1-82-CI

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

January 22, 1982

Mr. Elwin Skiles, Jr.
Texas Instruments, Inc.
P.O. Box 225474
Dallas, Texas 75265

Dear Mr. Skiles:

This is in response to your letter asking if Texas Instruments may permit candidates for elective office to visit the company's plants in Michigan or whether such visits are prohibited by the Campaign Finance Act (the "Act"), 1976 PA 388, as amended.

Specifically, you ask if the approach implemented by the Federal Election Commission in its regulations may be utilized in permitting visits to your facilities by Michigan candidates for state and local office. As you know, the Federal Election Commission is currently attempting to revise the regulations you cite in your letter, 11 CFR 114.3 and 114.4.

Section 54 prohibits corporations from making contributions or expenditures to or for the benefit of a candidate. Section 4 of the Act defines the term "contribution" and section 6 defines the term "expenditure." Section 6(2) specifically includes "contribution" in the definition of "expenditure."

Section 6 of the Act provides:

> "Sec. 6. (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.

(2) Expenditure includes a contribution or a transfer of anything of ascertainable monetary value for purposes of influencing the nomination or election of any candidate or the qualification, passage, or defeat of a ballot question.

(3) Expenditure does not include:

(a) An amount paid pursuant to a pledge or promise to the extent the amount was previously reported as an expenditure.

(b) An expenditure for communication by a person strictly with the person's paid members or shareholders.

(c) An expenditure for communication on a subject or issue if the communication does not support or oppose a ballot issue or candidate by name or clear inference or an expenditure for the establishment, administration, or solicitation of contributions to a fund or independent committee.

(d) An expenditure by a broadcasting station, newspaper, magazine, or other periodical or publication for any news story, commentary, or editorial in support of or opposition to a candidate for elective office, or a ballot question in the regular course of publication or broadcasting.

(e) An expenditure for nonpartisan voter registration or nonpartisan get-out-the-vote activities. This exclusion shall not apply if a candidate or group of candidates sponsors or finances the activity or is identified by name with the activity. This exclusion shall apply to an activity performed pursuant to sections 491 to 524 of the Michigan Compiled Laws, by the secretary of state and other registration officials who are identified by name with the activity. This exclusion shall apply to a candidate who is an elected officholder and whose office is not on the ballot for the general election in the calendar year in which the expenditure is made or is not a candidate within the meaning of section 3(1)(a) and 3(1)(b) and is identified by name with the activity."

An activity must assist in the candidate's election and have ascertainable monetary value in order to qualify as an expenditure which is also a contribution to a candidate. However, various activities are specifically excepted from the coverage of the Act.

Nonpartisan activities are not included within the definition of expenditure and are thus excepted from the Act's provisions in section 6(3)(e). Section 6(3)(c) also provides an exception if the corporation does not produce or sponsor any communications supporting or opposing a candidate by name or clear inference.

A review of the Act leads to the conclusion that visits by candidates to corporate facilities were never intended to be outlawed. If there is no communication by the corporation in support or opposition to a candidate, and if visits are equally available to all candidates for a particular office, the visits do not constitute expenditures as defined in section 6.

However, if visits are limited to only selected candidates for an office, or if the visits are accompanied by communications supporting or opposing a particular candidate, the corporation may be in violation of section 54 of the Act.

This response is an interpretation of the Act's provisions 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

3-82-CI

March 31, 1982

Honorable Robert A. Welborn
Michigan House of Representatives
State Capitol
Lansing, Michigan 48909

Dear Representative Welborn:

This is in response to your letter requesting a declaratory ruling "relative to section 3 of Public Act 388 of 1976" (the "Act"). You indicate that you have formally announced your candidacy for the office of State Senator, that you will not seek reelection to the House of Representatives and that you wish to "close out" your House campaign committee. You feel you are not permitted to dissolve your House committee and transfer funds to your Senate campaign committee until after the August primary.

Section 21 of the Act requires that, within 10 days after becoming a candidate, a candidate committee shall be formed "for each office for which the person is a candidate." One is considered to be a candidate for the purposes of the Act so long as the person falls within the ambit of section 3. In your case this means that, as an elected officeholder you are considered a candidate for reelection to the same office unless you are "constitutionally or legally barred from seeking reelection or fail to file for reelection to that office by the applicable filing deadline . . . ." You may therefore be a candidate for State Senate while meeting the above definition of "candidate" for your House seat.

Concerning the transfer of funds between two candidate committees of the same person, section 45(1) of the Act (MCL 169.245(1)) provides:

> "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 committee are simultaneously held by the same person."

In your particular case, the committees would appear to be "simultaneously held" by the same person. Section 52 provides that the contribution limit for the committee receiving the funds (i.e., your Senate committee) is "$450.00 in value for a candidate for State Senator" and the limit for the donor (i.e., your House committee) "is $250.00 in value for a candidate for State representative." Therefore, and pursuant to section 45(1), because the limit for the recipient (Senate) committee is "equal to or greater than" the limit for the donor (House) committee, and because both candidate committees would be simultaneously held by the same person, unexpended funds could be transferred from your House Committee to your Senate Committee. However, once funds have been transferred from your House to your Senate committee they cannot be transferred back to the House committee if you file for the House instead of the Senate.

So long as you are an officeholder, you must maintain the candidate committee for that office. When the applicable filing deadline has passed and you are no longer eligible for reelection to the House of Representatives, you may dissolve your "House" committee (so long as that committee no longer receives or expends funds and has no debts or assets) pursuant to rule R169.28. Even though you are required to maintain a House committee you may transfer unexpended funds to your Senate committee at any time and in any amount. Both committees must, of course, file the reports required in the Act.

This response is informational only and does not constitute a declaratory ruling because the specificity required by rule 6.3 is absent from your request

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF/cw

3-82-CI

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

April 8, 1982

Mr. Conrad L. Mallett, Jr.
669 Federal Building
231 West Lafayette
Detroit, Michigan 48226

Dear Mr. Mallett:

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

You state:

> "As you are aware, supporters of Congressman John Conyers, Jr. will be conducting a fundraiser to meet the Congressman's anticipated 1980 campaign expenses. In the past, public response to fundraising events benefitting the Congressman has been overwhelming. It is the opinion of staff advisors and fund-raising committee members, that this year's efforts will generate more than enough funds to defray all potential campaign costs."

You ask:

> "If, in fact, monies are collected which exceed anticipated campaign expenses, are there any statutes, regulations or rules promulgated under Public Act No. 388, which would prevent the transfer of the excess to a local candidate committee?"

Finally, you inquire as to whether any violation of the Act would occur if you take the following steps:

"1. Form a political committee . . . .

2. Under the auspices of this committee, conduct the fundraising event.

3. Collect the funds and compare revenues with anticipated campaign expenses.

4. Transfer any excess to the local candidate's committee, bearing in mind the April, 1978 bulletin produced by the Department of State Elections Division which states that political committees may make unlimited contributions to local candidates.

5. Transfer anticipated campaign funds to the federally registered congressional campaign committee known as Citizens for Conyers.

