MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

July 24, 1980

Senator William Faust
State Capitol Building
Lansing, Michigan

Dear Senator Faust:

This is in response to your inquiry concerning the Campaign Finance Act ("the Act"), 1976 PA 388, as amended. You ask if a legislator's candidate committee may lease an automobile at the committee's expense. You also inquire whether the leasing of an automobile and automobile expenses may be charged against an officeholder's expense fund.

Section 6 of the Act (MCL 169.206) defines "expenditure" as 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 (MCL 169.203) provides that an elected officeholder is a candidate for reelection to the same office.

A candidate committee is authorized to make expenditures in assistance of a legislator's renomination and reelection to office. If an automobile is being used to influence an election then the cost of leasing the vehicle may be paid from a candidate's campaign committee.

Section 49 of the Act (MCL 169.249) permits an elected public official to establish an officeholder expense fund. The fund may be used for expenses incidental to the person's office. Unreimbursed travel for legislative or constituent business is an expense incidental to a legislator's office. Consequently, the leasing of an automobile and automobile expenses may be charged against an officeholder expense fund to the extent that the expense is incurred on constituent or legislative business and is not otherwise reimbursed.

An officeholder expense fund is prohibited from making "contributions and expenditures to further the nomination or election" of the public official who established the fund pursuant to section 49. An officeholder who uses an officeholder expense fund to pay automobile expenses incidental to the office must be absolutely certain that monies from the fund are not used for the support of that person's campaign for office.

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

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF:lr

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

August 5, 1980

Ms. Mildred Meisner
P. O. Box 1276
Pontiac, Michigan 48056

Dear Ms. Meisner:

This is in response to your request for an interpretation of the Campaign Finance Act, 1976 PA 388, as amended ("the Act"), with respect to contributions of over $100.00 from a checking account maintained by more than one person.

Specifically, you have requested a ruling that authorizes persons who hold a joint account to make a contribution of over $100.00 with the contribution being prorated among the owners of the account for purposes of qualifying for matching funds pursuant to section 12(1) of the Act.

In a letter to William R. Lukens, the Department indicated that such a contribution may be prorated if both owners of the account sign the instrument representing the contributions. If the instrument is signed by only one of the owners of the account, the contributions may be prorated if a separate signed document is received from the other owner of the account. A copy of the letter to Mr. Lukens is enclosed.

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

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF/cs

Enc.

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

August 5, 1980

Mr. Daniel C. Krueger
County Clerk, Ottawa County
414 Washington
Grand Haven, Michigan 48417

Dear Mr. Krueger:

This is in response to your inquiry concerning the imposition of late filing fees pursuant to the Campaign Finance Act ("the Act"), 1976 PA 388, as amended.

You indicate that late filing fees should not be assessed on campaign statements present in a filing official's mail on the first Monday following a Friday filing deadline. In advancing this position you assume the campaign statement was received by the filing official on Saturday rather than Monday. Two days of late filing fees would be eliminated under the facts and interpretation stated in your letter.

The Department is not empowered by the Act nor any other provision of law to adopt the interpretation you offer. There is no statutory basis on which to rest your proposal.

However, if arrangements are made to have mail delivered to your office on the Saturday following the due date (Friday), reports received on Saturday may be considered filed on Saturday. Thus, you should assess only $10.00, rather than $30.00, in late filing fees for those reports.

Amendatory legislation is pending which would impose late filing fees on the basis of business days and not calendar days as the Act requires presently. Moreover, the legislation, if enacted, would enable filing officials to waive late filing fees upon the showing of "good cause."

This response 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

August 5, 1980

Mr. Marc T. Dedenbach
The Michigan Hospital Association
2213 East Grand River Avenue
Lansing, Michigan 48912

Dear Mr. Dedenbach:

This is in response to your request for a declaratory ruling concerning applicability of the Campaign Finance Act ("the Act"), 1976 PA 388, as amended, to solicitation of various persons by a non-profit corporation. You state the following:

> "Hospitals throughout the state are given support by volunteers in the community. These volunteers come together at the individual hospital level to form hospital auxiliaries. The volunteers who work in the hospital are not paid for the services they render. The hospital bylaws usually recognize the local auxiliaries as a part of the hospital's organizational structure. The majority of volunteers pay dues to the auxiliaries, which are used to support the auxiliary and the hospital. The auxilians do not pay dues to the MHA."
>
> "On a statewide basis, the auxiliaries are organized into six districts. Members of local auxiliaries elect auxilians to serve on the six district boards. The Michigan Association of Hospital Auxiliaries (MAHA) is the state level organization of auxiliaries. The district presidents, along with elected officers, serve on the Board of Directors of the MAHA. The MAHA and the district organizations are unincorporated, voluntary associations. A few of the local auxiliaries have incorporated."
>
> "The purpose of the MAHA is to support the MHA, the American Hospital Association and local auxiliaries. The president of the MAHA is a voting member of the House of Delegates of the MHA. The House of Delegates is that body, made up of all the members of the MHA, which meets to pass on policy matters of MHA. The president of the MAHA is an ex-officio member of the MHA's Board of Trustees, attends the MHA board meetings and presents an annual report to the MHA Board."

"The MHA is a nonprofit corporation and has established an independent political committee, the Hospital Association Political Action Committee (HAPAC), which is registered with the Secretary of State."

"It is my understanding that contributions to HAPAC can be solicited from: 1) officers and directors of the MHA; 2) employees of the MHA who have a policy-making, managerial, professional, supervisory or administrative non-clerical responsibility; 3) members of the MHA who are individuals; 4) officers or directors of members of the MHA; and 5) employees of members of the MHA who have a policy-making, managerial, professional, supervisory or administrative non-clerical responsibility."

"I am requesting a declaratory ruling on the following questions:

1. Whether MHA can solicit contributions to HAPAC from the five categories of persons listed above?

2. Whether volunteers of local hospitals, represented on the MHA's House of Delegates, are 'members' of the MHA who are individuals, within the scope of P.A. 388 of 1976, even though they do not pay dues to the MHA?

3. Whether MHA can lawfully solicit contributions to HAPAC from individual auxilians?"

Section 55 of the Act (MCL 169.255) governs a nonprofit corporation's establishment of a separate segregated fund to be used for political purposes. This provision states:

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

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

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

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

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

In response to your first question, therefore, MHA may solicit contributions to HAPAC from the five categories of persons you list. However, the knowledge that you may solicit from the above list is of little use unless you have a definition of the term "member." The latter term is not defined in the Act; the Department cannot determine MHA's membership without further information from you.

