MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

January 16, 1978

Honorable Patrick H. McCollough
c/o McCollough-Michigan Committee
P.O. Box 10039
Lansing, Michigan 48901

Dear Mr. McCollough:

The Department has received your letter of December 22, 1977, requesting a declaratory ruling concerning P.A. 388 of 1976, the Campaign Finance Act ("the Act"). The request is made pursuant to P.A. 306 of 1969, the Administrative Procedures Act, as provided in R169.6 of the General Rules promulgated to implement the Act.

Your letter states: "There may, however, be a need for clarification as to the point at which a loan may become a contribution. I seek a declaratory ruling on that point."

In addition, the Department has received a request from Mr. Steven R. Bartholomew, Treasurer of the McCollough-Michigan Committee. This letter, also dated December 22, 1977, raises several questions concerning the status of loans made to a candidate committee under several provisions of the Act.

After examining both letters, it is concluded that neither presents a proper request for a declaratory ruling. Section 63 of the Michigan Administrative Procedures Act provides:

> "On request of an interested person, an agency may issue a declaratory ruling as to the applicability to an actual state of facts of a statute administered by the agency or of a rule or order of the agency. An agency shall prescribe by rule the form for such a request and procedure for a submission, consideration and disposition. A declaratory ruling is binding on the agency and the person requesting it unless it is altered or set aside by any court. An agency may not retroactively change a declaratory ruling, but nothing in this subsection prevents an agency from prospectively changing a declaratory ruling. A declaratory ruling is subject to judicial review in the same manner as an agency final decision or order in a contested case."

The Administrative Procedures Act and the Department's rules, which govern the procedural aspects of declaratory rulings, allow the Department to issue a declaratory ruling only upon presentation of a specific factual situation and not upon a hypothetical set of facts. The requests as outlined in the two letters of December 22, 1977, do not set forth any facts and, therefore, cannot be acknowledged with the issuance of declaratory rulings as requested.

However, if the requests are modified to present actual factual situations, the Department may then be able to issue declaratory rulings which are binding on the requestors and the Department consistent with the requirements of the Administrative Procedures Act.

Although the Department may not respond with declaratory rulings in the case of these two letters, the issues presented therein merit some attention at this time. They relate to administration of the state campaign fund which became operational on January 1, 1978. In view of the fact the issues raised in the two letters have been of concern on several occasions, the Department at this time takes the opportunity to present its reading of the statute with respect to several questions in the form of an interpretive statement. This statement is rendered pursuant to the Department's authority as administrative supervisor of the several provisions of the Act.

In responding to the issues raised, the several questions in the two letters of December 22 have been modified to reflect the pertinent questions which need clarification at this time. The questions to which this statement is addressed are as follows:

1. Should a loan made to a candidate committee be treated as a contribution or expenditure under the provisions of the Act?

2. If considered a contribution, is a loan to a candidate committee subject to the various contribution limits provided in the Act?

3. May a loan to a gubernatorial candidate committee, which has filed a statement of organization indicating an intent to seek qualifying contributions in order to receive monies from the state campaign fund, be construed to be a qualifying contribution for purposes of the Act?

4. May funds received by a gubernatorial candidate committee from the state campaign fund be used for the repayment of a loan?

Section 4(1) of the Act defines "contribution" to include a loan, whether or not conditional or legally enforceable, made for the purpose of influencing the nomination or election of a candidate. With one major exception, a loan should be reported as a contribution consistent with the reporting provisions of Section 26(b) of the Act. In addition to general language for the reporting of contributions, this section provides specifically that if a loan is repaid during the period covered by the campaign statement, the amount of the repayment shall be subtracted from the total amount of contributions received. In short, a loan to a candidate committee should be reported as a contribution.

The one exception to the above is a loan made by a corporate lender in the ordinary course of business. Section 54(1) of the Act prohibits corporate financial involvement in political activity except as specifically authorized by the Act. An exception permitted by the Act is a loan made in the ordinary course of business by a corporate lender. The Department interprets the Act as requiring a corporate lender to be in the business of making loans.

This exception is consistent with the other provisions of the Act in that if a loan from an established corporate lender were treated as a contribution to a candidate, the lender would have to establish itself as a committee pursuant to the provisions of Section 3(4) in any instance where the loan exceeded $200.00 in a calendar year. A reading of the several relevant statutory sections does not support such a conclusion.

Therefore, a loan from a corporate lender in the business of making loans and made in the ordinary course of business, should not be reported as a contribution for purposes of the Act. Rather, a loan of this type should be reported as a receipt by the candidate committee pursuant to the provisions of Section 28(2) of the Act. This provision requires the reporting of a loan on a separate schedule and prescribes a number of reporting requirements.

It should be noted that Section 6(1) defines "expenditure" to include a loan made for the nomination or election of a candidate, or the qualification, passage or defeat of a ballot question. This statutory provision is intended to require the reporting as an expenditure of a loan made by an independent committee or a political party committee to a candidate, or by any committee for or against a ballot question. It does not include the situation where a candidate committee receives a loan on its own behalf. Repayment of a loan by a candidate committee does not constitute an expenditure. The statute contemplates this result in Section 26(b) which was cited previously. The amount of any repayment during the period covered by a campaign statement should be subtracted from the total amount of contributions received during that period.

Turning to the second question, it may be answered by stating that a loan made by a lender other than a corporate lender established for the purpose of making loans, and made during the course of its business, is subject to the contribution limits set forth in Sections 52(1) and 69(1) of the Act. Thus, a person other than an independent committee or a political party committee cannot make contributions to the candidate committee of a gubernatorial candidate which exceed $1,700.00 with respect to a single election. In the instance of a loan subject to the contribution limits of the Act, repayment of any part of the loan by the candidate committee frees the contribution limit available to the maker of the loan to the extent that repayment is made. For example, if a person lends the candidate committee of a gubernatorial candidate $1,700.00 on July 1 and $500.00 is repaid by July 15, the maker of the loan may contribute an additional amount up to $500.00 with respect to the single election covered by that contribution limit.

The third question is concerned with monies available to a gubernatorial candidate from the state campaign fund. The fund was created by the Act for the purpose of providing matching funds to gubernatorial candidates for their campaign upon the meeting of certain requirements. Section 12(1) of the Act defines what constitutes a "qualifying contribution" for purposes of receiving money from the fund. This provision expressly states that qualifying contribution does not include a loan.

The last question is concerned with whether monies received from the state campaign fund may be used towards the repayment of a loan. Section 66(1) of the Act states that a candidate may only apply the monies received from the fund against a "qualified campaign expenditure." Section 66(2) indicates what constitutes and what does not constitute a qualified campaign expenditure.

In view of the fact that repayment by a candidate committee of a loan does not constitute an expenditure, it does not constitute a qualified campaign expenditure. Thus, monies received from the state campaign fund by the candidate committee of a gubernatorial candidate may not be used for the repayment of a loan to that committee.

As stated previously, this letter does not constitute a declaratory ruling. It should be considered informational as to the interpretations 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

cc: Mr. Steven R. Bartholomew, Treasurer
c/o McCollough-Michigan Committee
P.O. Box 10039
Lansing, Michigan 48901

STATE OF MICHIGAN

FRANK J. KELLEY, ATTORNEY GENERAL

Opinion No. 5258

January 25, 1978

CAMPAIGN CONTRIBUTIONS AND EXPENDITURES ACT:

Fund raising events

LOTTERIES:

Fund raising events pursuant to Campaign Contributions & Expenditures Act

The fact that proceeds from the sale of chances for prizes at a political fund-raising event must be reported does not have the effect of making it legal for political candidates to conduct a lottery.

Honorable Paul A. Rosenbaum

State Representative

The Capitol

Lansing, Michigan 48901

Because section 7(4) of the campaign finance act, 1976 PA 388, Sec. 7(4); MCLA 169.207(4); MSA 4.1703(7)(4), defines a 'fund raising event' to include 'donations or chances for prizes', you have requested my opinion as to whether it is legal for a political candidate to conduct a lottery.

