MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

January 23, 1980

Mr. Edward Chmielewski
208 South Harrison
Saginaw, Michigan 48602

Dear Mr. Chmielewski:

This is in response to your inquiry concerning the Campaign Finance Act ("the Act"), 1976 P.A. 388, as amended, with respect to disbursements from an officeholder expense fund for the purpose of becoming a member of a fraternal organization.

Specifically, you ask whether an officeholder expense fund may be used for the purpose of joining a fraternal organization.

Section 49 of the Act (MCLA §169.249) authorizes an elected public official to establish an officeholder 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 that public official.

In a March 21, 1978, letter to Representative Raymond W. Hood as to whether office holder expense fund monies may be used to pay for the sponsorship of a baseball team, the Department stated, "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."

In a March 21, 1978, response to Senator Kerry Kammer as to whether an officeholder expense fund could be used to finance a district office to be used for Senate business, the Department in allowing the disbursement reasoned that "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."

In yet another March 21, 1978, response to Senator Gary G. Corbin, who asked whether tickets to other candidates fundraisers could be purchased with monies from an officeholder's expense fund, the Department stated, "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 each of these examples, the common theme in permitting the disbursement is that the expense is traditionally associated with or necessitated by, and therefore incidental to, the holding of public office. The joining of a fraternal organization is an activity engaged in by persons whether they are officeholders or not.

While involvement in an organization may further an officeholder's contact with the community, it should be noted that joining such organizations also develops and enhances social relationships which have little or nothing to do with holding public office. Consequently, in order to use officholder expense fund monies for membership dues or other organizational fees, it must be determined that joining a particular organization is incidental to the person's office.

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

Very truly yours,

Phillip T. Frangos

Phillip T. Frangos, Director
Office of Hearings & Legislation

PTF/jmp

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

January 29, 1980

Mr. Gene E. Overbeck, Chairman
American Airlines Political Action Committee
P. O. Box 61616
Dallas Fortworth Airport, Texas 75261

Dear Mr. Overbeck:

This is in response to your request for a declaratory ruling concerning the applicability of the Campaign Finance Act ("the Act"), 1976 PA 388, as amended, to your Committee, which is an out-of-state political action committee registered with the Federal Election Commission. You inquire as to whether American Airlines P.A.C. must also register with the Michigan Department of State in order to make contributions to candidates for a non-federal Michigan office.

You indicate that American Airlines P.A.C. is registered with the F.E.C., has supported various federal candidates in the past, and now desires to support candidates for state offices in Michigan. You point out a possible conflict between sections 3(4), 4(1) and 28(3) of the Act. You note that an interpretation of section 28(3) which would permit contributions by committees such as yours without complying with the registration and other requirements of the Act "could be construed as being inconsistent with the registration and reporting scheme outlined by the Act."

In an advisory opinion (A.O. #1975-59, dated November 13, 1975) the Federal Election Commission ruled that the state central committee may receive corporate contributions and use them for state candidates only where such candidates are permitted by state law to receive such contributions. Of significance in resolving the problem you posed is the statement by the F.E.C. that the matter of making contributions to or expenditures on behalf of state candidates "is a matter governed by state law." (40 F.R. 53722, November 19, 1975)

The F.E.C. clearly believes state election requirements are a proper subject for state law to control. In reviewing Michigan law which may impinge upon the issues presented, one should be aware of Rule R169.27, which provides:

> "A committee supporting a candidate for federal office and a candidate for office in this state shall file a statement of organization for the committee of the candidate for office in this state."

It is difficult for a state agency, operating under the limitations imposed by state law, to place mandatory filing or other requirements upon out-of-state corporate P.A.C.'s. For this reason, the Legislature included section 42(2) in the Act. This section provides:

> "A contribution of $20.01 or more from a committee or person whose treasurer does not reside in, whose principal office is not located in or whose funds are not kept in this state, shall not be accepted by a person for purposes of supporting or opposing candidates for elective office . . . unless accompanied by a statement certified as true and correct by an officer of the contributing committee . . . setting forth . . . certain information."

The same sort of information is required by section 28(3) to accompany a campaign statement reporting the receipt of a contribution from outside this state. Through these enactments, Michigan exercises its authority over the recipients of such contributions, rather than the contributors themselves. Committees may not accept contributions from out-of-state committees unless certain conditions are met and certain information is provided. These are not registration or "filing" requirements but "tracking" requirements.

Section 24(1) requires that a "committee" file a statement of organization with the appropriate filing official. "Committee" is defined by section 3(4) as meaning:

> "(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 section 11(1) to include:

> "(A) business, individual . . . joint venture . . . business trust . . . company, corporation, association, committee, or any other organization or group of persons acting jointly."

Clearly a "person" as defined above which "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 . . . if expenditures made total $200.00 or more in a calendar year . . ." is a committee, and is required to comply with section 24(1) and file a statement of organization. It is also required to comply with the periodic filing requirements of the Act.

The Act also includes a series of provisions controlling and limiting corporate participation in Michigan elections in section 54 of the Act. Section 55 of the Act permits a corporation to make expenditures of corporate funds for the:

> "Establishment and administration and solicitation of contributions to a separate segregated fund to be used for political purposes."

Based upon the information you have provided, if your particular entity falls within the above definitions, it will be required to register and made periodic filings with the Michigan Department of State so long as it supports candidates (as defined at section 3(1) of the Act) in this state to the extent provided in section 3(4).

This response constitutes a declaratory ruling concerning the applicability of the Act to the specific statement of facts presented.

Sincerely,

Richard H. Austin
Secretary of State

RHA:lr

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

January 29, 1980

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American Airlines Political Action Committee
P. O. Box 61616
Dallas Fortworth Airport, Texas 75261

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You indicate that American Airlines P.A.C. is registered with the F.E.C., has supported various federal candidates in the past, and now desires to support candidates for state offices in Michigan. You point out a possible conflict between sections 3(4), 4(1) and 28(3) of the Act. You note that an interpretation of section 28(3) which would permit contributions by committees such as yours without complying with the registration and other requirements of the Act "could be construed as being inconsistent with the registration and reporting scheme outlined by the Act."