Similarly, the remaining questions cannot be answered without this additional information since the response to these two questions is dependent on the definition of "member." It should be noted, however, that nothing in your request claims that the auxiliaries are members of the MHA. You only claim that the president of MAHA is a voting member of the House of Delegates of the MHA. In the absence of additional information from you, it does not appear that the auxiliaries are members of the MHA. Based on the information submitted by you, it does not appear possible for HAPAC to solicit the auxiliaries.

Section 120 of the General Corporation Act (MCL 450.120) states, "Membership in all non-profit corporations shall be governed by such rules of admission, retention, and dismissal, as the articles or by-laws shall prescribe: Provided, that all such rules shall be reasonable, germane to the purposes of the corporation, and equally enforced as to all members." Accordingly, whether an individual shall be considered a "member" for solicitation purposes depends on the rules prescribed by the articles or by-laws of MHA. It is necessary to submit the articles of incorporation or by-laws regarding membership in the Michigan Hospital Association in order that your request for a declaratory ruling may be properly addressed.

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 & Legislation

PTF/jmp

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

August 5, 1980

Mr. Paul Younglove
9063 Joseph
Maybee, Michigan 48159

Dear Mr. Younglove:

This is in response to your request for a declaratory ruling pursuant to the Campaign Finance Act ("the Act"), 1976 PA 388, as amended, concerning late filing fees assessed against yourself, Anthony B. Lieto, Thomas R. Hilyard, and Kris Rath.

You indicate the four of you filed petitions for various village elective offices on December 21, 1979. You asked the village clerk if you needed to file any other papers and were advised no other filings were necessary. Then on January 31, 1980 the village clerk notified you that filings were required under the Act. You filed your statements of organization by the next day and were subsequently notified that each of you owed $300.00 in late filing fees. You enclosed a statement from the Maybee Village Clerk indicating prior to January 30, 1980 she did not know candidates were required to file statements of organization. You ask if, considering these circumstances, your late filing fees may be forgiven.

Section 21(1) of the Act (MCL 169.221(1)) provides that "a candidate, within 10 days after becoming a candidate, shall form a candidate committee." It is impossible to positively determine when you became candidates from the information contained in your letter. "Candidate" is defined in section 3(1) of the Act (MCL 169.203(1)), which provides, in the relevant part, as follows:

> "Candidate means an individual: (a) who files a fee, affidavit of incumbency, or nominating petition for an elective office; (b) whose nomination as a candidate for elective office by a political party caucus or convention is certified to the appropriate filing official; (c) who receivesa 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; or (d) who is an officeholder who is the subject of a recall vote. Unless the officeholder is constitutionally or legally barred from seeking reelection or fails to file for reelection to that office by the applicable filing deadline, an elected officeholder shall be considered to be a candidate for reelection to that same office for the purposes of this act only."

Under this definition, you certainly became candidates no later than December 21, 1979, the date you filed for the various village offices. Thus, each of you was required to form a candidate committee no later than December 31, 1979.

Section 24 of the Act (MCL 169.224) states, in part:

> "(1) A committee shall file a statement of organization with the filing officials designated in section 35 to receive the committee's campaign statements. A statement of organization shall be filed within 10 days after a committee is formed. . . . A person who fails to file a statement of organization required by this subsection, shall pay a late filing fee of $10.00 for each day the statement remains not filed in violation of this subsection not to exceed $300.00. A person who is in violation of this subsection by failing to file for more than 30 days after a statement of organization is required to be filed is guilty of a misdemeanor and shall be fined not more than $1,000.00."

Therefore, you were each required to file a statement of organization within ten days of the day the committee was formed, but not later than January 10, 1980.

The filing official determines when the late filing fee begins to accumulate by checking item 6, "Date Committee was formed," on the committee's statement of organization. As long as the item 6 date is not later than ten days after the person became a candidate, the late filing fee is computed from the date provided by the candidate in item 6. You will need to determine if your late filing fees were properly computed. If the fees were incorrectly computed, the Monroe County Clerk should be informed so they may be corrected.

The Act does not give anybody, including the Secretary of State, the authority to forgive or cancel late filing fees regardless of the extenuating circumstances or good intentions on the part of the committee. Therefore, your request for forgiveness of the fees cannot be complied with by the Department of State.

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/cw

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

August 6, 1980

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

Dear Mr. Nobes:

This is in response to your inquiry regarding the applicability of the Campaign Finance Act ("the Act"), 1976 PA 388, as amended, to paid statements you would like to place in the media.

You indicate you do not know if you will run for office in the next election but you would like to make some public statements about a person who has been a candidate for election in the past, who you expect will be a candidate in a future election, and who has recently received an appointment. You would also like to make some public statements regarding the Governor and certain of his actions. You inquire as to the reporting requirements you must comply with if you make these statements by means of paid media messages.

Since the facts and questions you state are quite general in nature, this response must also be general. "Candidate" is defined (in part) by section 3(1) of the Act (MCL 169.203(1)) as follows:

> "'Candidate' means an individual: (a) who files a fee, affidavit of incumbency, or nominating petition for an elective office; (b) whose nomination as a candidate for elective office by a political party caucus or convention is certified to the appropriate filing official; (c) 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; or (d) who is an officeholder who is the subject of a recall vote. Unless the officeholder is constitutionally or legally barred from seeking reelection or fails to file for reelection to that office by the applicable filing deadline, an elected officeholder shall be considered to be a candidate for relection to that same office for the purposes of this act only." (Emphasis supplied)

The identification requirements for printed matter and media advertisements are set out in section 47 of the Act (MCL 169.247):

> "Sec. 47. (1) A billboard, placard, poster, pamphlet, or other printed matter having reference to an election, a candidate, or ballot question, shall bear upon it the name and address of the person paying for the matter.

(2) A radio or television paid advertisement having reference to an election, a candidate, or ballot questions shall identify the sponsoring person as required by the federal communications commission, shall bear the name of the person paying for the advertisement, and shall be in compliance with the following:

(a) If the radio or television paid advertisement relates to a candidate and is an independent expenditure, the advertisement shall contain the following disclaimer: "Not authorized by any candidate."

(b) If the radio or television paid advertisement relates to a candidate and is not an independent expenditure but is paid for by a person other than the candidate to which it is related, the advertisement shall contain the following disclaimer: "Authorized by _____ (Name of candidate or name of candidate committee)."

(3) If the printed matter relating to a candidate is an independent expenditure which was not authorized in writing by the candidate committee of that candidate, the printed matter shall contain the following disclaimer: "Not authorized by the candidate committee of _____ (candidate's name)."

