

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

December 2, 1981

Mr. Jack Bailey
General Manager
CN - WCAR
Livonia, Michigan 48901

Dear Mr. Bailey:

This is in response to your inquiry concerning applicability of the Campaign Finance Act ("the Act"), 1976 PA 388, as amended, to the sponsorship of a radio program hosted by a state senator.

Specifically, you indicate WCAR radio currently airs a weekly public service program entitled "People Power," which is hosted by State Senator Doug Ross. You state the program focuses upon "consumer oriented problems and solutions." However, "(t)here is absolutely no political content allowed in this program, and certainly no content that would give campaign support" to Senator Ross.

Your question concerns whether local retailers may sponsor the program without violating the Act. Before responding, however, it is first necessary to determine whether a station may hire an officeholder to host a public service program without itself violating the Act's provisions.

The Campaign Finance Act, in part, regulates the nature and amount of contributions and expenditures made in support of or opposition to a "candidate." Pursuant to section 3(1) (MCL 169.203) an officeholder is a "candidate" for purposes of the Act. Thus, any contribution or expenditure made with respect to a state senator is subject to the Act's provisions.

"Contribution" is defined in section 4 of the Act (MCL 169.204) as including anything of ascertainable monetary value "made for the purpose of influencing the nomination or election of a candidate, or for the qualification, passage, or defeat of a ballot question." The definition of "expenditure" is set forth in section 6 of the Act (MCL 169.206):

"(1) 'Expenditure' means a payment, donation, loan, pledge, or promise of payment of money or anything of ascertainable monetary value for goods, materials, services, or facilities in assistance of, or in opposition to, the nomination or election of a candidate, or the qualification, passage, or defeat of a ballot question. An offer or tender of an expenditure is not an expenditure if expressly and unconditionally rejected or returned."

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

These definitions make it clear that before an action can be determined to be a contribution or expenditure it must be something of ascertainable monetary value which is "in assistance of, or in opposition to, the nomination or election of a candidate or the qualification, passage, or defeat of a ballot question . . ." If a radio station furnishes the facilities in assistance of a candidate's election it has made a contribution to the candidate's campaign.

However, subsection (3) of section 6 exempts certain expenditures from the operation of the Act. This subsection provides, in part:

"(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)

Accordingly, if a given program has no content which would support or oppose either the candidate hosting the program, another candidate or a ballot question, the activity is exempt under section 6(3)(c). On the other hand, if any portion of the program does support or oppose any candidate or ballot question, the exemption is no longer available, and the Act's regulatory scheme is fully applicable.

In the latter instance, if the program supports the candidate serving as host, the candidate must report as a contribution the value of the wages, goods, materials, services or facilities not paid for by a sponsor and given by the station in assistance of the candidate's nomination or election. Similar reporting requirements are applicable where the program supports or opposes another candidate or ballot question, and the station's expenditures with respect to that segment of the program are directed or controlled by another person.

Where no such direction or control is exerted, the station is deemed to have made an independent expenditure. If such expenditures total \$100.01 or more, the station must file a report of the independent expenditure within 10 days pursuant to section 51 of the Act (MCL 169.251). When expenditures reach \$200.00 a statement of organization as a committee must be filed pursuant to section 24 of the Act (MCL 169.224).

It is particularly important to note that section 54 of the Act (MCL 169.254) prohibits a corporation from making a contribution or expenditure on behalf of a candidate. Consequently, if a station is incorporated and the program supports or opposes any candidate, the station has violated the Act. A corporation may, however,

Mr. Jack Bailey
Page three

contribute up to \$40,000 to a ballot question committee and may also make an independent expenditure relating to a ballot question, which is defined in section 2(1) of the Act (MCL 169.201) as a question which is submitted or which is intended to be submitted to the voters, whether or not it qualifies for the ballot.

Of course, section 54 does not prohibit any station from making an expenditure for a news story, commentary or editorial in support of or opposition to a candidate or ballot question. This type of expenditure, when made in the regular course of broadcasting, is excluded from the operation of the Act by section 6(3)(d).

The answer to the question you raised, i.e., whether a local retailer may sponsor a public service program without violating the Act, also depends upon the program's content. Thus, where the program does not support or oppose any candidate or ballot question, the activity is exempt pursuant to section 6(3)(c), and a retailer may sponsor the broadcast without regard to the provisions of the Act. Conversely, if the program supports or opposes a candidate or ballot question, the above-described statutory provisions come into play. In such cases, an incorporated retailer is prohibited by section 54 from sponsoring a program affecting the nomination or election of a candidate, but not a ballot question.


If the candidate who hosts the broadcast is benefitted by the program's content, the candidate must report the fact of sponsorship as an in-kind contribution. Where the program supports or opposes another candidate or a ballot question, sponsorship is considered an independent expenditure, provided the expenditure is not made at the direction or control of another person, and must be reported by the retailer if such expenditures total \$100.01 or more. When such expenditures reach \$200.00 a statement of organization as a committee must be filed pursuant to section 24 of the Act (MCL 169.224).

Finally, the Department is unable to respond to your inquiry concerning applicability of the lobbyist regulation act, 1978 PA 472, to the above-described facts. In order to respond, more information is needed regarding the financial relationships between the parties involved. For your information, the legislation was declared unconstitutional by the Ingham County Circuit Court. The decision is being appealed.

It should be emphasized that broadcasting is subject to regulation by the Federal Communications Commission. Nothing in this response should be read as being in conflict with or contradictory to any law, regulation, rule or decision administered or issued by the FCC with respect to political broadcasts, equal time provisions or related subjects.

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

Very truly yours,


Phillip T. Frangos, Director
Office of Hearings & Legislation

PTF/jmp