6. Dissolve the political committee when the funding task has been completed."

Although this response is not timely for the 1980 elections, it is being issued for future reference. The issues you raised require clarification.

Section 6(2) of the Act (MCL 169.206(2)) defines "expenditure" as including a contribution or transfer of anything of ascertainable monetary value given to influence the nomination or election of a candidate. A "committee" is defined in section 3(4) (MCL 169.203(4)) as a person who receives or expends $200.000 or more for the purpose of influencing the action of the voters for or against the nomination or election of a candidate. Thus, if the supporters of Congressman Conyers propose to transfer $200.00 or more to a local candidate, the Act does require you to register as a committee.

Section 11(2) (MCL 169.211(2)) defines a "political committee" as "a committee which is not a candidate committee, political party committee, independent committee or a ballot question committee." The proposed committee is clearly not a candidate, political party, or ballot question committee. Since steps have not been taken to meet the special requirements of an independent committee as defined by section 8(2) (MCL 169.208(2)), you may register as a political committee.

Under the Act, a political committee may make unlimited contributions to local candidates, i.e., individuals seeking an office other than state elective office. However, if the committee collects contributions from persons with the intent, agreement, or arrangement that the money will then be transferred to a particular local candidate committee, the provisions of section 44(1) (MCL 169.244(1)) will be violated.

It would be more appropriate for a federal candidate committee registered pursuant to the FECA and a political committee registered under the Act to hold a joint fundraiser. Contributors would have to be informed prior to making a contribution as to the allocation of proceeds between the committees. Expenses of the fundraiser would be borne by the committees according to the same numerical allocation.

At such time as the political committee has no assets or outstanding debts and determines that it will no longer receive contributions or make expenditures, the committee must file a dissolution statement pursuant to section 24(5) (MCL 169.224(5) and rule 28 (1979 AC R169.28) of the rules promulgated to implement the Act.

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

4-82-CI

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

April 12, 1982

Mr. Philip Van Dam
Riecker, George, Hartley, Van Dam & Camp, P.C.
414 Townsend Street
P.O. Drawer 632
Midland, Michigan 48640

Dear Mr. Van Dam:

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

You have asked two questions:

> 1) "Whether or not activity undertaken by [the Michigan Republican Party] designed to influence the decisions of the State Commission on Legislative Apportionment, and expenses engendered by the Michigan Republican Party for such activity, falls within the scope of the Act?"
>
> 2) "If such activity does not fall within the scope of the Act, may the Michigan Republican Party seek donations from individuals and corporations to help defray the expenses engendered by such activity and are such contributions and expenditures exempt from the record keeping and reporting requirements of the Act?"

While it is obvious the Michigan Republican Party ("MRP") is a committee as defined in section 3(4) of the Act (MCL 169.203), much of what a political party does is not covered by the Act. Whether or not MRP activity to influence the State Commission on Legislative Apportionment ("the Commission") is subject to the Act depends on the definitions of "contribution" and "expenditure" in sections 4 and 6 of the Act (MCL 169.204, MCL 169.206). A contribution is a payment, etc., "made for the purpose of influencing the nomination or election of a candidate, or for the qualification, passage, or defeat of a ballot question." Similarly, an expenditure is a payment, etc., "in

assistance of, or in opposition to, the nomination or election of a candidate, or the qualification, passage, or defeat of a ballot question." Since redistricting has nothing to do with ballot questions, it must be determined if MRP's reapportionment activity influences, assists, or opposes the nomination or election of a candidate.

It is quite clear the Commission's decisions (or the Supreme Court's decisions) affect the outcome of elections to be held in this decade; otherwise, MRP would not be attempting to influence those decisions. However, affecting the outcome of future elections in which the candidates are not identified, and influencing the election or nomination of a candidate are two different things.

MRP may make disbursements, provided they are not in violation of any other law, to influence the Commission, the Supreme Court, the Legislature, or any other entity who might decide the apportionment questions (as long as it does not become a ballot question) without those disbursements being subject to the Act. Since these disbursements are not subject to the Act, they need not be reported and are not subject to record keeping. As the Department stated in an earlier interpretative statement dated September 4, 1981, and directed to Ms. Olivia Maynard:

> "Political parties perform a wide variety of functions in our society. They are not single purpose organizations devoted only to the election of candidates to public office. The Election Code establishes various roles for political parties and substantially regulates their operations. 1981 PA 25 and the resolution of the Commission on Legislative Apportionment simply set up a new job for the political parties. That activity is entirely independent of supporting the election of candidates and opposing or supporting the enactment of ballot questions, and is not reportable under the Act."

Furthermore, the corporate prohibitions contained in sections 54 and 55 of the Act (MCL 169.254, MCL 169.255) are not applicable to these activities. A corporation would not be making a contribution or an expenditure if it provides money or services to support MRP's reapportionment activity. Of course, corporate money may not be commingled with money which is or will be subject to the Act, and any corporate money not spent to influence reapportionment must be returned to the corporation or spent on other exempt activities.

This response is informational only and does not constitute a declaratory ruling. Moreover, this interpretation deals only with the Act and no other statute.

Very truly yours,

Phillip T. Frangos

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF/jmp

5-82-CI

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING

MICHIGAN 48918

April 26, 1982

Honorable Martin D. Buth
Michigan State Representative
Nineteenth District
The Capitol Building
Lansing, Michigan 48909

Dear Representative Buth:

This is in response to your letter requesting a declaratory ruling with respect to the officeholder expense fund provisions of the Campaign Finance Act (the "Act"), 1976 PA 388, as amended.

Specifically you ask whether an officeholder can accept contributions to an officeholder expense fund (O.E.F.) from a corporation and whether there are limits on the amount of such contributions.

O.E.F.'s were created by section 49 (MCL 169.249) of the Act 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."

Previously in a letter to Senator Gary Corbin, a copy of which is enclosed, the Department of State expressed its view that an O.E.F. may receive corporate donations. In the Corbin letter of February 1, 1980, it was also indicated that an O.E.F. which had been the recipient of corporate funds would be precluded from purchasing tickets to the fund raising events of other candidates. An O.E.F. which has received corporate donations is "tainted" when it comes to purchasing tickets to the fund raising events of other candidates. Since the Corbin letter was issued the Department's views with respect to corporate donations to O.E.F.'s have not changed.

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You also ask about limits on donations to O.E.F.'s. Section 49(2) states that "The contributions and expenditures made pursuant to subsection (1) are not exempt from the contribution limitations of this act . . . ."

Section 52(1) of the Act sets forth various limitations on contributions as follows:

> "Sec. 52. (1) A person other than an independent committee or a political party committee shall not make contributions to a candidate committee of a candidate for state elective office which, with respect to a single election, are more than the following:
> (a) $1,700.00 in value for a candidate for state elective office other than the office of state legislator.
> (b) $450.00 in value for a candidate for state senator.
> (c) $250.00 in value for a candidate for state representative."

These limitations are based on the election cycle. Thus it appears that even though the O.E.F. is not to be used to support the election of the public official who sponsors the O.E.F., the contributors to the fund may not exceed the limits established by section 52 on a per election basis.