The size and placement of the disclaimer shall be determined by rules promulgated by the secretary of state. The rules may exempt printed matter and certain other items such as campaign buttons or balloons the size of which makes it unreasonable to add an idenfication or disclaimer, from the identification or disclaimer required by this section.

(4) 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."

You must apply these sections to yourself in purchasing media messages. If you are a "candidate," any purchased printed matter or advertising having reference to you must be identified as required in section 47. It must state: "Paid for by _____ (name of your committee)."

Similarly, if another person is a "candidate," any printed matter or advertising you pay for having reference to that person must contain one of the three disclaimers set out in subsections 2(a), 2(b), and 3 of section 47.

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

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN — SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

August 6, 1980

Honorable Francis R. Spaniola
Michigan House of Representatives
Roosevelt Building
Lansing, Michigan 48909

Dear Representative Spaniola:

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

You state you have been supplied with state highway maps by the Michigan Department of Transportation as part of the quota given to the Legislature for distribution. You indicate, "several service station owners have asked if I could make available a number of these maps with my insignia for free distribution."

You have enclosed a state highway map with a copy of your insignia attached. The insignia reads as follows:

"Compliments of
Your
State Representative
FRANCIS R. 'BUS' SPANIOLA
87th District"

The state emblem is affixed to the left of the inscription. The entire insignia is in the form of a sticker measuring 1" x 2-3/4".

You inquire as to the provisions of the Act which are applicable to the above facts.

Two questions must be addressed:

(1) How may distribution costs of the maps be paid consistent with the Act?

(2) Is distribution of the maps by service station owners permitted by the Act?

Distribution of highway maps as described in your letter is an activity incidental to the holding of office. Costs incurred for distributing maps are not made for the purpose of influencing an election. Any allowance authorized by the Legislature may be used. Alternatively, such costs may be paid with disbursements from an officeholder's expense fund created pursuant to section 49 of the Act (MCL 169.249), or with an officeholder's personal funds.

The second question arising from your factual presentation is whether a service station which makes the maps available is rendering an in-kind donation of services thereby requiring establishment of an officeholder expense fund to report the donation. The Act requires the reporting of measurable receipts and disbursements of an officeholder expense fund. However, in the situation you describe this does not appear to be applicable since making maps available in a service station does not have an ascertainable value.

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

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings & Legislation

PTF/jmp

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 4891

August 6, 1980

Mr. Douglas K. Weiland, Treasurer
Committee to Re-Elect Michael J. Carr
3314 Sherwood Drive
Flint, Michigan 48503

Dear Mr. Weiland:

This is in response to your inquiries concerning the Campaign Finance Act ("the Act"), 1976 PA 388, as amended.

Specifically, you state in connection with a May 20, 1979 fundraiser, the Committee to Re-Elect Michael J. Carr received funds by selling advertising space in a printed program book. After selling the advertisements, you discovered one of the purchasers of advertising space was an incorporated business.

Your first question is whether the sale of advertising space constitutes a contribution as defined by the Act or whether the sale of goods or services is outside the definition.

Section 4(1) of the Act (MCLA 169.204(1)) defines "contribution" as a "payment, . . . expenditure, (or) . . . payment for services . . . made for the purpose of influencing the nomination or election of a candidate . . ." Since money actually changes hands in the type of transaction you describe, the person who purchases advertising space makes an expenditure or a payment for a service. The printed program is a book which favorably presents the candidate to its readers and the sale of advertising is a source of campaign funds for the candidate. The program, by itself, may be considered a fundraiser. Thus the printed program has two purposes -- it raises money for the candidate and shows to the readers of the program the support the candidate has in the community. The two purposes influence the nomination or election of the candidate. Therefore, the purchase of advertising space constitutes a contribution.

In your second question, you ask if it is permissible to "receipt" the corporate contribution to an officholder expense fund. Section 54(1) of the Act (MCL 169.254(1)) expressly prohibits a corporation from making a "contribution" to a committee. None of the exceptions in that provision or section 55 (MCL 169.255) apply to your factual situation. As discussed previously, the purchase of an advertisement constitutes a contribution. Since it is improper for your candidate committee to receive this corporate contribution, it would also be improper for the committee to accept the contribution and pass it along to an officeholder expense fund. Additionally, it should be noted section 49(1) (MCL 169.249(1)) precludes usage of the officeholder expense fund for furthering the nomination or election of the public official.

Finally, you inquire as to how a committee can rectify the situation where it has received a corporate contribution under the above circumstances. The definition of "contribution" in section 4 provides an offer or tender of a contribution is not a contribution if expressly and unconditionally rejected or returned. A return of the contribution does not eliminate the violation, but it may evidence a willingness on the part of the committee to abide by the intent of the Act. Whether or not it does, depends on the facts of the case.

This response may be considered as 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

August 6, 1980

Mr. Wayne M. Deering
1511 Portage Street
Kalamazoo, Michigan 49001

Dear Mr. Deering:

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

You ask four questions:

1) Does the definition of "candidate committee" include a federal candidate committee?

2) Is a state candidate committee prohibited from contributing to a federal candidate committee?

3) Does the Act prohibit the transfer of funds by one individual's candidate committee to another individual's candidate committee for the purpose of reimbursing the latter committee for joint expenditures, or for the purchase of materials and/or services from the latter committee?

4) Is the answer to the third question the same, if one of the committees is a federal candidate committee?

In response to your first question, section 3 of the Act (MCL 169.203) provides an individual holding or seeking an elective office is required to form a candidate committee. Section 5(2) (MCL 169.205(2)) defines "elective office" to mean public office filled by an election, except for federal offices. Consequently, a candidate for federal office, if not holding or seeking an "elective office" as defined in the Act, is not required to form a candidate committee pursuant to the Act. In the instance where an individual seeks both federal and state office, Rule 27 (1977 AACS R169.27) states that "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." Therefore, the definition of "candidate committee" does not include a federal candidate committee.

Regardless of whether a state candidate committee and a candidate committee registered pursuant to federal law support the same person or different people, funds may not be transferred from the former to the latter. "Contribution" is defined in section 4 of the Act (MCL 169.204) as a transfer "made for the purpose of influencing the nomination or election of a candidate." "Expenditure" is defined similarly in section 6 (MCL 169.206). Section 3(1) (MCL 169.203(1)) ties the definition of "candidate" to "elective office." As noted previously, "elective office" does not include a federal office. Because a disbursement from a state candidate committee to a federal candidate committee is not an "expenditure" under section 6 and is not a transfer upon dissolution of the committee pursuant to section 45 of the Act (MCL 169.245), it cannot be made by a Michigan "candidate committee." A previous declaratory ruling made to State Senator Mitch Irwin (May 29, 1979) discusses this issue in detail. A copy is attached for your convenience.

