Act.

Accordingly, your gubernatorial candidate committee may apply to receive public moneys, for which it qualifies, to retire debts validly incurred in the August, 1978, primary election. Application for the public moneys, which will be available through December 31, 1978, must be made a reasonable time prior to that date to permit approval and processing. Moreover, in the period prior to December 31 but subsequent to 60 days after the primary election, the Department will require proof from the committee that moneys applied for are directed to and not in excess of qualified campaign expenditures.

This response constitutes a declaratory ruling concerning the applicability of the Act to the specific factual situation described in your request.

Sincerely,

Richard H. Austin
Secretary of State

RHA:pj