1-87-CD

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

January 20, 1987

Ms. Peggy E. Thodis
IMPAC
P.O. Box 20163
Lansing, Michigan 48901-0763

Dear Ms. Thodis:

This is in response to your request for a declaratory ruling concerning the applicability of the Campaign Finance Act (the Act), 1976 PA 388, as amended, to Industrial Michigan (IM) and the Industrial Michigan Political Action Committee (IMPAC).

You indicate that IM is an unincorporated association consisting of individuals, partnerships, corporations, associations and other persons. Members of IM are required to pay dues as provided in the association's bylaws. IM does not spend any of the dues it receives to directly participate in ballot question campaigns or candidate elections.

IMPAC is an independent committee as defined in section 8(2) of the Act (MCL 169.208). According to Article III of the committee's bylaws, IMPAC was established by IM "to solicit and receive voluntary political contributions from individuals to make expenditures (contributions) to candidates for elective office." The relationship between IM and IMPAC is further explained in paragraphs 11 through 13 of your statement of facts:

> "11. IM and IMPAC funds are maintained in separate bank accounts and separate books and records are maintained for the two organizations. The contributions and expenditures of IMPAC are reported as required under the Campaign Finance Act. None of the activities of IM is reported to the Department of State since none of the funds of IM is classified as a contribution or expenditure as defined in the Act.
>
> 12. IM and IMPAC have, in the past, jointly sponsored dinners and receptions for prominent public figures and social events such as golf outings. Contributions to such an event for IMPAC are deposited in IMPAC accounts and donations or dues received by IM for such an event are deposited in IM accounts.
>
> 13. IM funds are used to pay the administrative expenses of IMPAC, including the costs of dinners, receptions and social events sponsored by the organizations."

You then request a series of rulings concerning the Act's application to IM and IMPAC. First, you suggest that IM is not a "committee" as defined in section 3(4) of the Act (MCL 169.203). This section states:

> "Section 3. (4) '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."

According to your statement of facts, IM and IMPAC have jointly sponsored dinners, receptions and other social events at which contributions to IMPAC are solicited and received. Pursuant to section 4 (2) of the Act (MCL 169.204), "contribution" includes the purchase of tickets or payment of an attendance fee for dinners, luncheons, rallies, testimonials and similar fund raising events. The definition of "fund raising event" is set out in section 7(4) of the Act (MCL 169.207):

> "Sec. 7. (4) 'Fund raising event' means an event such as a dinner, reception testimonial, rally, auction, bingo, or similar affair through which contributions are solicited or received by purchase of a ticket, payment of an attendance fee, donations or chances for prizes, or through purchase of goods or services."

These definitions indicate that the social gatherings sponsored by IM and IMPAC, as described in your letter, are fund raising events which are subject to the Act's regulation.

Section 26(g)(v) (MCL 169.226) requires an independent committee to report in its campaign statement expenditures incident to a fund raising event. It is therefore clear that paying the costs of a fund raiser is an expenditure unless otherwise provided by the Act.

As previously noted, IM funds are used to pay the administrative expenses of IMPAC and the costs of jointly held dinners, receptions and social events, which are in fact fund raising events. The issue raised by your first ruling request is whether IM's payment of IMPAC's administrative and fund raising costs is an "expenditure" as defined in the Act. If so, IM is a committee if the expenditures total $200.00 or more in a calendar year.

Pursuant to section 6 of the Act (MCL 169.206), an "expenditure" is anything of ascertainable monetary value given in assistance of, or in opposition to, the nomination or election of a candidate, or the qualification, passage or defeat of a ballot question, including a contribution. However, section 6(3)(c) provides:

"Sec. 6. (3) Expenditure does not include:

* * * * *

(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."

Section 6 (3)(c) exempts an expenditure for the establishment, administration or solicitation of contributions to a fund or independent committee from the Act's regulation. Therefore, expenditures by an unincorporated association for establishing, administering or soliciting contributions to an affiliated independent committee do not trigger the Acts' registration requirements. In response to your first ruling request, IM is not a committee under the Act by virtue of its paying IMPAC's administration and solicitation costs.

The second and third issues you raise relate to IM's corporate membership. Historically, the use of corporate money in candidate elections has been totally prohibited. Section 55(1) carves a very narrow exception to this longstanding prohibition by authorizing a corporation to establish a single separate segregated fund which may participate in election activities. Specifically, section 55(1) allows a corporation to "make an expenditure for establishment and administration and solicitation of contributions to a separate segregated fund to be used for politcal purposes". The separate segregated fund is then allowed to solicit and receive contributions from a limited number of individuals and to make contributions to candidate committees, ballot question committees, political party committees and independent committees. Contributions received and expenditures made by the fund must be reported as required by the Act. However, corporate dollars used to pay the establishment, administration and solicitation costs of the separate segregated fund are not reported because they are excluded from the definition of "expenditure" by section 6(3)(c). Moreover, a corporation which pays the administration and solicitation costs of its separate segregated fund does not itself become a committee, and thus continues to be excluded from participation in candidate elections.

As indicated above, corporate participation in election campaigns was prohibited in Michigan prior to the passage of the Act. The Act modified the historical ban on corporate participation in two ways. First, corporations are permitted by section 54(3) and (4) to make contributions and independent expenditures in ballot question elections. Second, corporations may establish separate segregated funds under section 55, as outlined above.

It is crucial to note that no corporate treasury monies are allowed to be used to support or oppose candidates. This policy is continued by the Act. In fact, section 54 actually includes a more stringent minimum prison sentence and higher fine amounts than its predecessor provisions. It is noteworthy that making an unlawful corporate contribution or expenditure is and was a felony in Michigan under section 54 and its predecessor MCL 168.919.

The Act manifests the Legislature's continued policy against participation in candidate elections with the limited exception provided to corporate payment with respect to some overhead expenses of separate segregated funds. You state in your letter that IM is composed of dues paying members, including corporations. If an association with corporate dolllars in its treasury paid an independent committee's operating costs, corporate money would flow into the independent committee and could be used to covertly finance candidate elections. Indirect corporate participation of this nature would allow corporations to circumvent the direct prohibition against the use of corporate money in the political process, a result the legislature could not have intended.

Accordingly, if an unincorporated association is funded by corporate dollars, the association may not pay the administrative and solicitation costs of an independent committee. To hold otherwise would result in impermissible corporate contributions to the independent committee. Consequently, any expenditures IM makes for the administration and solicitation of contributions to IMPAC must be made from an account which has not been tainted with corporate dues money.

Your final question concerns the joint sponsorship of fund raising events by IM and IMPAC. In an interpretative statement issued to Michael W. Hutson, dated September 20, 1978, the Department explained the procedures which must be followed when holding a joint fund raising event. A copy of the Hutson letter is attached for your convenience. Prior to a joint event, the sponsors are required to execute a written agreement. The agreement must include, among other things, the exact share of contributions to be assigned to each sponsor and designation of a joint account for the deposit of all contributions. In addition, the Hutson letter states:

> "All advertising, either before or at the event, must inform contributors of the following:
>
> 1. The event is a joint fundraiser.
>
> 2. The names of the committees and candidates involved.
>
> 3. The office sought by each candidate.
>
> 4. The agreed share of each contribution to be allocated to each candidate
>
> 5. The manner of writing checks or other written instruments by the contributors to the event. For example, the name of each candidate receiving a contribution should appear on a written instrument."

There is nothing in the Act which prevents IM and IMPAC from co-sponsoring a fund raiser if the Hutson procedures are followed. However, these procedures clearly require that contributions and expenditures associated with a joint fund raiser are to be shared by the sponsors of the event and then allocated pursuant to the written agreement. As noted previously, section 54 of the Act prohibits a corporation from making contributions or expenditures under the Act. Consequently, corporate contributions may not be solicited or accepted at a fund raiser which is co-sponsored by a committee under the Act.

Finally, it should be noted that IM may pay the administration and solicitation costs of any fund raiser held, either jointly or spearately, by IMPAC. The Department noted in an interpretative statement to Mr. Jack Schick, dated October 4, 1984, that the predominant element of "solicitation" is communication. As Mr. Schick was advised, expenditures for the purchase of entertainment, premiums or raffle prizes are not included in the ordinary meaning of the term "solicitation" and result in contributions to the fund raising committee. Similarly, any expenditures by IM which exceed the ordinary administrative and solicitation costs of a fund raiser held to benefit IMPAC will result in a contribution from IM to IMPAC. If such contributions total $200.00 or more in a calendar year, IM will be required to register as a committee and file periodic disclosure reports under the Act.

This response is a declaratory ruling concerning the specific facts and issues presented.

Very truly yours,

Richard H. Austin
Secretary of State

Attachments

RHA:PTF:AC:bk

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

January 20, 1987

Mr. Donald L. Correll
820 N. Washington Avenue
Lansing, Michigan 48906

Dear Mr. Correll:

This is in response to your inquiry regarding the applicability of the Campaign Finance Act (the Act), 1976 PA 388, as amended, to the Democratic Leadership Fund, an independent committee. Specifically, you ask whether the committee is required to itemize fund raising expenditures which are not made to support or oppose a particular candidate or ballot question.

In general, an independent committee must report contributions received and expenditures made for the purpose of influencing elections. "Expenditures" is defined in section 6 (1) of the Act (MCL 169.206) as the payment of anything of ascertainable monetary value to assist or oppose the nomination or election of a candidate or the qualification, passage or defeat of a ballot question. However, according to section 6(3)(c):

> "Sec. 6. (3) Expenditure does not include:
>
> * * * * *
>
> (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." (Emphasis added.)

The definition of "fund raising event" is set out in section 7(4) of the Act (MCL 169.207):

> "Sec. 7. (4) 'Fund raising event' means an event such as a dinner, reception, testimonial, rally, auction, bingo, or similar affair through which contributions are solicited or received by purchase of a ticket, payment of an attendance fee, donations or chances for prizes, or through purchase of goods or services." (Emphasis added.)

According to section 4(2) (MCL 169.204), "contribution" includes the purchase of tickets or payment of an attendance fee for a fund raising event.

Section 6(3)(c) suggests that an independent committee's solicitation costs are excluded from the Act's requirements. However, such a broad interpretation conflicts with the specific reporting requirements for fund raising events found in section 26 (MCL 169.226). In particular, section 26(g)(v) provides that an independent committee shall reports its "expenditures incident to a [fund raising] event." The apparent conflict between these sections must be resolved in order to answer your questions.

Two well established rules of statutory construction are useful in this regard. First, inconsistencies within a statute must be resolved so that each provision is given meaning and effect, People v Stinson, 113 Mich App 719 (1982), and second, specific statutory provisions control over general provisions. Capps v Department of Social Services, 115 Mich App 10 (1982). With respect to the latter rule, the Supreme Court has stated:

> "Where there is in the same statute a specific provision, and also a general one which in its most comprehensive sense would include matters embraced in the former, the particular provision must control, and the general provision must be taken to affect only such cases within its general language as are not within the provisions of the particular provision." Evanston YMCA Camp v State Tax Commission, 369 Mich 1, 8; quoting with approval 50 Am Jur, Statutes, §367, p. 371.

Section 26(g) is a specific provision which goes beyond the Act's general disclosure requirements. It creates detailed reporting obligations which apply to fund raising events. Section 6(3)(c), on the other hand, is a more general term which applies to expenditures for the solicitation of contributions and not simply to contributions received at fund raisers. Applying the rule discussed above, it must be concluded that the specific requirements of section 26(g) control, and section 6(3)(c) "must be taken to affect only such cases within its general language as are not within the provisions of the particular provision."

You state that, in addition to holding fund raisers, the Democratic Leadership Fund engages in "non-particularized forms" of fund raising activities, such as general mailings to potential contributors. The above analysis indicates that expenditures for general activities whose purpose is to solicit contributions to an independent committee are not subject to the Act's specific reporting requirements. Consequently, only those expenditures which are incident to a particular fund raising event must be reported in the detail required by section 26.

However, while the Act does not require an independent committee to itemize general solicitation costs, section 26(b) provides that a committee shall report "the total amount of expenditures made during the period covered by the campaign statement." In order to comply with this provision, an independent committee such as the Democratic Leadership Fund must report its total fund raising expenditures for the reporting period in question as a single line item in campaign statements filed with the Department.

Your letter did not include a specific statement of facts describing the Democratic Leadership Fund's fund raising activities. Therefore, this response is an interpretative statement and does not constitute a declaratory ruling.

Very truly yours,

Phillip T. Frangos
Director
Office of Hearings and Legislation

PTF:bk

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

February 20, 1987

Mr. Kimbal R. Smith III
Atrium Center, Suite B
215 South Washington Square
Lansing, Michigan 48933

Dear Mr. Smith:

This is in response to your request for an interpretation concerning the applicability of the Campaign Finance Act ("the Act"), 1976 PA 388, as amended, to the campaign finance activities of a certain non-profit corporation.

The Michigan Institute for Political Action ("MIPA") is a non-profit corporation. You state:

> "MIPA intends to operate as an independent committee and as a corporation organized for political purposes. The corporation was incorporated solely for the liability purposes and is limited by its Articles to engaging in lawful political activities."

You ask whether MIPA may register and operate as an independent committee pursuant to the Act.

Under the provisions of section 54(1) of the Act (MCL 169.254), a corporation is prohibited from making a contribution or expenditure or providing personal services, unless the corporation is excepted under sections 54(2) or (3) of the Act, or the corporation operates through a separate segregated fund in accordance with the provisions of section 55 of the Act (MCL 169.255).

Section 54(2) prohibits a corporation from making a contribution or expenditure or providing personal services, but excepts "corporations formed for political purposes" from its prohibition. (Emphasis added.)

Ever since corporations were first prohibited from making expenditures or contributions in Michigan elections by enactment of the corrupt practices act, 1913 PA 109, an exception was made for "corporations formed for political purposes". Section 14 of the corrupt practices act; 1 Comp. Laws 1915, §3841.

Section 14 of the corrupt practices act was reenacted as section 919 of the Michigan election law, 1954 PA 116, §919; 1970 CL 168.919, which was eventually replaced by section 54 of the Act. Each of these provisions prohibited corporate involvement in election financing, but provided an exception for "corporations formed for political purposes". Although none of the statutory enactments or reenactments has explicitly defined the term, it must be kept clearly in mind that the subject matter of these laws is election campaign financing, and the prohibitions and exceptions of these laws must be interpreted within that context.

This response will consider whether MIPA is excepted from the prohibitions of section 54(1) of the Act as "a corporation formed for political purposes" as that term is used in section 54(2) of the Act. However, although it is presumed from your letter that MIPA does not intend to operate through a separate segregated fund, as provided in section 55 of the Act, consideration of that section will shed light on the meaning of the phrase "political purposes" as used in the Act.

Both sections 54 and 55 use the term "political purposes". Section 55 presents a recent innovation in campaign financing while section 54 presents a more traditional approach. The traditional exception (§54) did not define the term "political purposes"; however, the more recent exception to the prohibition against corporate involvement, allowing the use of separate segregated funds pursuant to section 55, manifests a clear indication of what the legislature intended by the term "political purposes".

Section 55(1) of the Act provides for corporate participation in election financing by means of a separate segregated fund. Pursuant to this section, a corporation

> ". . . 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 ... committees." (Emphasis added.)

The statutory language of section 55(1) leads to the conclusion that "political purposes" as used in this section means the making of contributions and expenditures pursuant to the Act.