As to your third question, in a September 20, 1978 letter to Mr. Michael W. Hutson, the Department indicated the Act permits joint fund raising events in which expenses relating to the fund raising event are payable through reimbursements of one participating candidate committee by another participating candidate committee. Guidelines to which joint fund raising events are subject were detailed in that letter. Enclosed you will find a copy of the Hutson letter. The same considerations which apply to joint fund raising events also apply to joint expenditures such as shared advertising.

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

The second part of your third question concerns the purchase of materials and/or services from a candidate committee by another candidate committee. There is nothing in the Act which prohibits such a transaction. However, it must be emphasized the sale and purchase must be at fair market value so as to avoid the making of any illegal contribution from one candidate to another.

With respect to your fourth question, the answer depends upon which committee is being benefited by the arrangement. As indicated in the answer to your second question, it is improper for a state candidate committee to make a contribution to or an expenditure for a federal committee. Therefore, a state candidate committee may not pay more than its fair proportion of joint expenses and a federal committee may not receive more than its fair proportion of the benefits of the joint venture. But the Act does not prohibit a federal committee from contributing to a state candidate. Section 52 of the Act (MCL 169.252) limits the amount any person, including a committee, may contribute to candidates

for state elective offices. In addition, sections 28(3) and 42(2) of the Act (MCL 169.228(3), MCL 169.242(2)) require a state committee which receives out of state funds in excess of $20.00 to obtain a certified statement which includes certain information from the contributor. And if the contribution or expenditure by the federal entity totals $200.00 or more in a calendar year, the entity must register as a committee pursuant to the Act. Of course, federal law should be examined for its ramifications on a transfer from a federal committee to a state candidate committee.

Thus if federal law permits contributions to state candidate committees, the federal committee may pay more than its fair proportion of joint expenses, receive less than its fair proportion of benefits, or sell materials or services at less than fair market value as long as these contributions are properly reported and do not exceed the section 52 limitations.

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:lr

Enclosure

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 4891[illegible]

August 6, 1980

Mr. Robert J. Kauflin
Attorney at Law
Two Crocker Boulevard
Mount Clemens, Michigan 48043

Dear Mr. Kauflin:

You have requested on behalf of four candidates a declaratory ruling concerning the applicability of the Campaign Finance Act ("the Act"), 1976 PA 388, as amended, to cash contributions made at a joint fundraising event.

Specifically, you indicate that you have been asked to serve as treasurer for four circuit court judges who will be seeking reelection in 1980. These candidates propose to conduct a joint fundraiser.

In keeping with the guidelines for conducting joint fundraisers, previously established by the Department in a letter addressed to Mr. Michael W. Hutson and dated September 20, 1978, you state that prior to the event the candidates will execute a written agreement establishing, among other things:

"A. The exact share of contributions to be assigned to each committee from contributions received from the event shall be twenty-five percent (25%).

B. The proportional share of expenditures to be allocated to each committee shall be twenty-five percent (25%).

C. A joint account (in the name of the joint committee) constituting a 'secondary depository' shall be set up in a proper depository for deposit of all contributions from the joint fundraising event.

D. One of the candidate committees shall be designated to pay all expenses of the joint fundraising event as they arise.

E. Each candidate committee shall reimburse the designated candidate committee for their proportionate share of the expenses attributable to the joint fundraising event.

F. The joint committee shall pay to each candidate committee, within a reasonable time, their proportionate share of the contributions."

You also state all advertising, either before or at the event, will indicate that the event is a joint fundraiser, the names of the candidates involved, the office sought by each candidate, the agreed share of each contribution to be allocated to each candidate, and the manner of writing checks or other written instruments.

Finally, you indicate each contribution to the joint fund raising event will be $60.00, and each candidate's proportional share will be $15.00. It is your belief that many contributors "will pay cash at the door on the evening of the event."

You ask whether acceptance of a $60.00 cash contribution violates section 41(1) of the Act (MCL 169.241(1)) which provides (in part):

> "A person shall not make or accept any single contribution of $20.01 or more in cash nor make or accept any single expenditure of $50.01 or more in cash. Contributions of $20.01 or more and expenditures of $50.01 or more, other than an in-kind contribution or expenditure, shall be made by written instrument containing the names of the payor and the payee."

It is your opinion that acceptance of $60.00 in cash does not violate the Act where the actual share of the contribution received by each candidate is $15.00, and each contributor is fully informed of this fact by advertising or other communications. However, section 41, when read in conjunction with section 11(1) (MCL 169.211(1)), contradicts your position.

As noted above, section 41 prohibits any "person" from accepting a contribution of $20.01 or more in cash. "Person" is defined in section 11 as including any "organization or group of persons acting jointly."

Accordingly, those who act jointly for the purpose of conducting a fundraising event are a "person" within the meaning of the Act, and as such may not accept contributions of $20.01 or more in cash.

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

Very truly yours,

Richard H. Austin
Secretary of State

RHA/jmp

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

September 4, 1980

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

Dear Mr. Nobes:

This is in response to your inquiry concerning requirements of the Campaign Finance Act, 1976 PA 388, as amended ("the Act"), for reporting filing fees in lieu of submitting nominating petitions.

You state you paid a $100.00 filing fee to the county clerk when you filed as a candidate; this fee was paid in lieu of filing petitions. You indicate the fee will be returned provided you receive the statutorily prescribed number of votes but, of course, you will not know this until the election is over. In addition, you have paid $130.00 in late filing fees pursuant to the Act.

You ask whether your candidate committee must report these disbursements as "expenditures" on the committee's campaign statements. In addition, you inquire as to how you are to report any reimbursement of your filing fee if it is refunded subsequent to the filing of your "last report."

Section 26 of the Act (MCL 169.226) requires all "expenditures" to be reported by a committee. Section 6(1) (MCL 169.206) defines "expenditure" to include a payment of anything of ascertainable monetary value made for the purpose of influencing an election. Fees paid in lieu of nominating petitions and fees paid as a penalty for not filing reports when required are expenditures in the assistance of the nomination or election of a candidate and must be reported as "expenditures" in the committee campaign statements.

