MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

October 9, 1978

Mr. Robert P. Hallenbeck, Director
Legislative Affairs
SmithKline Corporation
1500 Spring Garden Street
P.O. Box 7929
Philadelphia, Pennsylvania 19101

Dear Mr. Hallenbeck:

This is in response to your query as to whether the Campaign Finance Act, P.A. 388 of 1976, as amended ("the Act"), permits the use of a payroll deduction system for contributions to a separate segregated fund established by a corporation for political purposes.

Your question was answered by Michigan's Attorney General in OAG No. 5279, issued on March 22, 1978. The Attorney General stated Section 55 of the Act (MCLA § 169.255) provides contributions to a separate segregated fund established by a corporation to be used for political purposes may be in the form of a voluntary payroll deduction plan. However, contributions to the fund may only be made by the following persons or their spouses: (1) stockholders of the corporation; (2) officers and directors of the corporation; and (3) employees of the corporation who have policy-making, managerial, professional, supervisory, or administrative nonclerical responsibilities.

Enclosed you will find a copy of the Opinion, a copy of the Act, and a copy of the General Rules promulgated by the Secretary of State to implement the Act.

Your attention is directed to the definition of "committee" set forth in Section 3(4) of the Act (MCLA § 169.203). A separate segregated fund which receives or spends $200.00 or more for political purposes is a committee subject to the registration, recording, and reporting requirements of the Act.

For specific instructions and information as to reporting and recording requirements of the Act, please write or call:

Campaign Finance Reporting
P.O. Box 20126
Lansing, Michigan 48901
Phone: (517) 373-8558

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

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF:pj

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN ■ SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 489

October 9, 1978

Mr. Byron A. Williams
BBG&W, Inc.
114 N. Burdick Mall
Kalamazoo, Michigan 49007

Dear Mr. Williams:

This is in response to your request for revision of the identification and disclaimer required for political broadcast advertising pursuant to the Campaign Finance Act, P.A. 388 of 1976, as amended ("the Act").

Section 47 of the Act (MCLA § 169.247), which prescribes the identification and disclaimer requirements for political advertisements including radio and television broadcasts, was amended by the Legislature subsequent to receipt of your letter. The amendatory legislation, P.A. 348 of 1978, amended Section 47 to read as follows (in part):

> "(2) A radio or television paid advertisement having reference to an election, a candidate, or ballot question 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)

The amended statutory provision is consistent with identification and disclaimer practices existing in the broadcast industry prior to enactment of the Act. The new language resolves the issue raised in your letter.

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

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF:pj

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN ● SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

October 10, 1978

Honorable Richard Allen
Michigan State Senate
State Capitol
Lansing, Michigan 48909

Dear Senator Allen:

This is in response to your request on behalf of the Republican Senate Caucus for an answer to questions concerning the Campaign Finance Act, P.A. 388 of 1976, as amended ("the Act"). Your questions are answered in the order in which they were asked.

1. May a debt incurred in one year be paid in subsequent years from funds raised for campaign purposes?

2. Is interest on a campaign debt a legitimate campaign expense?

These two questions are answered affirmatively. A debt incurred by a committee in one year may be paid in subsequent years from funds raised by the committee for campaign purposes. Interest on a campaign debt is a legitimate campaign expense.

3. May campaign debts be carried from one year to another, and if so, is there any limitation on the number of years during which they may be carried?

Campaign debts may be carried from one year to a subsequent year by a committee. There is no limitation on the number of years that a debt may be carried.

4. May a debt incurred in one year be repaid with funds raised in another year for another election, and if so, would it make any difference if it was for another office?

A debt incurred in one year may be repaid with funds raised in another year, including funds raised by a committee for another election. In responding to the latter part of your question, attention must be given to Section 45(1) of the Act (MCLA § 169.245) which states:

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

The statute is explicit in permitting the transfer of funds only if the contribution limits of the committee receiving the funds are equal to or greater than those of the transferring committee. In addition, the candidate committees must be held simultaneously by the same person.

5. If more funds are raised than expended, can the excess moneys be used to pay off a debt as the result of the candidate having run in the past for county commissioner?

If more funds are raised than expended by the committee of a candidate, excess moneys may be used to pay off a debt remaining from an election in which the candidate ran previously for county commissioner. This office is not subject to contribution limits. However, as noted previously, the candidate must be holding both committees simultaneously, i.e., his or her present committee and the committee for county commissioner.

6. Is there a legal or implied designation of funds for a particular year when raising funds? Does it make a difference if the purpose is stated in the fundraising effort?

Section 52 of the Act (MCLA § 169.252) is responsive to your question. This statutory provision, which identifies contribution limits, states (in part):

> "(2) For the purpose of subsection (1), "with respect to a single election" means, in the case of a contribution designated in writing for a particular election, the election so designated. A contribution made after a primary election, general election, caucus, or convention and designated for the primary election, caucus, or convention shall be made only to the extent that the contribution does not exceed net outstanding debts and obligations from the primary election, general election, caucus, or convention. If a contribution is not designated in writing for a particular election, the contribution shall be considered made for a primary election, general election, caucus, or convention if made on or before the date of the primary election, general election, caucus, or convention."

With respect to the latter part of your question, the Department strongly encourages a statement of the purpose of a fundraising effort so a contributor is aware of the extent and purpose of any contribution he or she makes.

7. May excess funds raised by a committee at a fundraiser publicized as "John Doe for 1978" be used for another legitimate campaign purpose of the committee, past debt of the committee, or held over for future campaigns of the committee?

Excess funds raised at a fundraiser publicized as "John Doe for 1978" may be used for another legitimate campaign purpose of the committee, past debt of the committee, or held over for future campaigns of the committee so long as the original recipient committee remains in existence. If the original committee terminates its existence, Section 45(2) of the Act (MCLA § 169.245) states unexpended funds must be given to a political party committee, a tax exempt charitable institution, or returned to contributors of the funds.

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

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF:pj

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

October 10, 1978

Mrs. Donna F. Bluhm
274 E. Arbutus Lake Road
Traverse City, Michigan 49684

Dear Mrs. Bluhm:

This is in response to your request concerning the applicability of the Campaign Finance Act, P.A. 388 of 1976, as amended ("the Act"), to the Republican Women's Federation of Michigan (RWFM).