Such a limited interpretation of the term "political purposes" is reinforced by the long statutory history of excluding corporate involvement in campaign financing, except for those organizations whose only purpose and function is to make campaign contributions and expenditures and which incorporate for liability purposes only. The exception is meant to afford the corporate protection of limited liability to an organization whose only purpose and function is to make campaign contribution and expenditures.

Sections 54 and 55 are related by subject matter and proximity. Both sections deal with corporate involvement in election campaign financing. The term "political purposes" is a critical element in both sections and must be interpreted to mean the same thing in each section. There is no reason to suppose that this term should be given a different meaning in each section.

In fact, the opposite is true. Sections 54 and 55 provide complementary means of providing the corporate protection of limited liability to persons involved in election campaign financing. Separate segregated funds under section 55 are afforded this protection by virtue of being a part of the corporation which establishes it. Other organizations whose only purpose and function, like separate segregated funds, is to make contributions and expenditures under the Act, may incorporate for liability purposes only within the exception of section 54.

In a letter to Richard D. McLellan dated May 19, 1986, it was stated:

> "In order to be deemed 'a corporation formed for political purposes' under the Act, two conditions must be met: (1) the organization must be incorporated for liability purposes only, and (2) the organization must be created solely to engage in political activities, i.e., the organization must be in its entirety a committee under the Act." (Emphasis added.)

"Committee" is defined in section 3(4) of the Act (MCL 169.203):

> "(4) '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."

An organization which is in its entirety a committee under the Act is one whose only function is to receive "contributions" or make "expenditures" pursuant to the Act.

Contribution is defined in section 4(1) of the Act (MCL 169.204), which states:

> "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."

Section 4(3) of the Act provides that contribution does not include: 1) uncompensated volunteer personal services, or unreimbursed travel costs voluntarily incurred (section 4(3)(a) of the Act); 2) amounts received which were previously reported as a contribution (section 4(3)(b) of the Act), and 3) food and beverage under $50.00 donated by an individual (section 4(3)(c) of the Act).

Section 4(3) refers to amounts provided for the purpose of influencing elections because amounts not provided for this purpose would not meet the definition of a contribution and would not require an exception. This becomes even more clear when we consider the exclusions under section 6 of the act (below).

Consideration of section 4 of the Act leads to the conclusion that amounts provided under sections 4(3)(a), (b) and (c) of the Act are contributions, but are not subject to the reporting and limitation provisions of the Act. As a matter of fact, amounts received under section 4(3)(b) of the Act must have already been reported and this section merely prevents double reporting.

Expenditure is defined in section 6 of the Act (MCL 169.206), which provides in part:

> "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."

Section 6(3) of the Act provides that expenditure does not include: 1) amounts paid which were previously reported as an expenditure (section 6(3)(a) of the Act); 2) an expenditure for communication with the person's paid members or shareholders (section 6(3)(b) of the Act); 3) an expenditure for communication which does not support a candidate or ballot question by name or clear inference, or an expenditure for establishment, administration or solicitaion of contribution to a fund or independent committee; 4) an expenditure by a media company in the regular course of its publication or broadcasting, and 5) an expenditure for nonpartisan voter registration and get-out-the-vote activities. Here the legislature chose to use the word expenditure as shorthand rather than reiterate the entire definition. The purpose is to make clear that it is referring to amounts expended for the purpose of influencing elections.

In order to be deemed "a corporation formed for political purposes", an organization must be incorporated for liablity purposes only, and its only function must be to receive "contributions" or make "expenditures" for the purpose of influencing an election. For purposes of a corporation "formed for political purposes", contributions or expenditures are amounts received or expended which are included within the definitions of sections 6(1) and 4(1) of the Act including amounts received or expended which are specifically excluded under sections 6(3) and 4(3) of the Act.

Article II of MIPA's Articles of Incorporation states:

> "The purpose of the corporation is to organize the corporation's members for liability purposes only in order to engage in political activities, including:
>
> 1. To receive contributions and make expenditures in support of or in opposition to the nomination or election of individuals to public office or to influence the passage or defeat of ballot question proposals;
>
> 2. To advocate and speak out on political issues;
>
> 3. To participate in political party activities;
>
> 4. To participate in non-partisan voter registration and get-out-the-vote campaigns; and
>
> 5. To promote the cause of democracy by opposing excessive governmental regulation of citizen political activity."

As stated in a letter to Richard D. McLellan dated October 22, 1985:

> "In order to be deemed a corporation 'formed for political purposes' under the Act, such corporation must be formed solely for political purposes and must be incorporated for liability purposes only, as shown not only by its articles of incorporation or by-laws, but also by the manner in which the corporate enterprise is conducted." (Emphasis added.)

The only purpose and function of a corporation "formed for political purposes" as contemplated by the Act is reflected in part 1 of Article II. The purposes enumerated in parts 2 through 5 of Article II are acceptable only in so far as they are coincidental with part 1. That is to say, parts 2 through 5 may be pursued only by receiving contributions or making expenditures. If in receiving contributions and making expenditures, MIPA coincidentally pursues the purposes of parts 2 through 5, this does not violate the concept of a corporation formed for political purposes. However, if MIPA pursues part 5 by lobbying, this would not be consistent with the concept of a corporation formed for political purposes.

Since your letter fails to disclose any detailed information describing the manner in which MIPA conducts its operations, it is not possible to determine whether MIPA conducts its corporate enterprise in a manner consistent with a corporation formed for political purposes. Obviously, additional information must be provided before a more specific response can be rendered.

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/bk

3-87-CI

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

February 23, 1987

Mr. Richard D. McLellan
Dykema, Gossett, Spencer, Goodnow & Trigg
800 Michigan National Tower
Lansing, Michigan 48933

Dear Mr. McLellan:

This is in response to your inquiry regarding the applicability of the Campaign Finance Act (the Act), 1976 PA 388, as amended, to an officeholder expense fund (OEF) which has no assets "but a debt that will not have been paid at the time the public official's term of office ends." You ask the following questions:

> "1. Will additional OEF reports be required upon dissolution of the fund or annually if the fund remains in existence with an unpaid debt?
>
> 2. Is an OEF subject to the donation limits established in the Campaign Finance Act after the public official's term of office ends?"

OEF's are governed by the provisions of section 49 of the Act (MCL 169.249) and rule 39, 1982 AACS R169.39. Section 49 states:

> "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."

Rule 39 establishes certain record keeping and reporting requirements. A copy of the rule is attached for your convenience.

There is nothing in section 49 or rule 39 relating to the termination of officeholder accounts. However, other entities created under the Act (committees and separate segregated funds) are terminated by filing dissolution statements. Section 24(5) of the Act provides:

> "Sec. 24. (5) Upon the dissolution of a committee, a statement indicating dissolution shall be filed with the filing officials with whom the committee's statement of organization was filed. Dissolution of a committee shall be accomplished in accordance with rules promulgated by the secretary of state subject to section 15."

Rule 28, 1982 AACS R169.28, further describes the dissolution process:

> "Rule 28. (1) A committee which determines it will no longer receive contributions or make expenditures may dissolve by filing a form prescribed by the secretary of state.
> (2) A dissolution shall consist of a campaign statement that covers the period from the closing date of the last report filed to the date of dissolution and shall include a statement as to the disposition of residual funds.
> (3) A committee may not dissolve if it has assets, outstanding debts, or unpaid late filing fees."

"Dissolution" is not defined anywhere in the Act. However, according to The American Heritage Dictionary of the English Language, "dissolution" means the "extinction of life" or the "annulment or termination of a formal or legal bond, tie, or contract." Black's Law Dictionary states that "dissolution" is the "act or process of dissolving; termination; winding up." Thus, dissolution may be viewed as a process through which an entity winds up its affairs. Under the Act, a committee or OEF can wind up its affairs only by disposing of its assets and paying outstanding debts and late filing fees, where applicable.

Section 24(5) and rule 28 do not specifically apply to OEF's. However, in an interpretive statement issued to Mr. Maurice Kelman, dated July 18, 1986, the Department stated:

> "The only persons authorized to establish OEF's are elected public officials. An official who leaves office has no authority to maintain an officeholder account. Thus, a public official must dissolve his or her OEF upon leaving office . . . ."

Rule 39(5) provides that receipts to and disbursements from an OEF "shall be reported pursuant to the provisions of the act." Final activities which result in dissolution are reported in accordance with the provisions of section 24(5) and rule 28. It follows that dissolution of an OEF is accomplished by disposing of the OEF's assets, paying outstanding debts, and filing a dissolution statement.

Turning to your first question, a public official is required to dissolve his or her OEF when the official's term of office expires. However, the dissolution process is not complete until the OEF's assets are dispersed, its debts are paid, and a dissolution statement is filed. During the winding up phase, an OEF remains subject to the Act's requirements. Thus, an OEF which is in the process of dissolving but has not yet filed an acceptable dissolution statement must continue to file annual disclosure statements pursuant to section 49(2) of the Act.

You next ask whether an OEF established by a retiring public official is subject to the Act's "donation limits" after the official's term of office ends. Pursuant to section 49(2), contributions to an OEF are not exempt from the contribution limitations established in section 52 of the Act (MCL 169.252). Section 52(1) states that a person other than an independent or political party committee shall not contribute, with respect to a single election, more than $250 to a candidate for state representative, more than $450 to a candidate for state senator, or more than $1,700 to a candidate for other state elective offices. As stated previously, an OEF which has unpaid debts is governed by the Act's restrictions until the dissolution process is completed. Therefore, an OEF remains subject to the limitations found in section 52 after a public official's term of office has ended.

Finally, it should be noted that an OEF may only be used "for expenses incidental to the person's office." An ex-official can no longer incur expenses incidental to office. Accordingly, an OEF maintained during the dissolution process by a retired public official is limited to accepting donations and making disbursements for the purpose of satisfying debts incurred prior to the expiration of the official's term of office. Any new activity is strictly prohibited.

This response is informational only and does not constitute a declaratory ruling because none was requested.

Very truly yours,

Phillip T. Frangos
Director
Office of Hearings and Legislation

PTF/AC/bk

Attachment

Rule 39. (1) An elected officeholder shall indicate on the statement of organization, or on an amendment thereto, filed by the officeholder's candidate committee, the existence of an officeholder's expense fund.

(2) Money given specifically to an officeholder's expense fund shall be designated for that purpose by the donor.

(3) Money received by an officeholder's expense fund shall be kept in a depository account separate from the candidate committee's funds.

(4) The treasurer of an officeholder's expense fund shall keep records of all receipts to, and disbursements from, the fund for a period of 1 year longer than the officeholder's term of office.

(5) Receipts to, and disbursements from, the officeholder's expense fund shall be reported pursuant to the provisions of the act.

(6) The officeholder's expense fund report shall be signed by the treasurer of the fund and by the officeholder on the lines indicated following the verification statement.

(7) The officeholder's expense fund report shall be filed with the filing official designated by the act to receive the officeholder's candidate committee campaign statements.

(8) Money may be transferred from the candidate committee of an elected public official to the officeholder expense fund of that public official in accordance with the provisions of the act.

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

March 17, 1987

Senator Basil W. Brown
P.O. Box 30036
Lansing, Michigan 48909

Dear Senator Brown:

Your Administrative Assistant, Janet Lockwood, has recently requested a declaratory ruling on your behalf with respect to the operation of the Campaign Finance Act, 1976 PA 388, as amended (the Act). This request apparently asks whether it is permissible for a state senator's candidate committee and officeholder expense fund to make "loans" to the candidate/officeholder who established the committee and the officeholder expense fund (OEF).

Rule 6 of the administrative rules promulgated to implement the Act, 1979 AC R169.6, authorizes the Secretary of State to issue a declaratory ruling "on written request of an interested person." The declaratory ruling is issued with respect to the "applicability of the Act or these rules to an actual statement of facts."

Ms. Lockwood's request does not set forth an actual statement of facts. Therefore, it would be inappropriate for the Secretary of State to issue a declaratory ruling in response to Ms. Lockwood's request. However, the issues which appear to be of concern can be addressed in the form of an interpretative statement. The following analysis is issued so that you and other candidates can better understand the way in which candidate committee accounts and officeholder expense funds may spend money they hold.

Candidate Committees

The Act has been in effect for nearly ten years. In the course of administering the Act the Department of State has issued numerous declaratory rulings and interpretative statements in response to questions about the applicability of the Act. Some of the inquiries have involved the use of money in a candidate committee's account.

On November 2, 1978, an interpretative statement (enclosed) was issued to Christopher L. Rose. That letter makes it clear that "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."

Subsequently, on May 29, 1979, Senator Mitch Irwin received a declaratory ruling which discussed whether some of the expenses of his campaign met the test of being "made to influence an election." This ruling is also enclosed.

Since that time the Department has on numerous occasions published summaries of these and other letters which make it clear that committee funds are only to be used to influence an election.

Four exceptions to this requirement are spelled out in the Act and the rules. As the cited letters indicate, section 45 of the Act (MCL 169.245) provides three possible ways to distribute remaining funds when a committee dissolves. Rule 39(8), 1979 AC R169.39, also permits an officeholder to transfer money from the candidate committee to the officeholder expense fund.

The candidate committee is limited to making expenditures to influence the candidate's own election or the four purposes indicated above. Personal or business loans to the candidate are well outside these enumerated purposes, just as outright payments to the candidate are prohibited. An individual who has received such loans must pay them back immediately so that he or she can come into compliance with the Act.

Section 21 of the Act (MCL 169.221) contains a number of requirements for the administration and accounting of funds of a committee. Included is a provision in section 21(g) which prohibits funds of committee from being commingled with the funds of any other person. The emphasis of section 21 is on cash control and accountability through the appointment of a treasurer, the use of a single depository and the prohibition of commingling.

Officeholder Expense Fund

Section 49 of the Act (MCL 169.249) and rule 39, 1982 AACS R169.39, contain the provisions governing OEFs. Since the inception of the Act, questions have arisen with respect to the purposes for which an officeholder expense fund may be used lawfully.

Section 49(1) provides:

> "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."

There is no definition in the Act of the phrase "incidental to the person's office." When no specific definition of a term is provided the term has the same meaning it has when it is commonly used. Resorting to dictionary definitions is an appropriate way to ascertain this "common and approved usage," K Mart Corp. v Department of State, 127 Mich App 390, 395 (1983).

Webster's New World Dictionary, Second College Edition, Simon and Schuster, New

York, 1982 defines "incidental" as follows:

> "incidental adj. 1. happening as a result of or in connection with something more important; casual (incidental benefits) b. likely to happen as a result or concomitant (with to) [troubles incidental to divorce] 2. secondary or minor, but usually associated (incidental expenses)."

In Blacks' Law Dictionary, Fifth Edition, West Publishing Co., St. Paul, Minnesota, 1979 "incidental" means:

> "Incidental. Depending or appertaining to something else as primary; something necessary, appertaining to, or depending upon another which is termed the principal; something incidental to the main purpose. The Robin Goodfellow, D.C. Wash., 20 F2d 924, 925."

Since the Act first became effective on June 1, 1977, the Department of State has issued numerous rulings regarding appropriate uses of OEFs. Although none of these rulings have dealt with whether making loans is incidental to a person's office because the question has never been asked previously, it is obvious the use of an OEF for making loans is not incidental to holding a public office. Making loans to the officeholder or others is a personal activity.

Enclosed for your information are a number of declaratory rulings and interpretative statements which discuss expenses which are incidental to a person's office as distinguished from personal expenses.

Rule 39 provides administrative and accounting requirements that parallel those included in section 21 for committees. Rule 39(3) mandates the segregation of committee funds from monies held by an OEF. It follows that these funds are not to be commingled with the personal funds of the officeholder or any other person.