With respect to receiving a refund of a fee after filing your "last report," if by "last report" you mean the postprimary campaign statement or the postgeneral campaign statement, you should report the refund as an "other receipt" on any subsequent campaign statement. If by "last report" you mean your committee dissolution statement, you should amend that report to reflect the refund as an "other receipt." This has the effect of reducing the total amount expended in your campaign.

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

Very truly yours,

Phillip T. Frangos
Director
Office of Hearings and Legislation

PTF/cw

MICHIGAN DEPARTMENT OF STATE

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STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

September 4, 1980

Mr. Anthony Raduazo
Assistant City Attorney
161 West Michigan
Jackson, Michigan 49201

Dear Mr. Raduazo:

This is in response to your inquiry concerning the Campaign Finance Act, 1976 PA 388, as amended (the "Act").

Specifically, you ask whether a home rule city, or municipal corporation, may make expenditures in support of a local ballot question without violating the Act.

Corporate contributions and expenditures are governed by sections 54 and 55 of the Act (formerly section 95 of 1975 PA 227). Pursuant to section 54 (MCL 169.254) a corporation may not make a contribution or expenditure except as provided in sections 54 and 55. Of particular relevance to your inquiry are subsections (3) and (4) of section 54, which provide for limited corporate activity with respect to ballot questions.

Section 54(3) of the Act (MCL 169.254(3)) provides:

> "(3) A corporation or joint stock company, whether incorporated under the laws of this or any other state or foreign country, except a corporation formed for political purposes, shall not make a contribution or provide volunteer personal services which services are excluded from the definition of a contribution pursuant to section 4(3)(a), in excess of $40,000.00, to each ballot question committee for the qualification, passage, or defeat of a particular ballot question." (Emphasis supplied)

Thus, if a municipal corporation is created for political purposes, it may contribute to ballot question committees without regard to the spending limitation found in section 54(3). Otherwise, it may contribute to ballot question committees, but such contributions may not exceed $40,000.00.

"Corporation formed for political purposes" is not defined in the Act, and Michigan case law is of little value in determining whether a municipal corporation is within the term's meaning. However, Professor McQuillan, in his treatise on municipal corporations, states:

> "Strictly speaking, a public corporation is one that is created for political purposes only, with political powers to be exercised for purposes connected with the public good in the administration of civil government . . . All municipal corporations are public corporations, but all public corporations are not municipal corporations." (Emphasis supplied) 1 McQuillan, Municipal Corporations, (3d ed), §2.03, p 130.

Similarly, 17 Michigan Law & Practice, Municipal Corporations, §1, p 8, defines "municipal corporation" as follows:

> "It is, in short, a public corporation, created by the government for political purposes, and having subordinate and local powers of legislation." (Emphasis supplied)

Other secondary authorities, including 17 Callaghan's Michigan Civil Jurisprudence, Municipal Corporations, §1, p 430, concur in this definition.

It must be concluded, therefore, that a municipal corporation is a "corporation formed for political purposes" and, consequently, is not subject to the limitations found in section 54(3).

In addition to section 54(3), section 54(4) of the Act (MCL 169.254(4)) permits a corporation to make an independent expenditure "in any amount for the qualification, passage or defeat of a ballot question." If such expenditures total $100.01 or more, the corporation must file a report of an independent expenditure within 10 days pursuant to section 51 (MCL 169.251). If the expenditures total $200.00 or more, the corporation must register as a ballot question committee and will be subject to all of the reporting requirements of the Act.

Pursuant to the above, a home rule city may make a contribution or an expenditure in support of a local ballot question without violating the Campaign Finance Act. However, it is well established that a municipal corporation possesses only those powers granted to it by the state. Accordingly, there may be other statutory or constitutional provisions which would prohibit the use of public money for political purposes.

This response 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

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STATE TREASURY BUILDING

LANSING

MICHIGAN 489-8

September 15, 1980

Mr. Patrick C. Hancock, Jr.
1625 Meadow Lane
Wolverine Lake, Michigan 48088

Dear Mr. Hancock:

This is in response to your request for a declaratory ruling concerning the applicability of the Campaign Finance Act, 1976 PA 388, as amended ("the Act") to an individual who is nominated as a candidate by the village council pursuant to the village charter.

You state that you gave a written authorization to the filing officer to have your name appear on the ballot since an insufficient number of nominating petitions were filed.

Specifically, you ask if under these circumstances you qualify as a "candidate" subject to the reporting requirements of the Act.

Section 3(1) (MCL 169.203(1)) states in pertinent part:

> "'Candidate' means an individual: (a) who files a fee, affidavit of incumbency, or nominating petition for an elective office; (b) whose nomination as a candidate for elective office by a political party caucus or convention is certified to the appropriate filing official; (c) 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; or (d) who is an officeholder who is the subject of a recall vote. Unless the officeholder is constitutionally or legally barred from seeking reelection or fails to file for reelection to that office by the applicable filing deadline, an elected officeholder shall be considered to be a candidate for reelection to that same office for the purposes of this act only."

According to the information in your letter, you did not file a fee, affidavit of incumbency or nominating petition for elective office; nor were you nominated by a party caucus or convention and certified to the appropriate filing official; nor did you receive a contribution or make an expenditure to influence your election to public office; nor were you appointed to an elective office.

A persuasive argument could be made that you became a "candidate" when you authorized the village clerk to place your name on the ballot. Such an authorization could be considered to be equivalent to filing a nominating petition. Reading the Act in this way would certainly correspond to the common sense belief that a person whose name is on the ballot is a candidate.

As you point out, however, section 3 does not specifically include your fact-situation in the definition of the term "candidate." A failure to file a statement of organization not only involves late filing fees but also includes the possibility of a criminal prosecution if it extends for more than 30 days. The general rule is that penal provisions of a statute are to be read strictly.

In the fact situation you present there is no language in section 3 which specifically requires a candidate appointed by the village council to run for village office to file a statement of organization. However, section 3 does mandate the filing of a statement of organization when a contribution is received, an expenditure is made or the person becomes an officeholder.

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:lr

MICHIGAN DEPARTMENT OF STATE

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STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

December 8, 1980

Mr. Dallas S. Kelsey
P. O. Box 216
Grosse Isle, Michigan 48138

Dear Mr. Kelsey:

You have requested a declaratory ruling concerning the applicability of the Campaign Finance Act ("the Act"), 1976 PA 388, as amended, to the annual campaign statement filing requirements of the Kelsey for House Committee.