You state in the recent history of the RWFM there have been no political contributions to candidates or proposals exceeding $200.00 in any one year. You indicate a local club requesting affiliation with the national organization, National Federation of Republican Women (NFRW), or the state organization, RWFM, sends 75 cents per member to the RWFM. The RWFM treasurer sends on 40 cents per member to the NFRW. Any other funds needed for operations and education are raised through special events, presumably sponsored by the RWFM. Those funds are funneled back to local club members in the form of programs, workshops, bulletins and educational material. There is no profit, interest accumulation, or overflow; you state that only enough money is raised to finance the organization's educational activities. You indicate the RWFM neither receives nor gives contributions in excess of $200.00 per year.

You request a declaratory ruling that the Republican Women's Federation of Michigan is relieved from reporting requirements under the Act.

In a March 29, 1978, letter to Ms. Cindy Sage, Treasurer, Republican Women's Federation of Michigan, the Department stated the only organization which must file under the Act is an organization which fits the definition of "committee" as defined in the Act. Sec. 3 of the Act (MCLA § 169.203) defines "committee" to include an organization which spends or receives $200.00 or more to influence an election.

A general answer was provided to Ms. Sage because her original request was vague. She stated, for example, "It has not been the practice of the Michigan Federation to contribute to political campaigns or ballot issues. In the past, however, local clubs have contributed funds to political campaigns or issues."

Your present letter, though apparaently restricted to the RWFM, lacks some information which precludes the issuance of a declaratory ruling at this time. It is not clear whether you are including the local organizations as part of the RWFM in seeking for the RWFM a blanket exemption from the Act's reporting requirements.

Further, you do not elaborate on the nature of the "educational activities" engaged in by the RWFM. Some organizations have been surprised to find their "educational activities" to be subject to the Act.

Lastly, you do not indicate whether the RWFM or any of its local units are incorporated. This information is pertinent to issuance of any declaratory ruling by the Department.

In view of the fact your letter was general in nature and lacked the specificity required by Section 63 of the Michigan Administrative Procedures Act (MCLA § 169.263), which establishes the criteria for requesting and issuing a declaratory ruling, this response may be considered as informational only and not as constituting a declaratory ruling.

Very truly yours,

Phillip T. Frangos

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF:pj

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

October 10, 1978

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

Dear Mr. Lukens:

This is in response to your request for an interpretation concerning the applicability of the Campaign Finance Act, P.A. 388 of 1976, as amended ("the Act"), to two areas of concern to your committee. The first relates to contributions from joint accounts, and the second to mailers soliciting contributions as well as participation in campaign activities.

You state the Milliken for Michigan Committee has received several contributions of amounts over $100 from married individuals by means of checks drawn against jointly held funds. You ask whether contributions received from a married couple may be prorated between each spouse for the purpose of qualifying the contributions for matching funds from the State Campaign Fund under each of the following circumstances:

1. If the contributions are from a joint account by a written instrument signed by only one of the spouses;

2. If the contributions are from a joint account by a written instrument signed by both individuals;

3. If the contributions are from a joint account by a written instrument signed by one of the spouses but expressly indicating that both individuals intend to provide the funds.

Section 12 (1) of the Act (MCLA § 169.212) provides that in order to qualify a contribution for matching moneys from the State Campaign Fund, the contribution must not exceed $100.00 and it must be made by a written instrument. There are additional limitations with respect to the nature of the contribution and the time period in which it is made and qualified.

In a declaratory ruling to Mr. Zolton Ferency, dated September 13, 1977, the Department stated "The Department shall demand that a document in order to be acceptable for purposes of Section 12(1) of the Act must clearly contain the names of the payor, payee, the amount, the date, the purpose of the contribution, and the signature of the contributor." The declaratory ruling was limited to contributions of less than $20.00 since Section 41(1) of the Act (MCLA § 169.241) extended adequate safeguards to all contributions in excess of $20.00, including those made for the purpose of constituting

a "qualifying contribution." Section 41(1) requires that all contributions over $20.00 be made by written instrument containing the names of the payor and the payee.

Accordingly, the Department requires that all written instruments contain the signature of the contributor, regardless of whether the contributions are from a joint or an individual account. The signature serves as evidence of an individual's intent to contribute to the particular committee. The Department will not accept the signature of one individual as reflecting the intent of another individual to make a contribution, notwithstanding the fact the two individuals are joint holders of an account and married.

Consequently, under the circumstances of your first and third examples, the contributions could not be prorated. The contribution must be regarded as having been made by the signatory. Under the circumstances of your second example, however, there may be proration of a contribution made from a joint account on a written instrument signed by both individuals. The contribution must be prorated equally to each of the signatories unless it is otherwise indicated by the contributors.

It should be noted that in the instance where a gubernatorial candidate committee has received a qualifying contribution exceeding $100 on a written instrument signed by only one spouse, expressly indicating that both individuals intend to provide the funds, the Department has permitted the prorating of the contribution to the two individuals upon the submission of a separate document. The latter must state an intent to make a qualifying contribution in the amount set forth in the written instrument, and the signature of both individuals confirming that intent.

With respect to your second concern, you state the Michigan for Milliken Committee has purchased a number of mailers to be used for the primary purpose of soliciting contributions. You indicate the mailers, a copy of which you enclosed in your letter, also solicit volunteer services for the campaign. In addition, language appears in the mailer endorsing the candidate and requesting the potential contributor's support as a voter.

You ask whether the costs of producing and distributing these mailers are exempt from the expenditure limitations set by Section 67 of the Act (MCLA § 169.267)?

Section 67 provides that expenditures of a gubernatorial candidate committee which has applied for public funding may not exceed $1,000,000 in the aggregate for one election. The provision states further that total expenditures of up to $200,000.00 made by a candidate committee solely for the solicitation of contributions shall be exempt from the expenditure limitation.

On August 7, 1978, a letter was addressed to you in which the Department identified several guidelines relating to various types of expenditures intended solely for the solicitation of contributions. The guidelines indicate a key factor in determining whether an expenditure qualifies for the $200,000.00 exclusion is the audience to which the message purchased by the expenditure is directed. Further, the message itself must be subjected to scrutiny.

In addition, a portion of the August 7 letter dealt with circulars and handouts. The pertinent language stated:

> "Circulars and handouts are excluded from the 20% because of the 'mass media' principles stated previously, unless limited to a specific audience (other than geographic area, with common interests and goals, etc.) and limited solely to a plea for funds.
>
> "The addition to a plea for funds of "Doe also needs your vote' will move a 'message' from within to outside of the 20% (or from outside to inside the $1,000,000.00)."

In the present case, your request lacks information as to the persons who will be recipients of the mailer. Further, it does not indicate whether in fact the mailer was mailed or distributed as a handout. Consequently, absent this information, a definitive answer cannot be provided at this time as to whether the mailer qualifies for the exclusion. However, Department staff members are at your disposal to further explore this question.