Any ruling issued to you based on the facts currently available would conclude with a directive to repay all monies borrowed by you from either your candidate committee or your OEF. In addition, you would be directed to recover all other funds loaned by either account to other persons.

This letter, as previously indicated, 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/WB/cw

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STATE OF MICHIGAN

FRANK J. KELLEY, ATTORNEY GENERAL

Opinion No. 6423

February 24, 1987

COLLEGE AND UNIVERSITIES:

Authority of community college district to expend public funds to support independent political ballot or candidate committees

CRIMES AND OFFENSES:

Unlawful expenditure of public funds

PUBLIC OFFICES AND OFFICERS:

Removal of a member of a community college district board of trustees

PUBLIC FUNDS:

Recovery of unlawfully expended funds

SCHOOLS AND SCHOOL DISTRICTS:

Authority of school district to expend public funds to support independent political ballot or candidate committees

A school district or community college district may not provide public funds, public property, or the services of public personnel to independent political ballot or candidate committees.

A board of education of a school district or a community college board of trustees may commence an action against school district or community college officials to recover unlawfully expended public funds.

Taxpayers may commence a lawsuit to enjoin the unlawful expenditure of public funds for political purposes by a school district or a community college district.

The Legislature has not enacted legislation authorizing the removal from office of either a member of a board of education of a school district or a member of a community college board of trustees.

The expenditure of school district or community college district funds for political purposes without lawful authority is neither misfeasance nor nonfeasance in office. Such expenditures could constitute malfeasance in office if the expenditures involved wilful and knowing wrongdoing.

A violation of MCL 750.490; MSA 28.758, dealing with the safekeeping of public money, may be prosecuted by the county prosecutor.

There is no statutory provision making malfeasance, misfeasance, or nonfeasance in public office a crime.

Honorable Gilbert J. DiNello

State Senator

The Capitol

Lansing, Michigan

You have forwarded a series of questions revolving around interactions between institutions of public education and independent political ballot or candidate committees. The questions are:

> "1. Can an institution of public education rent or lease public facilities (school buildings, public offices, etc.) to an independent political ballot or candidate committee?
>
> "2. Can an institution of public education give or loan to an independent political ballot or candidate committee paper, pencils, duplicating equipment, printing supplies, and other sundry items?
>
> "3. Can an institution of public education provide or loan to an independent political ballot or candidate committee services such as secretarial, computer operators and assistants to include registered voters lists, labels, etc.?
>
> "4. Can an institution of public education solicit during business hours volunteers such as students, and by use of the telephones solicit private individuals and or public/private enterprises, labor unions, etc. in advocacy for or against a ballot proposal or candidate?
>
> "4a. In the above question, can these names be turned over to and for use by an independent political ballot or candidate committee?
>
> "5. Can an institution of public education or any other public employee while receiving compensation (salary, pay, etc.) campaign for or against a ballot proposal or candidate?
>
> "5a. Can public funds, public vehicles, gasoline, charge cards entrusted to a public official be utilized in advocacy for or against a ballot proposal or candidate?
>
> "6. If in your opinion any of the questions asked above constitute a violation of law, who is responsible to press charges?
>
> "6a. Specifically, does the County Prosecuting Attorney have the authority to prosecute?
>
> "6b. If any of the above are found to be violations of law, does this constitute malfeasance, misfeasance or nonfeasance in office?
>
> "6c. Does malfeasance, misfeasance or nonfeasance constitute a criminal act?
>
> "6d. In the event your answer to question 6c is negative, then who is responsible for taking civil action against the violators?"

INITIAL DISCUSSION

Since it is my understanding that these questions concern school districts and community college districts, the term "institution of public education" as used in this letter will be deemed to refer only to school districts and community college districts. The foregoing questions will be responded to seriatim.

Preliminarily, it must be observed that school districts have only those powers granted to them either expressly or by reasonably necessary implication in statutes enacted by the Legislature. Senghas v L'Anse Creuse Public Schools, 368 Mich 557; 118 NW2d 975 (1962). A community college district, as a public body, has only those powers conferred by the Constitution or state statutes. OAG, 1979-1980, No 5826, p 1108 (December 10, 1980).

QUESTION 1

In OAG, 1979-1980, No 5826, supra, it was concluded that a community college district lacked statutory authority to lease a portion of its facilities to a legislator for office space because the lease was for a purpose unrelated to the educational mission of the community college district. That conclusion is equally applicable to school district property that is still required for school purposes. See, MCL 380.1262; MSA 15.41262; OAG, 1979-1980, No 5522, p 240 (July 10, 1979). Thus, the answer to your first question is no.

QUESTION 2

Turning to your second question, it has been the consistent position of this office that school districts and other public boards and commissions lack statutory authority to expend public funds to influence the electorate in support of or in opposition to a particular ballot proposal or candidate. OAG, 1965-1966, No 4291, p 1 (January 4, 1965); Phillips v Maurer, 67 NY2d 672; 490 NE2d 542 (1986). A public body, however, may expend public funds to objectively inform the people on issues related to the function of the public body. OAG, 1965-1966, No 4421, p 36 (March 15, 1965); OAG, 1979-1980, No 5597, p 482 (November 28, 1979). In light of these prior opinions and cited authority, the answer to your second question is no.

QUESTIONS 3-5a

Addressing questions 3 through 5a, the answer to each is also no. See, OAG, 1965-1966, No 4291, supra; OAG, 1965-1966, No 4421, supra; OAG, 1979-1980, No 5597, supra; and Phillips v Maurer, supra.

QUESTIONS 6-6a

Turning to questions 6 and 6a, research has failed to reveal any statute that makes it a crime for officers or employees of a school district or community college to engage in political activities on behalf of a candidate or a ballot proposal during working hours. Although in MCL 15.404; MSA 4.1702(4), the Legislature has prohibited public employees from engaging in political activities during the hours they are being compensated as employees, it has not provided any criminal penalties for violation of such prohibition. There is, therefore, no criminal penalty to be enforced by the county prosecutor.

In MCL 750.490; MSA 28.758, dealing with the safe keeping of public money, the Legislature has provided, in pertinent part:

> "Any officer who shall wilfully or corruptly draw or issue any warrant, order or certificate for the payment of money in excess of the amount authorized by law, or for a purpose not authorized by law, shall be guilty of a misdemeanor, punishable as provided in this section." (Emphasis added.)

Thus, if any school district or community college district officer were to draw or issue any warrant, order, or certificate for the payment of public funds to private persons or private business organizations to influence the electorate to support or oppose a particular ballot proposal or candidate, if done wilfully or corruptly, the officer would be violating the above-quoted statutory provision. OAG, 1952-1954, No 1793, p 361 (June 23, 1954). Such a violation may be prosecuted by the county prosecutor.

QUESTION 6b

Addressing question 6b, malfeasance by a public officer is conduct that is wholly wrong and beyond the authority of the public official. Misfeasance by a public officer is the performance of a lawful function of the office in an improper manner. Nonfeasance by a public officer is the failure to perform a duty of the office. See, In Re Cartwright, 363 Mich 143, 150; 108 NW2d 865 (1961); Gray v Clerk of Common Pleas Court, 366 Mich 588, 594; 115 NW2d 411 (1962); 67 CJS, Officers, Sec. 122, p 492. Although the expenditure of school district or community college district funds for political purposes without lawful authority would not constitute either misfeasance or nonfeasance, it could constitute malfeasance in office if the expenditures involved wilful and knowing wrongdoing. 67 CJS, Officers, supra. In this connection, however, it is to be observed that there is no statutory provision implementing Const 1963, art 7, Sec. 33 authorizing the removal from office of either members of boards of education of school districts or community college trustees. OAG, 1977-1978, No 5395, p 705 (December 11, 1978); See also, OAG, 1981-1982, No 6075, p 672, 674 (June 14, 1982).

Although under Section 253 of 1955 PA 269, the superintendent of public instruction was authorized to remove from office, for cause, members of local boards of education, this provision was repealed by the Legislature in the enactment of the School Code of 1976, 1976 PA 451. The Legislature may, of course, enact legislation authorizing the removal from office for cause of members of local boards of education and community college boards of trustees.

QUESTIONS 6c-6d

Turning to questions 6c and 6d, while the Legislature has made wilful neglect of duty by a public officer or employee a misdemeanor, MCL 750.478; MSA 28.746, there is no statutory provision making malfeasance, misfeasance, or nonfeasance in public office a crime. Taxpayers may, however, bring a lawsuit to enjoin the unlawful expenditure of public funds for political purposes by a school district or a community college district. Mosier v Wayne County Board of Auditors, 295 Mich 27; 294 NW 85 (1940). In addition, a board of education or a community college board of trustees may commence an action against school district or community college officials to recover unlawfully expended public funds. Johnson v Gibson, 240 Mich 515, 522-524; 215 NW 333 (1927). Finally, if requested in writing by at least twenty-five percent of the registered electors of a school district, the attorney general may audit the records of the school district. If the audit reveals that school district funds have been illegally expended, either the attorney general or the prosecuting attorney may institute a civil action to recover such funds. See, MCL 14.141; MSA 3.241 and MCL 14.143; MSA 3.243.

Frank J. Kelley

Attorney General

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5-87-CI

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

April 17, 1987

Mr. John F. Markes
Treasurer
Detroit Edison Political Action Committee
2000 Second Avenue
Detroit, Michigan 48226

Dear Mr. Markes:

This is in response to your inquiry regarding the applicability of the Campaign Finance Act (the Act), 1976 PA 388, as amended, to the Detroit Edison Company (Detroit Edison) and the Detroit Edison Political Action Committee (EdPAC).

EdPAC is a separate segregated fund established by Detroit Edison pursuant to section 55 of the Act (MCL 169.255). EdPAC is planning to ask Detroit Edison to match voluntary individual contributions to EdPAC with an equal amount to be given to charity. The proposal "would allow each individual EdPAC member to designate any 501(c)(3) charity as the recipient of a 1988 Company contribution equal to the sum of the members' 1987 contributions to EdPAC." You ask whether the matching plan is permissible under the Act.

Section 54 of the Act (MCL 169.254) prohibits the use of corporate money in candidate elections but allows corporate contributions or expenditures to support or oppose ballot questions. In addition, section 55 provides, in relevant part:

> "Sec. 55. (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.

* * * *

(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."

Prior to requesting a ruling from the Department of State, you asked the Federal Election Commission for its opinion concerning application of the Federal Election Campaign Act to the plan proposed by Detroit Edison. In the attached Advisory Opinion, dated January 9, 1987, the Commission stated:

"According to your proposed plan, Detroit Edison will make a donation from its treasury funds to a 501(c)(3) charity to match the amount that a solicitable individual has contributed to EdPAC. The contributor to EdPAC will be able to designate the 501(c)(3) charity to receive a donation in an equal amount from Detroit Edison, but such contributor to EdPAC will not receive any tax benefit from Detroit Edison's charitable donation. Under these facts, Detroit Edison's charitable donation is in the nature of a solicitation expense for EdPAC and would otherwise constitute a prohibited corporate contribution or expenditure but for the express exemption permitting a corporation such as Detroit Edison to pay the 'establishment, administration, and solicitation' costs for its separate segregated fund. See 11 CFR 114.1 (b). Furthermore, it does not appear that the EdPAC contributors will be paid for their contribution through this process; nor will they receive any financial, tax, or other tangible benefit from this plan. Thus, it does not appear that Detroit Edison will be exchanging treasury monies for voluntary contributions. Accordingly, your proposed plan is permissible under the Act and Commission regulations. Of course, since the communication of this plan constitutes a solicitation, Detroit Edison and EdPAC may offer the plan only to those persons whom it may solicit for contributions to EdPAC, and the offer of the plan must meet the requirements of a proper solicitation."

It does not appear from the facts you have presented that Detroit Edison's matching charitable donations will result in the exchange of corporate dollars for voluntary contributions or in impermissible corporate contributions to EdPAC. Moreover, as stated by the Commission, the donations represent a cost of soliciting contributions to the separate segregated fund. Therefore, pursuant to section 55(1), Detroit Edison may use corporate dollars to make charitable

donations equivalent to individual contributions made to EdPAC, provided (1) the contributions are solicited and received from persons described in section 55(2), and (2) the contributions are not obtained by threat, force or coercion, or as a condition of employment.

Your request for a declaratory ruling did not contain a definite statement of facts, as required by rule 6, 1979 AC R169.6, of the administrative rules promulgated to implement the Act. Accordingly, 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:bk

Attachment

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

J. F. MARKES
JAN 19 1987

January 9, 1987

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1986-44

John F. Markes, Treasurer
Detroit Edison Political Action Committee
2000 Second Avenue
Detroit, MI 48226

Dear Mr. Markes:

This responds to your letter of December 4, 1986, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations with regard to a proposed charitable donation plan.

Detroit Edison Political Action Committee ("EdPAC") is the separate segregated fund of Detroit Edison Company, its connected organization, and is registered with the Commission as a political committee. You state that EdPAC is considering plans to ask Detroit Edison to match all voluntary individual personal contributions made to EdPAC with an equal amount to be given to charity. You add that the plan, if adopted, would allow each individual EdPAC member[1/] to designate any 501(c)(3) charity as the recipient of a 1988 donation from Detroit Edison equal to the sum of the member's 1987 contributions to EdPAC. You add that the proposal is expected to encourage greater participation in

1/ Commission regulations permit a separate segregated fund established by a corporation to provide that persons who contribute to the fund may become "members" of the fund, but the regulations further provide that such classification does not provide the corporation with any greater right of communication or solicitation than it is otherwise granted under the regulations. 11 CFR 114.5(c)(1) and (2).

EdPAC and also to cause an infusion of charitable giving2/ that is needed "even though the individual would not receive any tax benefit."

You ask whether the Act and regulations permit this specific proposal.

The Act prohibits a corporation from making contributions or expenditures in connection with any Federal election, but it excludes from the definition of contribution or expenditure "the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation... ." 2 U.S.C. §441b(a) and §441b(b)(2)(C). Commission regulations explain that a corporation may use its treasury monies to pay the establishment, administration, and solicitation expenses of such a separate segregated fund, but it may not use this process as a means of exchanging treasury monies for voluntary contributions. 11 CFR 114.5(b). In this respect, Commission regulations further explain that a contributor may not be paid for his or her contribution through a bonus, expense account, or other form of direct or indirect compensation. 11 CFR 114.5(b)(1).

The Act and regulations further provide that a corporation or its separate segregated fund may solicit contributions to such a fund from its stockholders and their families and its executive or administrative personnel and their families. 2 U.S.C. § 441b(b)(4)(A)(i); 11 CFR 114.5(g)(1). Any solicitation to such persons for contributions to such a fund must also meet the requirements of a proper solicitation. See 11 CFR 114.5(a) and, in particular, 11 CFR 114.5(a)(5).

According to your proposed plan, Detroit Edison will make a donation from its treasury funds to a 501(c)(3) charity to match the amount that a solicitable individual has contributed to EdPAC.3/ The contributor to EdPAC will be able to designate the

2/ You have not indicated that the proposed matching plan would be used in a factual context where Detroit Edison personnel are obligated or expected, in order to comply with Company policy, to make a specified amount of charitable donations from their own personal funds. Accordingly, this opinion does not reach any issues concerning application of the Act and Commission regulations that may arise in those circumstances.

3/ For purposes of this opinion the Commission assumes that the matching plan would be limited to the solicitable categories of personnel specified in the preceding paragraph. Thus, the Commission expresses no opinion as to the use of this plan for EdPAC contributions by employees who would only be solicitable under the twice yearly solicitation procedure. See 11 CFR 114.6 and 2 U.S.C. §441b(b)(4)(B).