The Act makes this quite explicit and does not adopt the annual cycle utilized for reporting O.E.F. activity. A donor is limited to $250.00 in donations to a state representative's O.E.F. for each election period for that office. For example, between November 5, 1980 and August 3, 1982, a person could donate $250.00 to the O.E.F. of a state representative. Between August 4, 1982 and November 2, 1982 the same person could contribute up to $250.00. For those public officials who are elected for longer terms there would be correspondingly longer period between a general election and a primary. For a state senator or the governor the period could be 45 months during which a contributor would be limited to $450.00 and $1,700.00 in donations respectively.

Exceeding the limitations set forth in section 52 is a violation by the donor which upon conviction could result in up to 90 days in jail and/or a fine of up to $1,000.00.

The preceeding information relates only to O.E.F.'s. A person who donates to an O.E.F. is not precluded from making otherwise lawful contributions to an officeholder's campaign committee.

This response is informational only and does not constitute a declaratory ruling. A declaratory ruling is not being issued because your request did not include a specific set of facts.

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings and Legislation

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MICHIGAN DEPARTMENT OF STATE

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STATE TREASURY BUILDING

LANSING

MICHIGAN 48918

6-82-CI

June 3, 1982

Mark L. Heinen
Gregory, Van Lopik, Moore & Jeakle
2142 First National Building
Detroit, Michigan 48226

Dear Mr. Heinen:

This is in response to your request for an interpretative statement with respect to whether the Campaign Finance Act (the "Act"), 1976 PA 388, as amended, permits a committee administered by a labor union to utilize the same account for making contributions to both federal and state candidates as well as how such activity must be reported.

Specifically, you ask the following:

> "Under the Campaign Finance Act, is the described labor union federal PAC prohibited from making a contribution, out of its single account, directly to the Candidate Committee of a candidate running for Michigan state or local elective office?
>
> If not prohibited, would making such a contribution result in all activity within the federal PAC's single account (activity in connection with non-Michigan as well as Michigan elections) being made reportable under the Campaign Finance Act? If not all activity would be made reportable, would only such contribution(s) as are made to Candidate Committees of Michigan state or local candidates be made reportable?"

In a telephone conversation subsequent to your letter you indicated that the committee has a depository in Michigan and a treasurer who is a qualified elector in this state. Therefore, the requirements of section 21 (MCL 169.221) will not specifically be addressed in this letter.

Section 3(4) of the Act (MCL 169.203) defines any entity other than an individual that receives contributions or makes expenditures of $200.00 in a calendar year as a committee. Subsequent sections of the Act require committees to file with the appropriate filing official. In the case of your client, filing as a political committee or an independent committee would appear to be the appropriate type of filing. The filing requirements are detailed in sections 24, 25, and 26 of the Act (MCL 169.224, 169.225 and 169.226). Filing dates for campaign statements are detailed in sections 33 and 35 of the Act (MCL 169.233 and 169.235).

The Act does establish limitations on expenditures by some types of committees. For example, ballot question committees are by definition prohibited from making contributions or expenditures for the purpose of influencing the nomination or election of a candidate (MCL 169.202). Limitations on expenditures by candidate committees were outlined in the attached interpretative statement issued to Senator Mitch Irwin on May 29, 1979. Corporate separate segregated funds are limited by section 55(1) to making expenditures to and on behalf of candidate, ballot question, political party, and independent committees.

There is no provision of the Act which would preclude an independent or political committee which is not a corporate separate segregated fund from contributing to both state and federal candidates.

When it comes to reporting contributions, a combined state and federal committee must report all contributions received and other receipts as required by section 26 and section 28. Each disbursement may also be reported whether it is an expenditure to influence a Michigan state or local election or not. However, it is also acceptable to report each expenditure which influences a Michigan state or local election and then report a single combined amount for all other disbursements.

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

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings & Legislation

PTF/cw

Enc.

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

May 29, 1979

Honorable Mitch Irwin
Michigan State Senate
State Capitol Building
Lansing, Michigan 48902

Dear Senator Irwin:

This is in response to your request for a declaratory ruling concerning the applicability of the Campaign Finance Act ("the Act"), P.A. 388 of 1976, as amended, to expense payments made by your campaign committee for certain personal living expenses incurred by you during the course of the 1978 primary and general election campaigns.

Your question is whether personal living expenses of a candidate in the course of a campaign may be paid by the candidate's committee.

Specifically, during your campaign for the State Senate, several expenses were paid by your candidate committee. These payments were made after June 9, 1978, the date you went on a non-paid leave status with your employer. The payments enumerated below were made ostensibly for the reasons indicated while you were on leave without pay:

Payment	Purpose
Mortgage payments	Shelter and part-time campaign office for candidate.
Lot rent for trailer	Shelter and part-time campaign office for candidate.
Car payments	Transportation in lieu of a leased vehicle for candidate.
Babysitting expense	Expenditure allowing candidate and wife to campaign jointly.
Candidate car insurance	Transportation in lieu of a leased vehicle for candidate.
Dental expense	Necessary dental work with an emphasis for television exposure.
Clear eyeglass lenses	Replacement of candidate's photogray lenses with clear lenses for television image.

As an explanation of the above expenses you add:

> "While these expenditures are for the personal maintenance of the candidate, they also were 'Payments...in assistance of... the nomination or election of a candidate.' The committee made the expenditures for the single purpose of influencing the primary and general election.
>
> "The purpose of the expenditure must be viewed from the perspective of the committee. By making these payments, the committee made it possible for the candidate to devote his full-time efforts to the campaign for the Senate. The judgment that was made insured that the candidate would not be devoting his personal energies to anything but winning the election. This full-time effort was thought to be necessary because of the geographical size of the District, the stiff competition for the office, and the fact that the candidate was not well known throughout the District when the campaign began.
>
> "It should be noted that the Federal Election Commission has issued numerous Advisory Opinions concluding that a committee's funds may be used for payment of personal subsistence payments for candidates. Such expenditures are also permissible in other States."

You mention the Federal Election Commission has issued numerous advisory opinions concerning the use of campaign funds. However, the Federal legislation and regulations do not contain a provision similar to that in Michigan's statute which requires particular disposition of residual funds which may affect permissible use of funds as explained below. This fact serves to illustrate the point that candidates and committees should exercise care in using exclusively the Federal Campaign Act and supplementary materials as guidance for committee conduct in this state. Each provision under the Federal legislation must be viewed in total context and not in isolation. The Federal statute is similar but not identical to the Act.

However, a review of permissible uses in the Federal law and in the statutes of other states will assist in interpretation of the pertinent provisions of the Act. Succinctly stated, in the Federal system a candidate may make expenditures from his or her campaign fund for any lawful purpose. It does not make any difference whether the disbursement is political or non-political so long as every disbursement is reported.

The relevant advisory opinions and informational letters, and telephone conversations with the Federal Election Commission, also reveal that excess campaign funds are treated the same as campaign funds. Consequently, the question of the use of excess campaign funds is pertinent in this case.

Under the Federal law, the time of disbursement before, during, or after an election, or after termination, makes no difference as to possible use of the funds.