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

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF:pj

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

October 10, 1978

Honorable Barbara-Rose Collins
Michigan House of Representatives
State Capitol
Lansing, Michigan 48909

Dear Representative Collins:

This is in response to your request for a declaratory ruling concerning the applicability of the Campaign Finance Act, P.A. 388 of 1976, as amended ("the Act"), to a candidate who files as a candidate for an elective office and withdraws within three days of filing.

You state that three days after filing as a candidate for election to State Senator from the 4th Senatorial District you withdrew from the race. After reading Section 24(1) of the Act (MCLA § 169.224), which provides a candidate has 10 days after forming a candidate committee in which to file a statement of organization, you did not file a statement because a candidate committee was never formed. Subsequently, you received a notice of failure to file a statement of organization and a notice providing for payment of late filing fees.

Section 3(1) of the Act (MCLA § 169.203) defines "candidate" to include an individual who files a fee, affidavit of incumbency, or nominating petition for an elective office. Section 21(1) of the Act (MCLA § 169.221) requires a candidate to form a candidate committee within 10 days after becoming a candidate. Section 24(1) requires a committee to file a statement or organization within 10 days after its formation.

Upon becoming a candidate, an individual enters the disclosure system established by the Act by forming a committee and filing certain reports to serve disclosure purposes. The public is informed who is in the system through the filing of a statement of organization; what financial activities are being performed by committees in the system through the filing of appropriate campaign statements; and who has left the system through the filing of a dissolution statement.

The obligation to form a committee and file pursuant to the Act are independent of the deadlines for forming a committee or filing a report. Once the disclosure system is entered by becoming a candidate, a statement of organization must be filed, and the filing of a dissolution statement is a prerequisite to leaving the system.

Section 164 of the Michigan Election Law, P.A. 116 of 1954, as amended (MCLA § 168.164), provides a candidate for the Michigan Senate may withdraw within three days of filing. It states:

> "After the filing of a nominating petition or filing fee by or in behalf of a proposed candidate for the office of state senator or representative, such candidate shall not be permitted to withdraw unless a written notice of withdrawal is served on the official with whom his nominating petitions or filing fee were filed, or his duly authorized agent, not later than 4 o'clock, eastern standard time, in the afternoon of the third day after the last day for filing such petition."

This statutory provision does not relieve an individual from meeting requirements of the Act under the circumstances of the present case since the pertinent definition of "candidate" is that found in the Act. It must be recognized the Act's definition of "candidate" goes far beyond that found in other statutes, e.g., Section 3(l) states that "candidate" includes an individual who receives a contribution, makes an expenditure, or gives consent for another person to receive a contribution or make an expenditure with a view to bringing about the individual's nomination or election to an elective office, whether or not the specific elective office for which the individual will seek nomination or election is known at the time the contribution is received or the expenditure is made. Therefore, once an individual becomes a candidate as defined in the Act, he or she is not relieved from the obligation of forming a committee or reporting pursuant to the Act by withdrawing under the Michigan Election Law prior to the date for filing the statement of organization or forming a committee.

As to the specific facts of your request, you are required to file a statement of organization and a statement of dissolution for the office of State Senator. However, since the question you raised is answered for the first time with this ruling, you shall have ten days from the receipt of this ruling to file your statement of organization. A statement of dissolution should accompany the statement of organization. Compliance with the preceding will constitute timely compliance for meeting the requirements of the Act as they apply to this particular factual situation.

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

Sincerely,

Richard H. Austin
Secretary of State

RHA:pj

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

November 2, 1978

Mr. Ivy Thomas Riley
Hartz Building, Fourth Floor
1529 Broadway
Detroit, Michigan 48226

Dear Mr. Riley:

This is in response to your request concerning the applicability of the Campaign Finance Act, P.A. 388 of 1976, as amended ("the Act"), to an individual whose name has not appeared on a ballot.

You indicate your law firm represented Mr. Juan Torres in his unsuccessful attempt to be elected State Representative for the 85th District, as well as the Communist Labor Party in their unsuccessful attempt to gain a position on the ballot for the November, 1978, general election. The Communist Labor Party was required under Section 560a of the Michigan Election Law (MCLA § 168.560a) to run in the party qualification section of the August, 1978, primary election ballot in order to qualify to run candidates in the November, 1978, general election.

It is your position that since Mr. Torres would have been a candidate of the Communist Labor Party only if the Party qualified for the general election, reporting is not required of Mr. Torres under the Act as the Communist Labor Party was unsuccessful in the August primary election. You contend Mr. Torres cannot now become a candidate since the Communist Labor Party was unsuccessful and Mr. Torres' name will never have appeared on any ballot in 1978.

Section 3(1) of the Act (MCLA § 169.203) provides:

> "(1) '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."

In the present case, Mr. Torres would be a candidate pursuant to Section 3(1)(b) if the Communist Labor Party had obtained sufficient votes in the primary election to gain a place on the general election ballot and Mr. Torres was certified by the Communist Labor Party as a candidate. These events did not occur in the present case.

However, an examination of Section 3(1) reveals several other methods by which an individual becomes a candidate for purposes of the Act. For example, Section 3(1)(c) defines "candidate" as including an individual who receives a contribution or makes an expenditure with a view to effecting his or her nomination or election to an elective office, even though the person doesn't know the office he or she will seek at the time the contribution is received or the expenditure is made. In view of this language, Mr. Torres would be a candidate for purposes of the Act if he received a contribution or made an expenditure for the purpose of seeking elective office. Your letter does not indicate whether Mr. Torres engaged in this type of activity.

This is the first time the Department addresses specifically the issue of compliance by individuals identified with a political party seeking unsuccessfully a position on the general election ballot. Therefore, if Mr. Torres is a candidate by virtue of the provisions of Section 3(1), other than Subsection (b), he shall have ten days from the receipt of this interpretation to file his statement of organization. Compliance with the preceding will constitute timely compliance for meeting the requirements of the Act as they apply to this particular factual situation.

The absence of certain information, i.e., with respect to whether Mr. Torres engaged in financial activity of the type contemplated by Section 3(1)(c), precludes this response from constituting a declaratory ruling.

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF:pj

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

November 2, 1978

Mr. Christopher L. Rose, Clerk
Independence Township
90 North Main Street
Clarkston, Michigan 48016

Dear Mr. Rose:

This is in response to your request for an interpretation concerning applicability of the Campaign Finance Act, P.A. 388 of 1976, as amended ("the Act"), to retention by a candidate for personal use after an election of items purchased with campaign contributions. In your letter you pose a series of hypothetical situations, all of which have the candidate committees purchasing assets prior to the election, ostensibly for usage in the election. In each instance, however, the candidate retains the assets after the election.