501(c)(3) charity to receive a donation in an equal amount from Detroit Edison, but such contributor to EdPAC will not receive any tax benefit from Detroit Edison's charitable donation. Under these facts, Detroit Edison's charitable donation is in the nature of a solicitation expense for EdPAC and would otherwise constitute a prohibited corporate contribution or expenditure but for the express exemption permitting a corporation such as Detroit Edison to pay the "establishment, administration, and solicitation" costs for its separate segregated fund. See 11 CFR 114.1(b). Furthermore, it does not appear that the EdPAC contributors will be paid for their contribution through this process; nor will they receive any financial, tax, or other tangible benefit from this plan.4/ Thus, it does not appear that Detroit Edison will be exchanging treasury monies for voluntary contributions. Accordingly, your proposed plan is permissible under the Act and Commission regulations. Of course, since the communication of this plan constitutes a solicitation, Detroit Edison and EdPAC may offer the plan only to those persons whom it may solicit for contributions to EdPAC, and the offer of the plan must meet the requirements of a proper solicitation.

The Commission expresses no opinion regarding any tax ramifications of your proposed activity since such issues are outside its jurisdiction.

This response constitutes an advisory opinion concerning application of the Act, or regulations prescribed by the Commission, to the specific transaction or activity set forth in your request. See 2 U.S.C. §437f.

Sincerely yours,

Scott E. Thomas
Chairman for the
Federal Election Commission

4/ The Commission assumes for purposes of this opinion that the plan does not include any premium, award, or other tangible benefit provided to EdPAC contributors by the charitable entities that receive Detroit Edison donations pursuant to the plan.

7-87-CI

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

May 26, 1987

Ms. Patricia A. Russell
Treasurer
Let's Invest for Education
1062 Canterbury
Pontiac, Michigan 48053

Dear Ms. Russell:

This is in response to your letter of February 23, 1987, requesting an exemption from the identification requirements set forth in the Campaign Finance Act (the "Act"), 1976 PA 388, as amended. As stated in your letter, you intend to have a message favoring a ballot question printed on sweatshirts and t-shirts.

Section 47 (3) of the Act, MCL 169.247, states that "printed matter having reference to an election, . . . shall bear upon it the name and address of the person paying for the matter." This section goes on to state:

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

Pursuant to this provision in the Act, the Department has promulgated rules 36(3), 1979 AC R169.36(3):

> "(3) A campaign item, the size of which makes it unreasonable to add an identification or disclaimer, or both, as designated by the secretary of state, is exempted from this rule."

You indicate that your printer has informed you that the identification language would have to be 36 point type to be readable. The identification would take a minimum of three lines of type on a shirt if it were in 36 point type.

Based on the above, the Department of State finds that a waiver is appropriate in the fact situation presented.

Very truly yours,

Phillip T. Frangos
Director
Office of Hearings and Legislation

PTF:bk

6-87-CI

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

May 26, 1987

Mr. Tom Brackenrich, Chairman
Michigan Taxpayers for Good Government
Post Office Box 293
Sterling Heights, Michigan 48077

Dear Mr. Brackenrich:

This is in response to your request for an interpretation concerning the applicability of the Campaign Finance Act ("the Act"), 1976 PA 388, as amended, concerning the types of investments that may be made by campaign committees and officeholder expense funds.

You ask whether a campaign committee or an officeholder expense fund may invest in: (1) certificates of deposit, (2) bonds, (3) mutual funds, and (4) purchases of land contracts secured by real estate.

Section 21(3) of the Act (MCL 169.221) provides:

> "(3) Except as provided by law, a committee shall have one account in a financial institution in this state as an official depository for the purpose of depositing all contributions which it receives...and for the purpose of making all expenditures. The committee shall designate a financial institution in this state as its official depository.*** Secondary depositories shall be used for the sole purpose of depositing contributions and promptly transferring the deposits to the committee's official depository."

Rule 1(1)(d), 1979 AC R169.1(1)(d), states:

> "(d) 'Official depository' means a bank, savings and loan association, or credit union, chartered by this state or the United States, and located and doing business in Michigan."

For purposes of section 21(3) of the Act, a financial institution is one which could qualify as an "official depository" under rule 1(1)(d).

In a declaratory ruling to Mr. John L. Damstra issued on September 2, 1977, the Department addressed the issue of investment of campaign committee funds in cer-

tificates of deposit and other interest bearing accounts. A copy of that declaratory ruling is enclosed.

In that ruling, the Department stated:

> "[T]he Act in section 28(1) contemplates that a committee may receive interest on an account consisting of funds belonging to the committee. The mere transfer of funds deposited in the official depository to an interest bearing account for investment purposes is not an 'expenditure' as defined in section 6 of the Act. Thus, the Act would not preclude a transfer from the official depository account to an interest bearing account in any financial institution if the committee retains complete control of the funds at all times and full disclosure is made."

In an interpretive statement to Senator Michael O'Brien issued on May 30, 1979, the Department addressed the issue of investment of campaign committee funds and OEF funds in the stock market and commodities market. A copy of that interpretive statement is enclosed.

In the letter to Senator O'Brien, the Department stated:

> "A certificate of deposit is an interest bearing account with a fixed interest rate payable at a date certain. Consequently, funds in a certificate of deposit are always in complete control of the investor, notwithstanding that a substantial interest penalty might be assessed for early withdrawal of the invested monies.
>
> On the other hand, investment in the stock market or commodities market would involve a purchase or sale of shares, not a mere transfer of controlled funds by an investor to an interest bearing account.
>
> * * *
>
> [T]he Act requires that committees deposit funds in an account in a financial institution."

The purchase and sale of a bond, a share in a mutual fund, or a land contract is functionally equivalent to the purchase or sale of shares on the stock market or commodities market, "not a mere transfer of controlled funds by an investor to an interest bearing account". Therefore, funds of a campaign committee or an OEF may not be invested in bonds, mutual funds or land contracts.

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:cw

Attachments

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STATE OF MICHIGAN

FRANK J. KELLEY, ATTORNEY GENERAL

Opinion No. 6447

June 16, 1987

ESCHEATED ESTATES:

Residual moneys in officeholder expense fund

OFFICEHOLDER EXPENSE FUND:

Distribution of residual moneys upon departure from office

Upon departure of an officeholder from public office, residual moneys in the officeholder expense fund of the officer must remain in such fund and are subject to escheat to the State of Michigan.

Honorable Richard H. Austin

Secretary of State

State Treasury Building

Lansing, Michigan 48918

You have requested my opinion on the following question:

> If residual funds remain in an officeholder expense fund upon departure of the officeholder from his or her public office, what disposition of the residual moneys is permissible?

The campaign financing and practices act, 1976 PA 388, Sec. 49, MCL 169.249; MSA 4.1703(49), authorizes an elected public official to establish an officeholder expense fund.

A letter opinion to Secretary of State Richard H. Austin, December 19, 1986, concluded that in the enactment of Act 388, Sec. 49, the Legislature did not authorize the public officer leaving his or her public office to expend moneys remaining in an officeholder expense fund for the personal use of the officeholder.

Act 388, Sec. 49, provides:

> "(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."

While the foregoing provisions authorize an elected official to establish and maintain an officeholder expense fund, such provisions authorize that official to use such a fund only for expenses incidental to the office. Unfortunately, the Act is silent with regard to how moneys remaining in the officeholder expense fund shall be disposed of when the elected public official leaves or no longer occupies the public office. This contrasts with the provisions of 1976 PA 388, Sec. 45 (2), MCL 169.245(2); MSA 4.1703(45)(2), which specifically authorizes three alternative methods of disposing of unexpended funds received by the "candidate committee" which is required to be formed by a candidate for public office.

It must be observed that 1976 PA 388, MCL 169.201 et seq; MSA 4.1703(1) et seq, envisions that all moneys received or expended from funds regulated by its terms must be scrupulously detailed and reported and kept in separate accounts in financial institutions. For example, a candidate committee must have a treasurer for receipt of contributions on behalf of the candidate, which receipts must be deposited in an account in a financial institute, pursuant to 1976 PA 388, Sec. 21(3), MCL 169.221(3); MSA 4.1703(21)(3):

"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. The committee shall designate a financial institution in this state as its official depository. The establishment of an account in a financial institution is not required until the committee receives a contribution or makes an expenditure. Secondary depositories shall be used for the sole purpose of depositing contributions and promptly transferring the deposits to the committee's official depository."

See also, 1976 PA 388, Sec. 66(3), MCL 169.266(3); MSA 4.1703(66)(3), providing that qualifying candidates must keep matching funds received from the state campaign fund in a separate account and make expenditures only from such account.

This legislative intent has been recognized by the Secretary of State in the rules governing officeholder expense funds promulgated pursuant to the rule-making authority conferred by 1976 PA 388, Sec. 15(1)(e), MCL 169.215(1)(e); MSA 4.1703(15)(1)(e). 1982 AACS, R 169.39, provides, among other requirements, that an officeholder expense fund must be kept in an account in a "depository," i.e., a financial institution:

"(1) An elected officeholder shall indicate on the statement of organization, or on an amendment thereto, filed by the officeholder's candidate committee, the existence of an officeholder's expense fund.

"(2) Money given specifically to an officeholder's expense fund shall be designated for that purpose by the donor.

"(3) Money received by an officeholder's expense fund shall be kept in a depository account separate from the candidate committee's funds.

"(4) The treasurer of an officeholder's expense fund shall keep records of all receipts to, and disbursements from, the fund for a period of 1 year longer than the officeholder's term of office.

"(5) Receipts to, and disbursements from, the officeholder's expense fund shall be reported pursuant to the provisions of the act.

"(6) The officeholder's expense fund report shall be signed by the treasurer of the fund and by the officeholder on the lines indicated following the verification statement.

> "(7) The officeholder's expense fund report shall be filed with the filing official designated by the act to receive the officeholder's candidate committee campaign statements.
>
> "(8) Money may be transferred from the candidate committee of an elected public official to the officeholder expense fund of that public official in accordance with the provisions of the act." (Emphasis added.)

The doctrine of the law of escheats is applicable. It holds that where there is a lack of ownership of real or personal property, the state takes it over to conserve for any person who might ultimately establish his or her right, or otherwise, for the common benefit of the people of the state. Evans Products Co v State Bd of Escheats, 307 Mich 506, 520; 12 NW2d 448 (1944).

Inasmuch as an officeholder expense fund must be maintained as a separate account in a financial institution, such account is like any other account in the financial institution for the purposes of the application of the Michigan Code of Escheats, 1947 PA 329, MCL 567.11 et seq; MSA 26.1053(1) et seq. Pursuant to 1947 PA 329, Sec. 14, MCL 567.14; MSA 26.1053(4), property covered by the Michigan Code of Escheats and abandoned by its owner descends to the State of Michigan.

"Abandoned property" is defined in 1947 PA 329, Sec. 15(e), MCL 567.15(e); MSA 26.1053(5)(e), as "property against which a full period of dormancy has run." "Period of dormancy" is defined, in pertinent part, in 1947 PA 329, Sec. 15(f), MCL 567.15(f); MSA 4.1053(5)(f), as follows:

> " 'Period of dormancy', except as provided in section 7a, means the full and continuous period of 7 years, during which an owner has ceased, failed, or neglected to exercise dominion or control over his or her property or to assert a right of ownership or possession; ...." (Emphasis added.)

Since neither the treasurer of an officeholder expense fund nor the elected official after departure from office is authorized to use or dispose and thus withdraw any residual moneys in such elected official's officeholder expense fund, i.e., all control over the fund ceases by operation of law at that time, it is my opinion that seven years after the office is vacated, the residual moneys in the officeholder expense fund of such official escheats to the State of Michigan in the same manner as other accounts in financial institutions escheat.

To summarize:

1. The campaign financing and practices act (a) limits the use of officeholder expense funds to "expenses incidental to the person's office" and (b) is silent with regard to how moneys remaining in the officeholder expense fund shall be disposed of when a public official who has established such a fund leaves office.

2. The Secretary of State has adopted rules governing officeholder expense funds, 1982 AACS, R 169.39, which provides that an officeholder expense fund must be kept in a financial institution.

3. The Michigan Code of Escheats is applicable to officeholder expense fund accounts maintained in a financial institution.

4. Neither the treasurer of an officeholder expense fund nor the elected official who maintains the officeholder expense fund can, after the official leaves office, use or dispose and thus withdraw any money in the officeholder expense fund account. Therefore, residual moneys remaining in an officeholder expense fund account after the official creating it leaves office escheat to the state pursuant to the Michigan Code of Escheats.

The Legislature may wish to amend the campaign financing and practices act, 1976 PA 388, to provide for the disposition of residual moneys remaining in an officeholder expense fund when the officeholder maintaining the fund leaves office.

It is my opinion, therefore, that upon departure of an officeholder from his or her public office, residual moneys in an officeholder expense fund must remain in such fund and are subject to escheat to the State of Michigan.

Frank J. Kelley

Attorney General

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8-87-CI

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

July 1, 1987

Honorable William A. Sederburg
State Senator
Twenty-fourth District
120 State Capitol
Lansing, Michigan 48909

Dear Senator Sederburg:

This is in response to your inquiry concerning the applicability of the Campaign Finance Act (the Act), 1976 PA 388, as amended, to certain expenses incurred by an officeholder when his or her spouse is a companion on a business trip. Specifically, you ask whether it is "an appropriate expenditure of O.E.F. dollars to reimburse an elected official for expenses incurred by him/her because his/her spouse accompanied the official on a trip made by the official in [the] line of his/her official duty."

Officeholder expense funds (OEF's) are regulated by section 49 of the Act (MCL 169.249). This section states:

> "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 $1000.00 or imprisoned for not more than 90 days, or both."

The only disbursements authorized by this section are for "expenses incidental to office," a term not defined in the Act. However, as stated in an interpretive statement issued to Maurice Kelman, dated July 18, 1986, the phrase does not include the conversion of OEF assets to personal use. Therefore, if the travel expenses of a spouse are incidental to office, the official incurring the

expense may be reimbursed from his or her officeholder account. Conversely, if the expenses are personal in nature, reimbursement is prohibited. This determination can only be made on a case by case basis.

You indicate that "expenses incurred because of a spouse traveling with an individual are recognized as legitimate business expenses by the I.R.S." However, according to I.R.S. regulations such expenses are deductible only if the spouse's presence on a trip has a bona fide business purpose. Specifically, 26 C.F.R. §1.162-2(c) provides:

> "(c) Where a taxpayer's [spouse] accompanies him[/her] on a business trip, expenses attributable to her[/his] travel are not deductible unless it can be adequately shown that the [spouse's] presence on the trip has a bona fide business purpose. The [spouse's] performance of some incidental service does not cause her[/his] expenses to qualify as deductible business expenses. The same rules apply to any other member of the taxpayer's family who accompany him[/her] on such a trip."

This approach may be useful in determining whether spousal travel expenses are incidental to office. If an officeholder's spouse performs little or no office-related services when traveling with the official, his or her expenses are clearly not incidental to office. However, if the spouse's presence has a bona fide business or office-related purpose, his or her travel expenses may be paid or reimbursed by the official's OEF, provided the services performed by the spouse are identified in the OEF report filed by that public official.