In an advisory opinion (A.O. #1975-59, dated November 13, 1975) the Federal Election Commission ruled that the state central committee may receive corporate contributions and use them for state candidates only where such candidates are permitted by state law to receive such contributions. Of significance in resolving the problem you posed is the statement by the F.E.C. that the matter of making contributions to or expenditures on behalf of state candidates "is a matter governed by state law." (40 F.R. 53722, November 19, 1975)

The F.E.C. clearly believes state election requirements are a proper subject for state law to control. In reviewing Michigan law which may impinge upon the issues presented, one should be aware of Rule R169.27, which provides:

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It is difficult for a state agency, operating under the limitations imposed by state law, to place mandatory filing or other requirements upon out-of-state corporate P.A.C.'s. For this reason, the Legislature included section 42(2) in the Act. This section provides:

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> "Establishment and administration and solicitation of contributions to a separate segregated fund to be used for political purposes."

Based upon the information you have provided, if your particular entity falls within the above definitions, it will be required to register and made periodic filings with the Michigan Department of State so long as it supports candidates (as defined at section 3(1) of the Act) in this state to the extent provided in section 3(4).

This response constitutes a declaratory ruling concerning the applicability of the Act to the specific statement of facts presented.

Sincerely,

Richard H. Austin
Secretary of State

RHA:lr

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN ● SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

February 1, 1980

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

Dear Senator Corbin:

You requested a declaratory ruling concerning contributions made to office-holder expense funds (O.E.F.) by corporations. You inquired whether an O.E.F. may accept corporate contributions and, if so, how such contributions should be reported. You specifically ask whether a corporation may pay the telephone bill for a legislator's district office.

O.E.F.'s were created by section 49 (MCLA §169.249) of the Campaign Finance Act ("the Act"), 1976 PA 388, as amended, which reads as follows:

> "Sec. 49. (1) An elected public official may establish an officeholder 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 that public official.
>
> (2) The contributions and expenditures made pursuant to subsection (1) are not exempt from the contribution limitations of this act but any and all contributions and expenditures shall be recorded and shall be reported on forms provided by the secretary of state and filed not later than January 31 of each year and shall have a closing date of January 1 of that year.
>
> (3) A person who knowingly violates this section is guilty of a misdemeanor and shall be punished by a fine of not more than $1,000.00 or imprisoned for not more than 90 days or both."

It is the position of the Department of State that O.E.F.'s may receive corporate contributions (or more accurately, "donations." Since these funds may not be used to further the nomination or election of the recipient, they should be distinguished from the definitions of "contribution" or "expenditure" found at sections 4 and 6 of the Act (MCLA §168.204 and 168.206)).

In view of the fact these monies are not "contributions" or "expenditures," an officeholder is not precluded from accepting such funds and placing them in his or her O.E.F. It must be noted, however, that the inclusion of corporate contributions will "taint" the O.E.F. and thereby greatly limit the uses for which the O.E.F. may be utilized. For example, funds from an O.E.F. into which corporate contributions have been deposited may not thereafter be used to purchase tickets to the fund raiser of another candidate or utilized for any other purpose for which corporate contributions may not be used.

It has been suggested that this "taint" might be avoided by creating two separate accounts, one for corporate contributions and another for funds from other sources. The Act, however, favors the creation of single depositories for monies reported pursuant to the Act's provisions.

Although applicable to contributions, section 21(3) (MCLA §169.21) provides that "except as permitted by law, a committee shall have one account in a financial institution in this state as an official depository . . . for all contributions which it receives." Similarly, section 21(8) prohibits the commingling of committee funds. Rule R169.39(3), directly applicable to O.E.F.'s, provides that"money received by an officeholder expense fund shall be kept in a depository account separate from the candidate committee funds." This rule, written in the singular, contemplates a single account; and does not permit O.E.F. monies to be kept in several accounts.

Corporate donations are to be reported as required by section 49(2) of the Act. This provision mandates the filing of reports not later than January 31 of each year, with a closing date of January 1 of that year.

Pursuant to the above discussion, a corporation is permitted to pay the telephone bill for a legislator's district office so long as the office is not used for the purpose of influencing the nomination or election of the officeholder. Such payment shall be reported as an "in kind" corporate donation to the O.E.F.

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

Very truly yours,

Phillip T. Frangos

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF:cas

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

FEB 1 1980

LANSING
MICHIGAN 48918

February 1, 1980

Honorable Jack Welborn
Michigan State Senate
State Capitol Building
Lansing, Michigan 48909

Dear Senator Welborn:

This is in response to your request for information regarding the Campaign Finance Act ("the Act"), 1976 PA 388, as amended.

Specifically, you inquire as to whether expenses you incur as a result of bringing a libel action which "involves amendments which I introduced to a bill, . . ." may be paid from your officeholder's expense fund established pursuant to Section 49 of the Act (MCLA §169.249). In addition, you indicate you are ". . . interested in knowing if there has been any ruling on corporate contributions to Officeholder's Expense Funds, and if there is any limit to those contributions."

Section 49(1) of the Act states:

> "An elected public official may establish an officeholder 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 that public official." (Emphasis added)

In this instance, it must be determined whether your legal expenses as a plaintiff in a libel action against a private citizen are "expenses incidental to the person's office."

Previously, declaratory rulings and interpretative statements have been issued which dealt with the permissible uses of monies in an officeholder's expense fund.

Uses previously identified as permissible, include the purchase of tickets to fundraisers for other candidates, operation of a district office by a legislator, sponsorship of a baseball team, and the purchase of advertisements notifying constituents of an officeholder's address and telephone number. These costs have been determined to be "expenses incidental" to holding an office. The Department, in making these determinations, has looked at each activity in terms of whether the activity claimed to be incidental is among the array of functions officeholders usually are expected to or must perform by virtue of holding office.