Under Section 45(2) of the Act (MCLA §169.245), a candidate is clearly restricted as to possible expenditures from the campaign fund upon termination of the committee. A candidate must give excess funds to a political party committee, a tax exempt charity, or to the original contributors. However, the Act or rules are not clear as to expenditures permissible prior to termination, i.e., whether the candidate can make non-political expenditures.

Section 6 of the Act (MCLA §169.206) defines "expenditure" as anything of ascertainable monetary value transferred out for the purpose of influencing an election. Interestingly, the Federal system defines "expenditure" similarly.

The title of the Act states:

> "An ACT to regulate political activity; to regulate campaign financing; to restrict campaign contributions and expenditures; to require campaign statements and reports; to regulate anonymous contributions; to regulate campaign advertising and literature; to provide for segregated funds for political purposes; to provide for the use of public funds for political purposes; to create a state campaign fund; to provide for reversion of or refunding of, unexpended balances; to require reports; to provide appropriations; to prescribe penalties; and to repeal certain acts and parts of acts." (Emphasis supplied)

Section 21(3) of the ACT (MCLA §169.221) provides (in pertinent part):

> "Except as provided by law, a committee shall have 1 account in a financial institution in this state as an official depository for the purpose of depositing all contributions which it receives in the form of or which are converted to money, checks, or other negotiable instruments and for the purpose of making all expenditures."

Section 26(b) of the Act (MCLA §169.226) provides (in part):

> "A campaign statement of a committee shall contain the following information: Under the heading 'receipts', the total amount of contributions received during the period covered by the campaign statement; under the heading 'expenditures', the total amount of expenditures made during the period covered by the campaign statement, and the cumulative amount of those totals for that election."

These provisions of the Act reinforce the conclusion that campaign fund money must be used to influence a campaign. The title makes it clear that one of the purposes of the Act is to restrict expenditures. The language in the title indicates an "anything goes" policy with regard to spending is not contemplated statutorily. Section 21(3), which requires one account for deposit of all campaign monies to be used for making all expenditures,

and Section 26(b), which requires the reporting of all expenditures together constrict the use of campaign funds for purposes which influence elections. It is particularly noteworthy that while the Act requires the reporting of "receipts" such as interest paid by a bank for campaign funds on deposit, thereby acknowledging funds not given for the purpose of influencing elections, the Act requires only the reporting of "expenditures", i.e., monies used to influence an election, rather than "disbursements", a term which includes monies used for purposes other than influencing an election.

In order to give full meaning to all the statutory provisions concerning permissible use of campaign funds, it must be concluded a candidate must use campaign funds for the purpose of influencing an election.

Addressing your query as to whether campaign funds may be used for personal expenses of a candidate, it appears since a candidate must use campaign funds for political expenses, the fact an expenditure is also personal makes no difference so long as the expense may in good faith be interpreted as influencing an election. For example, if a candidate purchases a trip to Mexico and that trip in good faith is purchased for the purpose of influencing his or her election, e.g., to enhance the candidate's image as an individual familiar with Michigan's foreign trade policy, the expenditure is permissible.

The above interpretation concerning permissible use of campaign funds finds support in the statutes of other states. Illinois has a statute which reads very much like Michigan's law. Illinois Statutes §9-5 provides (in part):

> "In the event that a political committee dissolves, all contributions in its possession, after payment of the committee's outstanding liabilities, including staff salaries, shall be refunded to the contributors in amounts not exceeding their individual contributions, or transferred to other political or charitable organizations consistent with the positions of the committee or the candidates it represented. In no case shall these funds be used for the personal aggrandizement of any committee member or campaign worker."

According to the Illinois State Board of Elections, Division of Public Disclosure, the above statute is interpreted to mean that before, during and after an election, a candidate must spend campaign funds for the purpose of influencing an election; all other uses are prohibited. A candidate may make personal use of the funds only if the expenditure is also made to influence an election. Thus, a candidate could theoretically purchase satin sheets with campaign funds if the use of satin sheets served to influence the candidate's renomination or election. If a candidate can in good faith substantiate that an expenditure shall influence an election, the expenditure can also serve any other purpose including a personal purpose. However, an expenditure may not solely be a personal expenditure.

In California there are no limits as to how campaign funds may be used. The time before, during, or after an election makes no difference as to permissible uses. However, there is also no requirement, as in Michigan's statute, that excess funds be given to charity, a political party committee, or to the original contributors, upon dissolution of the committee.

Minnesota has no regulation or limitation on the use of private contributions received by candidates. Nonetheless, the Ethical Practices Board which regulates campaign finance has recommended in the 1977-78 Annual Report that the Minnesota law be amended so that unused or expended campaign funds be returned to the contributors, or donated to a political party committee or charitable organization.

In summary, a reading of Sections 6, 21, 26, and 45 of the Act, for the reasons enumerated above, leads to the conclusion that campaign funds must be used to influence an election. All of the expenditures which you have listed in your request, even though made for personal living expenses, were intended to influence an election. Consequently, all of the enumerated expenditures were proper and within the parameters of the Act.

In support of this opinion, it should be noted there is a bill presently before the Legislature which would restrict the expending of campaign funds solely for the purpose of influencing an election.

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/PTF/smh

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN o SECRETARY OF STATE

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LANSING
MICHIGAN 48918

July 26, 1982

Mr. David E. Wilson
4619 Brightmore Court
Bloomfield Hills, MI 48013

Dear Mr. Wilson:

This is in response to your request for a declaratory ruling regarding the provisions of the Campaign Finance Act ("the Act"), 1976 PA 388, as amended, governing independent expenditures. Because your request does not specify a set of facts, no declaratory ruling will be issued.

Since the questions you raise have wide applicability and have not previously been answered by the Department of State, they will be dealt with via the following interpretation of the Act.

You raise a series of questions with respect to the permissible activities of "Independent Expenditure Groups (IEG)". This is to advise you that there is no mention in the Act of anything called an independent expenditure group. An individual or a group may make an expenditure. When a group makes expenditures including independent expenditures of $200.00 or more in a calendar year the group is required to file a statement of organization as a committee pursuant to the Act.

A group making an independent expenditure of more than $100.00 is required to file an independent expenditure report pursuant to section 51 of the Act (MCL 169.251). Enclosed is an interpretative statement issued to Deane Baker September 5, 1981 which deals with reporting independent expenditures.

As indicated previously, a group making expenditures of $200.00 or more in a calendar year is a committee and is thus required to file a statement of organization and periodic campaign statements. This interpretative statement will not deal in detail with the filing requirements of committees since your questions by and large are related to the definition of the term "independent expenditure" in the Act.

Section 9(1) of the Act (MCL 169.209) defines independent expenditure as follows:

> Sec. 9. (1) "'Independent expenditure' means an expenditure as defined in section 6 by a person if the expenditure is not made at the direction of, or under the control of, another person and if the expenditure is not a contribution to a committee."