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

Very truly yours,

Phillip T. Frangos
Director
Office of Hearings and Legislation

PTF/AC/cw

9-87-CI

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

August 4, 1987

Ms. Camille Cleveland
Elias Brothers Restaurants, Inc.
4199 Marcy
Warren, Michigan 48091-1799

Dear Ms. Cleveland:

This is in response to your request for an interpretive statement concerning the applicability of the Campaign Finance Act (the Act), 1976 PA 388, as amended, to certain corporate activity. Specifically, you ask whether a nonprofit corporation, consisting of a group of corporations, may form a committee for the purpose of supporting or opposing candidates and ballot questions. You also inquire whether each corporate member would be required to establish its own separate segregated fund for the purpose of contributing to the committee established by the nonprofit corporation.

Corporate involvement in election financing is governed by sections 54 and 55 of the Act, MCLA 169.254 and 169.255.

Section 54(1) of the Act prohibits a corporation from making expenditures or contributions under the Act, but excepts from the this general prohibition the following:

(1) Loans made in the ordinary course of business [section 54(1)].
(2) Corporations formed for political puposes [section 54(2)].
(3) Contributions to a ballot question committee [section 54(3)]. Section 54(3) of the Act limits corporate contributions to $40,000.00 for each ballot question committee; however, this provision was ruled unconstitutional by the Federal District Court in Michigan Chamber of Commerce v Secretary of State, 637 F Supp 1192 (ED Mich, 1986). This case is currently on appeal.
(4) Unlimited independent expenditures for the qualification, passage or defeat of a ballot question [section 54(4)]. A corporation making an independent expenditure under section 54(4) of the Act, will be considered a ballot question committee.

Section 55(1) of the Act permits a corporation, profit or nonprofit, to make an expenditure for the establishment, administration and solicitation of contributions to, and expenditures on behalf of, candidtate committees, ballot question committees, political party committees and independent committees.

However, contributions to a corporation's separate segregated fund may be solicited only from certain persons. The category of persons eligible to contribute to a corporation's separate segregated fund is dependent upon the corporation's classification as a profit or nonprofit corporation.

Contributions to the separate segregated fund of a profit corporation are controlled by section 55(2) of the Act, which provides:

> "(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."

Contributions to the separate segregated fund of a nonprofit corporation are controlled by section 55(3) of the Act, which provides:

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

In the case of a separate segregated fund established by a nonprofit corporation, solicitations permitted by section 55(3) are in addition to those permitted by section 55(2). See Interpretive Statement issued to Mr. Roland T. Baumann II on November 2, 1978.

The Attorney General ruled in OAG, 1977-1978, No 5344, p 549 (July 20, 1978), that a separate segregated fund established by one corporation may not contribute to a separate segregated fund established by another corporation. This opinion also ruled that a corporation may establish only one separate segregated fund. These limitations apply to both profit and nonprofit corporations.

In an Interpretive Statement issued to Mr. William E. Hazel, Jr., on August 1, 1978, the Department stated:

> "Section 55 does not permit a corporation to make disbursements or contributions for the establishment, administration or solicitation of contributions for a political action committee formed by another corporation.

Further, in an Interpretive Statement issued to Mr. Thomas J. Grzywacz on August 21, 1979, the Department stated:

> "[O]nly a nonprofit corporation may receive contributions from 'members' of the corporation. Moreover, these 'members' must be individuals or their spouses. The 'members' may not be corporations."

Section 3(4) of the Act, MCLA 169.203(4), provides:

> "(4) '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 nonmination 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."

A separate segregated fund which meets the criteria of section 3(4) of the Act is a committee. A corporation may have only one committee, and that committee must be its separate segregated fund.

Therefore, a nonprofit corporation, consisting of a group of corporations, may establish a separate segregated fund for the purpose of supporting or opposing candidates and ballot questions. However, the member corporations may not contribute to the fund, since section 55(3) only allows contributions from members who are individuals.

In answer to your second question, it follows from the foregoing that the separate segregated fund of a corporate member of the nonprofit corporation is prohibited from contributing to the committee established by the nonprofit corporation.

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

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings and Legislation

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STATE OF MICHIGAN

FRANK J. KELLEY, ATTORNEY GENERAL

Opinion No. 6531

August 8, 1988

COLLEGES AND UNIVERSITIES: Expenditure by community college district of funds to provide facts on ballot proposals

ELECTIONS: Filing of reports by voluntary associations advocating for or against ballot proposal

SCHOOLS AND SCHOOL DISTRICTS: Expenditure of funds to provide facts on ballot proposals.

School districts or community college districts may expend public funds to inform their electors in a fair and objective manner of the facts surrounding an upcoming ballot proposal or proposals to be voted upon by the school district or the community college district electors.

A voluntary unincorporated association receiving contributions and making expenditures therefrom to advocate for or against a ballot proposal is subject to the filing requirements of the campaign financing and practices act and may be subject to imposition of fines for violating the Act.

Honorable Art Miller, Jr.

State Senator

The Capitol

Lansing, Michigan 48913

You have requested my opinion on several questions concerning the extent to which institutions of public education and voluntary unincorporated associations may expend funds in connection with an upcoming ballot proposal. It is my understanding that the term "institution of public education" refers only to school districts and community college districts. See OAG, 1987-1988, No 6423, p 33 (February 24, 1987). Your questions will be addressed seriatim.

Your first question is:

> May institutions of public education expend public funds to objectively inform the public concerning upcoming ballot proposals?

School districts have only those powers granted to them either expressly or by reasonably necessary implication in statutes enacted by the Legislature. Snyder v. Charlotte Creuse Public Schools, 368 Mich 557; 118 NW2d 975 (1962), Jacox v. Bd of Education of Van Buren Consolidated School Dist, 293 Mich 126; 291 NW 247 (1940). Similarly, a community college district, as a public body, has only those powers conferred by Const 1963 or state statutes. OAG, 1979-1980, No 5826, p 1108 (December 10, 1980).

OAG, 1987-1988, No 6423, supra, concluded that school districts and other public boards and commissions are not authorized to expend public funds to influence the electorate in support of or in opposition to a particular ballot proposal. OAG, 1965-1966, No 4291, p 1 (January 4, 1965); Phillips v Maurer, 67 NY2d 672; 490 NE2d 542; 499 NYS2d 675 (1986); Elsenau v Chicago, 334 Ill 78; 165 NE 129 (1929); Mines v Del Valle, 201 Cal 273; 257 P 530 (1927).

This prohibition evolves from the concern that such an expenditure of public "funds might be contrary to the desire and even subject to the disapproval of a large portion of" taxpayers and, further, "that it was never contemplated under the Constitution and statutes of this State that our boards ... should function as propaganda bureaus." Mosier v. Wayne County Bd of Auditors, 295 Mich 27, 31; 294 NW 85 (1940); OAG, 1965-1966, No 4421, p 36 (March 15, 1965); OAG, 1965-1966, No 4291, supra.

A public body, however, "may expend public funds to objectively inform the people on issues related to the function of the public body." OAG, 1987-1988, No 6423, supra; OAG, 1965-1966, No 4421, supra; OAG, 1979-1980, No 5597, p 482 (November 28, 1979).

It has been held that a board of education of a school district has implied power to make reasonable expenditures to provide a fair presentation of facts relating to a school bond election so as to aid school electors in reaching an informed judgment on proposed issues to be voted at the school election. Citizens to Protect Public Funds v Bd of Education of Parsippany-Troy Hills Twp, 13 NJ 172, 179; 98 A2d 673, 677 (1953). The expenditure of public funds for such purposes will be held invalid if the presentation of facts, including good and bad features, is not fairly presented. Hankin v Bd of Education of Hamilton Twp, 47 NJ Super 70; 135 A2d 329, 334 (1957).

It is my opinion, in answer to your first question, that school districts or community college districts may expend public funds to inform their electors in a fair and objective manner of the facts surrounding an upcoming ballot proposal or proposals to be voted upon by the school district or the community college district electors.

Your second question is:

> If a voluntary unincorporated association spends its funds to advocate for or against a ballot proposal, is the association exempt from the filing requirements of the campaign finance and practices act?

There is no statutory proscription to a voluntary unincorporated association making expenditures to advocate the passage or defeat of a ballot proposal. If it does so, it is not exempt from the requirements of the campaign financing and practices act, MCL 169.201 et seq; MSA 4.1703(1) et seq, since the definition of "person" for purposes of that statute includes an "association ... or any other organization or group of persons acting jointly." MCL 169.211(1); MSA 4.1703 (11)(1). See also OAG, 1977-1978, No 5328, p 520 (July 7, 1978).

It is my opinion, in answer to your second question, that a voluntary unincorporated association making expenditures in support of or in opposition to a ballot proposal is not exempt from the requirements of the campaign financing and practices act.

Your third question is:

> If a voluntary unincorporated association is required to file under the campaign finance and practices act and it fails to do so, is this a criminal violation, and if so, who is responsible for enforcement of the Act?

The campaign financing and practices act, MCL 169.201 et seq; MSA 4.1703(1) et seq, makes failure of a voluntary unincorporated association receiving contributions for or making expenditures to advocate the passage or defeat of a state-wide ballot proposal to file certain documents or filing incomplete or inaccurate documents required to be filed a misdemeanor subject to imposition of fines. See MCL 169.224(1), 169.234(6) and (7), and 169.235(5); MSA 4.1703(24) (1), 4.1703(34)(6) and (7), and 4.1703(35)(5). A person may file a complaint alleging violation of the campaign finance and practices act with the Secretary of State. MCL 169.215(2); MSA 4.1703(15)(2).

It is my opinion, in answer to your third question, that failure of a voluntary unincorporated association receiving contributions for or making expenditures to advocate the passage of or defeat of a ballot proposal to file under the campaign financing and practices act is a misdemeanor subject to imposition of fines and complaints alleging violation

should be filed with the Secretary of State.

Your fourth question is:

> In question 3, if there is a criminal violation, who is the member of members or board of directors or director who would be criminally responsible for the activities of the association that are deemed to be criminal violations?

Some of the criminal violation sections cited above specifically name an organization's treasurer the responsible party who may be charged, while other sections make reference to the liability of the "committee" or "person."

It is my opinion, in answer to your fourth question, that depending upon the nature of the violation and the sanction to be imposed, the association itself, the treasurer and/or other officers or members with particular knowledge of or involvement in the criminal activity may be charged, and upon conviction, be held criminally responsible.

Frank J. Kelley

Attorney General

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10-87-CI

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

September 8, 1987

Roger Short
Office of the Auditor General
204 City-County Building
2 Woodward Avenue
Detroit, Michigan 48226

Dear Mr. Short:

This is in response to your inquiry concerning the applicability of the Campaign Finance Act (the Act), 1976 PA 388, as amended, to the disbursement of money from a public official's candidate committee and officeholder's expense fund (OEF) after the official leaves office to accept a position as probate judge. Specifically, you ask whether Freddie Burton, a former county commissioner, may use unexpended funds in his local candidate committee or officeholder's account "to give a farewell party for those who have worked on behalf of the Commissioner, including office workers and campaign staff."

With respect to candidate committees, the Department indicated in a declaratory ruling to Senator Mitch Irwin, dated May 29, 1979, that committee funds may only be used to influence a campaign. Subsequently, in an October 12, 1981, letter to Ms. Dorothey Sherman, the Department stated:

> "A thank-you dinner for [a] candidate's committee soon after the election is sufficiently tied to election activity so as to serve to influence his or her nomination or election. Consequently, the use of campaign funds to pay for such an event would be appropriate under the Act's provisions."

The farewell party you describe is not tied to election activity and is not intended to influence the commissioner's nomination or election. As such, excess candidate committee funds may not be used to pay for the party.

The disposition of residual candidate committee money is governed by section 45 of the Act (MCL 169.245). This section provides:

> "Sec. 45. (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 contri-

> bution limits for the candidate committee transferring the funds and if the candidate committees are simultaneously held by the same person. The funds being transferred shall not be considered a qualifying contribution regardless of the amount of the individual contribution being transferred.
>
> (2) Unexpended funds in a campaign committee that are not eligible for transfer to another candidate committee of the person, pursuant to subsection (1), shall be given to a political party committee, or to a tax exempt charitable institution, or returned to the contributors of the funds upon termination of the campaign committee."

Pursuant to sections 24 and 36 of the Act (MCL 169.224 and 169.236), upon meeting the definition of "candidate" Mr. Burton must form a probate judge candidate committee and file a statement of organization with the Secretary of State. The Act does not limit contributions made to the candidate committees of local officials or probate judges. Therefore, the Act would allow Mr. Burton to transfer unexpended funds in his local committee to his probate judge committee. (You may, however, wish to request an ethics opinion from the State Bar of Michigan concerning the propriety of transferring the funds to the probate judge committee under the Code of Judicial Conduct.) If the unexpended money is not transferred pursuant to section 45(1), it must be returned to the contributors of the funds or given to a political party or charitable institution.

Officeholder expense funds, on the other hand, may only be used to pay expenses incidental to office, as stated in section 49 of the Act (MCL 169.249). Money transferred or donated to an OEF is not subject to the requirements of section 45. However, the Attorney General recently issued an opinion concerning the disposition of funds remaining in an OEF when an officeholder leaves office. The Attorney General indicated in OAG, 1987, No 6447, p _____ (June 16, 1987) that "neither the treasurer of an officeholder expense fund nor the elected official after departure from office is authorized to use or dispose and thus withdraw any residual moneys in such elected official's officeholder expense fund." The Attorney General concluded that "residual moneys" remaining in an official's OEF after the official leaves office escheat to the State of Michigan.

The Attorney General's opinion did not address the propriety of using OEF funds to dispose of office-related debts incurred before the officeholder vacated his or her office. This issue was previously addressed by the Department in an interpretive statement issued to Mr. Richard D. McLellan, dated February 23, 1987.

In the McLellan letter, the Department noted that while a departing officeholder's OEF must be dissolved, dissolution cannot be accomplished unless the OEF's assets are dispersed, its debts are paid, and a dissolution statement is filed. During the winding up process, the Department warned that disbursements from the OEF are strictly limited:

> " . . . . an OEF may only be used 'for expenses incidental to the person's office.' An ex-official can no longer incur expenses incidental

> to office. Accordingly, an OEF maintained during the dissolution process by a retired public official is limited to accepting donations and making disbursements for the purpose of satisfying debts incurred prior to the expiration of the official's term of office. Any new activity is strictly prohibited."

The McLellan letter is not inconsistent with the Attorney General's opinion. As indicated previously, the Attorney General stated that "residual moneys" in an OEF may not be withdrawn after the officeholder who created the account leaves office. "Residual," of course, refers to the residue. According to both Black's Law Dictionary and The American Heritage Dictionary of the English Language, when used in its legal sense "residue" means the remainder of an estate after all claims, debts and bequests have been satisfied. Similarly, in the Department's view, the "residual" funds in an OEF are those funds remaining in the account after office-related debts and obligations incurred by the officeholder prior to leaving office have been paid.

Expenses for a farewell party attended by an official's staff and former campaign workers may be considered incidental to office. Therefore, funds remaining in the commissioner's OEF may be used to pay debts related to the farewell party, provided the debts were incurred prior to the date on which the commissioner left office. However, funds remaining in the account after the OEF's pre-existing debts and obligations are satisfied will escheat to the state in accordance with the Attorney General's opinion.

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/AC/cw

2-87-CD

RICHARD H. AUSTIN
SECRETARY OF STATE

MICHIGAN
DEPARTMENT
OF STATE
LANSING, MICHIGAN 48918

August 4, 1987

Mr. Peter F. McNenly
Levin, Levin, Garvett and Dill
3000 Town Center, Suite 1800
Southfield, Michigan 48075

Dear Mr. McNenly:

This is in response to your request for a declaratory ruling concerning the applicability of the Campaign Finance Act (the Act), 1976 PA 388, as amended, to a reverse check-off procedure for collecting contributions, as proposed by the Michigan Education Association (MEA) and the Michigan Education Association Political Action Council (MEA-PAC).