The facts you present indicate the action in question is for personal damages allegedly inflicted upon you by another individual. Sanctioning the use of funds reserved for "expenses incidental to the person's office" for the purpose of commencing an action for personal money damages exceeds the limitation on the use of such funds established by the Legislature.

You also ask whether an officeholder expense fund may receive funds from a corporation and, if so, what limitations apply to such funds. A letter dealing with these issues was sent recently to Senator Gary Corbin. Enclosed you will find a copy of this letter.

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

Very truly yours,

Phillip T. Frangos

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF:cas

Enclosure

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

February 6, 1980

Mr. Steven R. Bartholomew
5206 Sunrose Avenue
Lansing, Michigan 48910

Dear Mr. Bartholomew:

This is in response to your inquiry concerning the applicability of the Campaign Finance Act ("the Act"), 1976 PA 388, as amended, to the settlement of outstanding campaign debts by negotiating less than full payment agreements with various creditors, including corporations.

The McCollough-Michigan Committee ("MMC") incurred debts during the 1978 gubernatorial primary election. You state that some of those debts, which were qualified expenditures, remain unpaid. MMC does have some funds remaining which you believe are sufficient to allow MMC to negotiate settlements with all of the committee's creditors. Of those funds, $2,030.50 are in MMC's public funding account.

You ask if MMC may negotiate settlements with creditors at less than the full amount of the debts without the creditors thereby making a contribution to the committee. You are particularly concerned about corporate creditors. Additionally, you ask if the money in MMC's public funding account may be used to pay these settlements:

Section 4 of the Act (MCLA § 169.204) defines "contributions" as follows:

> "Sec. 4.(1) Contribution means a payment, gift, subscription, assessment, expenditure, contract, payment for services, dues, advance, forbearance, loan, donation, pledge or promise of money or anything of ascertainable monetary value, whether or not conditional or legally enforceable, or a transfer of anything of ascertainable monetary value to a person, made for the purpose of influencing the nomination or election of a candidate, or for the qualification passage, or defeat of a ballot question. An offer or tender of a contribution is not a contribution if expressly and unconditionally rejected or returned.
>
> (2) Contribution includes the purchase of tickets or payment of attendance fee for events such as dinners, luncheons, rallies, testimonials, and similar fund raising events; and individual's own money or property other than the individual's

homestead used on behalf of that individual's candidacy; the granting of discounts or rebates not available to the general public; or the granting of discounts or rebates by broadcast media and newspapers not extended on an equal basis to all candidates for the same office." (Emphasis added)

This language indicates clearly a negotiated settlement of less than the full value of the debt is a contribution if the settlement is not available to the general public. In order that the discounting or writing off of a debt is not made a contribution, a committee must receive prior approval from the Department of State. This approval will be granted only when the Department is convinced all of the following conditions are met:

1) At the time the debt was incurred both the committee and the creditor expected the debt would be repaid in full within a reasonable time;

2) The committee has made a good faith effort to raise sufficient money to repay all outstanding debts;

3) The creditor has taken all the steps it normally takes against debtors in the same financial condition as the committee;

4) The proposed settlement agreement between the creditor and the committee is similar to previous settlements made by the creditor and other debtors;

5) The committee has treated all creditors equally since it became aware there would be difficulty in the repayment of all debts; and

6) The proposed settlement agreement between the creditor and the committee is similar to other settlements proposed or made by the committee.

A settlement approved by the Department is not "made for the purpose of influencing the nomination or election of a candidate" and is not, therefore, a "contribution." As long as the settlement is not a contribution, it may be made with a corporate creditor.

Your second question is partially answered by a declaratory ruling issued on September 29, 1978, to Mr. William R. Ralls. It is attached to and adopted as part of this declaratory ruling by reference. MMC is considered to have spent the money when the debt was incurred. You state MMC received money from the State Campaign Fund which was not credited to MMC's account until after January 1, 1979. MMC may apply money in its public funding account

to retire primary debts which are qualified expenditures. However, for the period subsequent to 60 days after the primary election, MMC must submit proof to the Department that the money being spent from the public funding account is directed to, and not in excess of, qualified campaign expenditures.

In conclusion, MMC may submit proposed debt settlements to Mr. John T. Turnquist, Deputy Director, Elections Division, for approval. State Campaign Fund money may be used for the settlement(s) if proof is submitted that the debts are qualified expenditures.

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

Sincerely,

Richard H. Austin
Secretary of State

RHA:lmr

Attachment

FEB 8 1980

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING

MICHIGAN 48918

February 6, 1980

Jacquelyn A. Rice, Secretary
We The People Committee
1200 North Telegraph Road
Pontiac, Michigan 48053

Dear Ms. Rice:

This is in response to your request for a declaratory ruling concerning the applicability of the Campaign Finance Act ("the Act"), 1976 PA 388, as amended, to loans made to a ballot question committee by a candidate committee.

You state We The People Committee, a ballot question committee, was loaned approximately $2,800.00 by Citizens Supporting L. Brooks Patterson, a candidate committee. The loans were made between December, 1977, and March, 1978. You indicate We The People Committee would like to repay the candidate committee for part of the loan. You ask whether repayment under these circumstances is permitted by the Act.

Section 2(2) of the Act (MCL 169.202(2)) restricts a ballot question committee from receiving contributions, or making expenditures or contributions, for the purpose of influencing or attempting to influence the action of voters for or against the nomination or election of a candidate. This restriction is related to the fact a corporation may make contributions to a ballot question committee pursuant to section 54 (MCL 169.254) but under no circumstances may it contribute to a candidate committee.

Money loaned is included in the definitions of "contribution" as provided in section 4 (MCL 169.204), and "expenditure" as set forth in section 6 (MCL 169.206).

There is no provision in the Act prohibiting a contribution from a candidate committee to a ballot question committee. Consequently, it appears a contribution in the form of a loan to a ballot question committee by a candidate committee is proper under the Act. As mentioned previously, section 2(2) does prohibit a contribution or an expenditure, including a loan, by a ballot question committee to or on behalf of a candidate committee.