Before answering your questions it should be noted that they appear to be premised on the regulations promulgated to implement the Federal Election Campaign Act which establish "consultation, consent, and communication" as

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the criteria which form the test of an independent expenditure (11 CFR 109.1). In both the federal regulations and the Act an independent expenditure is required to be reported by only the entity making the expenditure. If it is not an independent expenditure it must be reported by the beneficiary committee as well. A gubernatorial committee which utilizes public funds is subject to a limitation on total expenditures by section 67 of the Act (MCL 169.267). If an expenditure is not an independent expenditure pursuant to the Act it must be included as an in kind contribution and thus added to the total of expenditures subject to the limit established in section 67. Section 70 of the Act (MCL 169.270) makes this very clear for publically funded gubernatorial campaigns. Section 70 states:

> Sec. 70. "A contribution or expenditure which is controlled by, or made at the direction of, another person, including a parent organization, subsidiary, division, committee, department, branch, or local unit of a person, shall be reported by the person making the expenditure or contribution, and shall be regarded as an expenditure or contribution attributable to both persons for purposes of expenditure or contribution limits.

Section 31 (MCL 169.231) makes the same principle applicable for contribution limits established by the Act for campaigns which do not apply for public funding pursuant to section 61 to 71 of the Act (MCL 169.261 to 169.271).

As the foregoing indicates the critical determination which must be made before concluding a particular expenditure is an independent expenditure which is only reportable subject to limitations imposed on the maker is whether the expenditure was "made at the direction of, or under the control of another person. . ."

The American Heritage Dictionary of the English Language, Houghton Mifflen Co., 1978, defines "direction" in relevant part as follows:

> "1. The act or function of directing. 2. Management, supervision, or guidance of some action or operation. 5. An instruction or series of instructions for doing something. 6. An order or command; authoritative indication."

"Control" is defined in the same dictionary, again in relevant part, as follows:

> "1. To exercise authority or dominating influence over; direct; regulate. 2. To hold in restraint."

With this background your questions are discussed below.

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"1. To what extent, if any, may a candidate, campaign official, volunteer, or any other member of a campaign committee directly or indirectly communicate with an IEG?

"A. What constitutes communication?

"B. What constitutes campaign or IEG association?

"2. Under what conditions may a candidate, campaign official, volunteer, or other member of a campaign committee seek support of IEG's for the candidate and his policies?

"A. May a campaign official contact an official of a private expenditure group to seek active and financial support in behalf of the candidate? -- May a campaign official seek such support through a (neutral) third party or intermediary?

"B. May a campaign official express gratitude to an official of an IEG for their offer of, and expressions of support?

"C. May a candidate or campaign official accept an invitation to speak before an IEG, realizing that his acceptance and appearance may increase that group's active and financial support for that candidate in the future?"

These questions ask about the extent of permissible communication between a committee and a gubernatorial candidate on whose behalf the committee wishes to make an independent expenditure. As the foregoing analysis indicates communication between committees is not regulated by the Act. The critical determination to be made is if the particular expenditure was made at the direction of, or under the control of another person. Therefore, these questions can only be answered in terms of the character of the communication between the committees.

"3. In what ways are IEG's limited in the nature of their support for an individual candidate?

"A. May such group utilize T.V., radio, and press advertisements?

"B. May IEG's participate at public rallies in behalf of a candidate?

"C. To what extent are IEG's limited in the amount they may spend in behalf of a specific candidate?"

A committee making independent expenditures is like any other committee. It may utilize any lawful medium to convey its message to the voters without limitation as to amount. This does not exclude participation in public rallies. However, it should be noted that joint participation with a candidate committee could create the impression that the committee making an independent expenditure is under the direction or control of the candidate committee. The only relationship which would transform an independent expenditure into an in kind contribution subject to the Act's limitations on contributions or expenditures is a relationship characterized by one person directing or controlling the expenditures made by another person.

"4. May an IEG solicit funds in the name of a specific candidate?

Example: As Organization "X", we are strongly in support of Candidate "Y" for Governor, and hope that you may support us in this effort. Your financial and active support in this regard is appreciated."

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There is nothing in the Act which would preclude this type of solicitation as long as the solicitation is not made at the direction of or under the control of another person.

"5. May a paid consultant to a campaign actively participate in the activities of an IEG supportive of the same campaign?
Example: May a consultant to a campaign act as a consultant to an IEG which is supportive of that campaign? "

Although you do not specify the functions of a consultant it will be assumed that a "paid consultant" is a person who is in a position to make or influence decisions with respect to the use of campaign resources. A person with access to and influence with the decision makers in a campaign is certainly in a position to participate in the exercise of direction or control by one committee over another.

While each fact situation must, of course, be analyzed on its own merits, the use of the same consultant by a candidate committee and an independent committee making expenditures on behalf of the candidate certainly creates the appearance of direction or control which would negate a claim that expenditures by a committee were truly independent.

"6. If a founder of an IEG becomes a candidate for governor, may the IEG which he founded actively support his candidacy? -- What additional limitations, if any, must such an IEG adhere to in this regard?"

If the founder divests him or herself of all authority with respect to decisions regarding expenditures by the committee or any other manifestation of direction or control of the committee then the committee may make independent expenditures in behalf of the candidacy of the founder.

"7. May non-profit organizations, established for the purpose of public education, act under the law as an IEG?"

Yes, such a group may make expenditures. However, like all other entities it must report its activities as specified in the Act. You should also be advised that a corporation, whether for profit or not, may not utilize corporate funds in behalf of a candidate committee (see MCL 169.254). A corporation may form a separate segregated fund pursuant to section 55 (MCL 169.255), which may make expenditures in behalf of a gubernatorial candidate.

"8. What limitations, if any, are placed on private citizens, not officially associated with a specific campaign or IEG, to actively participate in seeking IEG support for a specific candidate?"

The Act does not regulate the ability of a "private citizen" to express political views or to urge any other person to take positions on issues or candidates. However, when this support is manifested through spending

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resources on campaigns, then the filing and reporting provisions of the Act are applicable. Without specific information a more detailed answer to this question cannot be formulated.

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/v

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MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING

MICHIGAN 48918

October 12, 1982

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

Dear Mr. Downs:

This is in response to your request for a "formal ruling" with respect to the provisions of the Campaign Finance Act (the "Act"), 1976 PA 388, as amended.

Specifically, you are concerned with whether a corporation may purchase a paid advertisement in an independent committee's newsletter. In addition, you ask whether an independent committee may solicit a corporation for paid advertising in its newsletter.

You maintain that the purchase of paid advertising in an independent committee's newsletter is not a contribution to the committee because it is not a contribution as defined in section 4 of the Act.

Section 4(1) of the Act sets forth the basic definition of the term "contribution" 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."

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You appear to have concluded that the test of whether a particular disbursement to a committee is a contribution is determined only by the intent of the person disbursing the funds. In your letter you give as an example, a fast food restaurant "who purchases an ad purely to sell hamburgers in an independent committee's widely disseminated newsletter." However, the use to which funds are to be put is the primary determinant of whether a payment to a committee is a contribution pursuant to section 4(1). A committee's purpose in raising money is to utilize the money by making expenditures. Using a particular form of fundraising cannot transform a contribution into a purchase of goods or services.