You indicate the "MEA is a voluntary membership organization composed of approximately 100,000 individuals, both professional and nonprofessional, employed by Michigan education institutions." Membership is not required in order to secure or maintain employment in an institution. However, all MEA members must join both an affiliated local association and MEA's parent organization, the National Education Association (NEA).

In most cases, the local association is the exclusive representative of MEA members for purposes of collective bargaining under the Public Employment Relations Act (PERA), 1947 PA 336, as amended. Pursuant to section 10(1) of PERA (MCL 423.210):

> "Local associations are permitted . . . to negotiate what are commonly called 'agency shop clauses' in their collective bargaining agreements. Under an agency shop clause an individual is not required to be a member of the MEA or its local affiliate in order to work, but the local association and public employer agree 'to require as a condition of employment that all employees in the bargaining unit pay to the exclusive bargaining representative a service fee equivalent to the amount of dues uniformly required of members . . . .' The rights of nonmember agency fee payers are controlled by MEA Administrative Policy V which provides that they shall receive all 'appropriate services' but shall not be permitted to participate in policy making, voting, or holding of office within MEA or its affiliates. Perhaps most important, for present purposes, agency fee payers are not solicited for contributions to MEA's separate segregated fund MEA-PAC, discussed infra, and no part of the service or agency fee goes to support MEA-PAC activities. Further, under the proposal discussed infra, the MEA-PAC contribution will not be part of the service or agency fee."

MEA-PAC is a separate segregated fund established by MEA, a non-profit corporation, pursuant to section 55 of the Act (MCL 169.255). This section states, in relevant part:

> "Sec. 55. (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.
>
> * * * * *
>
> (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."

You indicate that presently, most contributions to MEA-PAC are collected from MEA members through a voluntary payroll deduction plan. Upon joining MEA, an individual may execute a MEA-PAC Voluntary Contribution Authorization form, which is printed separately and as part of the MEA Continuing Membership Application. The authorized amount is then deducted from the member's paycheck and remitted by the local association to MEA, along with the member's dues. Upon receipt, the MEA-PAC contribution is transferred directly to MEA-PAC. A member may prevent MEA-PAC contributions by revoking his or her payroll deduction authorization in writing prior to September 1 of the next membership year (September 1 through August 31). [illegible]

MEA and MEA-PAC propose to modify the current collection procedure by implementing a Guaranteed Contribution System. Under this proposal, a $10.00 contribution will automatically be deducted from each member's salary and remitted to MEA-PAC unless the member indicates that he or she does not wish to make a contribution, or the member requests a refund. The system will be funded by increasing MEA dues by $1.00 per month for each of the 10 months (September through June) in which dues are collected. Agency fee payers will not be subjected to a corresponding increase.

Any new member will be required to execute a Continuing Membership Dues Authorization form. A notice will appear on the form indicating that 1) a contribution to MEA-PAC is included in the member's MEA dues; 2) the contribution will be made on the member's behalf unless the member indicates on the front of the form that he or she does not elect to make a contribution, or unless the member requests a refund; 3) a full refund will be made if the member submits a written refund request by December 1 of the current fiscal year; 4) a request for refund will automatically operate to discontinue contributions in future years; 5) the contribution will be used to help support candidates for elective office; 6) the contribution is voluntary and not a condition of membership or employment; 7) a member has the right to refuse to contribute; and 8) such refusal will in no way alter the person's membership or employment status, rights or benefits.

A new member may refuse to participate in the system by indicating or "checking off" on the form that he or she does not elect to make a MEA-PAC contribution. Under the revised system described in your third ruling request, if a member checks-off, the additional dollar will not be deducted from the member's paycheck.

Existing MEA members "will be advised of the new procedure by way of a notice which will appear in each issue of the MEA VOICE during the first year the proposed system is implemented and in the September issues of each year thereafter." A copy of the VOICE, which is published 15 times per year, is sent to each member's home. The proposed notice will contain information substantially similar to the information provided to new members. In addition, a form will be provided to every member who does not contribute to MEA-PAC under the current payroll deduction plan. The member may refuse to participate in the Guaranteed Contribution System by checking off and returning the form to his or her local treasurer or to MEA. If a member checks-off before the start of the next fiscal year, a contribution will not be deducted from the member's paycheck.

A member who does not check-off, or a member who elects to make a contribution, will have $1.00 per month transferred to MEA-PAC on his or her behalf unless a request for refund is made by December 1 of the current membership year. Under your revised proposal, MEA-PAC will refund $10.00 to any member who submits a timely refund request. If the member has contributed less than $10.00 when the refund is made, an additional dollar will continue to be deducted from the member's paycheck during that fiscal year and will be used to reimburse MEA-PAC. However, no deduction will be made in subsequent fiscal years.

MEA requests a ruling that the proposed Guaranteed Contribution System, as described above, does not violate the Act.

Section 54 of the Act (MCL 169.254) prohibits a corporation from making contributions or expenditures in candidate elections. However, as noted previously, section 55 authorizes a corporation to make expenditures for the establishment, administration and solicitation of contributions to a separate segregated fund. The fund may be used to make contributions to, and expenditures on behalf of, candidate committees, ballot question committees, political party committees and independent committees.

Contributions to a separate segregated fund established by a nonprofit corporation are restricted by section 55(3) and (4). Pursuant to subsection (3), contributions may only be solicited from a limited number of persons, including individual members of the corporation. The method used to collect contributions is restricted by subsection (4), which states:

> "Sec. 55. (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."

The Attorney General has indicated that the Act "does permit a voluntary payroll deduction plan as a form of collection of contributions to [a] separate segregated fund." OAG, 1977-78, No 5279, p 391 (March 22, 1978). The issue raised by your inquiry is whether contributions collected under the reverse check-off procedure are voluntary, or whether they are obtained by coercion, force, threat, or as a condition of employment or membership.

The federal courts have previously considered the propriety of using labor union funds to finance political activity. In Abood v Detroit Board of Education, 431 US 209; 97 S Ct 1782; 52 L Ed 2d 261 (1977), the Supreme Court considered the validity of an agency shop clause negotiated by the Detroit Federation of Teachers and the Detroit Board of Education pursuant to the Michigan Public Employment Relations Act, supra. The agency shop provision required non-members to pay to the union, as a condition of employment, a service fee equal to the amount of union dues. The Court ruled that service fees could be used to finance union expenditures for purposes of collective bargaining, contract administration and grievance procedures. However, they could not be used to support ideological causes:

> "We do not hold that a union cannot constitutionally spend funds for the expression of political views, on behalf of political candidates, or toward the advancement of other ideological causes not germane to its duties as collective-bargaining representative. Rather, the Constitution requires that such expenditures be financed from charges, dues, or assessments paid by employees who do not object to advancing those ideas and who are not coerced into doing so against their will by the threat of loss of governmental employment." Abood, supra, pp 235-236.

The Court noted that in determining an appropriate remedy, the "objective must be to devise a way of preventing compulsory subsidization of ideological activity" without restricting the union's ability to finance collective bargaining activities. The case was then remanded to the Michigan Court of Appeals, with a suggestion that further judicial action be deferred pending the voluntary use of a refund procedure developed by the parties during the course of the litigation.

Other decisions have focused upon the construction of the Federal Election Campaign Act of 1971 (FECA) and particularly what is now 2 USC §441b(b)(3)(A). In Pipefitters Local 562 v United States, 407 US 385; 92 S Ct 2247; 33 L Ed 2d 11 (1972), petitioners were convicted under 18 USC §610, which prohibited a labor organization from making a contribution or expenditure in connection with a federal election. After the Court had heard oral argument, section 610 was amended by adding the language contained in section 441b(b)(3)(A) of the FECA. This section now states:

> "(3) It shall be unlawful -
> (A) for such a fund to make a contribution or expenditure by utilizing money or anything of value secured by physical force, job discrimination, financial reprisals, or the threat of force, job discrimination, or financial reprisal; or by dues, fees, or other moneys required as a condition of membership in a labor organization or as a condition of employment, or by moneys obtained in any commercial transaction;"

The Supreme Court's decision in Pipefitters is explained by the District Court in Federal Election Commission v National Education Association, 457 F Supp 1102, 1105 (DDC, 1978):

> "Insofar as is pertinent here, the Court held that the Act merely codified existing law and further, that not all political contributions by labor organizations were prohibited, only those derived from funds that 'were actually or effectively required for employment or union membership.' Id. at 339, 439, 92 S.Ct. at 2256, 2276. The funds at issue in Pipefitters were raised by contributions and kept strictly segregated from the union's general treasury, which was financed by assessed dues. Id. at 414, 91 S.Ct. at 2264. The Court therefore concluded that reversible error had occurred because the jury was not instructed to determine whether the contributions to that segregated fund were voluntary or whether they were involuntary because required or effectively assessed. Id. at 435-38, 92 S.Ct. at 2274, 2275. To be voluntary the contribution must result from a 'knowing free-choice,' which means that the solicitation must be
>
> > conducted under circumstances plainly indicating donations are for political purposes and that those solicited may decline to contribute without loss of job, union membership, or other reprisal.
>
> Id. at 414, 92 S.Ct. at 2264. The purpose of such a standard, the Court said, is to protect the dissenting union member. Id. at 414-15, 92 S.Ct. at 2274."

The issue in FEC v NEA, supra, was whether a reverse check-off system used by the NEA and certain of its state affiliates, including MEA, to collect contributions to its separate segregated fund violated section 441b(b)(3)(A). Under that system, a person executing a membership application automatically agreed to the deduction of a $1.00 political contribution from his or her paycheck. The member had no opportunity to disallow the deduction in the first place but had to submit a separate, written refund request if the member did not wish to contribute to NEA-PAC.

After discussing Pipefitters, the Court cited with approval the decision reached in United States v Boyle, 157 US App DC 166; 482 F2d 755 (1973). In Boyle, the Court of Appeals considered a constitutional challenge to section 610 as amended by section 441b(b)(3)(A). Appellant argued that a union member's right not to contribute to a political cause could be protected less restrictively by permitting a refund "of a proportionate amount of a member's dues if the dissenter gives notice of his [or her] disagreement." The Court of Appeals rejected the refund alternative, indicating that Pipefitters required a union member to affirmatively approve a contribution "by assenting to have a deduction made from the member's paycheck." Boyle, supra, p 764.

The District Court concluded that "'knowing free-choice' means an act intentionally taken and not the result of inaction when confronted with an obstacle." FEC v NEA, supra, p 1109. Therefore, dissenting members could not be required to bear the burden of requesting a refund. In these circumstances, the Court ruled that "reverse check-off is per se violative of section 441b(b)(3)(A)'s prohibition against financing political funds by 'dues, fees, or other moneys required as a condition of membership in a labor organization.'" Id, p 1110. The Court did not rule out, however, a payroll deduction method which asked the union member beforehand if he or she wanted a contribution deducted along with his or her dues.

In so holding, the Court agreed with the Federal Election Commission (FEC), which had been asked prior to commencement of the litigation to render an advisory opinion concerning the federal act's application to variations of the reverse check-off procedure proposed by the NEA. The FEC had previously taken the position that reverse check-off violated section 441b(b)(3)(A). The NEA offered as an alternative a "premembership reimbursement method" under which the NEA would refund contributions to dissenting employees upon enrollment or at the beginning of each membership year, rather than at a later time. However, the employee's payroll deduction would continue throughout the year.

A majority of the Commission was unpersuaded:

> "The illegality of the reverse check-off procedure stems from the deduction of political monies from a member's paycheck even though he or she may not wish to contribute to the union's political fund. These funds are required as a condition of membership in that the political payment must be made in order to become a member or to maintain membership status in the union. The Act and the regulations prescribe that a refund of the political monies does not relieve the

> condition of membership proscription. The proposed premembership reimbursement method does not change the operation of a reverse check-off procedure, it merely alters the timing of the reimbursement. The reimbursement continues to operate as a refund in that there is a subsequent automatic payroll deduction of political funds and membership dues. The essence of the illegality of the reverse check-off procedure goes to how and why the funds are collected and not to the timing of the dissenting member's reimbursement." AO 1977-37. (April 14, 1978)

The system which the FEC and the District of Columbia Court found offensive required an automatic deduction from each member's paycheck. A member could not refuse to participate in the system and could not prevent the deduction of a political contribution from his or her salary. Thus, the member's only recourse was to seek a refund.

These factors were absent in Kentucky Educators Public Affairs Council v Kentucky Registry of Election Finance, 677 F2d 1125 (CA6, 1982), where the Court of Appeals approved a reverse check-off plan similar to the plan proposed by MEA. In this case, the Kentucky Education Association (KEA) was prohibited by state law from making contributions in candidate elections. KEA therefore established the Kentucky Educators Public Affairs Council (KEPAC) as a "separate political arm" to engage in election activity. Contributions to KEA and KEPAC were collected as follows:

> "Kentucky law authorizes local school systems to deduct KEA dues and other membership dues from salary checks. The deduction can be made only upon request of an employee or group of employees. This payroll deduction plan, called Automatic Payment Authorization, [hereinafter, 'APA'] has long been in use in Kentucky. Since 1975, KEPAC has used a 'reverse check-off' system in conjunction with KEA's payroll deduction of dues to obtain contributions. Under the reverse check-off system used by KEPAC, all KEA members executing APA forms have contributions, along with dues payments, insurance premiums, and retirement fund contributions, deducted from their salary checks unless the KEA member affirmatively checks off that she or he declines to contribute to KEPAC. The aims and activities of KEPAC are explained on the APA form. If a KEA member does not initially check off his or her designation to contribute to KEPAC, an automatic contribution is made. If the member does check off, and yet, subsequently decides not to participate, the member can stop the deduction and can also obtain a refund of past contributions. Separate forms are used for members who wish to contribute to KEPAC but not through the payroll deduction system." 677 F2d at 1127.

The Kentucky Corrupt Practices Act prohibited KEPAC from obtaining funds "by assessment or coercion." The issues before the Sixth Circuit, as described by the Court, were whether dissenting members were adequately protected by a reverse check-off procedure which allowed members to elect at the outset not to participate and which was coupled with a refund system, and whether contributions collected under this system were coerced or assessed.

The Kentucky District Court had previously determined that the reverse check-off plan used by KEPAC did not violate Kentucky law. In so holding, the Court distinguished FEC v NEA, supra, stating that the two cases involved different statutes. The Court of Appeals, agreeing with the lower court, further distinguished the cases:

> "....the fundamental questions in both cases was whether a reverse check-off system meets the 'Knowing Free-Service Donation' test set forth in Pipefitters. The District of Columbia Court held that a reverse check-off requiring a dissenter to submit a separate written request for refund rather than being able to disallow the deduction in the first place placed an undue burden on the dissenter. The Court below held that a reverse check-off procedure permitting a disallowance in the first place with a right of refund was not coercion and was not an assessment. The decisions are not incompatible, and the court below was correct in its analysis in its decision."

The Sixth Circuit held the rights of dissenting members were sufficiently protected because 1) they could leave KEA without jeopardizing their employment; 2) they could remain in KEA and attempt to influence its ideological positions; 3) they could check-off and refuse to contribute to KEPAC; or 4) they could request and receive refunds of KEPAC contributions. The Court also found no evidence indicating that contributions collected through reverse check-off were coerced or assessed.