However, repayment of a loan is treated differently by the Act. In a letter to Senator Patrick McCollough, dated January 16, 1978, the Department stated, "Repayment of a loan by a candidate committee does not constitute an expenditure." The Department based its conclusion on section 26(b) (MCL 169.226(b)) which

provides, "If a loan was repaid during the period covered by the campaign statement, the amount of the repayment shall be subtracted from the total amount of contributions received." The latter provision applies to all committees, including a ballot question committee.

Accordingly, repayment of a loan by a ballot question committee constitutes neither a contribution nor an expenditure. The ballot question committee must report repayment of the loan as a deduction by itemizing the transaction as a "loan repayment" on the committee's campaign statement. The candidate committee, which made the original loan and now receives the repayment, must identify the transfer as a repayment of a previously made loan.

In order to insure a ballot question committee does not become the improper conduit of a corporate contribution to a candidate committee by calling the contribution a "repayment of a loan", the interpretation set forth in this letter applies only to repayment for a transfer by a candidate committee to a ballot question committee which was mutually considered to be a "loan" from the date of the original transfer. This interpretation does not authorize or apply to a transfer from a candidate committee to a ballot question committee, which, in fact, constitutes a contribution, and which at some time subsequent to the date of transfer is labelled or considered a loan in order that money may be directed to the candidate committee by the ballot question committee as "repayment of a loan."

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

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings & Legislation

PTF/jmp

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

February 6, 1980

Ms. Karen Bush Schneider
Foster, Swift, Collins & Coey, P.C.
313 South Washington Square
Lansing, Michigan 48933

Dear Ms. Schneider:

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

You ask the following question:

> "Is a public employee labor organization which is organized for the purpose of assisting public employees to engage in lawful concerted activities but which, as a matter of legal form, has become incorporated under the laws of the State of Michigan, regulated by section 55 of the Act (MCLA §169.255), or, like other labor organizations operating in this state, is it regulated only by the general recordkeeping and contribution limitation requirements of the Act?"

You state, "It is our belief, based upon a careful study of 1976 P.A. 388 and related laws, that a public employee labor organization, which is only incidentally incorporated as a matter of legal form, but whose primary activity is to engage in collective negotiation and other mutual aid and protection for public employees, is not regulated by the requirements set forth for business corporations in section 55 of 1976 P.A. 388."

You further state, "It is clear from the legislative history of 1976 P.A. 388, from a comparison of it to the Federal Elections Campaign Act, from case precedent, from construction of penal status, and from a review of 1976 P.A. 388 itself that section 55 was intended to cover business corporations, not labor organizations which are only incidentally incorporated." (Emphasis added)

You emphasize that prohibitive legislation and strict regulation of corporations was meant to prevent "big business" from exerting too powerful an influence over the electoral process. Consequently, you conclude that a labor organization, which is only incidentally incorporated, is not included in the term "big business." You conclude further that an incidentally incorporated labor organization is not subject to section 55 of the Act.

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

"(1) A corporation or joint stock company formed under the laws of this or another state or foreign country may make an expenditure for the establishment and administration and solicitation of contributions to a separate segregated fund to be used for political purposes. A fund established under this section shall be limited to making contributions to, and expenditures on behalf of, candidate committees, ballot question committees, political party committees, and independent committees.

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

(a) Stockholders of the corporation.

(b) Officers and directors of the corporation.

(c) Employees of the corporation who have policy making, managerial, professional, supervisory, and 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 corporations.

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

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

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

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

As you acknowledge in your supporting brief, the term corporation is not defined in the Act. However, a definition is unnecessary since section 55 itself provides reference to the proper statutes for definition. Section 55(1) provides in part):

> "A corporation or joint stock company formed under the laws of this or another state or foreign country . . ." (Emphasis added)

Accordingly, "corporation" means, for purposes of section 55, any entity which has complied with the applicable incorporation laws of any state or foreign country making that entity a corporation. Moreover, in addition to corporations organized for profit making purposes, the Act's provisions also apply to nonprofit corporations by virtue of section 55(3).

You contend that the term "business" is relevant to this discussion. Although that term is never used in section 55 it should be noted that section 2(3) of the Act defines "business" (in part) as an "entity which is organized for profit or nonprofit purposes."

In summary, the Department is unconvinced that section 55 only pertains to "big business" corporations and that labor organizations, "incorporated only as to form," are exempt from that section's restrictions. Section 55 is applicable to all corporations. The Act neither requires nor authorizes the Department to determine the purpose for use of the corporate form. If distinctions are to be made based upon the reasons for organizing as a corporation, it is up to the Legislature to supply the framework for drawing such distinctions.

This response constitutes an interpretative statement of the pertinent provisions of the Act.

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF/s

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

February 6, 1980

Ms. Karen Bush Schneider
Foster, Swift, Collins & Coey
313 South Washington Square
Lansing, Michigan 48933

Dear Ms. Schneider:

This is in response to your request for a declaratory ruling concerning the applicability of the Campaign Finance Act ("the Act"), 1976 PA 388, as amended, to leave days designated as "association days."

You state the following factual situation:

> "The Carman School District entered into a collective bargaining agreement with the Carman Education Association, the certified bargaining representative for the teaching personnel employed by said school district. Pursuant to the collective bargaining agreement between the parties, teachers may be excused from classroom duties for a school day at the request of the Association. These leave days are called 'association days,' and the Education Association has a total of 50 days available as 'association days.' Teachers utilizing such leave days receive their normal salary from the district."
>
> "Several teachers have asked that the Carman Education Association request 'associtions days' so that they (the teachers) might voluntarily work in several aspects of either an election or a campaign."

You note the Carman Education Association is incorporated under state law. You indicate the Michigan Education Association (MEA) also has a number of affiliated local education associations which are unincorporated. In requesting the declaratory ruling, you ask that it address unincorporated as well as incorporated associations.