Section 3(4) of the Act (MCLA § 169.203) defines "committee" as an entity which receives contributions or makes expenditures for the purpose of influencing an election. Section 4(1) (MCLA § 169.204) relates "contribution" to the purpose of influencing an election. Similarly, Section 6(1) (MCLA § 169.206) ties "expenditure" to the same purpose.

Consequently, the moneys in a committee's official account or assets held by a committee are for a single purpose, i.e., to influence an election. In making an expenditure, a committee must do so consistent with the requirements of the Act.

Subsequent to an election, a committee may continue to hold certain moneys and assets. If the committee continues in existence, e.g., the committee is that of a candidate who wins the election and who must retain the committee during his or her tenure as an elected official by virtue of Section 3(1) of the Act, the committee is required to file periodic campaign statements indicating the status of the diverse assets and moneys. It should be stressed the statutory purpose of these assets and moneys remains the same, i.e., to influence an election.

If the committee wishes to dissolve, it must dispose of all financial holdings prior to dissolution pursuant to Rule 169.28 of the General Rules promulgated by the Secretary of State to implement the Act. Section 45(1) of the Act (MCLA § 169.245 permits transfer of funds, in the case of those held by a candidate committee, to another candidate committee of the same individual, provided the contribution limits of the recipient committee are equal to or greater than those of the transferring committee, and both committees are held simultaneously by the same person. Section 45(2) provides that funds not eligible for transfer to another candidate committee shall be given to a political party committee, tax exempt charitable institution, or returned to contributors of the funds upon termination of the committee.

Therefore, expenditures by a candidate committee must be made for the purpose of influencing an election, not for the personal benefit of an individual.

In the case of assets and moneys remaining with a committee after an election, and in the instance where the committee intends to terminate through dissolution, the Act prescribes the method for disposition of financial holdings. The Act does not expressly permit usage or retention of these assets and moneys by the candidate for his personal benefit.

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

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF:pj

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

October 10, 1978

Mrs. Donna F. Bluhm
274 E. Arbutus Lake Road
Traverse City, Michigan 49684

Dear Mrs. Bluhm:

This is in response to your request concerning the applicability of the Campaign Finance Act, P.A. 388 of 1976, as amended ("the Act"), to the Republican Women's Federation of Michigan (RWFM).

You state in the recent history of the RWFM there have been no political contributior to candidates or proposals exceeding $200.00 in any one year. You indicate a local club requesting affiliation with the national organization, National Federation of Republican Women (NFRW), or the state organization, RWFM, sends 75 cents per member to the RWFM. The RWFM treasurer sends on 40 cents per member to the NFRW. Any other funds needed for operations and education are raised through special events, presumably sponsored by the RWFM. Those funds are funneled back to local club members in the form of programs, workshops, bulletins and educational material. There is no profit, interest accumulation, or overflow; you state that only enough money is raised to finance the organization's educational activities. You indicate the RWFM neither receives nor gives contributions in excess of $200.00 per year.

You request a declaratory ruling that the Republican Women's Federation of Michigan is relieved from reporting requirements under the Act.

In a March 29, 1978, letter to Ms. Cindy Sage, Treasurer, Republican Women's Federation of Michigan, the Department stated the only organization which must file under the Act is an organization which fits the definition of "committee" as defined in the Act. Sec. 3 of the Act (MCLA § 169.203) defines "committee" to include an organization which spends or receives $200.00 or more to influence an election.

A general answer was provided to Ms. Sage because her original request was vague. She stated, for example, "It has not been the practice of the Michigan Federation to contribute to political campaigns or ballot issues. In the past, however, local clubs have contributed funds to political campaigns or issues."

Your present letter, though apparaently restricted to the RWFM, lacks some informatior which precludes the issuance of a declaratory ruling at this time. It is not clear whether you are including the local organizations as part of the RWFM in seeking for the RWFM a blanket exemption from the Act's reporting requirements.

Further, you do not elaborate on the nature of the "educational activities" engaged in by the RWFM. Some organizations have been surprised to find their "educational activities" to be subject to the Act.

Lastly, you do not indicate whether the RWFM or any of its local units are incorporated. This information is pertinent to issuance of any declaratory ruling by the Department.

In view of the fact your letter was general in nature and lacked the specificity required by Section 63 of the Michigan Administrative Procedures Act (MCLA § 169.263), which establishes the criteria for requesting and issuing a declaratory ruling, this response may be considered as informational only and not as constituting a declaratory ruling.

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF:pj

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

November 2, 1978

Mr. David R. Justian
4453 Oakwood Drive
Okemos, Michigan 48864

Dear Mr. Justian:

This is in response to your request concerning several provisions of the Campaign Finance Act, P.A. 388 of 1976, as amended ("the Act"). Your questions are answered in the order in which they were raised.

1) Is a violation of Section 47 of the Act (MCLA § 169.247), which requires printed material to identify the person who paid for it, fatal to the validity of ballot question petitions?

A violation of Section 47 of the Act does not affect the validity of ballot question petitions. Petitions are qualified pursuant to the provisions of the Michigan Election Law, not the Campaign Finance Act.

2) Does a blank, commercially printed candidate nominating petition, which is purchased by a candidate, have to bear the identification statement set forth in Section 47?

3) Does a candidate nominating petition, printed by the candidate, have to bear the identification statement set forth in Section 47?

4) May the identification required by Section 47 be printed upon the detachable portion of the ballot question and candidate petitions?

Section 47 provides all printed matter having reference to an election, candidate, or ballot question, shall bear upon it the name and address of the person paying for the matter. The identification must be in a place and in a print clearly visible to and readable by an observer, as required by Rule 169.36 of the General Rules promulgated by the Secretary of State to implement the Act.

The body of a petition, with space for signature, is printed on a single page. The information provided on a candidate petition, e.g., name of candidate, address, office sought, is sufficient to relate the petition to a specific candidate. However, this is not the case with respect to a ballot question petition. Several committees may be active relative to the same ballot question; the information on the ballot question petition is inadequate to identify a particular committee.

Consequently, a candidate petition which is printed by the candidate or purchased from a commercial source does not have to bear an identification. An exception to this determination, however, is a candidate petition with a detachable sheet. In this instance, the detachable portion must bear the identification required by Section 47. A ballot question petition which is printed by a committee or purchased from a commercial source must carry the identification.

A commercially preprinted petition may be rubber-stamped with the required information. In any event, an affected petition must be printed or stamped with the identification prior to circulation.