The reverse check-off plan proposed by MEA is distinguishable from the NEA case in the same manner. Under MEA's revised proposal, new and existing members will be given the opportunity to check-off before any amount is deducted from their paychecks. If a member does not check-off or chooses to make a contribution, the member may still recover any amount transferred to MEA-PAC by requesting a refund. MEA-PAC will then return any money it has received from the member, plus any amount which will be deducted from the member's paycheck during the rest of that fiscal year. Although the member's payroll deduction will continue during that year, the deduction will not be for a political contribution but will be used to reimburse MEA-PAC. After a member requests a refund, the deduction will automatically be discontinued for subsequent fiscal years.

Moreover, you specifically state that service fee payers are not solicited, and their fees will not be increased under the proposed system. Thus, there is no danger that service fee payers will unknowingly or unwillingly subsidize MEA's political activities. Similarly, there is no suggestion that members will be coerced, threatened, or suffer job discrimination or financial reprisals if they refuse to contribute to MEA-PAC. Finally, by giving members notice and the opportunity to check-off beforehand, the proposal offers adequate measures which insure that members' contributions will be voluntary.

In these circumstances, MEA will not obtain contributions for MEA-PAC as a condition of employment or membership. A member may refuse to make a contribution to MEA-PAC either before or after money is deducted from his or her paycheck. If a member checks-off or requests a refund, money will no longer be deducted from the member's salary for the purpose of making a contribution to MEA-PAC. Thus, a person is not required to contribute to MEA-PAC in order to acquire or maintain membership in MEA, or employment in an MEA institution. Moreover, it does not appear that MEA members will be coerced, forced or threatened, nor will they suffer job discrimination or financial reprisals if they refuse to contribute to MEA-PAC. Therefore, the revised Guaranteed Contribution System proposed by MEA does not violate section 55 and is permitted under the Act.

It must be emphasized, however, that transfers to MEA-PAC must be made from earmarked contributions and not from MEA's membership dues or general treasury funds. Any transfer of MEA funds to MEA-PAC would result in a violation of section 54 of the Act.

This response is a declaratory ruling concerning the specific facts and questions presented.

Sincerely,

Richard H. Austin

10-87-CI

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

September 8, 1987

Roger Short
Office of the Auditor General
204 City-County Building
2 Woodward Avenue
Detroit, Michigan 48226

Dear Mr. Short:

This is in response to your inquiry concerning the applicability of the Campaign Finance Act (the Act), 1976 PA 388, as amended, to the disbursement of money from a public official's candidate committee and officeholder's expense fund (OEF) after the official leaves office to accept a position as probate judge. Specifically, you ask whether Freddie Burton, a former county commissioner, may use unexpended funds in his local candidate committee or officeholder's account "to give a farewell party for those who have worked on behalf of the Commissioner, including office workers and campaign staff."

With respect to candidate committees, the Department indicated in a declaratory ruling to Senator Mitch Irwin, dated May 29, 1979, that committee funds may only be used to influence a campaign. Subsequently, in an October 12, 1981, letter to Ms. Dorothey Sherman, the Department stated:

> "A thank-you dinner for [a] candidate's committee soon after the election is sufficiently tied to election activity so as to serve to influence his or her nomination or election. Consequently, the use of campaign funds to pay for such an event would be appropriate under the Act's provisions."

The farewell party you describe is not tied to election activity and is not intended to influence the commissioner's nomination or election. As such, excess candidate committee funds may not be used to pay for the party.

The disposition of residual candidate committee money is governed by section 45 of the Act (MCL 169.245). This section provides:

> "Sec. 45. (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 contri-

> bution limits for the candidate committee transferring the funds and if the candidate committees are simultaneously held by the same person. The funds being transferred shall not be considered a qualifying contribution regardless of the amount of the individual contribution being transferred.
>
> (2) Unexpended funds in a campaign committee that are not eligible for transfer to another candidate committee of the person, pursuant to subsection (1), shall be given to a political party committee, or to a tax exempt charitable institution, or returned to the contributors of the funds upon termination of the campaign committee."

Pursuant to sections 24 and 36 of the Act (MCL 169.224 and 169.236), upon meeting the definition of "candidate" Mr. Burton must form a probate judge candidate committee and file a statement of organization with the Secretary of State. The Act does not limit contributions made to the candidate committees of local officials or probate judges. Therefore, the Act would allow Mr. Burton to transfer unexpended funds in his local committee to his probate judge committee. (You may, however, wish to request an ethics opinion from the State Bar of Michigan concerning the propriety of transferring the funds to the probate judge committee under the Code of Judicial Conduct.) If the unexpended money is not transferred pursuant to section 45(1), it must be returned to the contributors of the funds or given to a political party or charitable institution.

Officeholder expense funds, on the other hand, may only be used to pay expenses incidental to office, as stated in section 49 of the Act (MCL 169.249). Money transferred or donated to an OEF is not subject to the requirements of section 45. However, the Attorney General recently issued an opinion concerning the disposition of funds remaining in an OEF when an officeholder leaves office. The Attorney General indicated in OAG, 1987, No 6447, p _____ (June 16, 1987) that "neither the treasurer of an officeholder expense fund nor the elected official after departure from office is authorized to use or dispose and thus withdraw any residual moneys in such elected official's officeholder expense fund." The Attorney General concluded that "residual moneys" remaining in an official's OEF after the official leaves office escheat to the State of Michigan.

The Attorney General's opinion did not address the propriety of using OEF funds to dispose of office-related debts incurred before the officeholder vacated his or her office. This issue was previously addressed by the Department in an interpretive statement issued to Mr. Richard D. McLellan, dated February 23, 1987.

In the McLellan letter, the Department noted that while a departing officeholder's OEF must be dissolved, dissolution cannot be accomplished unless the OEF's assets are dispersed, its debts are paid, and a dissolution statement is filed. During the winding up process, the Department warned that disbursements from the OEF are strictly limited:

> " . . . . an OEF may only be used 'for expenses incidental to the person's office.' An ex-official can no longer incur expenses incidental

to office. Accordingly, an OEF maintained during the dissolution process by a retired public official is limited to accepting donations and making disbursements for the purpose of satisfying debts incurred prior to the expiration of the official's term of office. Any new activity is strictly prohibited."

The McLellan letter is not inconsistent with the Attorney General's opinion. As indicated previously, the Attorney General stated that "residual moneys" in an OEF may not be withdrawn after the officeholder who created the account leaves office. "Residual," of course, refers to the residue. According to both Black's Law Dictionary and The American Heritage Dictionary of the English Language, when used in its legal sense "residue" means the remainder of an estate after all claims, debts and bequests have been satisfied. Similarly, in the Department's view, the "residual" funds in an OEF are those funds remaining in the account after office-related debts and obligations incurred by the officeholder prior to leaving office have been paid.

Expenses for a farewell party attended by an official's staff and former campaign workers may be considered incidental to office. Therefore, funds remaining in the commissioner's OEF may be used to pay debts related to the farewell party, provided the debts were incurred prior to the date on which the commissioner left office. However, funds remaining in the account after the OEF's pre-existing debts and obligations are satisfied will escheat to the state in accordance with the Attorney General's opinion.

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/AC/cw

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

MUTUAL BUILDING
208 N. CAPITOL AVENUE

LANSING
MICHIGAN 48918

November 16, 1987

Thomas H. Shields
Marketing Resource Group, Inc.
115 W. Allegan, Suite 910
Lansing, Michigan 48933

Dear Mr. Shields:

This is in response to your request for a declaratory ruling concerning the applicability of the Campaign Finance Act (the Act), 1976 PA 388, as amended, to a Corporate Executive Guaranteed Contribution System proposed by Marketing Resource Group, Inc. (MRG) for the collection of contributions to its separate segregated fund (MRG-PAC).

MRG-PAC was established by MRG pursuant to section 55 of the Act (MCL 169.255). This section states, in relevant part:

> "Sec. 55. (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."

The proposed Corporate Executive Guaranteed Contribution System would apply only to "eligible employees," or those employees from whom contributions may be solicited under section 55(2)(c), and would operate as a "reverse check-off." Under the proposal, a contribution of $1.00 per month will automatically be deducted from each eligible employee's paycheck and remitted to MRG-PAC unless the employee indicates that he or she does not wish to make a contribution, or the

employee requests a refund.

To implement the system, new and existing eligible employees will be given MRG-PAC Continuing Contribution Authorization Forms. The form explains that a contribution will be withheld from the employee's paycheck "unless you check the box and sign the statement below. This contribution will be withheld unless this form is returned to the MRG payroll office within the next month or if at a later date you change your mind and request a refund." The form then describes how to obtain a refund, explains that a refund request will automatically operate to discontinue MRG-PAC contributions in future years, and discloses that contributions to MRG-PAC will be used to support candidates for elective office. Finally, the form states that 1) a contribution to MRG-PAC is voluntary and not a condition of employment, 2) an employee has the right to refuse to contribute to MRG-PAC, and 3) refusing to contribute will not alter the employee's status, rights or benefits with MRG. An employee may decline to participate in the system and prevent - at the outset - the deduction of political contributions by checking-off and returning the form within the allotted time.

The contribution system you describe appears to be identical, with one exception, to the reverse check-off plan recently implemented by the Michigan Education Association (MEA) and its separate segregated fund (MEA-PAC). In the attached declaratory ruling issued to Mr. Peter F. McNenly, dated August 4, 1987, the Department indicated that MEA's reverse check-off system was not prohibited by the Act. The only apparent difference between the MRG and MEA contribution systems is the relationship between the corporation and the individuals solicited.

Under the reverse check-off plan approved in McNenly, contributions to MEA-PAC are solicited only from members of MEA, a non-profit corporation which is restricted in the solicitation of contributions to its separate segregated fund by section 55(3). MRG-PAC, on the other hand, was established by a profit corporation and solicitations by MRG are regulated by section 55(2). Thus, the solicitation of contributions under the proposed Corporate Executive Guaranteed Contribution System will be limited to MRG employees who have policymaking, managerial, professional, supervisory, or administrative nonclerical responsibilities.

However, solicitations by non-profit and profit corporations are governed equally by section 55(4), which states:

> "Sec. 55. (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."

The dispositive issue in the McNenly ruling was whether this subsection prohibited MEA from implementing its Guaranteed Contribution System. After thoroughly examining MEA's proposal and reviewing relevant decisions from other jurisdictions, the Department concluded that MEA's reverse check-off plan did not violate the Act, stating:

> "In these circumstances, MEA will not obtain contributions for MEA-PAC as a condition of employment or membership. A member may refuse to make a contribution to MEA-PAC either before or after money is deducted from his or her paycheck. If a member checks-off or requests a refund, money will no longer be deducted from the member's salary for the purpose of making a contribution to MEA-PAC. Thus, a person is not required to contribute to MEA-PAC in order to acquire or maintain membership in MEA, or employment in an MEA institution. Moreover, it does not appear that MEA members will be coerced, forced or threatened, nor will they suffer job discrimination or financial reprisals if they refuse to contribute to MEA-PAC. Therefore, the revised Guaranteed Contribution System proposed by MEA does not violate section 55 and is permitted under the Act."

This conclusion depended upon three key factors. First, new and existing MEA members may check-off and refuse to participate in the system before or after money is withheld from their paychecks. Second, if a member checks-off or requests a refund, no further political contributions are deducted from his or her paycheck. And third, at the time of MEA's ruling request, there was no evidence of coercion, force, threat, discrimination or financial reprisal if a member refused to contribute to MEA-PAC.

MRG's Corporate Executive Guaranteed Contribution System appears, on its face, to include similar safeguards. MRG proposes to give its eligible employees notice and the opportunity to refuse to participate in the system before contributions are withheld from their paychecks. An employee who does not check-off will be entitled to a refund upon submission of a timely written request. Political contributions will not be deducted from an employee's salary after the employee checks-off or requests a refund. Finally, MRG will advise its employees in notices printed on the contribution authorization form and in payroll stuffers that MRG-PAC contributions are voluntary and not a condition of employment, and that an employee's status, rights and benefits will not be altered if he or she elects not to make a MRG-PAC contribution.

If the above conditions are strictly adhered to, contributions to MRG-PAC will not be obtained as a condition of employment, and if the contributions are not obtained by the use of threat, force or coercion, the guaranteed contribution system is permissible under the Act. However, given the master-servant relationship which exists between MRG and its employees, extreme caution must be exercised to prevent MRG from exerting any coercion, express or implied, upon its solicited employees. For example, if MRG-PAC contributions are solicited outside of normal channels or in circumstances which suggest that an employee does not have a free choice, a violation of the Act may occur. This determination can only be made on a case by case basis.

Finally, it should be noted that this ruling is limited to the application of the Campaign Finance Act to MRG's proposed contribution system. The Wages and Fringe Benefits Act, 1978 PA 390, as amended, may prohibit MRG from implementing a reverse check-off plan. Specifically, section 7 of that act (MCL 408.477) provides:

> "Sec. 7. With the exception of those deductions required or expressly permitted by law or by a collective bargaining agreement, an employer shall not deduct from the wages of an employee, directly or indirectly, any amount without the full, free, and written consent of the employee, obtained without intimidation or fear of discharge or refusal to permit the deduction. A deduction for the benefit of the employer shall require written consent from the employee for each wage payment subject to the deduction and the cumulative amount of the deductions shall not reduce the gross wages paid to a rate less than minimum rate as defined in Act No. 154 of the Public Acts of 1964, as amended, being sections 408.381 to 408.397 of the Michigan Compiled Laws. Each deduction shall be substantiated in the records of the employer and shall be identified as pertaining to an individual employee. Prorating of deductions between 2 or more employees shall not be permitted." (emphasis added)

Questions concerning the applicability of this statute to MRG's Corporate Executive Guaranteed Contribution System should be referred to the Department of Labor, Bureau of Employment Standards, 7150 Harris Drive, Box 30015, Lansing, Michigan 48909.

This response is a declaratory ruling concerning the applicability of the Campaign Finance Act to the specific facts and questions presented.

Sincerely,

Richard H. Austin

11-87-CI

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

December 14, 1987

George Hubka
7950 Marshall Road
Nashville, Michigan 49073

Dear Mr. Hubka:

This is in response to your request for a declaratory ruling under the Campaign Finance Act (the Act), 1976 PA 388, as amended. Rule 6 of the administrative rules promulgated to implement the Act, 1979 AC R169.6, establishes the procedure for requesting a declaratory ruling. This rule states, in relevant part:

> "Rule 6. (1) The secretary of state, on written request of an interested person, may issue a declaratory ruling as to the applicability of the act or these rules to an actual statement of facts. An interested person is a person whose course of action would be affected by the declaratory ruling. A brief or other reference to legal authorities, upon which the person relies for determination of the applicability of the act or of a rule to the statement of facts, may be submitted with the request."

Rule 6 corresponds with section 63 of the Administrative Procedures Act, 1969 PA 306, as amended, which further governs the issuance of declaratory rulings. Under section 63, an "interested person" may request a ruling as to an actual statement of facts. If issued, the interested person and agency are bound by the declaratory ruling.

Your questions appear to concern the manner in which a certain political committee has conducted its affairs. There is no indication that you are affiliated with the committee or that you are an "interested person" who would be affected or bound by the requested ruling. Moreover, your inquiry does not include an actual statement of facts, as required by rule 6. Therefore, the Secretary of State declines to issue a declaratory ruling in response to your request.