As concerns the above facts, you ask four questions.

1) Is a request by an incorporated or unincorporated local association for "association days" permissible under sections 54 and 55 of the Act (MCLA §169.254 and 169.255) to enable teachers to do volunteer work in the following capacities:

    a) Election challengers for a ballot question committee.
    b) Election challengers for a candidate committee.
    c) Election inspectors.
    d) Campaign workers for a ballot question committee.
    e) Campaign workers for a candidate committee.

2) If the request is permissible, are these association days to be reported as expenditures and who, if anyone, is responsible for reporting them--the school district, the individual teacher, the local association, or the 10-B Coordinating Council PAC of which the Carman Education Association is a constituent member?

3) If the local association were to expend time to actively seek volunteers for any of the activities identified in the first question, would the answer differ and, if so, how?

4) If teachers utilize, for election or campaign activities, other leave provisions available to them under a collective bargaining agreement, such as "personal leave days," does this usage become a "corporate contribution" by the local association which negotiated the contract or by the school district which agreed to the contract?

"Contribution" is defined generally in section 4 of the Act (MCLA §169.204) as anything of ascertainable monetary value made for the purpose of influencing an election. Section 4(3) provides, however, that a "contribution" does not include volunteer personal services provided without compensation.

Your statement of facts indicates that teachers performing volunteer work will receive their normal salary from the district during any "association day" requested and assigned by the local association. In other words, the teachers are compensated while rendering volunteer personal services, with the compensation provided at the direction of the local association. Although the school district is the source of the salary, the local association has control of when and for what purpose to request an "association day." Accordingly, a request by the local association for an "association day" so that a teacher may provide volunteer services for a committee constitutes a "contribution" to the committee.

Turning to your first question, an incorporated association may not request an "association day" for a teacher to function as an election challenger or campaign worker for a candidate committee since this constitutes an illegal campaign contribution prohibited by section 54 of the Act. An incorporated association may request an "association day" for a teacher to function as an election challenger or campaign worker for a ballot question committee subject to the limitations prescribed in section 54. In the instance of teachers working as official election inspectors, an incorporated association may request "association days" without limitation since there is no "contribution" to any committee.

If a local association is not incorporated, it is free to ask for an "association day" to enable a teacher to do volunteer work in any of the identified activities regardless of the salary compensation provided to the teacher.

In regard to your second question concerning how requests for "association days" are to be reported, it should be stated initially that if the association contributes or expends an amount equivalent to $200 or more in a calendar year to influence elections, it becomes subject to the committee reporting provisions of the Act. Consequently, if an association requests an "association day" for a teacher, it must be reported as an in-kind expenditure by the association if the association is a "committee" pursuant to the Act. The recipient committee must report the services received pursuant to the request as an in-kind contribution and as an in-kind expenditure. If the association is not a "committee," only

the recipient committee must report. The school district, the individual teacher, and the 10B Coordinating Council PAC have no reporting obligations under the Act in these circumstances. The value of the services that must be reported is the actual gross compensation rate.

With respect to your third question, the preceding statements remain valid even if the local association actively seeks volunteers to perform any of the listed activities. The contribution to the recipient committee is the compensation paid for the work of the teacher, and the value of the time or effort and any resources expended by the association in obtaining that assistance.

In answer to your last question, usage by teachers of other leave provisions available to them under a collective bargaining agreement, such as "personal leave days," to work in election or campaign activities does not constitute "contribution" by the association or school district. Under normal circumstances, neither the association nor the school district has control over when or how the individual may use his or her "personal leave days." The individual using "personal leave time" may use the time as he or she sees fit. Services rendered without compensation to a candidate or ballot question committee are exempted by section 4(3)(a) from the definition of "contribution" and need not be reported.

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

Sincerely,

Richard H. Austin
Secretary of State

RHA/s

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

February 6, 1980

Mr. William H. Butler
Clark, Klein, Winter, Parsons & Prewitt
1600 First Federal Building
1001 Woodward Avenue
Detroit, Michigan 48226

Dear Mr. Butler:

This is in response to your letter objecting to an assessment of late filing fees imposed against your client, the Michigan Truck PAC, pursuant to the Campaign Finance Act ("the Act"), 1976 P.A. 388, as amended.

You state your client's committee has received notices of late filing fees. These notices allege late receipt of the statement of organization, annual campaign statement, and post-primary campaign statement, and attempt to assess late filing fees of $300.00, $300.00, and $40.00 respectively.

Your objection to imposition of these fees rests on your assertion that the Act was unclear as to whether your client's committee had to file initially It is your contention the Michigan Attorney General, in OAG, 1977-78, No. 5279 (March 22, 1978), expressly prohibited a corporation from establishing a committee. Consequently, based on that contention you believe the Michigan Truck PAC was not required to file since the Act only requires a committee to file. You assert the foregoing opinion was diametrically reversed subsequently in OAG, 1977-78, No. 5344 (July 20, 1978).

You state the following:

> "In that opinion, it was held for the first time that separate, segregated funds constitute 'committees' and must register with the Department of State. Opinion of Attorney General 5344, page 5. Although the Michigan Truck PAC continues to disagree with this conclusion, it observed this later opinion and promptly took steps to properly register as a committee including the filing of all required Statements of that time. All of these Statements were submitted to the Secretary by our letter of August 24, 1978 within a reasonable time after the publication and circulation of the foregoing opinion.
>
> The attempted collection of late filing fees, therefore constitutes, in substance, an attempt at imposing an ex post facto law which we consider improper."

In the present case, there is no effort to create an ex post facto law. The Attorney General did not reverse his opinion as articulated in OAG No. 5279, since the Attorney General never stated a separate segregated fund is not a committee in that ruling. The pertinent language from OAG No. 5279 reads as follows:

> "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."