5) Are independent expenditures made by an independent committee limited by Section 52(3) (MCLA § 169.52) or any other provision of the Act?

The Act does not establish limitations concerning the amount of independent expenditures which may be made by any group, including independent committees. The Act only provides limitations on contributions.

6) Since the reporting requirements of Section 51 (MCLA § 169.251) are not applicable to a committee, must a committee meet any reporting requirements with respect to independent expenditures other than the filing of regular campaign finance statements?

The Act does not impose reporting requirements other than the filing of regular campaign statements, upon a committee for independent expenditures.

7) Does Section 34 of the Act (MCLA § 169.234) establish the closing and filing dates for campaign statements required of ballot question committees?

Closing and filing date deadlines are set forth in Section 34 for campaign statements filed by ballot question committees.

8) Does the definition of "committee" provided in Section 3(4) (MCLA § 169.203) require an individual to register as a committee if his or her expenditures exceed $200.00?

The definition of "committee" in Section 3(4) does not require an individual, other than a candidate, to form a committee upon making an expenditure in any amount. In fact, the statute provides "an individual, other than a candidate, shall not constitute a committee."

9) Does an advertisement sold for the back of petitions in order to raise money for the printing of the petitions have to bear the identification required by Section 47?

Each advertisement sold for petitions must bear an identification as required by Section 47 of the Act.

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

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF:pj

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN ◦ SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

November 2, 1978

Reverend Reba Hawkins
2685 Richton
Detroit, Michigan 48206

Dear Reverend Hawkins:

This is in response to your letter resubmitting your original May 5, 1978, request for an interpretation of the definitions of "candidate" and "committee" as provided in the Campaign Finance Act, P.A. 388 of 1976, as amended ("the Act"). In your most recent letter, you state the Department's response of May 26, 1978, informing you of a June 4, 1978, amendment to the Act which excused payment of late filing fees under prescribed circumstances did not satisfy your concerns.

You ask whether a candidate must create a candidate committee if he or she does not receive or spend $200.00 or more in a calendar year to influence an election. Your question concerns the period of time prior to January 4, 1978, the date on which the Act was amended to make clear a candidate must file regardless of an amount received or spent for an election.

It is your contention a candidate did not have a committee, prior to amendment of the Act, until $200.00 or more had been received or spent for an election. You indicate the $200.00 amount was not exceeded during your campaign for Detroit City Clerk in the 1977 primary election. Consequently, you did not file a pre-primary or post-primary campaign statement. However, you filed a statement of organization on August 15, 1977.

Prior to the January 1, 1978, amendment, Section 3(2) of the Act (MCLA § 169.203) defined "candidate committee" as follows:

> "'Candidate committee' means the committee designated in a candidate's filed statement of organization as that individual's candidate committee. A candidate committee shall be presumed to be under the control and direction of the candidate named in the same statement of organization."

Section 3(4), which was not affected by the amendment, reads as follows:

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

Section 21 of the Act (MCLA § 169.221) has always required a candidate to form a candidate committee within 10 days of becoming a candidate. Similarly, Section 24 (MCLA § 169.224) has always required the filing of a statement of organization within 10 days after formation of a committee. These two statutory provisions require a candidate to create and register a committee without reference to the $200.00 threshold. The amendment to Section 3(2) served to clarify that provision in order to avoid confusion with the requirements of Sections 21 and 24.

In conclusion, it is the Department's interpretation an individual must create a committee within 10 days of becoming a candidate and the committee must be registered by means of a statement of organization within 10 days of its creation. These requirements apply even though the $200.00 contribution or expenditure amount has not been realized. Moreover, this interpretation has been in effect since June 1, 1977, the effective date of the Act.

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

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF:pj

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

November 2,.1978

Ms. Elizabeth J. Davis, Treasurer
Committee to Re-Elect Councilman Robert D. Wagner
34202 Beechnut
Westland, Michigan 48185

Dear Ms. Davis:

This is in response to your request for a declaratory ruling concerning late filing fees assessed pursuant to the Campaign Finance Act, P.A. 388 of 1976, as amended ("the Act").

You state that on or about Thursday, December 8, 1977, you mailed to the Wayne County Clerk a post-election campaign statement for the above named committee. The statement was due December 8, 1977, but was not received until Monday, December 12, 1977.

You ask whether your committee should be assessed a penalty for the Saturday and Sunday when the filing official was not available for accepting the report.

The Act states a person who fails to file a statement of organization or campaign statement as required by the Act "shall pay a late filing fee of $10.00 for each day the statement remains unfiled not to exceed $300.00." The statute does not specify either calendar days or business days. An examination of other legal references, however, indicates "day" is to be interpreted as a "calendar" day in the absence of further clarification.

Consequently, the period for filing the campaign statement in a timely manner ended on Thursday, December 8, 1977, the day by which the statement was due. Filing offices were open that day for the purpose of receiving the documents. Your committee was properly assessed for the following Saturday and Sunday as these were calendar days during which the statement remained unfiled.

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

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF:pj

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

November 2, 1978

Mr. E. A. Cisewski
337 East Ayer
Ironwood, Michigan 49938

Dear Mr. Cisewski:

This is in response to your inquiry concerning the method by which the name of a candidate committee is changed pursuant to the Campaign Finance Act, P.A. 388 of 1976, as amended ("the Act").

You state the "Marvin Marks for State Representative Committee" desires to change its name to "A lot of People Who Want To See Marks Elected." You request information as to the exact procedure for amending the committee's original statement of organization to reflect this change. In addition, you indicated some of the committee's printed material bears the old name as an identification. You ask whether the new name must be rubberstamped on the material or whether it may be used in its present form. You state all future printing will bear the new name. Finally, you certify you are the duly designated campaign manager for Mr. Marks and possess the authority to make the name change officially. Your letter is offered as the legal basis for the Department's acting to reverse its records.

Section 24(2) of the Act (MCLA § 169.224) provides a statement of organization shall include the name of the committee. Section 24(3) states when any of the information required in a statement of organization is changed, an amendment shall be filed within 10 days to reflect the change. The provision states late filing fees and criminal penalties are applicable for failure to comply with this requirement.

Rule 169.3(4) of the General Rules promulgated by the Secretary of State to implement the Act provides candidate committee statements and reports must be signed by both the treasurer and candidate. Moreover, Rule 169.3(1) states any statement or report required by the Act must be on a form prescribed or approved previously by the Department.

In view of the cited legal provisions, your letter is not sufficient to change the committee's name. The letter is not a prescribed form nor has the usage of a letter for this purpose been approved previously by the Department. In addition, the signatures of the treasurer and candidate on the prescribed form are necessary to effect the desired change.