1976 PA 388, Sec. 7(4), supra, states:

> "Fund raising event' means an event such as a dinner, reception, testimonial rally, auction, bingo, or similar affair through which contributions are solicited or received by purchase of a ticket, payment of an attendance fee, donations or chances for prizes, or through purchase of goods or services.' [Emphasis added]

The provisions of the Penal Code which prohibit conducting a lottery are contained in Section 372 and Section 372a, 1931 PA 328, Secs. 372 and 372a; MCLA 750.372 and 750.372a; MSA 28.604a and 28.604a. These provisions prohibit any person from establishing or promoting a lottery or gift enterprise for money. Section 372 makes it a criminal offense to 'dispose of any property, real or personal, goods, chattels or merchandise or valuable thing by the way of lottery or gift enterprise . . .'.

In Miller v Radikopf, 51 Mich App 393; 214 NW2d 897 (1974), the Court of Appeals noted that the general policy of this State is against the holding of lotteries and, therefore, would not permit a lottery winner to bring a successful suit for a private lottery prize. Responding to the contention that the 1970 constitutional amendment authorizing the legislature to establish lotteries (Const 1963, art 4, Sec. 41) and the enactment of the lottery act, 1972 PA 239; MCLA 432.1 et seq;

MSA 18.969(1) et seq, evinces a public policy in favor of lotteries, the Court of Appeals noted that the specific exemption does not apply to any lottery other than that conducted by the State. In so holding, the Court stated:

> '. . . This is especially true since the state lottery has as its purpose the raising of revenue for the state, and it would seem incongruous that the Legislature would allow private lotteries to compete with the public lottery and thereby reduce the revenues earned for the state. We therefore hold that the state lottery established by the McCauley-Traxler-Law-Bowman Lottery Act is the only legal lottery conducted in this state, and that the maintenance of other lotteries is contrary to statute and public policy.' 51 Mich App at 395-396; 214 NW2d at 898

Although the Supreme Court reversed the Court of Appeals in Miller v Radikopf, 394 Mich 83; 228 NW2d 386 (1975), the reversal did not indicate any dissent from the conclusion that the public policy of the State did not preclude the plaintiff from enforcing his claim; the Supreme Court did not indicate any dissent with the above statement of the Court of Appeals concerning lotteries. In fact, in its opinion the Supreme Court noted:

> 'It is a crime to 'set up or promote' a lottery in this state. It is similarly a crime for a person to 'sell', 'offer for sale', or 'have in his possession with intent to sell or offer for sale' lottery tickets.' 394 Mich at 87; 228 NW2d at 387

Thus, the Supreme Court only took exception to the decision of the Court of Appeals that there is a bar to enforcement of a contractual claim for a lottery prize against a person who did not promote the lottery because, the Supreme Court reasoned, it is consistent with the public policy of the State to encourage the performance of legal contracts and to foster the just resolution of disputes.

It is therefore clear that Michigan law prohibits a person from conducting a fund raising event which involves the sale of a chance for a prize unless authorized by statute.

The issue then becomes: Does the fact that 1976 PA 388, Sec. 7(4), supra, requires that the proceeds of a lottery be reported have the effect of legalizing the activity? In my opinion, the answer is, 'No'.

The concept of having a statute that requires that monies illegally obtained be reported is not without precedent. For example, the Internal Revenue Code of 1954, Sec. 4412 requires the filing of a special return and a registration application by persons engaged in the business of accepting wagers although this activity is prohibited. In United States v Knox, 396 US 77; 24 L Ed 2d 275; 90 S Ct 363 (1969), the person indicated for making a fraudulent statement to the government asserted that the wagering tax law that required him to file a special return be held invalid. However, a majority of the United States Supreme Court held that the Fifth Amendment gave the defendant no privileges of filing a false return when faced with the charge of prosecution for failure to file an accurate return or filing incriminating statements in a truthful return.

Thus, the fact that the legislature requires a person to report lottery income which is illegally obtained does not have the effect of legalizing the lottery that produces the income.

Nor is there any basis to conclude that the legislature intended by the enactment of 1976 PA 388, Sec. 7(4), supra, to authorize political candidates to hold lotteries. The title to 1976 PA 388, supra, clearly identifies its purposes as the regulation of political activity, campaign financing, contributions, expenditures, and reporting. There is nothing in the title to suggest to legislators and to the people that lotteries were to be authorized. Const 1963, art 4, Sec. 24, requires such notice to permit legislators to fully understand statutes before they approve them and second, that the public be made aware of the laws enacted. Adams v Treasurer of Wayne County, 71 Mich App 275; 248 NW2d 232 (1976).

It is therefore, my opinion that the fact that proceeds from the sale of chances for prizes at a political fund raising event must be reported does not have the effect of making it legal for political candidates to conduct a lottery.

Frank J. Kelley

Attorney General

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

March 21, 1978

Honorable Thaddeus C. Stopczynski
Michigan House of Representatives
State Capitol
Lansing, Michigan 48909

Dear Representative Stopczynski:

This is in response to your letter in which you state your desire to award a $100.00 scholarship to a 1978 high school graduate from your legislative district. The specific question you present is whether the scholarship may be funded from monies held by your candidate committee.

Section 6 of P.A. 388 of 1976 (MCLA § 169.206) defines "expenditure" as "a payment, donation, loan, pledge, or promise of payment of money or anything of ascertainable monetary value for goods, materials, services, or facilities in assistance of, or in opposition to, the nomination or election of a candidate..." Section 3 of the Act (MCLA § 169.203) provides that an elected officeholder is a candidate for reelection to the same office.

As an incumbent State Representative, you are considered a candidate under the provisions of the Act. As such, your candidate committee is authorized to make expenditures in assistance of your renomination and reelection to office. If you construe the awarding of a scholarship to a 1978 high school graduate as assisting your renomination and reelection, the scholarship may be funded from monies held by your candidate committee.

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

March 21, 1978

Honorable Gary G. Corbin
Michigan State Senate
State Capitol
Lansing, Michigan 48909

Dear Senator Corbin:

This is in response to your letter in which you asked questions concerning the officeholder's expense fund as provided in P.A. 388 of 1976 ("the Act"). The questions, which have been modified for purposes of clarification, are as follows:

1) May funds held by an officeholder's candidate committee be transferred to the same officeholder's expense fund?

2) May tickets to other candidates' fundraisers be purchased with monies from an officeholder's expense fund?

3) If the second question is answered in the affirmative, would an officeholder's expense fund from which monies are used to purchase tickets to other candidates' fundraisers have to register as a committee?

Section 49 of the Act (MCLA § 169.249) enables an elected public official to establish an officeholder's expense fund. The fund may be used for expenses incidental to the person's office. The fund may not be used to make contributions or expenditures to further the nomination or election of the public official who establishes the fund.

Rule 169.39 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, expressly permits the transfer of money from the candidate committee of an elected public official to that official's officeholder expense fund in accordance with the provisions of the Act.

In view of Rule 169.39, your first question is answered in the affirmative, i.e., funds held by an officeholder's candidate committee may be transferred to the same officeholder's expense fund.

With respect to your second question, it has been custom and tradition for incumbent public officials to purchase tickets to the fundraisers of other candidates for political office. Indeed, it may be stated the expenditure of monies for this purpose by an elected public official is often necessitated by, and therefore incidental to, the person's office. In enacting language authorizing the establishment of an officeholder's expense fund, the Legislature was cognizant of this political tradition.

In requiring the recording and reporting of receipts to and disbursements from the officeholder's expense fund, Section 49(2) speaks of "expenditures." "Expenditure" is defined in Section 6 of the Act (MCLA § 169.206) as "a payment...in assistance of...the nomination or election of a candidate..." Consequently, tickets to other candidates' fundraisers may be purchased with monies from an officeholder's expense fund.

This result gives rise to the answer to your third question. The simple action of utilizing monies in an officeholder's expense fund to pay for tickets to other candidates' fundraisers does not, in of itself, necessitate the registering of the fund as a committee for purposes of the Act. As indicated previously, Section 49(2) provides recording and reporting requirements for the officeholder's expense fund separate from those required for other committees. An officeholder's expense fund used for expenses incidental to the person's office is not a committee for purposes of 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

MICHIGAN DEPARTMENT OF STATE
RICHARD H. AUSTIN • SECRETARY OF STATE
STATE TREASURY BUILDING
LANSING
MICHIGAN 48918

March 21, 1978

Mr. Timothy Downs
c/o Farber & Downs P.C.
1217 First National Building
Detroit, Michigan 48226

Dear Mr. Downs:

This is in response to your letter in which you asked several questions concerning P.A. 388 of 1976 ("the Act"). The questions, which have been modified for purposes of clarification, are as follows:

1) May donations be made specifically to an officeholder's expense fund?