You indicate the Kelsey for House Committee was formed on June 11, 1980, and a statement of organization was filed to reflect that information. The Department of State received your statement of organization on June 16, 1980, and it should be noted item 10, "The committee does not expect to receive or expend an excess of $500 in an election," was not checked. You also filed an amended pre-primary statement which indicates it covers the period from June 11, 1980 through July 20, 1980. You feel since the committee was not in existence for a year prior to June, 1980, an annual statement should not be required.

The statutory provision which requires the filing of an annual campaign statement is section 35 of the Act (MCL 169.235). Prior to July 18, 1980, this section read as follows:

> "(1) In addition to any other requirements of the act to file a campaign statement, a committee shall also file a campaign statement not later than June 30 of each year. The campaign statement shall have a closing date of June 20 of that year. The period covered by the campaign statement filed pursuant to this subsection shall begin from the day after the closing date of the previous campaign statement.
> (2) Subsection (1) does not apply to a candidate committee for an officeholder who is a judge or holds an elective office for which the salary is less than $100.00 a month and does not receive any contribution or make any expenditure during the time which would be otherwise covered in the statement.
> (3) A person who fails to file a campaign statement under this section shall pay a late filing fee of $10.00 for each day the campaign statement remains not filed in violation of this section not to exceed $300.00. A person who is in violation of this section for more than 7 days 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.

> (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."

Section 25(1) of the Act (MCL 169.225) indicates:

> "The period covered by a campaign statement is the period beginning the day after the closing date of the most recent campaign statement which was filed, and ending with the closing date of the campaign statement in question. If the committee filing the campaign statement has not previously filed a campaign 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)

Since the Kelsey for House Committee did not check item 10 on the statement of organization, the exemption in section 35(4) does not apply to the committee. Reading sections 25(1) and 35(1) together, it is clear the Kelsey for House Committee was required to file a campaign statement not later than June 30, 1980, covering the period from June 11, 1980 through June 20, 1980. There was no requirement for the committee to be in existence for any period of time in order for section 35 to apply.

It should be noted section 35 has since been amended by 1980 PA 215, effective July 18, 1980. This act moves the closing date of the section 35 campaign statement from June 20 to December 31 and the reporting date from June 30 to January 31. The amendment also provides for the waiver of the section 35 campaign statement if the committee has filed a post election campaign statement within 30 days of the new closing date (December 31).

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

Very truly yours,

Richard H. Austin
Secretary of State

RHA/jmp

MICHIGAN DEPARTMENT OF STATE

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STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

December 3, 1980

Mr. David P. Hohendorf
Spinal Column Newsweekly
Box 14
Union Lake, Michigan 48084

Dear Mr. Hohendorf:

This is in response to your request for an interpretation of the Campaign Finance Act (the "Act"), 1976 PA 388, as amended, with respect to who is responsible for the payment of late filing fees assessed under the Act.

You observe that under the Act late filing fees are levied at a rate of $10 a day up to a maximum of $300 when certain reports which are required to be filed under the Act are not filed in a timely manner. Your five questions are quoted and dealt with below.

"1. In what sense, if any, are those incurred late filing fines considered a debt to the state (or to the county for local campaign committees)?"

Late filing fees are a debt owed to the state or county from the time they become due until they are actually paid. They are like any other fee, fine, or tax which must be paid to a unit of government.

"2. Who is responsible for paying the fines, the candidate, the committee chairman of the committee treasurer?"

Late filing fees for candidate committees are assessed under sections 24 (MCL 169.224), section 33 (MCL 169.233), and section 35 (MCL 169.235) of the Act. Each of these sections begins with such language as "A committee shall file" a campaign statement or a statement of organization. Thus, it is the committee which is required to make the filing under the Act. However, these sections go on to say, "A person who fails to file" a required statement shall pay the appropriate late filing fee (emphasis added). Thus, the statutory sections differentiate between a committee which must file and a person who fails to file.

The definition of "person" which appears in section 11(1) of the Act (MCL 169.211(1)) includes a committee. The Legislature's use of the term "person" immediately after requiring the statements to be filed by the "committee" indicates an intent to hold some other person, as well as the committee, responsible for the late filing fee. When discussing a candidate committee, this fact is buttressed by the language in section 3(2) of the Act (MCL 169.203(2)), the definition of "candidate committee," which states:

> "A candidate committee shall be presumed to be under the control and direction of the candidate named in the same statement of organization."

It is the Department's view that a candidate is responsible for the late filing fees of the candidate's committee. A recent amendment to section 35 (1980 PA 215, effective July 17, 1980) expressly confirms this view with respect to annual campaign statements:

> "As used in subsections (3) and (5), 'person' means for a committee other than a candidate committee, that committee and that committee's treasurer, and for a candidate committee, that committee, that candidate, and that candidate committee's treasurer."

This amendment clarifies what was always the legislative intent, the committee, the candidate, and the treasurer are all liable for any late filing fees.

"3. Until the fines are paid in full, is the person who is responsible for paying the fines considered to be in default to the state (or county)? What constitutes 'default' in relation to late filing fees?"

"4. If the person is in default, is there any state law that prohibits a person from running for or assuming public office if he or she is in default to the state?"

"5. In your opinion, if a person owes late filing fines and were to seek public office or is in public office in a city with the following (or similar) city charter provision, would he or she be considered ineligible to run or hold public office?"

These three questions deal with the definition of "default" and the consequences of a default. While there is a limited amount of ambiguous case law on this subject, the subject is outside the purview of the Act and the expertise of the Department of State. Therefore, it would not be appropriate for this Department to respond to these three questions.

There is one provision in the Act which may interest you. Section 33(4) provides the following consequence when a person is found guilty of violating section 33:

> "(T)he circuit court of that county, on application by the attorney general or the prosecuting attorney of that county, may prohibit that person from assuming the duties of a public office or from receiving compensation from public funds, or both."

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 & Legislation

PTF/jmp

MICHIGAN DEPARTMENT OF STATE

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STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

October 29, 1980

Ms. Patricia Ann Davis
4400 Andersen
Brighton, Michigan 48116

Dear Ms. Davis:

This is in response to your inquiry concerning the imposition of late filing fees pursuant to the Campaign Finance Act ("the Act"), 1976 PA 388, as amended.

You indicate that on May 27, 1980, you became a candidate for elective office. You then formed a candidate committee and filed a statement of organization pursuant to sections 21 and 24 of the Act. Subsequently, you were a successful participant in the August 5, 1980, primary election, although you made no expenditures in support of your candidacy.