With respect to the identification of political advertising, the new name must be used from the effective date of the change, i.e., the date the committee begins to use the new name as contrasted to the date the amendment indicating the change is filed with the Department. The effective date must be indicated on the amendment to the committee's statement of organization. It is suggested printed materials with the old name be rubberstamped with the new name.

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

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF/v

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING

MICHIGAN 48918

November 2, 1978

Mr. Ray H. Boman
Ostrowski, Wilson, Belanger & Boman, P.C.
11220 Whittier Avenue
Detroit, Michigan 48224

Dear Mr. Boman:

This is in response to your letter requesting an interpretation as to the applicability of the Campaign Finance Act, P.A. 388 of 1976, as amended ("the Act"), to a committee which amends its statement of organization after the due date of a required filing in order to secure an exemption from the Act's provisions requiring that filing.

You state that "for a number of reasons" you did not think it necessary to file the annual campaign statement which was due on June 30, 1978. You indicate you were informed by letter on July 6, 1978, that you were required to file, and on July 14, 1978, you filed your required statement under protest. It is your opinion that since you amended your committee's statement of organization on July 10, 1978, to indicate the committee did not receive or expend an amount in excess of $500.00, you were exempted from the requirement of filing the annual campaign statement.

Section 24(4) (MCLA s 169.224) states, "When filing a statement of organization a committee may indicate in a sworn statement that the committee does not expect for each election to receive an amount in excess of $500.00 or expend an amount in excess of $500.00."

Section 35(4) (MCLA s 169.235) provides a committee filing a sworn statement pursuant to Section 24(4) need not file a statement in accordance with Section 35(1) which requires the filing of an annual campaign statement. If a committee receives or expends more than $500.00 during a period covered by a filing, the committee is subject to the Act's filing requirements.

Your committee's statement of organization was not amended to allow for the exemption provided by Section 35(4) until July 10, 1978, ten days after the annual statement was due. This amendment may allow exemption from filing in 1979 if all other criteria are met; however, amendment of the statement of organization does not operate retroactively to exempt a committee from prior filing requirements. Consequently, your committee should have filed an annual campaign statement and late filing fees were appropriately applied.

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

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF:pj

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

November 2, 1978

Mr. Phillip J. Arthurhultz
Michigan Senate Republican Staff
State Capitol Building
Lansing, Michigan 48909

Dear Mr. Arthurholtz:

This is in response to your letter concerning provisions of the Campaign Finance Act, P.A. 388 of 1976, as amended ("the Act"). You present a hypothetical situation in which a candidate for Congress, having raised funds for that purpose, subsequently withdraws from the race in order to seek election to the State Senate. The four questions you raise in connection with this hypothetical are answered in the order presented.

1) When does Federal law no longer apply to the individual under the facts of the hypothetical?

The Federal Elections Campaign Act of 1971, as amended, governs campaign practices relating to candidates for Congress. The Federal Elections Commission administers that law. Consequently, you are referred to that agency for a response to your first question.

2) When does Michigan's Campaign Finance Act become applicable under the facts presented?

The Act applies to an individual as soon as he or she becomes a "candidate" as defined by Section 3(1) of the Act (MCLA § 169.203). This statutory provision sets forth several criteria by which a person becomes a candidate. It is possible for an individual to be a candidate for purposes of Federal law and the Act.

3) May an individual transfer funds from his or her Congressional campaign committee to his or her committee for State Senate?

4) If an individual may transfer funds from his or her congressional campaign committee to his or her committee for State elective office, are the Act's contribution limits applicable to the transfer?

Section 52(1) of the Act (MCLA § 169.252) establishes a contribution limit of $450.00 per election for the elective office of State Senator. It is the understanding of the Department the Federal Elections Campaign Act sets a contribution limit in excess of that amount for Congressional office. Section 45(1) of the Act (MCLA § 169.245) precludes the transfer of funds from one candidate committee of an individual to another candidate committee of the same individual if the contribution limits of the former committee are greater than the limits of the recipient committee.

Although in the hypothetical you present, the transferring committee is subject to Federal law and the recipient committee is subject to the Act, Section 45(1) serves to preclude receipt of the funds by the State Senate Committee. This interpretation is consistent with the contribution limits imposed by the Act.

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

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF:pj

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

November 2, 1978

Mr. Howard Altman
Director of Elections
c/o Oakland County Clerk
Pontiac, Michigan 48053

Dear Mr. Altman:

This is in response to your request for an interpretation of Sections 35(1) and 82(2) of the Campaign Finance Act, P.A. 388 of 1976, as amended ("the Act").

Section 35(1) (MCLA § 169.235) states:

> "(1) In addition to any other requirements of this 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."

Section 82(2) (MCLA § 169.282) provides:

> "(2) Section 35 shall not take effect until June 30, 1978."

You ask whether the first annual campaign statement required by Section 35(1) must be filed on June 30, 1978, or June 30, 1979.

Committees become subject to the reporting requirements of the Act upon their meeting the Act's definitional requirements. Their responsibility to maintain records and materials necessary to satisfy the Act's provisions arises simultaneously. Consequently, the information a committee needs to complete a required campaign statement, annual or otherwise, should be continuously available to it.

Section 82(2) made Section 35 effective on June 30, 1978. In so doing, it made mandatory the filing of an annual statement on that date by any committee in existence on June 20, 1978, the closing date of the annual statement. Although Section 35 also established the closing date for the report, i.e., June 20, the impact of requiring the filing of an annual statement in 1978 was not inappropriately retroactive since affected committees were required by other provisions of the Act to have the necessary information on that date.

The Department's experience indicates virtually all affected committees filed an annual statement on June 30, 1978. Appropriate measures should be taken by filing officials with respect to those committees which did not.

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF:pj

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

November 2, 1978

Mr. Roland T. Baumann II
Assistant General Counsel
Michigan Farm Bureau
7373 West Saginaw Highway
Lansing, Michigan 48909

Dear Mr. Baumann:

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

Specifically, you ask whether contributions for a separate segregated fund established by a nonprofit corporation under Section 55 of the Act (MCLA § 169.255) may be solicited from: (1) the officers and directors of the nonprofit corporation, and (2) the employees of the nonprofit corporation who have policy making, managerial, professional, supervisory, or administrative nonclerical responsibilities.