2) May contributions be made specifically to a campaign committee?

3) May contributions be made specifically to a combined officeholder's expense fund and campaign committee account?

4) May funds held in an officeholder's expense fund be transferred to the same officeholder's candidate committee?

5) May funds held by an officeholder's candidate committee be transferred to the same officeholder's expense fund?

6) What disbursements may be properly made from an officeholder's expense fund?

7) Must funds held by a candidate committee or in an officeholder's expense fund as of June 1, 1977, be itemized in a reporting statement, or may they be reported as to total amount?

Section 21 of the Act (MCLA § 169.221) provides a candidate committee shall designate an account in a Michigan financial institution as the official depository for the purpose of depositing all contributions and for the purpose of making all expenditures. A contribution to a candidate committee pursuant to the Act is made for the purpose of influencing the nomination or election of the candidate. An expenditure by a candidate committee for purposes of the Act is generally in assistance of the nomination or election of the candidate.

Section 49 of the Act (MCLA § 169.249) enables an elected public official to establish an officeholder's expense fund. The fund may be used for expenses incidental to the person's office. The fund may not be used to make contributions or expenditures to further the nomination or election of the public official who establishes the fund.

Rule 169.39 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, provides that money received by an officeholder's expense fund shall be kept in a depository account separate from the candidate committee's funds. Further, the rule states that money given specifically to an officeholder's expense fund shall be designated for that purpose by the donor. It permits the transfer of money from the candidate committee of an elected public official to that official's officeholder expense fund in accordance with the provisions of the Act.

In view of the foregoing provisions, your questions may be answered as follows:

1) Donations may be made specifically to an officeholder's expense fund.

2) Contributions may be made specifically to a campaign committee.

3) Contributions to a combined officeholder's expense fund and campaign committee account are precluded by the Act and rules.

4) Funds in an officeholder's expense fund may not be transferred to the same officeholder's candidate committee. As noted above, Section 49 of the Act does not permit monies in the officeholder's expense fund to be used for furthering the nomination or election of the officeholder.

5) Funds held by an officeholder's candidate committee may be transferred to the same officeholder's expense fund by virtue of Rule 169.39 promulgated pursuant to the Act.

6) The officeholder's expense fund may be used for expenses incidental to the person's office but may not be used to further the nomination or election of that public official.

Your last question concerns the proper method for reporting monies held by a candidate committee or in an officeholder's expense fund as of June 1, 1977. Such funds need only be reported as to total amount, and need not be itemized as is the case with funds received after June 1, 1977. It should be noted, however, that Section 25(2) of the Act (MCLA § 169.225) provides a person is not exempted from disclosing transactions which occurred prior to June 1, 1977, according to the laws then in effect.

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 4891

March 21, 1978

Honorable R. Robert Geake
Michigan State Senate
State Capitol
Lansing, Michigan 48909

Dear Senator Geake:

This is in response to your letter in which you asked whether monies in an officeholder's expense fund, as provided in P.A. 388 of 1976 ("the Act"), may be used to purchase tickets to testimonial dinners and similar fund raising affairs of other candidates for political office.

Section 49 of the Act (MCLA § 169.249) enables an elected public official to establish an officeholder's expense fund. The fund may be used for expenses incidental to the person's office.

As you point out in your letter, it is an obligation for incumbent public officials to purchase tickets to the fundraising affairs of other candidates for political office. It may be observed that the expenditure of monies for this purpose by an officeholder is necessitated by, and therefore incidental to, the person's office. In enacting the language authorizing establishment of an officeholder's expense fund, the Legislature manifested its cognizance of this political tradition.

In requiring the recording and reporting of receipts to and disbursements from an officeholder's expense fund, Section 49(2) uses the term "expenditures." "Expenditure" is defined in Section 6 of the Act (MCLA § 169.206) as "a payment...in assistance of...the nomination or election of a candidate..." It may be concluded that tickets to testimonial dinners and similar fund raising affairs of other candidates may be purchased with monies from an officeholder's expense fund.

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

March 21, 1978

Honorable Raymond W. Hood
Michigan House of Representatives
State Capitol
Lansing, Michigan 48909

Dear Representative Hood:

This is in response to your inquiry concerning P.A. 388 of 1976 ("the Act"). You asked whether you may use funds in your officeholder's expense fund or in your candidate committee account to pay for sponsorship of a baseball team.

Section 49 of the Act (MCLA § 169.249) permits an elected public official to establish an officeholder's expense fund. The fund may be used for expenses incidental to the person's office. The fund may not be used to make contributions and expenditures to further the nomination or election of the officeholder.

It has not been uncommon for an elected public official to sponsor athletic teams. It may be observed that the expenditure of monies for this purpose by an officeholder is often necessitated by, and therefore incidental to, the person's office.

Consequently, funds in your officeholder expense fund may be used for sponsorship of a baseball team. Caution should be exercised, however, to avoid advertising in conjunction with the sponsorship which may be construed as furthering your nomination or election to public office. For example, if sponsorship includes the purchase of team shirts, the latter should not bear such words as "vote for" or "reelect."

Section 6 of the Act (MCLA § 169.206) defines "expenditure" as "a payment, donation, loan, pledge, or promise of payment of money or anything of ascertainable monetary value for goods, materials, services, or facilities in assistance of ... the nomination or election of a candidate..." Section 3 of the Act (MCLA § 169.203) provides that an elected officeholder is a candidate for reelection to the same office.

As an incumbent State Representative, you are considered a candidate under the provisions of the Act. As such, your candidate committee is authorized to make expenditures in assistance of your renomination and reelection to office. If you construe the sponsorship of a particular baseball team as assisting your renomination and reelection, monies in your candidate committee account may be used for this purpose. In this instance, any identification borne by uniforms or other materials involved in sponsorship may be related directly to your campaign for reelection.

In conclusion, a baseball team may be sponsored with monies from either your officeholder's expense fund or candidate committee. The choice in each instance of sponsorship is based on the facts and your determination as to whether the particular sponsorship is incidental to your office or whether it furthers your reelection to office.

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

March 21, 1978

Honorable Kerry Kammer
Michigan State Senate
State Capitol
Lansing, Michigan 48909

Dear Senator Kammer:

This is in response to your inquiry concerning P.A. 388 of 1976 ("the Act"). You asked whether you may use funds in your officeholder's expense fund to finance a district office to be used for Senate business. You indicated it is your intention to have your name associated with the office in the following manner: "State Senator Kerry Kammer, District Office."

Section 49 of the Act (MCLA § 169.249) permits an elected public official to establish an officeholder's expense fund. The fund may be used for expenses incidental to the person's office. The fund may not be used to make contributions and expenditures to further the nomination or election of the officeholder.

It is the obligation of an elected public official to serve effectively his or her constituents. The providing of governmental services and information to the electorate is an integral part of an officeholder's duties and responsibilities. The presence of an office in a public official's district for making available such services and information is incidental to the office of the public official.

Consequently, as an elected State Senator who intends to maintain a district office for purposes similar to those cited, you may use your officeholder's expense fund to finance the office. Moreover, the association of your name with the office in the manner described is proper for purposes of the Act.

Prior to closing, however, a note of caution should be introduced. No portion of the district office, while financed from your officeholder's expense fund, should be used for activities related to or promoting your renomination or reelection.

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

STATE OF MICHIGAN

FRANK J. KELLEY, ATTORNEY GENERAL

Opinion No. 5279

March 22, 1978

ELECTIONS:

Corporate contributions

Establishment of separate segregated fund by a corporation

CAMPAIGN FINANCE ACT:

Establishment of separate segregated fund by a corporation

A corporation is prohibited from establishing a political committee for the support of state candidates but may make expenditures for the establishment, administration and solicitation of contributions for a separate segregated fund to be used for political purposes.