Enclosed is an interpretative statement previously issued to Douglas K. Weiland on August 6, 1980, which covers the issue of a corporate purchase of advertising in a candidate's program book. The sale of advertisements in a committee's newsletter is, like the sale of ads in a program book, a fundraising activity.

The Federal Election Commission has dealt with similar issues which have been raised pursuant to the Federal Election Campaign Act of 1971, as amended. Both the federal statute and the Act prohibit corporate contributions and expenditures on behalf of candidates for federal or state office. The federal statute and the Act have similar definitions of the terms contribution and expenditure.

In Advisory Opinion 1981-3 issued March 28, 1981 the Federal Election Commission concluded that corporate payment to purchase advertising in a party newspaper is a contribution or expenditure prohibited by the federal law. Such advertising was prohibited to the extent that the party newspaper's publication was "for the purpose of influencing" or was "in connection with" a federal election.

On September 21, 1981 the Federal Election Commission issued Advisory Opinion 1981-33 which construed a provision of federal law prohibiting contributions or expenditures by corporations "organized by authority of any law of Congress," 2 U.S.C. 441b(a). In that Advisory Opinion the Federal Election Commission concluded that advertisements by a federally chartered savings and loan association in a journal produced by a political club for an anniversary party or political rally are prohibited contributions or expenditures.

The Department of State has concluded that the purchase of advertising in a newsletter published by a committee is a contribution to the committee. It is clear that the principal purpose of a committee is participation in an election. But for such electoral activity there would be no reason to establish a committee. The publication and distribution of a newsletter by a committee is an activity which is ancillary to the primary purpose, which is to participate in the electoral process. Payments made for advertising in a committee publication are, therefore, contributions to the committee.

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Section 54 of the Act prohibits corporations from making contributions or expenditures except those made for or against a ballot question. Payments for advertising by a corporation in a newsletter published by a candidate, independent or political committee are prohibited by section 54 of the Act.

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

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings & Legislation

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Enclosure

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MICHIGAN DEPARTMENT OF STATE

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MUTUAL BUILDING
208 N. CAPITOL AVENUE

LANSING
MICHIGAN 48918

DR

November 15, 1982

Honorable Ray C. Hotchkiss
Ingham County Circuit Court
Lansing, Michigan

Dear Judge Hotchkiss:

This letter is pursuant to your Order remanding, to the Secretary of State for a written interpretation, the question of the use of funds realized from the sale of entertainment tickets at face value. This letter applies the provisions of the Campaign Finance Act, 1976 PA 388, as amended ("the Act") to the facts which gave rise to Dick M. Jacobs v Richard Austin Secretary of State which is presently before the Court.

Specifically, the issue can be stated as follows:

> Does the Act prohibit the Secretary of State from matching pursuant to section 64 the gross amount realized from the sale of entertainment tickets to persons contributing $100.00 or less to a candidate committee of a candidate for governor who qualifies for primary election public funding?

Section 64 provides as follows:

> "Sec. 64. (1) A candidate in a primary election may obtain moneys from the state campaign fund in an amount equal to $2.00 for each $1.00 of qualifying contribution if the candidate certifies to the secretary of state that:
> (a) The candidate committee of the candidate received an amount of qualifying contributions at least equal to 5% of the candidate's designated spending limit.
> (b) The full name and address of each person making a qualifying contribution is recorded by the candidate committee of the candidate certifying. This requirement is in addition to and not in lieu of any other requirements relating to the recording and reporting of contributions.
> (2) An unopposed candidate for nomination in a primary election is not entitled to moneys from the state campaign fund except as provided in subsection (3).
> (3) If a major party has a contest for the nomination for the same office, an unopposed candidate for nomination of another party in a primary election may receive up to 25% of the maximum payment provided in subsection (6).

(4) A candidate is not entitled to moneys from the state campaign fund for a primary election if it is determined the name of the candidate is ineligible to appear on the primary election ballot pursuant to section 53 of Act No. 116 of the Public Acts of 1954, as amended, being section 168.53 of the Michigan Compiled Laws.
(5) For purposes of this act, a write-in candidate shall not be regarded as opposition, or as creating a contested primary.
(6) A candidate may not receive from the state campaign fund for a contested primary more than 66% of the candidate's expenditure limit designated in section 67(1).
(7) For purposes of this section, primary election is an election held pursuant to section 52 of Act No. 116 of the Public Acts of 1954, as amended, being section 168.52 of the Michigan Compiled Laws."

Section 12(1) of the Act sets forth the definition of the term "qualifying contribution" as follows:

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

"Contribution" is defined in section 4 of the Act. The relevant portion of that section reads 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 an attendance fee for events such as dinners, luncheons, rallies, testimonials, and similar fund raising events, an 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 broadcase media and newspapers not extended on an equal basis to all candidates for the same office."

Based on the definition of the term contribution it appears that the purchase of a ticket from a candidate committee is a contribution "made for the purpose of

influencing the nomination or election of a candidate." A key element in determining whether a payment is a contribution is the committee's plan for utilizing the money received, the intent of the contributor is not the sole determinant. A committee's purpose in raising money is to utilize the money by making expenditures. The use of a particular form of fundraising cannot convert a contribution into a purchase of goods or services.

In the situation at hand, the committee receiving the payments for entertainment tickets apparently included the funds received as qualifying contributions in the committee's application for matching funds in the primary election. Presumably, the monies received were then used to make expenditures in assistance of the candidate's election.

Such utilization of the monies is for the purpose of influencing as well as in assistance of the nomination or election of a candidate. The tickets were sold as a means of raising funds for the campaign.

The term "contribution" is defined by the Federal Election Campaign Act in much the same way as it is defined in the Act. When the federal statute's provisions for matching contributions in presidential primaries first went into effect, the Federal Election Commission utilized procedures which made certain purchases of goods and entertainment tickets "nonmatchable." That is, while the purchase of the ticket was reported as a contribution the whole price of the ticket was not matched. This approach was expanded in regulations which were published subsequent to the 1976 Presidential elections.

The revised regulations grew out of a controversy surrounding the question of whether the full price of tickets to some concerts used by Presidential candidates as fundraisers could be matched pursuant to the Federal Election Commission policies then in effect. The regulations which limited the matchability of some contributions are attached. Basically, regulations currently in effect provide that only the amount in excess of the fair market value of a concert ticket purchase is matchable. These events are described as "any activity that primarily confers private benefits in the form of entertainment to the contributor. . . ." A contribution in the form of a ticket purchase to an event that is "essentially political" is fully matchable.

Recently the Federal Election Commission has issued proposed regulations for presidential primary matching funds which would clarify and elaborate on the regulations now in effect, Federal Register August 17, 1982, pp 35892, 35912. The proposed regulations make no substantive changes with respect to matchability, however, the F.E.C. did request that comments be made on the matchability of contributions made in the form of ticket purchases. It is interesting to note that the comment period for these proposed regulations has been extended because of comments received dealing with the matchability of concert ticket sales. A copy of the proposed regulations is attached.

The State of New Jersey also has a matching program for gubernatorial primary elections. In discussions with New Jersey officials administering the program, Departmental staff have been informed that insofar as the matchability of

contributions is concerned New Jersey's regulations are very similar to the federal regulations.