On September 10, 1980, you received a letter from your county clerk, advising you that you had failed to file a Post-Primary Campaign Statement as required by the Act. You were assessed a late filing fee of $60.00, or $10.00 for each day the statement remained unfiled. You have asked whether this late filing fee may be waived, since your local filing official did not inform you that you must file a postelection statement.

Section 33 of the Act (MCL 169.233) requires candidate committees to file certain campaign statements. This section provides:

> "Sec. 33. (1) A committee supporting or opposing a candidate shall file campaign statements as required by this act according to the following schedule:
>
> (a) A preelection campaign statement shall be filed not later than the eleventh day before an election. The closing date for a campaign statement filed under this subdivision shall be the sixteenth day before the election.

(b) A postelection campaign statement shall be filed not later than the thirtieth day following the election. The closing date for a campaign statement filed under this subdivision shall be the twentieth day following the election. A committee supporting a candidate who loses the primary election shall file closing campaign statements in accordance with this section. If all liabilities of such a candidate or committee are paid before the closing date and additional contributions are not expected, the campaign statement may be filed at any time after the election, but not later than the thirtieth day following the election.

(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 receive or expend an amount in excess of $500.00. If the committee did not 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.

(3) A person who fails to file a statement as required by this section shall pay a late filing fee of $10.00 for each day the statement remains unfiled not to exceed $300.00. A person who is in violation more than 7 days 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.

(4) If a person who is subject to this section is found guilty, the circuit court of that county, on application by the attorney general or the prosecuting attorney of that county, may prohibit that person from assuming the duties of a public office or from receiving compensation from public funds, or both." (emphasis added)

Pursuant to section 33(1)(b), a postelection campaign statement was due not later than September 4, 1980, or thirty days after the August 5th election. If you previously filed a sworn statement indicating that you did not expect to receive or expend more than $500.00 per election, you were required under subsection (2) to file a campaign statement stating that your committee did not actually receive or expend an amount in excess of $500.00. Otherwise, you were obligated to file a statement in conformity with the other requirements of the Act.

Subsection (3) provides for a late filing fee of $10.00 for each day a statement remains unfiled. 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. Accordingly, any late filing fee assessed by your filing official cannot be waived.

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/cw

MICHIGAN DEPARTMENT OF STATE

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STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

October 29, 1980

Mr. Chad C. Schmucker
410 S. Jackson Street
P.O. Box 570
Jackson, Michigan 49204

Dear Mr. Schmucker:

This is in response to your letter concerning the applicability of the Campaign Finance Act, 1976 PA 388, as amended ("the Act") to the placement of yard signs on corporate owned property.

Specifically you ask: "Is the placing of a yard sign on corporate owned property considered a contribution? Would it be a violation for the corporation to allow the use of its land as such and also would it be a violation for the Committee to allow the placement of such sign?"

In your first question it is assumed that you are asking whether the corporation would be considered as having made a contribution if it permitted the placement of campaign advertisements on corporate property.

The provisions regarding corporate contributions and expenditures are found in section 54 of the Act and read in part as follows:

> "(1) Except with respect to the exceptions and conditions in subsection (2) and (3) and section 55, and to loans made in the ordinary course of business, a corporation may not make a contribution or expenditure or provide volunteer personal services which services are excluded from the definition of a contribution pursuant to section 4(3)(a). . . .
>
> (4) Nothing in this section shall preclude a corporation or joint stock company from making an independent expenditure in any amount for the qualification, passage, or defeat of a ballot question. A corporation making an independent expenditure under this subsection shall be considered a ballot question committee for the purposes of this act."

"Contribution" is defined in section 4 of the Act which states:

> "(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 . . . ." (emphasis added)

This section does include "expenditure" in its definition. Section 6 defines "expenditure" under the Act and includes "contribution" as an expenditure.

> "(1) 'Expenditure' means 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. An offer or tender of an expenditure is not an expenditure if expressly and unconditionally rejected or returned . . . ." (emphasis added)

From the foregoing it is clear that a corporation may not make a contribution or an expenditure other than for the qualification, passage or defeat of a ballot question, or for other narrowly defined activities not here relevant.

In permitting the use of corporate property for the display of campaign signs the corporation would be providing its facilities. However, in order for the use of these facilities to become a contribution under the Act the use must have ascertainable monetary value.

Consequently, the answer to your questions will depend on the specific facts involved in each individual case. Your letter does not provide enough information to make a determination as to whether an ascertainable monetary value can be shown which would make it an illegal corporate contribution.

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

Very truly yours,

Phillip T. Frangos
Director
Office of Hearings and Legislation

PTF/cw

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

October 22, 1980

Honorable William Faust
The Senate
Capitol Building
Lansing, Michigan

Dear Senator Faust:

This is in response to your recent request for an interpretation of various provisions of the Campaign Finance Act (the Act), 1976 PA 388, as amended. Your first two questions deal with the relationship between an officeholder expense fund and a ballot question committee. Specifically you ask:

"1) Is it permissible for an officeholder to transfer funds from an established officeholder expense account to a committee supporting or opposing a ballot question?

2) If the answer to 1) is affirmative, may the funds be contributed directly to the ballot question committee account, or may the moneys only be used to purchase tickets to a fund raising event sponsored by the ballot question committee?"

Section 49 of the Act (MCL 169.249) permits a 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 for making contributions and expenditures to further the election of the public official establishing the fund.

Your first question focuses on the issue of whether a disbursement by an officeholder expense fund to a ballot question committee is an expense incidental to office. In answering this question it could be said that an officeholder, like any other person, may take positions on issues and support or oppose a ballot question with his or her personal funds. However, it is also true that officeholders, because of their office, are in a unique position, they are elected to office with the expectation that they will be more active than other citizens. By virtue of being an officeholder an individual is expected and obliged to take positions on issues facing the community. In this political system the expenditure of money in support or opposition to an issue is one of the fundamental ways of promoting a particular political view. Since an officeholder has a special obligation to take positions on issues facing his or her constituency,

it is clear that such an activity is incidental to the person's office. Since support or opposition to a ballot question is incidental to the office, an officeholder may use an officeholder expense fund to support or oppose a ballot question. Such support or opposition can be manifested by making either contributions or independent expenditures in support or opposition to the ballot question.

With respect to your second question, support or opposition to a ballot question is quite different from purchasing tickets to another candidate's fund raiser. In a letter to Senator Gary D. Corbin on March 21, 1978 the Department indicated that the purchase of tickets to another candidate's fund raiser was incidental to the candidate's office because it has long been customary for candidates to purchase such tickets. Since the support or opposition to the ballot question is itself the activity which is incidental to the office, there is no prohibition against direct contribution from an officeholder expense fund to a ballot question committee.

