

RICHARD H. AUSTIN

SECRETARY OF STATE

MUTUAL BUILDING  
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MICHIGAN 48918

April 24, 1981

Honorable James DeSana  
P. O. Box 30036  
Lansing, Michigan 48909

Dear Senator DeSana:

This is in response to your inquiry concerning applicability of the Campaign Finance Act ("the Act"), 1976 PA 388, as amended, to the disbursement of monies held in your candidate committee and officeholder expense fund accounts.

You indicate you have been asked to purchase advertising space in a program book for a member of Congress who represents your Senate district. However, you are uncertain whether you may charge either your candidate committee or officeholder account for such an expense. This situation has led you to ask the following questions:

- "1) May a state legislator charge either a candidate committee account or an officeholder expense fund for the purchase of advertising space in a testimonial book for a member of Congress? Which expenditure is more appropriate?
- 2) May an officeholder charge either fund for the purchase of advertising space in the program book for a political party fund-raising dinner, such as the Jefferson-Jackson Day Dinner?
- 3) May an officeholder charge either fund for the purchase of a ticket for a political party fund-raising dinner, such as the Jefferson-Jackson Day Dinner?"

In a May 29, 1979, declaratory ruling issued to Mr. Mitch Irwin, the Department indicated that sections 6, 21, 26 and 45 of the Act (MCL 169.206, 169.221, 169.226 and 169.245) prohibit a candidate from using campaign funds for any purpose other than to influence his or her nomination or election. A copy of this ruling is attached for your convenience. Pursuant to section 3 of the Act (MCL 169.203), an officeholder is a candidate for purposes of the Act. Accordingly, expenditures from a state legislator's candidate committee account must be for the purpose of influencing that legislator's renomination or reelection.

Section 44 of the Act (MCL 169.244) further limits the use of campaign funds. Section 44 provides that a candidate committee shall not make a contribution to or independent expenditure on behalf of another candidate committee. "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. Section 6 defines "expenditure" in similar terms. According to section 5 of the Act (MCL 169.205), "election" means any election held in this state, and "elective office" means a public office filled by an election, except for federal offices. Thus, section 44 prohibits a candidate from making a contribution to or expenditure on behalf of a candidate for state or local office.

Officeholder expense funds, on the other hand, are governed by section 49 of the Act (MCL 169.249). Pursuant to this section, an elected public official is authorized to establish an officeholder fund. The fund may only be used for expenses incidental to the person's office. It may not be used to further the nomination or election of that public official.

The Department has previously indicated that section 49 permits a public official to purchase a ticket to another candidate's fundraiser with monies from an officeholder expense fund. In a letter to Senator Gary Corbin, dated March 21, 1978, the Department stated:

" . . . it has been custom and tradition for incumbent public officials to purchase tickets to the fundraisers of other candidates for political office. Indeed, it may be stated the expenditure of monies for this purpose by an elected public official is often necessitated by, and therefore incidental to, the person's office. In enacting language authorizing the establishment of an officeholder's expense fund, the Legislature was cognizant of this political tradition."

It was noted in a January 23, 1980, letter to Mr. Edward Chmielewski that the common theme in permitting a disbursement from an officeholder expense fund is that "the expense is traditionally associated with or necessitated by, and therefore incidental to, the holding of public office."

Applying the above principles to the questions you have raised, it is apparent that a state legislator would traditionally be expected to purchase advertising space in a testimonial book for a member of Congress who represents that legislator's district. Indeed, it may be presumed that the legislator would not have been asked to purchase such space but for his status as officeholder. Consequently, the purchase of advertising space in a Congressional testimonial book by a state legislator is incidental to office and may be charged to the legislator's officeholder expense fund.

It should be noted, however, that pursuant to section 49 the advertisement itself may not urge the renomination or reelection of the state legislator paying for the space. If it does, then the expenditure would also be for the purpose of influencing that legislator's nomination or election. In this instance, the legislator must charge the purchase of the advertising space to his or her candidate committee account, provided the testimonial book is for a federal officeholder. If the book is for a state or local official, the purchase of advertising space would constitute an illegal contribution from one candidate to another. As noted above, such a contribution is prohibited by section 44.

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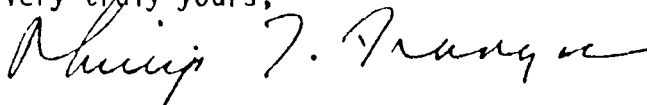
With respect to your second question, it would also appear that the purchase of advertising space in the program book for a political party fundraiser is traditionally associated with or necessitated by the holding of public office. Ordinary citizens would not be expected to advertise in a book distributed at a fundraiser. As such, the purchase of such advertising space is incidental to office and may be paid for with monies from an officeholder expense account, provided the advertisement does not contain words such as "vote for", "nominate" or "reelect". Advertisements which further the nomination or election of the state legislator must be paid with funds held in the legislator's candidate committee account.

Finally, you have asked which account may be used for the purchase of a ticket to a political party fundraiser. As indicated previously, it is customary and traditional for an officeholder to purchase tickets to other candidates' fundraisers. Similarly, the purchase of a ticket to a political party fundraiser is often traditionally associated with or necessitated by, and therefore incidental to, the holding of public office. Consequently, an officeholder may charge his or her officeholder expense fund for the purchase of a political party fund raising ticket. However, if the ticket is purchased for the purpose of influencing the officeholder's renomination or reelection, the expenditure must be made from the officeholder's candidate committee account.

In summary, if a state legislator makes an expenditure for the purpose of influencing that legislator's nomination or election, the expenditure must be made from the legislator's candidate committee account. However, the expenditure cannot also be a contribution to another state or local candidate committee. On the other hand, if the expenditure is traditionally associated with or necessitated by, and therefore incidental to, the holding of office, the legislator may charge the expense to his or her officeholder expense fund, provided the expenditure does not also further that legislator's nomination or election.

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:lr

Attachment