However, enclosed for your use is a copy of the Act and rules, including a digest of declaratory rulings and interpretive statements issued by the Department. You may be particularly interested in sections 4 and 6 (the definitions of "contribution" and "expenditure"), sections 15 and 16 (the responsibilities and authority of the Secretary of State and county clerks), sections 21, 22 and 24 (the organization of a committee and duties of its treasurer), and section 26 (the required contents of campaign statements filed by non-political party committees). You may also find other sections and rules useful in addressing your concerns.

If after reviewing these materials you have further questions concerning the Act's reporting obligations or the completion of reports, you should contact

your county clerk or the Bureau of Elections, Disclosure and Public Records Section, for additional information. If your review leads you to believe that a violation of the Act may have occurred and you have evidence in support of your belief, you may file a complaint with the Department's Compliance and Rules Division in accordance with Part 5 of the rules.

You have also asked whether the Freedom of Information Act (FOIA), 1976 PA 442, as amended, applies to "items" supplied to the Secretary of State pursuant to the Campaign Finance Act and "material secured by [the Secretary of State] in investigating illegal activity" under the Act.

Pursuant to section 3 of FOIA (MCL 15.233), a state agency must make public records available to a person upon oral or written request, unless the record is exempt from disclosure under section 13 (MCL 15.243). Section 13(1)(b) provides that a public body may exempt from disclosure investigating records compiled for law enforcement purposes. Therefore, the Department does not disclose information secured during the course of investigating an alleged violation of the Act until after the investigation is completed.

Section 13(1)(s) further provides that records of any campaign committee may be exempt from disclosure. However, pursuant to section 13(2) an agency may not withhold information otherwise required by law to be made available to the public.

Section 16(1) of the Campaign Finance Act requires a filing official to "make statements and reports required to be filed under this act available for public inspection and reproduction, commencing as soon as practicable, but not later than the third business day following the day on which they are received, during regular business hours of the filing official." Therefore, even if campaign statements and reports filed with the Secretary of State are exempt from disclosure under FOIA, they must be made available to the public pursuant to section 16(1). Copies of these records may be obtained from the Bureau of Elections at a current cost of 16¢ per page.

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
(517) 373-8141

PTF/AC/cw

Enc.

Sec. 26. A campaign statement of a committee, other than a political party committee, required by this act shall contain the following information.

(a) The filing committee's name, address, and telephone number, and the full name, residential and business addresses, and telephone numbers of its committee treasurer.

(b) 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 thosetotals for that election. If a loan was repaid during the period covered by the campaign statement, the amount of the repayment shall be subtracted from the total amount of contributions received. Forgiveness of a loan shall not be included in the totals. Payment of a loan by a third party shall be recorded and reported as a contribution by the third party but shall not be included in the totals. In-kind contributions or expenditures shall be listed at fair market value and shall be reported as both contributions and expenditures. A contribution or expenditure which is by other than completed and accepted payment, gift, or other transfer, which is clearly not legally enforceable, and whichis expressly withdrawn or rejected and returned before a campaign statement closing date need not be included in the campaign statement if included may, in a later or amended statement be shown as a deduction, but adequate records of each instance shall be kept.

(c) The balance of cash and cash equivalents on hand at the beginning and the end of the period covered by the campaign statement.

(d) The total amount of contributions received during the period covered by the campaign statement from persons who contributed $20.01 or more.

(e) The total amount of contributions received during the period covered by the campaign statement from persons who contributed $20.00 or less.

(f) The total amount of contributions of $20.00 or less received during the period covered by the campaign statement and the cumulative amount of the contributions received by the filer for thatelection pursuant to section 41(3).

(g) The total amount of contributions of $20.00 or less received during the period covered by the campaign statement for each fund raising event held during that period. The following information regarding each fund raising event shall be included in the report:

(i) The type of event, date held, address and name, if any, of the place where the activity was held, and approximate number of individuals participating or in attendance.

(ii) The full name of each person who, though making a contribution or expenditure in connection with the event, made a total contribution of $20.01 or more, and the total of all such contributions. This requirement is in addition to, and not it lieu of, the requirements of this section relating to the recording and reporting of contributions.

(iii) Moneys received in connection with the event or activity from persons in amounts of $20.00 or less shall be listed by general category such as tickets, beverages, bumper stickers, or other, and the total of those contributions shall be recorded.

(iv) The gross receipts of the fund raising event.

(v) The expenditures incident to the event.

(h) The full name of each person from whom contributions totaling $20.01 or more are received during the period covered by the campaign statement, together with the person's street address, the amount contributed, the date on which each contribution was received, and the cumulative amount contributed by that person for that election. The occupation, employer, and principal place of business shall be stated if the person's total contributions for the period is $200.01 or more.

(i) The cumulative amount contributed and the name and address of each person, except those persons or names reported under subdivision (h), who contributed a total of $20.01 or more for that election. The occupation, employer, and principal place of business, shall be stated for each person who contributed $200.01 or more for that election.

Sec. 16. (1) A filing official shall make statements and reports required to be filed under this act available for public inspection and reproduction, commencing as soon as practicable, but not later than the third business day following the day on which they are received, during regular business hours of the filing official.

(2) Copies of statements or parts of statements shall be provided by a filing official at a reasonable charge.

(3) A statement open to the public under this act shall not be used for purposes of commercial solicitation or any commercial purpose. A person who violates this subsection is subject to a civil penalty of not more than $1,000.00.

(4) A statement or report filed under this act shall be preserved by the filing official for 5 years or for 1 year beyond the term of office for which the statement or report is filed, whichever is longer. Statements and reports filed under this act may be microfilmed. After the required preservation period the statements and reports, microfilmed or otherwise, shall be destroyed.

(5) A charge may not be collected by a filing official for the filing of a required statement or report, or for a form upon which the statement or report is to be prepared except for a late filing fee required by this act.

(6) A filing official shall determine whether a statement or report filed under this act complies, on its face, with the requirements of this act and the rules promulgated under this act. The filing official shall determine whether a statement or report which is required to be filed under this act is in fact filed. Within 4 days after the deadline for filing a statement or report under this act, the filing official shall give notice to the filer by registered mail of an error or omission in the statement or report and give notice to a person the filing official has reason to believe is a person required to and who failed to file a statement or report. A failure to give notice by the filing official under this subsection is not a defense to a criminal action by the person required to file.

(7) Within 9 days after the report or statement is required to be filed, the filer shall make any corrections in the statement or report filed with the appropriate filing official. If the report or statement was not filed, then it shall be late filed within 9 days after the time it was required to be filed and shall be subject to late filing fees.

(8) After 9 days and before 12 days have expired after the deadline for filing the statement or report, the filing official shall report errors or omissions which were not corrected and failures to file to the attorney general.

(9) A statement or report required to be filed under this act shall be filed not later than 5 p.m. of the day in which it is required to be filed. A statement or report which is postmarked by registered mail at least 2 days before the deadline for filing shall be considered filed within the prescribed time regardless of when it is actually delivered.

(j) The name and street address of each committee and the full name and street address of the treasurer of each committee which is listed as a contributor.

(k) The name, address, and amount given by a person who contributed $20.01 or more of the total amount contributed by a person who is other than a committee or an individual. The occupation, employer, and principal place of business shall be stated if the person contributed $200.01 or more.

(l) A listing, by general category, of expenditures of $50.00 or less made during the period covered by the campaign statement and thetotal of those expenditures.

(m) The full name and streetaddress of each person to whom expenditures totaling $50.01 or more were made, together with the amount of each separate expenditure to each such person during the period covered by the campaign statement; the purpose of the expenditure; the full name and street address of the person providing the consideration for which any expenditure was made if different from the payee; and the full name and street address of the treasurer of a committee which is listed.

(n) The amount of expenditures for or against a candidate or ballot question during the period covered by the campaign statement and the cumulative amount of expenditures for or against the candidate or ballot question. An expenditure made in support of more than 1 candidate or ballot question, or both, shall be apportioned reasonably among the candidates or ballot questions, or both.

12-87-CI

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

December 15, 1987

James A. Rice
Rt. 3, Guy Road
Nashville, Michigan 49073

Dear Mr. Rice:

This is in response to your request for a declaratory ruling under the Campaign Finance Act (the Act), 1976 PA 388, as amended. Rule 6 of the administrative rules promulgated to implement the Act, 1979 AC R169.6, establishes the procedure for requesting a declaratory ruling. This rule states, in relevant part:

> "Rule 6. (1) The secretary of state, on written request of an interested person, may issue a declaratory ruling as to the applicability of the act or these rules to an actual statement of facts. An interested person is a person whose course of action would be affected by the declaratory ruling. A brief or other reference to legal authorities, upon which the person relies for determination of the applicability of the act or of a rule to the statement of facts, may be submitted with the request."

Rule 6 corresponds with section 63 of the Administrative Procedures Act, 1969 PA 306, as amended, which further governs the issuance of declaratory rulings. Under section 63, an "interested person" may request a ruling as to an actual statement of facts. If issued, the interested person and agency are bound by the declaratory ruling.

Your questions concern the sufficiency of a report filed by the On With the Job committee. There is no indication that you are affiliated with the committee or that you are an "interested person" who would be affected or bound by the requested ruling. Moreover, your inquiry does not include an actual statement of facts, as required by rule 6. Therefore, the Secretary of State declines to issue a declaratory ruling in response to your request.

However, enclosed for your use are copies of sections 16 and 26 of the Act. Section 16 describes the process for reviewing reports filed under the Act. The information which must be included in a report is identified in section 26.

The report filed by On With the Job was reviewed by the Bureau of Elections pur-

suant to section 16. A determination was made that further disclosure was not required. Subsequently, the committee filed a dissolution statement, indicating that it no longer receives or makes campaign contributions or expenditures. Therefore, the Department does not intend to take any further action concerning the report filed by this committee.

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

Very truly yours,

Phillip T. Frangos
Director
Office of Hearings and Legislation

PTF/cw

Enc.

Sec. 26. A campaign statement of a committee, other than a political party committee, required by this act shall contain the following information.

(a) The filing committee's name, address, and telephone number, and the full name, residential and business addresses, and telephone numbers of its committee treasurer.

(b) 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 thosetotals for that election. If a loan was repaid during the period covered by the campaign statement, the amount of the repayment shall be subtracted from the total amount of contributions received. Forgiveness of a loan shall not be included in the totals. Payment of a loan by a third party shall be recorded and reported as a contribution by the third party but shall not be included in the totals. In-kind contributions or expenditures shall be listed at fair market value and shall be reported as both contributions and expenditures. A contribution or expenditure which is by other than completed and accepted payment, gift, or other transfer, which is clearly not legally enforceable, and whichis expressly withdrawn or rejected and returned before a campaign statement closing date need not be included in the campaign statement if included may, in a later or amended statement be shown as a deduction, but adequate records of each instance shall be kept.

(c) The balance of cash and cash equivalents on hand at the beginning and the end of the period covered by the campaign statement.

(d) The total amount of contributions received during the period covered by the campaign statement from persons who contributed $20.01 or more.

(e) The total amount of contributions received during the period covered by the campaign statement from persons who contributed $20.00 or less.

(f) The total amount of contributions of $20.00 or less received during the period covered by the campaign statement and the cumulative amount of the contributions received by the filer for thatelection pursuant to section 41(3).

(g) The total amount of contributions of $20.00 or less received during the period covered by the campaign statement for each fund raising event held during that period. The following information regarding each fund raising event shall be included in the report:

(i) The type of event, date held, address and name, if any, of the place where the activity was held, and approximate number of individuals participating or in attendance.

(ii) The full name of each person who, though making a contribution or expenditure in connection with the event, made a total contribution of $20.01 or more, and the total of all such contributions. This requirement is in addition to, and not it lieu of, the requirements of this section relating to the recording and reporting of contributions.

(iii) Moneys received in connection with the event or activity from persons in amounts of $20.00 or less shall be listed by general category such as tickets, beverages, bumper stickers, or other, and the total of those contributions shall be recorded.

(iv) The gross receipts of the fund raising event.

(v) The expenditures incident to the event.

(h) The full name of each person from whom contributions totaling $20.01 or more are received during the period covered by the campaign statement, together with the person's street address, the amount contributed, the date on which each contribution was received, and the cumulative amount contributed by that person for that election. The occupation, employer, and principal place of business shall be stated if the person's total contributions for the period is $200.01 or more.

(i) The cumulative amount contributed and the name and address of each person, except those persons or names reported under subdivision (h), who contributed a total of $20.01 or more for that election. The occupation, employer, and principal place of business, shall be stated for each person who contributed $200.01 or more for that election.

Sec. 16. (1) A filing official shall make statements and reports required to be filed under this act available for public inspection and reproduction, commencing as soon as practicable, but not later than the third business day following the day on which they are received, during regular business hours of the filing official.

(2) Copies of statements or parts of statements shall be provided by a filing official at a reasonable charge.

(3) A statement open to the public under this act shall not be used for purposes of commercial solicitation or any commercial purpose. A person who violates this subsection is subject to a civil penalty of not more than $1,000.00.

(4) A statement or report filed under this act shall be preserved by the filing official for 5 years or for 1 year beyond the term of office for which the statement or report is filed, whichever is longer. Statements and reports filed under this act may be microfilmed. After the required preservation period the statements and reports, microfilmed or otherwise, shall be destroyed.

(5) A charge may not be collected by a filing official for the filing of a required statement or report, or for a form upon which the statement or report is to be prepared except for a late filing fee required by this act.

(6) A filing official shall determine whether a statement or report filed under this act complies, on its face, with the requirements of this act and the rules promulgated under this act. The filing official shall determine whether a statement or report which is required to be filed under this act is in fact filed. Within 4 days after the deadline for filing a statement or report under this act, the filing official shall give notice to the filer by registered mail of an error or omission in the statement or report and give notice to a person the filing official has reason to believe is a person required to and who failed to file a statement or report. A failure to give notice by the filing official under this subsection is not a defense to a criminal action by the person required to file.

(7) Within 9 days after the report or statement is required to be filed, the filer shall make any corrections in the statement or report filed with the appropriate filing official. If the report or statement was not filed, then it shall be late filed within 9 days after the time it was required to be filed and shall be subject to late filing fees.

(8) After 9 days and before 12 days have expired after the deadline for filing the statement or report, the filing official shall report errors or omissions which were not corrected and failures to file to the attorney general.

(9) A statement or report required to be filed under this act shall be filed not later than 5 p.m. of the day in which it is required to be filed. A statement or report which is postmarked by registered mail at least 2 days before the deadline for filing shall be considered filed within the prescribed time regardless of when it is actually delivered.

(j) The name and street address of each committee and the full name and street address of the treasurer of each committee which is listed as a contributor.

(k) The name, address, and amount given by a person who contributed $20.01 or more of the total amount contributed by a person who is other than a committee or an individual. The occupation, employer, and principal place of business shall be stated if the person contributed $200.01 or more.

(l) A listing, by general category, of expenditures of $50.00 or less made during the period covered by the campaign statement and thetotal of those expenditures.

(m) The full name and streetaddress of each person to whom expenditures totaling $50.01 or more were made, together with the amount of each separate expenditure to each such person during the period covered by the campaign statement; the purpose of the expenditure; the full name and street address of the person providing the consideration for which any expenditure was made if different from the payee; and the full name and street address of the treasurer of a committee which is listed.

(n) The amount of expenditures for or against a candidate or ballot question during the period covered by the campaign statement and the cumulative amount of expenditures for or against the candidate or ballot question. An expenditure made in support of more than 1 candidate or ballot question, or both, shall be apportioned reasonably among the candidates or ballot questions, or both.