Contributions to a separate segregated fund established by a corporation to be used for political purposes may be in the form of a voluntary payroll deduction plan, but contributions to the fund may only be made by the following persons or their spouses: (1) stockholders of the corporation; (2) officers and directors of the corporation; and (3) employees of the corporation who have policy-making, managerial, professional, supervisory or administrative nonclerical responsibilities.

The administration of a separate segregated fund established by a corporation for political purposes and authorization of expenditures from the fund must be in the board of directors of the corporation or by a committee authorized by the board of directors.

Mr. Bernard J. Apol

Director

Elections Division

Department of State

106 South Pine Street

Lansing, Michigan

You have requested my opinion on the following questions:

1. Does Michigan law prohibit a corporation from establishing or maintaining a political committee for the

support of state candidates?

2. Does Michigan law prohibit using a voluntary payroll deduction plan to collect political contributions to a separate segregated fund established by a corporation?

3. Does Michigan law prohibit a corporation from establishing or maintaining a political committee for the support of federal candidates?

Section 55 of the campaign finance act, 1976 PA 388; MCLA 169.255; MSA 4.1703(55), 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.

Thus, contributions by a separate segregated fund established by a corporation may only be made to four committees, these being (1) a candidate committee; (2) a ballot question committee; (3) a political party committee; and (4) an independent committee. The act, therefore, prohibits a corporation from establishing a political committee for the support of state candidates. This section does, however, permit a corporation to make expenditures for the establishment, administration and solicitation of contributions for a separate segregated fund to be used for political purposes, but does not authorize the corporation to contribute its funds to the separate segregated fund or to establish a political committee for the support of state candidates. It must be noted that the administration of such a 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.

As to your second question, the act does permit a voluntary payroll deduction plan as a form of collection of contributions to the separate segregated fund, but limits the contributors to the following persons and their spouses (1) officers and directors of the corporation and (2) employees of the corporation who have policy making, managerial,

professional, supervisory or administrative responsibilities.

Finally, in answer to your third question, while Michigan law does not specifically prohibit a corporation from establishing a political committee for the support of federal candidates, a prohibition does exist by virtue of federal law. 90 Stat 490, 2 USC 441b.

Frank J. Kelley

Attorney General

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

March 24, 1978

Mr. Leon D. Nobes
2033 Crozier Avenue
Muskegon, Michigan 49441

Dear Mr. Nobes:

This is in response to your letter concerning possible application of P.A. 388 of 1976 ("the Act") to disbursements made by you in order to reply to an unfavorable editorial printed prior to June 1, 1977, the effective date of the Act. You inquire whether such disbursements, some of which were made after June 1, 1977, must be recorded and reported pursuant to the Act.

Your letter indicates that on October 29, 1976, several days before the 1976 general election in which you were a candidate for state elective office, a local newspaper printed an unfavorable editorial concerning alleged improper campaign activities committed in your behalf. Subsequent to that date, you made disbursements for the purpose of replying to the unfavorable editorial. You state that if "you decide to run again, you will announce after the first of this next year," i.e., January 1, 1978. However, you indicate you will continue to distribute leaflets responding to the editorial regardless of whether you run or not.

As indicated previously, the recording and reporting provisions of the Act became effective on June 1, 1977. Therefore, this response addresses only those disbursements made subsequent to that date.

Section 3(1)(c) of the Act (MCLA § 169.203) defines a candidate as an individual "who receives a contribution, makes an expenditure, or gives consent for another person to receive a contribution or make an expenditure with a view to bringing about the individual's nomination or election to an elective office, whether or not the specific elective office for which the individual will seek nomination or election is known at the time the contribution is received or the expenditure is made." Accordingly, if your disbursements are made to influence a subsequent nomination or election, you are a candidate for purposes of the Act and must report the disbursements in question in your campaign statement. However, if your disbursements are not made for that purpose, you are not a candidate by virtue of making them and need not report.

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

March 24, 1978

Mr. Leon D. Nobes
2033 Crozier Avenue
Muskegon, Michigan 49441

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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

March 24, 1978

Ms. Denise Arnold
Committee Rooms, 4th Floor
State Capitol
Lansing, Michigan 48909

Dear Ms. Arnold:

This is in response to your inquiry regarding P.A. 388 of 1976 ("the Act").

It is the Department's understanding you ran unsuccessfully in the 1976 General Election as the Democratic candidate for State Representative from the 56th District. It is further understood you incurred debts for that campaign which had not been discharged as of the date of your inquiry. You indicated your own and others' funds are being used to retire the debts in existence after June 1, 1977, the effective date of the Act.

You ask whether an individual must file a statement of organization or campaign statement under these circumstances.

Section 4 of the Act (MCLA § 169.204) defines "contribution" as a payment of money made for the purpose of influencing the election of a candidate. "Expenditure" is defined in Section 6 of the Act (MCLA § 169.206) as a payment in assistance of the election of a candidate.

Section 3 of the Act (MCLA § 169.203) indicates the manner by which an individual becomes a candidate. Of the several methods, only one is relevant to this discussion since the election in question took place prior to the effective date of the Act. Specifically, an individual may attain the status of candidate for purposes of the Act by receiving a contribution or making an expenditure.

In the present case, none of the funds are influencing or assisting the election of an individual to a political office, provided they are designated and used to retire campaign debts incurred in an election which was held prior to the effective date of the Act.

Consequently, an individual is not a candidate solely by virtue of participating in the 1976 General Election, nor are monies designated and used to retire debts from the 1976 General Election to be construed as contributions or expenditures for purposes of the Act. Under these circumstances, a statement of organization or campaign statement would not have to be filed.

However, subsequent to receipt of your inquiry, it has come to the Department's attention that you announced in the media an intention to seek nomination as Democratic candidate for State Representative from the 56th District in the August, 1978, primary election. As noted previously, Section 3 establishes the criteria by which an individual becomes a candidate for purposes of the Act.

In view of this development, any monies received and not applied to retirement of the former campaign debts could subject you to the filing, recording and reporting requirements of the Act.

Since your inquiry was not supported by the precise statement of facts required by Section 63 of the Michigan Administrative Procedures Act (MCLA § 24.262) 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:pk

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

March 24, 1978

Mr. Peter Coughlin
1134 Marigold
East Lansing, Michigan 48823

Dear Mr. Coughlin:

This is in response to your letter seeking clarification of the phrase "candidate supported by a committee" as used in P.A. 388 of 1976 ("the Act").

You state that you were a candidate for the East Lansing City Council and "ran up against candidates who were 'supporting' each other but who failed to mention this in their statements of organization." The three questions you ask, which have been restated for purposes of clarification, are as follows:

1) For purposes of the Act, must "support" of a candidate have ascertainable monetary value?

2) How does a candidate report his support for another candidate?

3) Must the statement of organization filed by a candidate committee reflect its support of another candidate committee?

Section 4 of the Act (MCLA § 169.204) defines "contribution" as "a payment, gift, subscription, assessment, expenditure, contract, payment for services, dues, advance, forbearance, loan, donation, pledge or promise of money or anything of ascertainable monetary value...made for the purpose of influencing the nomination or election of a candidate..." Section 26 of the Act (MCLA § 169.226) provides "In-kind contributions...shall be listed at fair market value..." These basic definitions indicate the Act is directed to the regulation and reporting of campaign transactions having ascertainable monetary value.

In view of the foregoing provisions and conclusion, your first question is answered by stating "support" of a candidate for purposes of the Act must have an ascertainable monetary value.

In responding to your second question, it is necessary to examine the Act with respect to restrictions it places on a candidate's ability to make contributions to other candidates.

Section 21 of the Act (MCLA § 169.221) requires a candidate to form a candidate committee. The committee must designate an account in a Michigan financial institution as the official depository in which all contributions to the committee must be deposited and from which all committee expenditures are made. The contributions received or expenditures made by a candidate shall be considered received or made by the candidate committee. Section 44 of the Act (MCLA § 169.244) provides a candidate committee shall not make a contribution to or an independent expenditure in behalf of another candidate committee.

With these provisions, the Act requires all monies contributed to or expended on behalf of a candidate to be channeled through the candidate committee account. Monies from this account may not be contributed to another candidate. However, the Act does not prohibit an individual, who also happens to be a candidate, from making a contribution to or independent expenditure on behalf of another candidate, provided the individual utilizes his or her personal funds or assets and not those of his or her candidate committee.