Your third and fourth questions deal with contributions by one ballot question committee to another ballot question committee. Specifically you ask:

> "3) May a committee formed to support a ballot question contribute or transfer its funds to the account of another committee formed to support or oppose another, separate ballot question?
>
> 4) If the answer to question 3) is affirmative, are there conditions or restrictions which would apply to this transfer?"

A review of the Act discloses no direct or indirect prohibition against contributions by one ballot question committee to another. Candidate committees are prohibited from making contributions to other candidate committees by section 44(2) of the Act (MCL 169.244) and corporate separate segregated funds are not permitted by section 55(2) (MCL 169.255(2)) to make contributions or expenditures on behalf of political committees. The only limitations on ballot question committeesare that section 2(2) of the Act limit a ballot question committee to activities for or against ballot questions and does not permit such a committee to contribute or make 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.

The restrictions that apply to such contributions by one ballot question committee to another are the Act's requirements that all such contributions be reported by both the committee making the expenditure and the committee receiving the contribution. A ballot question committee which supports or opposes a question must also file a post qualification statement required by section 34(2) of the Act (MCL 169.235) if it has made contributions or expenditures in support or opposition of the question during the period covered by the report.

This letter is an interpretative statement and is not a declaratory ruling.

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF:lr

[Previous Page] [Home Page]

STATE OF MICHIGAN

FRANK J. KELLEY, ATTORNEY GENERAL

Opinion No. 5804

October 24, 1980

INSURANCE:

Political contributions by parent of a domestic insurance company

POLITICAL CAMPAIGNS:

Campaign contributions and expenditures act

A parent corporation owning a subsidiary domestic insurance corporation doing business in Michigan as, well as other subidiary insurance companies, and which also engages in other non-insurance business of a substantial nature in that all its insurance subsidiaries contributed only 10 per cent of the parent corporation's total net income for the last fiscal year is not an insurer within the prohibitions contained in 1956 PA 218, Sec. 2074, and may make contributions for the political purpose of the qualification, passage or defeat of any ballot question and may establish a separate, segregated political fund for political purposes as authorized by 1976 PA 388, Secs. 54 and 55.

Mr. William F. McLaughlin

Director

Department of Commerce

Law Building

Lansing, Michigan

You have requested my opinion on the following question:

> May a parent corporation of a corporation engaged in the business of selling insurance in the State of Michigan make political contributions and establish a separate segregated fund under the provisions of 1976 PA 388, Secs. 54, 55; MCLA 169.254, 169.255; MSA 4.1703(54), 4.1703(55), in light of the prohibitions contained in the Insurance Code of 1956, 1956 PA 218, Sec. 2074; MCLA 500.2074; MSA 24.12074?

Specifically, 1956 PA 218, Sec. 2074, supra, provides, in pertinent 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 purpose, whatsoever, or for the reimbursement or indemnification of any person for money or property so used, . . .' (Emphasis added.)

OAG, 1979-1980, No 5695, p 743 (April 28, 1980), considered the question of whether the underscored portion of Section 2074, supra, was an unconstitutional limitation on the political activities of insurers doing business within the State of Michigan. The opinion considered (a) the Michigan Supreme Court decision in Advisory Opinion on Constitutionality of 1975 PA 227 (Questions 2-10), 396 Mich 465; 242 NW2d 3 (1976) which held unconstitutional a section of the former Political Reform Act which prohibited Michigan corporations from contributing to campaigns influencing the qualification, passage or defeat of ballot questions; (b) the United States Supreme Court decision in First National Bank of Boston v Bellotti, 435 US 765; 98 S Ct 1407; 55 L Ed 2d 707, reh den, 438 US 907; 98 S Ct 3126; 58 L Ed 2d 1150 (1978), which held a comparable provision in the Massachusetts law prohibiting corporations from making similar campaign contributions as a constitutional denial of the First Amendment rights of a corporation; and (c) a prior opinion of this office, OAG, 1975-1976, No 5123, p 629 (September 30, 1976), determining that a former provision of the Michigan Election Law, 1954 PA 116, Sec. 919; MCLA 168.919; MSA 6.1919, which prohibited corporations from making political contributions in support of or in opposition to a ballot question was a violation of the freedoms of expression and assembly granted by Const 1963, art 1, Secs. 1, 2, 3 and 5. OAG, 1979-1980, No 5695, p 743 (April 28, 1980), concluded that insurers doing business in the State of Michigan have the same protected rights to freedom of speech as do all other corporations doing business in the State of Michigan and found that the portion of Section 2074, supra, which prohibited contributions by insurers which would influence or affect the vote on ballot questions was unconstitutional.

Therefore, it must be determined whether the parent corporation is considered to be an insurer doing business within the State of Michigan before determining the applicability of the remaining statutory prohibitions.

The Insurance Code of 1956, 1956 PA 218, Sec. 106; MCLA 500.106; MSA 24.1106, 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 supporting information submitted with your request and subsequent information provided to this office indicates that the parent corporation in question is authorized to do business in the State of Michigan but is not itself engaged in the insurance business either in Michigan or elsewhere. Furthermore, the information supplied reveals that its subsidiary, which is engaged in the business of selling insurance within the State of Michigan, is separately incorporated and its internal operations and management are separate and distinct from those of the parent corporation. In addition, the parent corporation's insurance subsidiaries provided 10 percent of its total income in 1979. Considering this information in light of the definition found in Section 106, supra, it is my opinion that the parent corporation described in your request is not an entity included within the definition of insurer found in Section 106, supra.

Thus, having concluded that the parent is not an insurer as defined by the Insurance Code of 1956, it is my opinion that the parent corporation is not bound by the remaining prohibitions found in Section 2074, supra. It should be noted, however, that the parent corporation you describe is bound by the requirements of the Campaign Finance Act, 1976 PA 338, Secs. 54 and 55; MCLA 169.254, 169.255; MSA 4.1703(54), 4.1703(55). Section 54 permits a corporation to make a contribution for a political purpose when that purpose is for the qualification, passage, or defeat of a ballot question, and Section 55 permits a corporation to establish a separate segregated fund for which funds may be solicited from very specific sources and used for very specific political purposes. See OAG, 1979-1980, No. 5695, p 743 (April 28, 1980).

Frank J. Kelley

Attorney General

[Previous Page] [Home Page]

http://opinion/datafiles/1980s/op05804.htm
State of Michigan, Department of Attorney General
Last Updated 03/23/2001 12:20:26