In presidential primaries and gubernatorial primaries in Michigan and New Jersey, a person purchasing a ticket or other incentive from a campaign is making a contribution. However, the matchability of such contributions is limited, by promulgated rules, for presidential primaries and New Jersey gubernatorial primaries. The Michigan statute does not specifically make contributions in the form of ticket purchases nonmatchable.

The limitations on matchability in the Act are included in section 12(1) of the Act which is set out above. Those limitations are that a contribution or portion of a contribution which may be matched:

1. Must be a contribution of money, in kind contributions may not be used for matching purposes.

2. Is limited to $100.00 in a calendar year.

The question of the propriety of matching contributions in the form of entertainment ticket purchases was raised very late in the primary campaign. This foreclosed the possibility of making changes in the legislation in time to limit matchability of these contributions in the 1982 gubernatorial primary. Matching is not utilized in conjunction with the general election. Between now and the next gubernatorial primary election there is adequate time to seek legislative changes and implement any necessary changes in administrative rules so that contributions which are matched with public funds, as nearly as possible, indicate actual support for the candidate.

Inasmuch as courts do not rewrite statutes,[1] and the remedy for defects in the laws is with the Legislature,[2] administrative agencies, such as the Secretary of State's Office, may not, under the guise of its rule-making power, abridge or enlarge its authority or exceed powers given it by statute.[3] Because the practice of reselling entertainment tickets is within the Legislature's definition of contribution, any substantive change in the definition should be rendered by the Legislature not the administrative agency.

As Secretary of State I believe that Michigan should, for future elections, adopt an approach similar to the federal and New Jersey approach to the issue. I believe that a majority of concerned persons would be willing to support the adoption of such an approach. My staff has been directed to spearhead the effort to ensure that only contributions which actually indicate support for a candidate will qualify for matching in the 1986 gubernatorial primary.

Very truly yours,

Richard H. Austin
Secretary of State

[1] Connolly v Reading, 268 Mich 224; 256 NW 432 (1934).

[2] Warren Township v Engelbrecht, 251 Mich 608; 232 NW 346 (1930).

[3] Sterling Secret Police, Inc v Michigan Department of State Police, 20 Mich App 502; 174 NW2d 298 (1969).

MICHIGAN DEPARTMENT OF STATE

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STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

9-82-CI

December 3, 1982

Mr. D. Gravatt Huber
Michigan Citizens for Headlee Committee
Post Office Box 1481-RHH
East Lansing, Michigan 48823

Dear Mr. Huber:

This is in response to your request for answers to three questions with respect to the provisions in the Campaign Finance Act (the "Act"), 1976 PA 388, as amended, dealing with expenditures made by an independent committee in support of a candidate.

You indicate you are the campaign director for Michigan Citizens for Headlee Committee ("MCHC"), a political committee supporting the gubernatorial candidacy of Richard H. Headlee. (Since MCHC did not file a statement of organization at least six months before November 2, 1982, it is not an "independent committee" as defined in section 8(2) of the Act (MCL 169.208(2).) MCHC wishes to make expenditures urging the election of Mr. Headlee without the expenditures being attributable to and reportable by the Headlee candidate committee.

"Independent expenditure" is defined in section 9(1) of the Act (MCL 169.209(1)) as:

> "An expenditure as defined in section 6 by a person if the expenditure is not made at the direction of, or under the control of, another person and if the expenditure is not a contribution to a committee."

Also relevant is section 70 of the Act (MCL 169.270) which states:

> "A contribution or expenditure which is controlled by, or made at the direction of, another person, including a parent organization, subsidiary, division, committee, department, branch, or local unit of a person, shall be reported by the person making the expenditure or contribution, and shall be regarded as an expenditure or contribution attributable to both persons for purposes of expenditure or contribution limits."

An expediture in support of a candidate which is not an independent expenditure and which is not a contribution in money to another committee is an in-kind contribution or expenditure which must be reported by the candidate committee as well as the committee making the expenditure.

Your questions are set out and answered below:

> "1. Can a candidate (or the official candidate committee) supply an Independent/Political Committee (making independent expenditures, and desiring to preserve that independence) with copies of his weekly schedule? his press releases? his speeches?"

The standard set forth in the Act, in the two sections quoted above, is "direction or control". The three items about which you specifically inquire are all made for purposes other than providing them to friendly political committees. Press releases and speeches are statements of a candidate's positions made to favorably influence voters and contributors; they do not show direction and control over a favorably disposed political committee which receives copies. Assuming the weekly schedules, press releases, and copies of speeches are available upon request to the general public, a candidate or his committee would not be exercising direction or control over a political committee by providing these items.

> "2. Can a candidate for Governor attend, by invitation, a function sponsored by an Independent/Political Committee (which makes independent expenditures, and desires to preserve this inde pendence)? In fact, doesn't the act somewhere recognize the possibility of jointly shared functions (fund raisers)?"

What you are really asking is whether a political committee may make an independent expenditure for an event which a candidate attends. The answer depends upon a number of factors which cannot be determined from the limited facts you provide. For instance:

> Did the candidate purchase a fund raising ticket and attend on the same basis as the supporters of the political committee?
>
> Is the candidate given an opportunity to address the gathering, as contrasted with mingling and conversing in small groups?
>
> Are people encouraged to attend the event because the candidate will be there?
>
> Are all candidates for the same office (or all major party candidates) invited to the event and treated equally?
>
> Is the political committee openly supporting the candidate?

Only the final question can be answered based upon the information you have provided. Since MCHC supports Mr. Headlee, his attendance by invitation at an event sponsored by MCHC would be strong evidence that Mr. Headlee is exercising direction or control over the event. Mr. Headlee certainly controls the content of any statements he makes at the event. Once direction or control is exercised by Mr. Headlee, the expenditures by MCHC lose their independent status and become in-kind contributions to the Headlee candidate committee.

You raise the possibility of joint fund raisers held by a political committee and a candidate committee. By its very nature, a joint fund raiser is necessarily directed or controlled by all participating committees. MCHC could not retain its "independence" at a fund raiser held jointly with the Headlee candidate committee.

> "3. Can an Independent/Political Committee (which makes independent expenditures and desires to preserve that independence) pay for the distribution of literature, or provide for the vehicle of distributing the literature, that was printed and paid for by the candidate, or his staff or his official committee. Again continuing with the presumption that none of the literature was printed for distribution by this independent source, and no "direction or control" of the independent committee or its activities lies within the official candidate committee, or the candidate himself?"

As stated previously, the test for independent expenditures is direction and control. If MCHC distributes literature, bumper stickers, buttons, etc. which the Headlee candidate committee wrote, designed, conceptualized, or printed, the Headlee candidate committee would have exercised direction and control over the material and MCHC's expenditures would be in-kind contributions. Similarly, quotes from the press releases and copies of speeches discussed in question 1 can be extracted by MCHC for use in independent expenditure material distributed by MCHC, but MCHC may not copy and distribute the material provided by the Headlee candidate committee without MCHC's costs and efforts being in-kind contributions.