The Act also provides for creation of an officeholder's expense fund by an elected public official. Section 49 of the Act (MCLA § 169.249) permits usage of the fund for expenses incidental to the person's office. In separate letters to State Senators Gary G. Corbin and R. Robert Geake, the Department interpreted the Act as permitting an elected public official to use his or her officeholder's expense fund to purchase tickets to fundraising affairs of other candidates.

Responding to your second question, while prohibiting a candidate from making a contribution to or independent expenditure on behalf of another candidate from his or her own candidate committee account, the Act does permit the individual to use personal monies or assets for this purpose, of if an officeholder, then the officeholder's expense fund under appropriate circumstances. In the case of a contribution from personal monies, the burden is on the recipient candidate committee to report it pursuant to Section 26 of the Act (MCLA § 169.226). Independent expenditures in excess of $100.00 are reported by the maker pursuant to Section 51 of the Act (MCLA § 169.251). The usage of monies in an officeholder's expense fund to purchase tickets to other candidates' fundraising affairs is reported by the officeholder pursuant to Section 49 and the recipient candidate committee pursuant to Section 26.

In order to respond to your third question, Section 24 of the Act (MCLA § 169.224) must be examined. This statutory provision, which requires the filing of a statement of organization by all committees, indicates the statement shall include "The full name of, the office including district number or jurisdiction sought by, and the county residence of, each candidate, and a brief statement identifying the substance of each ballot question, supported or opposed by the committee." The provision further requires "Identification of the committee as a candidate committee, political party committee, independent committee, political committee, or ballot question committee if it is identifiable as such a committee."

There are several types of committees which must file a statement of organization pursuant to the Act. In so doing, a committee must conform with those provisions of Section 24 which are applicable specifically to it. Since, as indicated previously, a candidate committee cannot support another candidate committee, the statement of organization of a candidate committee will not reflect such support.

Therefore, your third question is answered by stating a candidate committee's statement of organization cannot reflect support of another candidate committee because such support is prohibited by the Act.

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

March 24, 1978

Honorable David S. Holmes, Jr.
Michigan State Senate
State Capitol
Lansing, Michigan 48909

Dear Senator Holmes:

This is in response to your letter requesting exemption for a ticket to your annual fundraising event from the identification requirements of P.A. 388 of 1976 ("the Act").

You state your candidate committee holds an annual fundraising affair through which contributions for your candidate committee are solicited by the sale of tickets. The tickets, one of which you have provided as a sample for purposes of this response, have already been printed for this year's event which will take place on April 24, 1978. Each ticket indicates the purpose, time, location, purchase price of ticket, and notice of entertainment and snacks. The ticket is 2½" x 6½" in size.

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. The Department has interpreted this rule on previous occasions to exempt campaign items ranging from ashtrays and brushes to whistles and yo-yo's.

The Department has determined in its role as principal administrator of the Act, that it would not be unreasonable to require the printing of an identification on a ticket such as here presented. Therefore, the tickets in question must have the identification required by the Act. It is suggested that since the tickets have already been printed, the necessary information may be placed on either side of the tickets with a stamp.

In a letter to Ms. Georgia M. Boewe, dated September 8, 1977, the Department stated the identification required by Section 47 must include the words "Paid for by" followed by the full name of the person paying for the material. If the purchaser is a committee, the full name of the committee must be stated. The identification must also indicate the person's street address including the street number or post office box, city or town, state, and zip code.

Sincerely,

Richard H. Austin
Secretary of State

MICHIGAN DEPARTMENT OF STATE

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STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

March 24, 1978

Ms. Charlotte Copp, President
League of Women Voters of Michigan
202 Mill Street
Lansing, Michigan 48933

Dear Ms. Copp:

This is in response to your request for a declaratory ruling concerning the applicability of P.A. 388 of 1976 ("the Act") to various voter service activities planned and sponsored by the state and local organizations of the League of Women Voters.

You state the League of Women Voters of Michigan is a nonprofit organization incorporated under P.A. 84 of 1921, as amended. The purpose of the League, as defined in state League bylaws, is "to promote political responsibility through informed and active participation of citizens in government and to act on selected governmental issues." The policy of the League, as stated in the bylaws, is that the League may take action on state governmental measures and policies in the public interest in conformity with the Principles of the League of Women Voters of the United States. In your letter, you emphasize the League does not support or oppose any political party or candidate.

There are 45 local Leagues in Michigan. Their purpose and policy, as stated in their local bylaws, conform with that of the state League.

You indicate one of the ways in which the state and local Leagues carry out their purpose is through nonpartisan voter service activities which seek to inform citizens as to candidates and ballot questions. Voter service activities of the League are recognized by the United States Internal Revenue Service as educational. As such, these qualify for grants from the League of Women Voters Education Fund, a 501(c)(3) organization, contributions to which are tax deductible.

The following statement of facts, set forth in the materials provided by you, describes different voter service activities conducted or planned by the League of Women Voters of Michigan and several of the local Leagues, including League of Women Voters of Detroit, League of Women Voters of Grand Rapids Area, and League of Women Voters of Dearborn-Dearborn Heights.

The League of Women Voters of Michigan plans to publish a State Voters Guide prior to the November, 1978, general election. All candidates for the offices of Governor, Lieutenant Governor, Attorney General, Secretary of State, State Board of Education, Regent of the University of Michigan, Trustee of Michigan State University, Governor of Wayne State University, Supreme Court Justice, Judge of Court of Appeals (all districts in Michigan), and United States Senator will be given an opportunity to provide biographical information about themselves and answers to questions about important issues, which will be published in the State Voters Guide. In addition, the Guide will include the wording of statewide ballot proposals and an explanation of each proposal. Nothing in the Guide will indicate support or opposition for a candidate or ballot proposal, nor will candidates be rated.

Distribution of the Guide is planned through the League's network of local Leagues, newspapers, and other organizations and businesses which purchase the Guide for distribution to their members, employees, and customers.

In compiling the Guide each certified candidate is contacted by letter. Every effort is made to contact any candidate who does not respond to the letter in order to include in the Guide all candidates, or failing that, as many candidates as possible.

In the past, State Voters Guides have qualified for funding by the League of Women Voters Education Fund. The 45 local Leagues publish similar materials except coverage of candidates and ballot issues is limited to a smaller geographical area.

The League of Women Voters of Detroit sponsored a live televised debate between Coleman A. Young and Ernest C. Browne, candidates for mayor of Detroit in the November 8, 1977, Detroit election. The debate was held in the studios of WJBK-TV, Channel 2, from 8:00 p.m. to 9:00 p.m. on Thursday, October 27, 1977, and was telecast simultaneously by WWJ-TV, Channel 4, and WXYZ-TV, Channel 7.

In addition to the mayoral candidates, participants included a moderator chosen by the League of Women Voters of Detroit who had not endorsed or opposed either candidate, and a panel of five people who questioned the candidates. Three of the panelists were chosen by the television stations and two by the League of Women Voters of Detroit. Each candidate was allowed equal time to respond to questions and to comment on his opponent's answer. The order of answering questions was rotated.

As the result of agreement between the League, candidates, and television stations, one tape was contributed to the Burton Historical Collection, candidates could not purchase tapes of the program until after the election, other television stations had to pay a fee for use of a complete tape, and political spots were not aired immediately before or after the live telecast.

The League of Women Voters of the Grand Rapids Area invited State Senators and State Representatives to attend a series of meetings known as "Meet Your Elected Official Town Meetings." The purpose of this series was to encourage communication between elected officials and citizens by providing a setting in which people could talk with and ask questions of their elected officials. These meetings were approved by the League of Women Voters Education Fund for a grant to cover expenses.

The meetings were held in the evening at accessible, well-known locations. The moderator for each meeting was an experienced League person. All public relations were handled by the League. Publicity for the meetings included press releases, public service announcements, and announcements to neighborhood groups and civic groups.

The format of the meetings gave equal time to each official to respond to oral and written questions from the audience and the League. Time cards were used to give the moderator more control and protection against seeming partiality and "campaigning." The non-partisanship of the meetings was announced during the introduction to the audience.

All of the meetings were held in 1977, a non-election year. There are no plans to schedule any "Town Meetings" in 1978.