The Attorney General stated simply that a corporation is prohibited from establishing a committee to support state candidates in the same sense that a corporation is permitted to form a committee to support a ballot question as provided by section 54(4) of the Act (MCLA §169.254). He did not say a separate segregated fund is not a committee. Subsequently, in OAG No. 5344, the Attorney General clarified how a separate segregated fund may operate if it meets the definition of "committee" as provided in the Act.

In defining "committee," section 3(4) of the Act (MCLA §169.203) clearly includes within the scope of the term any "person" who receives contributions or makes expenditures in the amount of $200.00 or more in a calendar year to influence certain state elections. The broad definition of "person" in section 11(1) of the Act (MCLA §169.211) includes a separate segregated fund by virtue of listing a number of entities including "any other organization or group of persons acting jointly."

Accordingly, the late filing fees in question were properly assessed since separate segregated funds have always been considered committees by the express language of the Act and have been so considered since the effective date of the Act.

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

Very truly yours,

Phillip T. Frangos

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF/s

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

February 6, 1980

Mr. Howard Altman
Director of Elections
Oakland County Clerk Office
Pontiac, Michigan 48053

Dear Mr. Altman:

You have requested an interpretation of the Campaign Finance Act ("the Act"), 1976 PA 388, as amended, regarding the transfer of funds between two candidate committees of the same person.

Section 45(1) of the Act (MCL 169.245(1)) states:

> "A person may transfer any unexpended funds from 1 candidate committee to another candidate committee of that person if the contribution limits prescribed in section 52 for the candidate committee receiving the funds are equal to or greater than the contribution limits for the candidate committee transferring the funds and if the candidate committees are simultaneously held by the same person."

You ask if this language prohibits a transfer of funds from a candidate committee for a local elective office to a candidate committee for a state elective office.

All state elective offices are subject to contribution limitations provided in section 52 of the Act (MCL 169.252); the Act sets no contribution limitations on local elective offices. In view of the latter fact, a local candidate committee has an unlimited contribution limitation and, consequently, can receive potentially far larger contributions than a state candidate committee.

Therefore, pursuant to section 45(1), funds may be transferred from an individual's state candidate committee to that person's local candidate committee, but funds may not be transferred from the local candidate committee to the state candidate committee.

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

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF/s

MICHIGAN DEPARTMENT OF STATE

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LANSING
MICHIGAN 48918

February 6, 1980

Ms. Elaine Tuttle
11254 Garden
Livonia, Michigan 48150

Dear Ms. Tuttle:

This office is in receipt of copies of your communications with both the Wayne County Clerk's Office and the Wayne County Prosecuting Attorney. These materials state you filed an original statement of organization on June 19, 1979 which indicated your committee was formed on June 13, 1979. On July 5, you were sent a notice for failing to file an annual report. You were contacted by the Wayne County Prosecutor's Office on or about July 27, 1979 with respect to this matter.

You should be advised the Department of State does not agree with your position that you are not required to file an annual report until July, 1980. Section 25(1) of the Campaign Finance Act ("the Act"), 1976 PA 388, as amended, provides as follows:

> "A committee supporting or opposing a candidate . . . shall file a legibly printed or typed campaign statement. The period covered by a . . . statement is the period beginning with the day after the closing date of the most recent . . . statement which was filed, and ending with the closing date of the . . . statement in question. If the committee filing the . . . statement has not previously filed a . . . statement, the period covered shall begin with the effective date of this section, or the date on which the committee was formed if the committee is formed after the effective date of this section." (Emphasis added)

From the information which you provided, as indicated previously, your committee was formed on June 13, 1979. This was after the effective date of Section 25(1). Therefore, a statement had to be filed covering the period which began with the date upon which the committee was formed, i.e., June 13, 1979. Section 35(1) of the Act provides this statement "shall have a closing date of June 20 of that year. The period covered . . . shall begin from the day after the closing date of the previous statement." In your particular case, there was no previous statement, so the period covered would commence with the date the committee was formed and have a closing date of June 20 of that year.

The Department of State, therefore, is in full agreement with the letter sent to you by Mary McLean on August 7, 1979, which enclosed a letter sent to Mr. Howard Altman on November 2, 1978.

You should be further advised that the Act does not give the Department of State any authority to reduce, waive or suspend late filing fees, even if meritorious defenses are presented.

Very truly yours,

Phillip T. Frangos

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF/s

CC: Mary McLean
John Turnquist

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

February 6, 1980

Mr. John W. Northrup
2622 Thomas Street
Flint, Michigan 48504

Dear Mr. Northrup:

This is in response to your request for a declaratory ruling concerning the applicability of the reporting requirements of the Campaign Finance Act ("the Act"), 1976 PA 388, as amended, to the John W. Northrup Election Committee.

You question whether an annual campaign statement must be filed by a committee when:

1) The committee filed a statement of organization pursuant to section 24(4) of the Act (MCLA §169.224(4)) indicating it did not expect to receive or expend more than $500.00 per election;

2) The committee subsequently did actually receive or expend more than $500.00 for one election;

3) The committee filed both preelection and postelection campaign statements reporting those receipts and expenditures; and

4) The committee neither received nor expended $500.00 subsequent to the postelection campaign statement (and the election for which the $500.00 limit was exceeded).

In answering your question, it will be helpful to analyze the filing requirements of the Act using the specific data you provided for illustrative purposes. On June 2, 1977 you filed a statement of organiztion pursuant to section 24(4) which states:

"(4) When filing a statement of organization a committee may indicate in a sworn statement that the committee does not expect for each election to receive an amount in excess of $500.00 or expend an amount in excess of $500.00."

Your preelection and postelection reporting requirements were governed by section 33(2) of the Act (MCLA 169.233(2)) which provides:

"(2) A candidate committee or a committee other than a candidate committee which files a sworn statement pursuant to section 24(4) need not file a campaign statement under subsection (1)(a) unless it did not receive or expend an amount in excess of $500.00. If the committee did receive

> or expend an amount in excess of $500.00 on behalf of the campaign, the committee shall file a campaign statement under subsection (1)(b) stating that the committee did not receive or expend an amount in excess of $500.00. If the committee receives or expends an amount in excess of $500.00 during a period covered by a filing, the committee is then subject to the campaign filing requirements under this act."