Of course, MCHC must comply with the disclaimer and identification requirements in section 47 of the Act (MCL 169.247) and rule 36 (1982 AACS R169.36).

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

Very truly yours,

Phillip T. Frangos
Director
Office of Hearings and Legislation

10-82-CI

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

December 3, 1982

George O. Von Frank, Treasurer
Citicorp Voluntary Political Fund-Federal
399 Park Avenue - 32nd Floor
New York, New York 10043

Dear Mr. Von Frank:

This is in response to your letter seeking a declaratory ruling pursuant to the Campaign Finance Act (the "Act"), 1976 PA 388, as amended, with respect to participation by your political action committee in Michigan elections.

In your letter you ask a number of specific questions. Your questions generally focus on the necessity of forwarding and filing certified statements when a committee located out-of-state makes contributions or expenditures in a Michigan election as specified in sections 28(3) and 42(2) of the Act (MCL 169.228 and 169.242).

The Act's provisions with respect to participation in Michigan elections by committees located out-of-state have been the subject of litigation initiated by the Michigan State Chamber of Commerce and other plaintiffs. On May 11, 1982 the Ingham County Circuit Court issued an Amended Opinion and Order with respect to the issue of out-of-state committee activities in Michigan elections. I have attached a copy of the Court's order as well as a copy of the January 29, 1980 declaratory ruling which was at issue.

In determining the amount of detailed information to be included on the certified statement an out-of-state committee must supply to a candidate, any reasonable accounting method may be utilized to ascertain the information that must be supplied. Two methods in particular will meet the Act's requirements.

First, a committee may use the so-called LIFO method. A committee using this approach would start with the most recent contribution it has received and go back through its contributors. The detailed information for those contributing more than $20.00 or $200.00 of the contribution would then be forwarded as required by section 42(2).

Another method is to divide the expenditure being made by the number of persons contributing to the committee. If the average contribution exceeds $20.00 or $200.00 then the detailed name, address and occupation information must be supplied.

Your remaining questions are answered seriatem below.

(3) Your assumption is correct. The statement of organization is due within 10 days of receiving contributions or making expenditures in Michigan that equal or exceed $200.00 in a calendar year.

(4) No annual campaign statement is required by an independent committee, see section 35 of the Act (MCL 169.235).

(5) The 25 persons contributing to an independent committee do not have to be Michigan residents.

(6) You may submit all expenditures made or you may list only those made to Michigan state or local candidates or Michigan ballot questions.

(7) Contributors need to be listed only to the extent their contribution was utilized in a Michigan election. No special rules apply for Michigan contributors.

(8) The summary page must only show activity taking place in Michigan, if your report reflects the information provided above it should balance.

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

Very truly yours,

Phillip T. Frangos
Director
Office of Hearings and Legislation

PTF/cw

Attachments

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

MICHIGAN STATE CHAMBER OF COMMERCE, a Non-Profit Michigan Corporation and its Separate Segregated Fund, the Michigan Business Political Action Committee; MICHIGAN ASSOCIATION OF REALTORS, a Non-Profit Michigan Corporation and its Separate Segregated Fund, Realtors Political Action Committee of Michigan; MICHIGAN FARM BUREAU, a Non-Profit Michigan Corporation and its Separate Segregated Fund, Michigan Farm Bureau Political Action Committee,

Plaintiffs,

and

NATIONAL BANK OF DETROIT, a National Banking Association, and NBD Good Citizenship Committee,

Intervening Plaintiffs,

vs

RICHARD H. AUSTIN, Secretary of State, and FRANK J. KELLEY, Attorney General,

Defendants.

AMENDED
OPINION AND ORDER

Docket No. 80-25671-CZ

PUBLIC EMPLOYMENT
AND ELECTIONS
RECEIVED
MAY 12 1982
DEPT. OF THE
ATTORNEY GENERAL

At a session of said Court held in the Circuit Courtrooms, City of Lansing, County of Ingham, State of Michigan, on the 11th day of May, A.D., 1982.

PRESENT: HONORABLE RAY C. HOTCHKISS, Circuit Judge

The Court, having reviewed the file and briefs submitted by counsel and having heard oral argument in open Court, is of the opinion that Plaintiffs' Motion for Partial Summary Judgment be denied.

Plaintiffs, in Count V of their First Amended Complaint challenge a January 29, 1980, declaratory ruling of the Secretary of State which held that out-of-state persons and committees who make expenditures of $200 or more for the purpose of influencing Michigan elections are required to file a Statement of Organization

and comply with periodic filing requirements of the Campaign Financing and Practises Act, MCLA 169.201 et seq. Plaintiffs contend that out-of-state persons and committees who provide the certified Statement required by §§28(3) and 42(2) of the act are not required to register under §24 of the act.

Plaintiffs now move for Summary Judgment as to Count V and allege that Defendants have failed to state a valid defense to the claims asserted therein.

Plaintiffs assert that §§28(3) and 42(2) were intended by the legislature to be the exclusive regulation of out-of-state contributors. This court does not agree. §28(3); MCLA 169.228(3) provides:

> "(3) Accompanying a campaign statement reporting the receipt of 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 be a statement certified as true and correct by an officer of the contributing committee or person setting forth the full name, address, along with the amount contributed, of each person who contributed $20.01 or more of the contribution. The occupation, employer, and principal place of business shall be stated for each person who contributed $200.01 or more."

§42(2); MCLA 169.242(2) provides:

> "(2) 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 or the qualification, passage, or defeat of a ballot question unless accompanied by a statement certified as true and correct by an officer of the contributing committee or person setting forth the full name and address along with the amount contributed, of each person who contributed $20.01 or more of the contribution. The occupation, employer, and principal place of business shall be listed for each person who contributed $200.01 or more of the contribution. A person who knowingly violated this subsection 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, and if the person is other than an individual the person shall be fined not more than $10,000.00."

The disclosure requirements of §28(3) are similar to those required by §26 (MCLA 169.226) except that §28(3) requires a certified statement from the out-of-state source to verify that the information disclosed is true. Without this certification,

a committee is prohibited by §42(2) from accepting the contribution. It is clear that §§ 42(2) and 28(3) were not intended to be exclusive. They merely impose a requirement that the information provided by certified as true. This Court is of the opinion that if an out-of-state contributor meets the definition of a committee under the Act, they are required to file a Statement of Organization and make periodic campaign statements under the Act. This court does not feel that §28(3) and 42(2) require an out-of-state committee to move its funds into the state or appoint a Michigan elector as its treasurer.

Plaintiffs contend that to require full registration of out-of-state contributors would render §§ 28(3) and 42(2) void. This Court does not agree. As noted above, these two sections merely impose additional requirements on committees whose treasurer, principal office or funds are located outside the state. This Court is of the opinion that Plaintiffs have failed to demonstrate, as a matter of law, that they are entitled to Partial Summary Judgment as to Count V.

NOW, THEREFORE;

IT IS ORDERED that Plaintiffs' Motion for Partial Summary Judgment as to Count V be denied.

RAY C. HOTCHKISS, Circuit Judge