The League of Women Voters of Dearborn-Dearborn Heights invited all candidates for the office of Councilman in the November 8, 1977, Dearborn election to attend a public meeting sponsored by the League and co-sponsored by the First Baptist Church.

The meeting was held in Robbins Hall of First Baptist Church of Dearborn. The meeting was opened at 7:30 p.m. by the League President who also closed the meeting at 9:30 p.m. The moderator for the meeting was a League member. The presence of time keepers assured that candidates were given equal time to respond to questions. Following the formal question and answer period there was a "refreshment" period to allow the audience to meet and talk directly with the candidates.

In accepting the invitations, candidates agreed to ground rules which precluded substitute spokesmen and distribution of campaign literature, and provided for the drawing of lots to determine speaking order.

The public was invited to attend at no charge through news releases which appeared in local papers, flyers which were distributed to churches and civic organizations, and notice in the local League newsletter, THE DEARBORN VOTER.

In other activity, the League of Women Voters of Dearborn-Dearborn Heights invited all candidates for City Charter Commission at the November 8, 1977, Dearborn election to attend an event called "Show Case." The purpose of the event was to give voters in Dearborn an opportunity to see, question, and talk with the candidates.

"Show Case" was held at the Dearborn Youth Center on Tuesday, November 1, 1977, from 7:00 p.m. to 10:00 p.m. Each candidate was given table space and a circle of chairs; those attending moved from candidate to candidate. A list of candidates for the office of Charter Commissioner was given to each person attending with enough space provided for notes to be made.

The event was publicized by press releases and a flyer prepared by the League. Flyers were available to candidates at 2¢ each, with a minimum order of 100. Forty-two hundred flyers were purchased by the candidates.

The League of Women Voters of Dearborn-Dearborn Heights sponsored a debate between Frank C. Hubbard and John B. O'Reilly, candidates for Mayor of Dearborn in the November 8, 1977, Dearborn election. The debate was held Thursday, October 27, 1977, from 7:30 p.m. to 10:00 p.m. in the auditorium of Clara Bryant Junior High School, Dearborn, and was open to the public at no charge.

The moderator for the debate was a League member. Questions of the candidates were asked by four panelists, three of whom were editors of the three local newspapers, and the fourth a member of the League of Women Voters of Dearborn-Dearborn Heights.

Each candidate was allowed equal time to respond to questions and to comment on his opponent's answers. Questions from the audience were permitted within time limitations.

The DEARBORN PRESS AND GUIDE asked for and received permission to tape the program for use in preparing their pre-election edition. Other newspapers were given the same option.

News releases as well as flyers were used to publicize the debate. Flyers were distributed to area churches and civic organizations to ask their cooperation in publicizing the event to their members and readers. Notice of the debate was included in the DEARBORN VOTER.

The issue presented is whether any of these activities constitute an "expenditure" as defined by the Act.

Section 6 of the Act (MCLA s 169.206) defines "expenditure" as "a payment, donation, loan, pledge, or promise of payment of money or anything of ascertainable monetary value for goods, materials, services, or facilities in assistance of, or in opposition to, the nomination or election of a candidate, or the qualification, passage, or defeat of a ballot question." Expenditure includes a contribution "for purposes of influencing the nomination or election of any candidate or the qualification, passage, or defeat of a ballot question." The activities of the various Leagues, detailed in the preceding statement of facts, are of some ascertainable monetary value. These activities may affect the nomination or election of individuals who are candidates for purposes of the Act.

The legislative history of the Act indicates an awareness by the Legislature of non-partisan activities of the type traditionally conducted by the League of Women Voters and described in your letter. Consistent with this awareness, the Legislature included Subsections (3)(c) and (e) of Section 6 which excludes from the definition of "expenditure" any expenditures for communication on a subject or issue if the communication does not support or oppose a ballot issue or candidate by name or clear inference. The statute also excludes non-partisan voter registration and non-partisan get-out-the-vote activities.

Accordingly, the Department rules that none of the activities of the League as presented in your statement of facts constitute an "expenditure" for purpose of the Act.

In your description of the debate sponsored by the League of Women Voters of Dearborn-Dearborn Heights, you indicate the debate originally was to be held in the Ford Motor Company management conference room (an auditorium seating 550 people). Ford Motor Company, however, needed assurance that making the conference room available without charge to the League would not be an illegal political contribution. In the absence of a precedent, another location was obtained.

The Department does not consider the making available of a facility without charge to the League under the stated facts to be a "contribution" as defined in the Act. An action of this type is considered a donation to the League for the purpose of sponsoring a non-partisan activity which is allowed by Section 6 of the Act. It is to be understood the donor cannot in any way influence the planning or activity sponsored by the League.

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

Sincerely,

Richard H. Austin
Secretary of State

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

March 29, 1978

Ms. Cindy Sage, Treasurer
Republican Women's Federation of Michigan
134 East State Street
Hastings, Michigan 49058

Dear Ms. Sage:

This is in response to your request for a declaratory ruling concerning the applicability of P.A. 388 of 1976 ("the Act") to the Republican Women's Federation of Michigan ("the RWFM").

You state the RWFM is organized for the purpose of educating members in the political process, party principles, and current issues facing the community, county, and state. The organization is a recognized committee of the Michigan Republican Party. You also indicate the RWFM is local in nature with members organized in the various recognized political subdivisions. Local units assess members for operating monies. If the local organizations desire affiliation with the state and national organizations, additional monies are assessed and forwarded to the state organization for operating purposes only. The state organization is responsible for forwarding the local clubs' national dues. You state it has not been the practice of the RWFM to contribute to political campaigns or ballot issues; however, in the past, local clubs have contributed to political campaigns or issues.

You ask whether the RWFM must file reports pursuant to the Act?

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.

Therefore, any RWFM organization which receives "contributions" or makes "expenditures," in the amount of $200.00 or more in a calendar year, is subject to the provisions of the Act. As such, the organization must file reports, including a statement of organization and campaign statements.

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 § 169.263), 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:pk

MICHIGAN DEPARTMENT OF STATE

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STATE TREASURY BUILDING

LANSING

MICHIGAN 48918

March 29, 1978

Mr. Steven R. Bartholomew, Treasurer
McCollough-Michigan Committee
P.O. Box 10039
Lansing, Michigan 48901

Dear Mr. Bartholomew:

This is in response to your letter requesting an interpretation from the Department concerning the legality of certain expenditures which the McCollough-Michigan Committee is planning to make from public funds received pursuant to P.A. 388 of 1976 ("the Act"). In terms of the Act, you ask whether intended expenditures will constitute "qualified campaign expenditures" as defined and limited in Section 66 of the Act (MCLA § 169.226).

The expenditures for which you wish to apply public monies are costs incurred in polling and graphics, consulting fees and expenses related to polling, computer services, fees and expenses for fundraising consultants, printing costs, and the purchase of television production equipment. As to the latter, it is the Department's understanding you intend to sell the equipment when you have no further need for it.

The Department is of the opinion the above enumerated expenditures, as described in your letter, constitute qualified campaign expenditures as provided in the Act. However, it should be noted the Act defines qualified campaign expenditure as not including a portion of any salary or wage to an individual in excess of $2,000.00 per month.

With respect to the television production equipment, upon selling the equipment the proceeds should be returned to the candidate's public funding account. Retention of the equipment or proceeds from the sale of the equipment would violate the provisions of the Act.

Further, it should be noted that payment received from the state campaign fund for expenditures in the primary may not be used for expenditures in the general election. This requirement is imposed by Section 66 which states "Payment received from the state campaign fund for expenditures in one election shall not be used for expenditures in a subsequent election."

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:pk

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

March 29, 1978

Honorable Matthew McNeely
Michigan House of Representatives
State Capitol
Lansing, Michigan 48909

Dear Representative McNeely:

This is in response to your letter requesting exemption for a throwaway poll card from the identification requirements of P.A. 388 of 1976 ("the Act").

In a conversation supplementing your letter, it was indicated the poll card is distributed to voters on the day of an election in which you are seeking office. The cards, one of which you have provided as a sample for purposes of this response, were printed in a bulk amount prior to June 1, 1977, the effective date of this Act. Each card, which is printed identically on both sides, indicates your name, office, statements endorsing your reelection, and your political party. In addition, there is a picture of the State Capitol which occupies approximately half of the space available on the card. There is no date of election identified on the card. The card is 2 3/4" x 5 3/4" in size.