The first sentence of this statutory provision indicates a committee with a reporting waiver need not file a preelection campaign statement unless more than $500.00 was received or expended. The time period during which that amount must have been received or expended would appear to be the "for each election" referred to in section 24(4) above. The second sentence provides for the filing of a short postelection statement if not more than $500.00 was received or expended "on behalf of the campaign." While campaign is not a term defined in the Act, it is defined in Rule 1(c) (1977 AACS R169.1(c)):

> "(c) 'Campaign' or 'candidate's campaign' means the candidate committee's activities for a specific election."

Therefore, "on behalf of the campaign" has the same meaning as "for each election." The third sentence of section 33(2) uses another period of time, "a period covered by a filing," to determine whether the committee becomes subject to the filing requirements of the Act. Section 25 of the Act (MCLA §169.225) defines that period as beginning the day after the closing date for the most recently filed statement, and ending on the closing date for the statement in question. The language, "a period covered by a filing," is inconsistent with the "for each election" and "on behalf of the campaign" language used in the rest of section 33(2) and in section 24(4). That is because, in its original form in 1976 PA 388, section 24(4) read:

> "(4) A candidate when filing a statement of organization for a candidate committee may indicate in a sworn statement that the committee does not expect for each election to receive an amount in excess of $500.00 or expend an amount in excess of $500.00 on behalf of the candidate's campaign. A committee other than a candidate committee may indicate in a sworn statement that the committee does not expect in a calendar year to receive or expend an amount in excess of $500.00."

When this section was amended to its present form by 1977 PA 311, section 33(2) was not changed to make the language consistent. The language "a period covered by a filing" referred in large part to the calendar year limitation in the original section 24(4). Since noncandidate committees are now limited to the period "for each election" instead of "in a calendar year," and the amendment to section 24(4) was made after the passage of the language in section 33(2), the time period in the third sentence of section 33(2) should be understood as being "for each election." This reconciles section 24(4) with section 33(2).

Since you exceeded your expected receipts or expenditures, you filed a preelection campaign statement on October 31, 1977 and a postelection campaign statement on December 9, 1977. Since you exceeded the $500.00 limit for the election, you were required to make those two filings. Having once received or expended more than $500.00 on one election, you were "then subject to the campaign filing requirements under this act."

This language indicates the section 24(4) reporting waiver is lost once the $500.00 limitation per election is exceeded.

The next filing requirement of the Act was the annual campaign statement due June 30, 1978 pursuant to section 35 (MCLA §169.235). In view of section 33(2), you were required to make the annual filing unless you amended your statement of organization to reassert your expectation that more than $500.00 would not be received or expended for each election. If you had amended your statement of organization on or before the due date of the annual campaign statement, you would have been exempted by section 35(4) from the annual campaign statement due on June 30, 1978. Section 35(4) provides:

> "(4) A committee filing a sworn statement pursuant to section 24(4) need not file a statement in accordance with section 35(1). If a committee receives or expends more than $500.00 during a period covered by a filing, the committee is then subject to the campaign filing requirements under this act."

This exemption does not apply if the reporting waiver has been lost by exceeding the limitation sometime after filing the sworn statement under section 24(4). The final sentence of section 35(4) is identical to the final sentence of section 33(2) and should be given the same reading. Thus had you refiled your statement of organization with a new sworn statement, you would not need to file an annual campaign statement until $500.01 had been received or expended for one election.

It should be noted that in determining whether more than $500.00 has been received for one election, rule 37 (1977 AACS 169.37) must be taken into account:

> "A committee which has filed with its statement of organization a sworn statement as provided in section 24(4) of the Act and which, following an election, has cash or cash equivalents on hand shall, for the next ensuing election, report the same as 'cash on hand at beginning of account period.' The 'cash on hand at beginning of accounting period' shall be a part of the aggregate receipts for the next ensuing election, but need not be further itemized."

Therefore, a surplus carried over from a prior election is "part of the aggregate receipts" for the next election and will be counted toward the $500.00 limitation.

In conclusion, an annual campaign statement must be filed by a committee with a reporting waiver once the committee has received or expended more than $500.00 for an election. In order to regain a lost reporting waiver, a committee must refile the sworn statement pursuant to section 24(4). Your committee was required to file an annual campaign statement on June 30, 1978. This is consistent with the instructions purlished on page five of the April, 1978 issue of BULLETIN, the informational publication prepared by the Department of State's Campaign Finance Reporting Section. Attached you will find a copy of this publication.

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

Sincerely,

Richard H. Austin
Secretary of State

PHA:lr

Attachment

cc: Janet McKenzie
Deputy Clerk
Genesee County

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STATE OF MICHIGAN

FRANK J. KELLEY, ATTORNEY GENERAL

Opinion No. 5695

April 28, 1980

ELECTIONS:

Corporate contributions to influence vote on ballot proposal

INSURANCE:

Contributions by insurance company to influence outcome of ballot proposal

A provision in the Insurance Code of 1956 which prohibits contributions by insurers which would influence or affect the vote on a ballot question is unconstitutional.

Honorable John M. Engler

State Senator

The Capitol

Lansing, Michigan

You have requested my opinion on the constitutionality of the Insurance Code of 1956, 1956 PA 218, Sec. 2074; MCLA 500.2074; MSA 24.12074, which prohibits political contributions which would influence or affect the vote on a ballot proposal by insurers doing business in the State of Michigan.

Specifically, 1956 PA 218, Sec. 2074, supra, provides, in part, that:

> '(1) No insurer doing business in this state shall, directly or indirectly, pay or use, or offer, consent or agree to pay or use any money or property for or in aid of any political parties, committee or organization, or for or in aid of any corporation, joint stock or other association organized or maintained for political purposes, or for or in aid of any candidate for political office or for nomination for such office, or for the purpose of influencing or affecting the vote on any question submitted to the voters, other than one materially affecting any of the property, business or assets of such insurer, or for any political pupose, whatsoever, or for the reimbursement or indemnification of any person for money or property so used, . . .'