Section 55 allows a corporation to establish a separate segregated fund to be used for political purposes. This statutory provision reads as follows:

> "(1) A corporation or joint stock company formed under the laws of this or another state or foreign country may make an expenditure for the establishment and administration and solicitation of contributions to a separate segregated fund to be used for political purposes. A fund established under this section shall be limited to making contributions to, and expenditures on behalf of, candidate committees, ballot question committees, political party committees, and independent committees.
>
> "(2) Contributions for a fund established by a corporation or joint stock company under this section may be solicited from any of the following persons or their spouses:
>
> "(a) Stockholders of the corporation.
>
> "(b) Officers and directors of the corporation.
>
> "(c) Employees of the corporation who have policy making, managerial, professional, supervisory, or administrative nonclerical responsibilities.

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

"(a) Members of the corporation who are individuals.

"(b) Stockholders of members of the corporation.

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

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

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

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

Unlike Section 55(2)(b) which contains the phrase "officers and directors of the corporation," Section 55(3)(c) contains the phrase "officers or directors of members of the corporation." Similarly, unlike Section 55(2)(c) which contains the phrase "employees of the corporation," Section 55(3)(d) contains the phrase "employees of the members of the corporation."

A casual reading of Sections 55(2) and 55(3) may lead to the conclusion they are mutually exclusive, i.e., the latter applies to nonprofit corporations and the former to all other corporations. However, an examination of Sections 54 and 55, which are the provisions of the Act authorizing corporate involvement in the financing of elections, reveals Section 55(3) is the only provision that singles out nonprofit corporations. For example, Section 55(1) states a "corporation" may establish a separate segregated fund; it does not refer specifically to a nonprofit corporation. Similarly, Section 54 in identifying contributions prohibited to corporations does not single out nonprofit corporations. It would be erroneous to conclude these statutory provisions do not apply to nonprofit corporations because they do not contain a reference to the latter. Thus, it is more appropriate to conclude Section 55(2), although not making specific reference to corporations, does include them.

Consequently, contributions for a separate segregated fund established pursuant to Section 55(1) by a nonprofit corporation may be solicited from (1) the officers and directors of the nonprofit corporation and (2) the employees of the nonprofit corporation who have policy making, managerial, professional, supervisory, or administrative nonclerical responsibilities. It follows from the above that in the case of a fund established by a nonprofit corporation, solicitations permitted by Section 55(3) are in addition to those permitted by Section 55(2).

It should be noted Section 55(3) restricts contributions for a fund established by a nonprofit corporation to several categories of "persons or their spouses." This language precludes, for example, a corporation which is a stockholder of a member of a nonprofit corporation from contributing to the latter's separate segregated fund.

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

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF:pj

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

November 9, 1978

Mr. Mark K. Wilson
Hill, Lewis, Adams, Goodrich & Tait
100 Renaissance Center
Detroit, Michigan 48243

Dear Mr. Wilson:

This is in response to your request for a declaratory ruling concerning the applicability of the Campaign Finance Act, P.A. 388 of 1976, as amended ("the Act"), to a candidate committee which did not timely file an annual campaign statement because it filed a postelection campaign statement covering the same period of time.

You state the following factual situation:

> "On April 8, 1978, a statement of organization was filed by the Committee for the Grosse Pointe School Board election held on June 12, 1978. On June 1, 1978, the preelection campaign statement covering the period from April 4, 1978, to May 27, 1978, was timely filed (an amended preelection statement was filed the following day). Subsequent to our filing the preelection campaign statement and prior to our anticipated filing of the postelection campaign statement, which would have covered the period from May 27, 1978, to July 2, 1978, the Committee received a notice from the Wayne County Clerk's office that it should have filed an annual report pursuant to Section 35(1) of Act 388 of the Public Acts of 1976 (State Campaign Expense Act) by June 30, 1978. This notice was received on July 10, 1978, and an annual report covering the period from May 27, 1978, to June 20, 1978, as indicated in the notice, was filed with the Wayne County Clerk's Office on that day. The notice received from the Wayne County Clerk's Office also stated that the Committee was subject to a penalty of $10.00 per day for failure to timely file the annual report, resulting in a total penalty amount of $100.00."

You ask whether the subject committee was required to file an annual report by June 30, 1978, or, in the alternative, whether the penalty for late filing could be waived under the above factual circumstances.

You make three arguments to support the contention the committee was not required to file the annual report and, consequently, that it did not have to pay the late filing fee:

(1) The annual report filed for the period from May 27, 1978, to June 20, 1978, duplicates the information which would have been set forth in the postelection campaign statement had it covered the period from May 27, 1978, to July 2, 1978.

(2) The postelection report, according to Section 33(1) of the Act (MCLA § 169.233), requires the postelection report to cover a period from the end of the preelection report to the closing date of the postelection report.

(3) Section 33(1)(a) and (b) of the Act set forth the periods and the filing dates for the preelection and postelection campaign statements. There is no statutory provision indicating an annual report should be filed under the above factual circumstances for a period of less than a month (May 27, 1978, to June 20, 1978).

Section 25(1) of the Act (MCLA § 169.225) provides the period covered by a campaign statement is the period commencing with the day after the closing date of the most recently filed campaign statement, and ending with the closing date of the campaign statement in question. All campaign statements, whether annual, preelection, or postelection, begin where the previous report left off and end on the closing date as provided by the Act. Moreover, nowhere in the Act is there any requirement that the statement in question covers any number of months, weeks, or days; the only requirement is that there not be any gaps from one report to the other as these reports become due under the Act.

Consequently, your first contention, i.e., the annual report filed for the period from May 27, 1978, to June 20, 1978, duplicates the information which would have been set forth in the postelection campaign statement had it covered the period from May 27, 1978, to July 2, 1978, is immaterial since an annual report was statutorily required on June 30, 1978, with a closing date of June 20, 1978. The fact a postelection report was also due does not obviate the requirement to file the annual report.

As indicated previously, your second and third arguments are not consistent with the requirements of the Act. There is no absolute requirement that the postelection report begin on the closing date of the preelection report, although that will be true generally when there are no intervening required reports; nor is there a prohibition against a report covering a period of less than a month.

Consequently with respect to the factual situation detailed in your request, the committee which you represent was required to file an annual statement on June 30, 1978, notwithstanding a postelection report was also due shortly afterwards. Failure to file an annual report properly required an imposition of late filing fees.

Section 35(3) (MCLA § 169.235) requires payment of a late filing fee of $10.00 for each day the annual campaign statement remains not filed, with the total late filing fees not to exceed $300.00. The Department has no discretion to waive the late filing fees.

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

Sincerely,

Richard H. Austin
Secretary of State

RHA:pj

STATE OF MICHIGAN

FRANK J. KELLEY, ATTORNEY GENERAL

Opinion No. 5422

December 29, 1978

CORPORATIONS:

Contributions of corporate funds to defray cost of recount

ELECTIONS:

Contributions of corporate funds to defray cost of recount

CAMPAIGN FINANCE ACT:

Contributions of corporate funds to defray cost of recount

A corporation may not contribute corporate funds to defray the expenses of conducting a recount.