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. The Department has interpreted this rule on previous occasions to exempt campaign items ranging from ashtrays and brushes to whistles and yo-yo's.

With respect to the fact the cards were printed prior to June 1, 1977, the Department has addressed this issue previously. In a letter to Ms. Georgia M. Boewe, dated September 8, 1977, the Department stated that political advertisements printed prior to June 1, 1977, need not include an identification. However, it stated further that beginning December 1, 1977, all political advertisements must bear the identification required by Section 47 and Rule 169.36, unless otherwise exempted. The Boewe letter emphasized that after December 1, 1977, the individual, group, or committee making use of the printed matter must indicate thereon its current name and address, and not that of the person who paid for the material prior to June 1, 1977, unless of course, the individual, group, or committee remains the same. It was stated that political advertisements purchased after June 1, 1977, are required to bear an identification unless specifically exempted.

The Department has determined in its role as principal administrator of the Act, that it would not be unreasonable to require the printing of an identification on a poll card such as here presented. Therefore, the poll cards in question must have the identification required by the Act. It is suggested that since the cards have already been printed, the necessary information may be placed on either side of the cards with a stamp.

In the Boewe letter referred to above, the Department stated the identification required by Section 47 must include the words "Paid for by" followed by the full name of the person paying for the material. If the purchaser is a committee, the full name of the committee must be stated. The identification must also indicate the person's street address including the street number or post office box, city or town, state, and zip code.

Sincerely,

Richard H. Austin
Secretary of State

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING

MICHIGAN 48918

March 29, 1978

Mr. James R. Killeen
Wayne County Clerk
Detroit, Michigan 48226

Attention: Mr. Orville L. Tungate
Chief Deputy County Clerk

Dear Mr. Killeen:

This is in response to your request for a declaratory ruling relative to several factual situations subject to the provisions of P.A. 388 of 1976 ("the Act"). Your questions are answered in the order asked.

I.

The city of Rockwood, Michigan held a primary on February 20, 1978, and will hold an election on April 3, 1978. Consistent with the schedule established by Section 33 of the Act (MCLA § 169.233) the post-primary report, which had a closing date of March 12, 1978, was due March 22, 1978. The pre-election report, which had a closing date of March 18, 1978, was due March 23, 1978.

You ask whether both the post-primary and pre-election reports must be filed by affected candidate committees since the filing dates of the reports fall on successive days, and to do so will "place an undue burden upon these candidates."

Section 33 requires filing of the post-primary report not later than the thirtieth day following the primary. It requires filing of the pre-election report not later than the eleventh day before the election.

If the post-primary report was replaced administratively with the pre-election report, candidate committees in Rockwood would not file a report within the statutory 30-day deadline. Conversely, if the pre-election report was replaced with the post-election report, candidate committees would be compelled to file a report sooner than the time allowed by the statute, i.e., the 11-day deadline. Consequently, it does not appear the filing requirements should be revised in the Rockwood situation, with one exception. The latter pertains to any candidate committee which files voluntarily a pre-election report between March 18, 1978 (the closing date of the pre-election report), and March 22, 1978 (the filing date for the post-primary report). In so doing, the committee could eliminate the post-primary report and replace it with a combined pre-election report.

Notwithstanding the foregoing conclusion, it seems members of the Department's staff indicated to you, prior to the issuance of this ruling, that it was anticipated a determination would be made whereby the post-primary report could be supplanted with the pre-election filing with respect to all candidate committees involved in both the primary and election in Rockwood. In reliance on this information, you advised affected candidates to act accordingly. A reversal in policy at this late date would expose the candidates to the stringent late filing fee and misdemeanor provisions of the statute. Since enforcement under these circumstances is unfair and dubious, the post-primary filing may be replaced with the pre-election filing in the case of all affected Rockwood committees.

II.

The city of River Rouge, Michigan held a primary on March 6, 1978, and will hold an election on April 3, 1978. The post-primary report, which has a closing date of March 26, 1978, is due on April 5, 1978. The pre-election report, which had a closing date of March 18, 1978, was due on March 23, 1978.

You inquire whether in view of the fact the pre-election report is due 13 days prior to the due date of the post-primary report, must both reports be filed by affected candidate committees in River Rouge.

In this case, elimination of the post-primary report in favor of the pre-election report does no violence to the statute because a report will be filed by the candidate committee well before the prescribed 30-day deadline. The purpose of disclosure is served since the bulk of primary information on the post-primary report, which would not be available to the public until April 5 or two days after the election, would now become available on March 23. The candidate committee would suffer no hardship since it could eliminate one filing.

Thus, candidates in River Rouge who qualify for the election may eliminate the post-primary report in favor of the pre-election report. All other candidates will have to file the post-primary report as required by the Act.

III.

The village of Grosse Pointe Shores will hold an election on May 16, 1978. The village charter does not provide for a primary and sets May 8, 1978, as the last filing date for the election. The pre-election report, which has a closing date of April 30, 1978, is due May 5, 1978, or three days prior to the last date an individual can qualify his or her name for the ballot. The statement of organization for individuals who become candidates by filing on the last day for qualifying will be due on May 28, 1978, or 12 days after the election.

You ask the following questions in conjunction with this factual situation:

1) Is the pre-election report necessary in view of the fact the due date for this report precedes the last date on which candidates qualify for the ballot?

2) What direction must the filing official take relative to the time for filing a statement of organization in view of the fact it may not be due until after the election?

In enacting this legislation, the Legislature could not have anticipated all the diverse problems presented in applying a general statute to unforeseen special elections or the many local elections, some of which have unique schedules. Since the Act by definition is applicable to all elections, an interpretation must be rendered which preserves the purposes of the Act wherever possible.

The principal purpose of the Act is disclosure of campaign finances. In addition, the provisions of the Act place a premium on accuracy of disclosure. The deadlines prescribed in Section 33 for the filing of campaign statements were established so as to permit sufficient time for the examination process provided in Section 16 (MCLA § 169.216). The process consists of the filing official reviewing the filed document and the candidate committee making corrections, where necessary, upon notice from the official.

It may be stated with some validity that disclosure should take place prior to any election so that the electorate may have the information relating to campaign finances available to them in order to consider it before casting their votes. However, it may also be stated with equal merit that disclosure serves the electorate by revealing any potential for influence that may arise from campaign finances and affect their elected officials. The statutory provision for post-election reports as well as pre-election reports indicates the process of disclosure is a continuing one.

Thus, in attempting to reconcile a statute to all the elections which it is intended to govern, as many of those concerns must be considered as is possible. As noted previously, however, this must be done in a manner which does not expose individuals through administrative action to the Act's severe penalty fee and misdemeanor provisions.

Therefore, in addressing your first question, the pre-election report for the Grosse Pointe Shores election should be considered in the context of those candidate committees which can provide it as contemplated by the Act. Pre-election reports must be filed by committees which are in a position to file accurate reports in a timely manner. This would be true only in the case of candidate committees in existence on April 30, 1978, the statutory closing date for the pre-election report.

Although an individual might not become a candidate for purposes of the Act until May 8, many persons will be candidates before that date. An individual might not wait until the last day to file the papers necessary to qualify his or her name for the ballot. Moreover, Section 3 of the Act (MCLA § 169.203) prescribes several means other than filing by which an individual may become a candidate. For example, officeholders are candidates by virtue of their incumbency. Others who have received contributions or made expenditures are candidates for purposes of the Act. Thus, a number of candidate committees will be in existence on April 30, and some will have reportable contributions and expenditures.

Therefore, in response to your first question, any candidate committee in existence on April 30 should file a pre-election report. Any committee which is created subsequent to that date need not file the pre-election report but may consolidate all financial information concerning the election in the post-election filing.

In passing, it should be noted Section 33 of the Act permits elimination of the pre-election report when a candidate indicates on the statement of organization filed pursuant to Section 24 of the Act (MCLA § 169.224) that an amount in excess of $500.00 will not be received or expended by the candidate committee in the election. Many local candidate committees will be able to eliminate the pre-election filing by virtue of this provision.

