RICHARD H. AUSTIN ○ SECRETARY OF STATE
STATE TREASURY BUILDING
LANSING
MICHIGAN 489

December 28, 1979

Ms. Constance E. Cumbey
139 Cadillac Square
5th Floor
Detroit, Michigan 48226

Dear Ms. Cumbey:

This is in response to your request for a declaratory ruling by the Secretary of State with respect to the constitutionality of the Campaign Finance Act ("the Act"), 1976 P.A. 388, as amended (MCLA §169.201 et seq.).

Specifically, you point out that the title of the Act does not refer to office-holder expense funds and that the absence of such a reference renders the Act unconstitutional as it applies to officeholder expense funds. In addition you assert that it is "unfair and a deprivation of due process" to consider an officeholder to be a candidate for reelection because to do so would be contrary to the "usual and accepted" definition of the term "candidate."

You also contend that a contribution to "a newly inaugurated representative's deficit party operation cannot be construed as being with respect to a single election . . ."

The facts you supply are as follows:

> "Mrs. Terrell's inaugural committee was given a check in the sum of $1,000.00 from a Mr. Art Orleans, an Ohio developer, to be used for tickets for senior citizens to State Representative Terrell's inaugural events. Mrs. Terrell was elected for the first time to this office on November 9, 1978 and her constituency is heavily composed of low income black and senior citizen population. Public Act No. 388 of 1976 is entitled the 'Campaign Financing and Practices Act'. The title of the Act provides that this is '(A)n Act to regulate political activity; to regulate campaign financing; to restrict campaign contributions and expenditures; to require campaign statements and reports; to regulate anonymous contributions; to regulate campaign advertising and literature; to provide for segregated funds for political purposes; to provide for the use of public funds for political purposes; to create a state campaign fund; to provide for reversion of, or refunding of, unexpended balances; to require reports; to provide appropriations; to prescribe penalties; and to repeal certain acts and parts of acts.'"

Section 63 of the Administrative Procedures Act, (MCLA §24.263), 1969 P.A. 306, as amended, provides administrative agencies, including the Department of State, with the authority to issue declaratory rulings as follows:

> "On request of an interested person, an agency may issue a declaratory ruling as to the applicability to an actual state of facts of a statute administered by the agency or of a rule or order of the agency. An agency shall prescribe by rule the form for such a request and procedure for its submission, consideration and disposition. A declaratory ruling is binding on the agency and the person requesting it unless it is altered or set aside by any court. An agency may not retroactively change a declaratory ruling, but nothing in this subsection prevents an agency from prospectively changing a declaratory ruling. A declaratory ruling is subject to judicial review in the same manner as an agency final decision or order in a contested case."

Section 63 requires an agency to promulgate an administrative rule before it may issue a declaratory ruling. Such a rule was promulgated by the Secretary of State in 1977 in conjunction with other rules promulgated to implement the Act. (1977 AACS 169.1 to 169.56)

Section 63 of the Administrative Procedures Act limits the scope of a declaratory ruling to "a declaratory ruling as to the applicability to an actual state of facts of a statute administered by an agency . . ." The request submitted is not limited to applying facts to the statute but asks instead that the agency declare the statute unconstitutional. This request is clearly beyond the scope of the agency's authority to issue declaratory rulings. Therefore, the Department of State declines to declare the Act's provisions with respect to officeholder's expense funds to be unconstitutional.

In your letter you also assert that an officeholder is not violating the Act in retaining a contribution from an individual that is in excess of $250.00. You base this assertion on the rationale that contributions to an officeholder's "deficit party operation" cannot be construed as being with "respect to a single election . . ."

Section 52 of the Act (MCLA §169.252) establishes limitations on the amounts which may be contributed to candidates. An individual may contribute no more than $250.00 in value to a candidate for state representative "with respect to a single election." The phrase "with respect to a single election" is defined in Section 52(2) as follows:

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

You also contend that an incumbent officeholder is not a "candidate"; however, section 3 of the Act (MCLA §169.203) includes a definition of "candidate" which clearly encompasses an incumbent officeholder:

> ". . . Unless the officeholder is constitutionally or legally barred from seeking reelection or fails to file for reelection to that office by the applicable filing deadline, an elected officeholder shall be considered to be a candidate for reelection to that same office for the purposes of this act only."

It is clear that for purposes of the Act Representative Terrell is a candidate. Without further legislative or judicial action with respect to these provisions, the Department is bound to enforce the Act's limitations on the amounts that individuals may contribute to candidate committees established by candidates for state elective office.

Prior to closing it should be noted that section 49 of the Act (MCLA §169.249), which provides for establishment of officeholder expense funds, imposes limits on donations to such funds.

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

Very truly yours,

Phillip T. Frangos

Phillip T. Frangos, Director
Office of Hearings & Legislation

PTF/jmp