Honorable Tom Holcomb

State Representative

Room 303

The Capitol

Lansing, Michigan 48909

You have asked whether a corporation may contribute funds for the purpose of defraying the expenses of conducting a recount of the votes cast at an election.

The current statutory provision relative to corporation political activity is 1979 PA 388, Sec. 54(1), MCLA 169.2541(1); MSA 4.1703(54)(1), which provides:

> 'Except with respect to the exceptions and conditions in subsections (2) and (3) [1] 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 are excluded from the definition of a contribution pursuant to section 4(3)(a).'

OAG, 1975-1976, No 5123, p 629 (September 30, 1976), ruled that 1954 PA 116, Sec. 919; MCLA 168.919; MSA 6.1919, [2] was unenforceable with regard to an election involving a ballot proposition. Subsequently, a letter opinion dated March 17, 1977 to the Honorable Thaddeus C. Stopczynski, ruled that the rationale of Opinion No. 5123, supra, was such that section 919 would not prohibit a corporation from contributing to the expense of recounting the votes cast at a school millage election. The rationale of those previous opinions would apply with like effect to the current statute

and where the recount pertains to the votes cast at an election on a ballot question, section 54 does not apply.

The contribution of funds toward the expenses of recounting votes at elections other than those involving ballot questions, however, do not fall within the exceptions in the remaining subsections of section 54, nor within section 55, of 1976 PA 388, and thus the issue is whether, in contributing to the costs of recount of elections of candidates, a corporation is making a 'contribution' or 'expenditure.'

The term 'contribution' is defined in section 4 of 1976 PA 388, MCLA 169.204; MSA 4.1703(4). The operative subsection is subsection (1) which provides that 'contribution' means:

> '. . . a payment, a gift, subscription, assessment, expenditure, contract, payment for services, dues, advance, forbearance, loan, donation, pledge or a promise of money or anything [sic] of ascertainable monetary value, whether or not conditional or legally enforceable, or a transfer of anything [sic] 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)

The purpose of a recount is to determine whether the results of the first count of the ballots should stand or should be changed because of a fraud or mistake in the canvass of the votes or in the returns thereon made by inspectors. 1954 PA 116, Sec. 862, MCLA 168.862; MSA 6.1862. There are costs involved in holding a recount just as there are costs involved in seeking office. These costs may deter a person from seeking office, limit a candidate's campaign or influence a candidate who has apparently lost an election by a close margin from seeking a recount unless the candidate in all three instances receives financial assistance. Thus, a financial contribution to pay for a recount may affect the outcome of an election as much as expenditures made to finance the election campaign.

It may also be noted that the conduct of a recount frequently involves more than a simple technical procedure encompassing a second count of the votes cast. Often a recount develops into an adversary administrative proceeding requiring the assistance of specialists in the area of election law, and can also end in extensive litigation. Presumably part of the contribution will be used to finance payment for these services as well.

In Advisory Opinion on Constitutionality of 1975 PA 227 (Questions 2-10), 396 Mich 465, 492-493; 242 NW2d 3 (1976), the court stated:

> '. . . The legislative intent in prohibiting financial involvement of corporations in the elective process was to prevent the use of corporate funds to impose undue influence upon elections. Large aggregations of capital controlled by a few persons could have a significant impact upon the nomination or election of a candidate. The possibility of misuse of corporate assets by persons acting on behalf of uniformed or unwilling shareholders and the attempts at influence or importunity which might be exerted upon a successfully elected candidate by a contributing corporation represent abuses which the passage of the corrupt practices act sought to eliminate.
>
> 'The state's interest in preserving the integrity of the elective process must be balanced against the assumed right to free expression of an artificial entity (i.e., a corporation) regarding the candidacy of persons seeking election to public office. Recognizing that the state must show a compelling interest to justify interference with the fundamental right of freedom of speech or press, it is our opinion that this test is met and that the Legislature can exercise its power to insure the integrity of the elective process by prohibiting any corporate contributions or expenditures made for the purpose of influencing either the nomination or election of a candidate. We need not discuss further those circumstances under which corporations may be afforded First Amendment protection.
>
> 'The prohibition against corporate contributions or expenditures for such purposes does not violate their right to equal protection under the law as guaranteed by art 1, Sec. 2. The United States Supreme Court in Buckley, supra, recently restated the established principle that:
>
> "[A] 'statute is not invalid under the Constitution because it might have gone further than it did,' Roschen v Ward, 279 US 337, 339 [49 S Ct 336; 73 L Ed 722 (1929)], that a legislature need not 'strike at all evils at the same time,' Semler v Dental Examiners, 294 US 608, 610 [55 S Ct 750; 79 L Ed 1086 (1935)], and that reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative

> mind,' 489 [75 S Ct 461; 99 L Ed 563 (1955)].' (105.)'

Thus, the reasons expressed by the Supreme Court for sustaining legislation that prohibits corporate contributions to political candidates for their election campaigns apply with equal vigor towards prohibiting contributions to finance the costs of a recount.

It should also be noted that 1976 PA 388, Sec. 55, supra, authorizes a corporation to make an expenditure for establishment and solicitation of contributions to a separate segregated fund to be used for political purposes and that contributions to such a fund may only be made by stockholders, officers, directors and policy-making employees. This sole exception indicates legislative intent that corporate funds as such are not to be used to influence selection of candidates.

It is therefore my opinion that, inasmuch as a financial contribution to pay the expenses of a recount are for the purpose of influencing an election, a corporation is prohibited from making such a contribution to a candidate.

It is also necessary to consider whether an expenditure of that nature would be an 'expenditure' as that term is defined in subsection (1) of section 6 of 1979 PA 388, MCLA 169.206; MSA 4.1703(6), which defines 'expenditure' as:

> '. . . A payment, donation, loan, pledge, or promise of payment of money or anything [sic] 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.'

The descriptive language of section 6(1) is slightly different than the language of section 4(1) defining a 'contribution,' but the scope of the two provisions is functionally the same. For the reasons stated above in the course of analyzing section 4(1), I am also of the opinion that corporate expenditures made for the purpose of defraying the expense of conducting or participating in a recount of the votes cast at an election to nominate or elect a candidate is an 'expenditure' within the meaning of section 54(1).

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[1] So in the act. Presumably reference to subsections (3) and (4) is intended.

[2] This provision was repealed but was substantially similar to 1976 PA 388, Sec. 54, supra.