Your second question is concerned that some statements of organization will be filed after the election. Implicit in its asking is the desire for a ruling which disposes of the matter with some degree of uniformity.

One suggestion would require all statements to be filed prior to the election. This may be ruled out as it would severely reduce in some cases the amount of time available to the candidate committee under the statute for filing the statement.

A second suggestion would eliminate the need to file the statement of organization in all cases. However, this would be in direct conflict with the statute. A statement of organization is necessary, even after the election, because it provides information, not available in other reports, by which the candidate committee is brought into the reporting system.

The third suggestion permits the filing of a statement of organization in accordance with the schedule established in the Act, i.e., an individual must form a committee within 10 days after becoming a candidate, and a committee must file a statement of organization within 10 days after its creation. Thus, in the Grosse Pointe Shores election, some statements may not be due until May 28, 1978. However, as in the case of the pre-election reports, many statements will be filed prior to the election because the candidate committees will have been formed well before the election.

Therefore, responding to your second question, candidate committees in the Grosse Pointe Shores election shall file statements of organization as required by the Act.

IV.

Annual school elections will be held on June 12, 1978. The last day for filing petitions is May 12, 1978. The last day for filing a statement of organization, depending on the means by which an individual becomes a candidate for purposes of the Act, is June 1, 1978. The pre-election report is due on June 1, 1978. The post-election report is due on July 12, 1978. Finally, the annual report required of candidates by Section 35 of the Act (MCLA § 169.235) is due on June 30, 1978.

You ask whether all the campaign reports are necessary in view of the fact the foregoing schedule requires their filing in a relatively short span of time.

For reasons stated in the preceding rulings, it is determined the statement of organization, pre-election report, and post-election report must be filed for the annual school election as per the indicated schedule.

In regard to the annual report, consideration of legislation presently pending before the Legislature has given vent to legislative intent which cannot be ignored by the Department in responding to your question. Specifically, reference is made to the legislation which would delay from June 30, 1978, to January 31, 1979, the filing of the annual report. The legislation, in its present form would permit elimination of the post-election report for the 1978 election in favor of the annual report.

As of the writing of this ruling, the Legislature has not enacted the proposed legislation. There appears to be a preponderance of support for maintaining the 1978 annual report. Given the expression of legislative intent, the Department determines the 1978 annual report must be filed by affected candidate committees in the 1978 annual school election.

Your attention is directed to the language in Section 35 which frees candidate committees from filing the annual report provided the committee indicates on its statement of organization that it will not receive or expend more than $500.00 in an election, and in fact does not do so within the period covered by the annual report. In addition, Section 35 exempts from the annual report filing requirement an officeholder who holds an election office for which the salary is less than $100.00 a month, and who does not receive any contribution or make any expenditure during the period covered by the annual report.

V.

The state and county primary election will be held on August 8, 1978. The last filing date for candidates will be June 6, 1978. The last day for filing a statement of organization, depending on the means by which an individual becomes a candidate for purposes of the Act, is June 26, 1978. The pre-primary report, which has a closing date of July 23, 1978, is due on July 28, 1978. The annual report, which has a closing date of June 20, 1978, is due on June 30, 1978.

You ask whether the pre-primary and annual reports must both be filed in view of the relatively short span of time in which they must be filed.

For reasons stated in the preceding rulings, it is determined the pre-primary and annual reports must be filed for the August 8, 1978, primary as per the indicated schedule.

Sincerely,

Richard H. Austin
Secretary of State

RHA:pk

MICHIGAN DEPARTMENT OF STATE

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STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

March 29, 1978

Honorable James E. Defebaugh
Michigan House of Representatives
State Capitol
Lansing, Michigan 48909

Dear Representative Defebaugh:

This is in response to your letter concerning P.A. 388 of 1976 ("the Act"). Your four questions, all of which pertain to independent committees, are as follows:

(1) What are the criteria for becoming an independent committee?

(2) May a committee lose its status as an independent committee?

(3) May a committee which meets the criteria for an independent committee function as another type of committee?

(4) Must a committee which meets the criteria for an independent committee file as an independent committee?

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

"Political committee" is defined in Section 11 of the Act (MCLA § 169.211) as "a committee which is not a candidate committee, political party committee, independent committee, or ballot question committee."

Section 8 of the Act (MCLA § 169.208) defines "independent committee" as a committee other than a political party committee which "Filed a statement of organization as an independent committee at least 6 months before an election for which it expected to accept contributions or make expenditures in support of or in opposition to a candidate for nomination to or election to a state elective office; and received contributions from at least 25 persons and made expenditures in support of or in opposition to 3 or more candidates for nomination for or election to a state elective office in the same calendar year."

The possible advantage of status as an independent committee is obvious in Section 52 of the Act (MCLA § 169.252) which establishes limits for contributions to a candidate committee of a candidate for state elective office. An independent committee may contribute 10 times the amount permitted an individual or political committee.

The definition of independent committee quoted above establishes four prerequisites in order for an entity to function as an independent committee. First, it must file a statement of organization as an independent committee at least six months prior to an election for which it engages in the financing of campaigns. Second, it must receive contributions from at least 25 persons. Third, it must make expenditures with respect to at least three candidates for state elective office. "State elective office" includes the office of Governor, Lieutenant Governor, Secretary of State, Attorney General, Supreme Court Justice, State Senator, State Representative, member of the State Board of Education, and member of the governing boards of the University of Michigan, Michigan State University, and Wayne State University. Fourth, the prescribed contributions and expenditures must be made in the same calendar year prior to the entity functioning as an independent committee for the purpose of contribution limits.

An entity may file and operate for reporting purposes as an independent committee even though it has not received the requisite contributions and made the required expenditures. Indeed, it will have to do so in order to operate with respect to an election occurring six months subsequent to filing. Once it has filed, however, the entity may operate as an independent committee with respect to contribution limits for the election upon receiving contributions from 25 persons and making expenditures for or against three candidates for state elective office. As noted previously, the contributions and expenditures must be made in the same calendar year.

For example, a group of individuals desires to function as an independent committee with respect to the November, 1978, general election. On May 1, 1978, the group files a statement of organization with the Secretary of State pursuant to Section 36 of the Act (MCLA § 169.236). On September 15, 1978, the committee holds a fundraiser and receives contributions in the total amount of $2500.00 from 25 individuals. On September 20, 1978, the committee makes an expenditure of $1000.00 on behalf of a candidate for Governor. On September 21, 1978, the committee makes an expenditure of $100.00 on behalf of a candidate for the State Senate. On September 25, 1978, the committee makes an expenditure of $500.00 on behalf of a candidate for Attorney General. As of September 25, 1978, the committee may operate as an independent committee. In the period between May 1 and September 25, 1978, the committee will operate as a political committee with respect to contribution limits.

In response to your first question, therefore, an entity must file as an independent committee at least six months prior to the election for which it wishes to operate as an independent committee for contribution limit purposes. Additionally, in the same calendar year it must receive contributions from at least 25 persons and make expenditures with respect to three candidates for state elective office.

Your second question presupposes that an independent committee at some subsequent point in time does not receive contributions from 25 persons and make expenditures with respect to three candidates for state elective office in the same calendar year. In order to respond to the question, it is necessary to examine once again the definition of independent committee provided in Section 8. It is significant the statute uses the phrases "received contributions" and "made expenditures." Utilization of the past tense leads to the conclusion that once the contribution and expenditure requirements have been met in one calendar year, they need not be met in subsequent calendar years.

Consequently, the answer to your second question is that an independent committee may continue its status by meeting all reporting requirements of the Act. It does not, however, have to continue to meet the contribution and expenditure requirements in subsequent calendar years.

Concerning your third question, an independent committee may function as another type of committee. The principal advantage of the independent committee is the tenfold contribution limit available to it. The committee, however, may choose not to exercise this option.

Turning to your fourth question, a committee which meets the criteria of an independent committee except for the filing requirement, need not file as an independent committee. It may file as a political committee as defined in Section 8. In that instance, however, the committee will be subject to the same contribution limits as individuals.

This response may be considered as informational only and not as constituting a declaratory ruling. Your request did not present the precise statement of facts prescribed by Section 63 of the Michigan Administrative Procedures Act (MCLA § 24.263), which establishes the requirements for seeking a declaratory ruling.

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF:pk