(emphasis added)

Additionally, Sec. 106 of the Insurance Code of 1956, supra, defines an insurer as:

'. . . any individual, corporation, association, partnership, reciprocal exchange, inter-insurer, Lloyds organization, fraternal benefit society, and any other legal entity, engaged or attempting to engage in the business of making insurance or surety contracts.'

The Michigan Supreme court in Advisory Opinion on Constitutionality of 1975 PA 227 (Questions 2-10), 396 Mich 465; 242 NW2d 3 (1976), while considering the constitutionality of Sec. 95 of the then Political Reform Act, 1975 PA 227, Sec. 95; MCLA 169.95; MSA 4.1701(95) which prohibited corporate contributions or expenditures for any political purpose, concluded that:

'. . . corporate contributions or expenditures for the purpose of influencing the nomination or election of a candidate may be constitutionally prohibited in order to preserve the integrity of the electoral process. However, we would view the prohibition of corporate contributions or expenditures for the purpose of influencing the qualification, passage, or defeat of a ballot question as an unconstitutional abridgement of freedom of speech and press as guaranteed by [Const 1963] art 1, Sec. 5.' 396 Mich 465, 491 (emphasis added)

The Court went on to hold that:

'. . . insofar as Sec. 95 interferes with the right of the public to hear divergent views of public importance by prohibiting corporations from making contributions or expenditures for the purpose of communicating its opinion concerning ballot questions, it is violative of Const 1963, art 1, Sec. 5. . . .' 396 Mich 465, 495

In addition, the United States Supreme Court in First National Bank of Boston v Bellotti, 435 US 765, 777; 55 L Ed 2d 707; 98 S Ct 1407, reh den, 438 US 907; 57 L Ed 2d 1150; 98 S Ct 3126 (1978), held a comparable provision of Massachusetts law prohibiting corporations from making political contributions, except as to ballot proposals which materially affected the property, business or assets of the corporation, to be unconstitutional as a denial of the First Amendment rights of the corporation. The Court, quoting from Mills v Alabama, 384 US 214, 218; 16 L Ed 2d 484; 86 S Ct 1434 (1966) held that:

'. . . 'there is practically universal agreement that a major purpose of [the First] Amendment was to protect the free discussion of governmental affairs."

Thus, legal entities which are encompassed within the definition of insurer in 1956 PA 218, Sec. 106, supra, have the same protected right to freedom of speech as do corporations.

OAG, 1975-1976, No 5123, p 629, 633 (September 30, 1976), considered whether Sec. 919 of the Michigan Election Law, 1954 PA 116, Sec. 919; MCLA 168.919; MSA 6.1919 [a1]) which prohibited a corporation from making political contributions of any kind, was constitutional. After reviewing the principles established in Advisory Opinion on Constitutionality of 1975 PA 227 (Questions 2-10), supra, and Schwartz v Romnes, 495 F2d 844 (CA 2, 1974), the Attorney General concluded that:

'. . . any attempt to enforce 1954 PA 116, Sec. 919, supra, where the sole basis of prosecution is a campaign contribution made in support of or in opposition to a ballot question, would violate the freedoms of expression and assembly guaranteed by Const 1963, art 1, Secs. 1, 2, 3 and 5.'

Furthermore, the present Campaign Finance Act, 1976 PA 388, Secs. 54, 55; MCLA 169.254, MCLA 169.255; MSA 4.1703(54), MSA 4.1703(55) permits a corporation or joint stock company to make a contribution when the purpose is 'for the qualification, passage, or defeat of a ballot question,' 1976 PA 388, supra, Sec. 54, and to establish separate, segregated funds which may be solicited from very specific sources and used for very specific political purposes. In OAG, 1977-1978, No 5279, p ___ (March 22, 1978), OAG, 1977-1978, No 5344, p ___ (July 20, 1978) and OAG, 1977-1978, No 5422, p ___ (December 29, 1978) it was held that the extent of corporate investment in the financing of elections is limited to the manner and method authorized in Secs. 54 and 55, supra.

Thus, while the Insurance Code of 1956, Sec. 2074, supra, does permit insurers to make political contributions in narrowly defined instances, the limitation contained therein relating to ballot questions is not in accord with the Michigan Supreme Court's decision in Advisory Opinion on the Constitutionality of 1975 PA 227, (Questions 2-10), supra, the United States Supreme Court's decision in First National Bank of Boston v Bellotti, supra, and recent opinions

of this office. Therefore, it is my opinion that the provision in 1956 PA 218, Sec. 2074, supra, which prohibits contributions by insurers which would influence or affect the vote on ballot questions is unconstitutional.

Whenever a portion of a statute is determined to be unconstitutional, the void provision may be severed without invalidating the entire statute. This may be accomplished as long as the statute can be enforced without the void provision, and it is clear that the Legislature would have enacted the statute without the severed portion. OAG, 1979-1980, No 5485, p ___ (April 26, 1979); OAG 1975-1976, No 4870, p 101 (June 13, 1975).

Since 1956 PA 218, Sec. 2074, supra, provides for other limitations on political activities by insurers doing business in the State of Michigan, it is clear that the section would have been enacted without the invalid provision. Therefore, the unconstitutional portion of Sec. 2074 may be severed without invalidating the entire section.

It is, therefore, my opinion that the underscored portion of 1956 PA 218, Sec. 2074, supra, quoted above, is unconstitutional.

Frank J. Kelley

Attorney General

[a1.] Repealed by the Campaign Finance Act, 1976 PA 388, Sec. 281; MCLA 169.281; MSA 4.1703(81) and replaced with changes as 1976 PA 388, Secs. 254, 255; MCLA 169.254; 169.255; MSA 4.1703(54), 4.1703(55).

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