

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN

SECRETARY OF STATE

STATE TREASURY BUILDING



LANSING

MICHIGAN 48918

December 14, 1979

Mr. John P. Hancock, Jr.
1881 First National Building
Detroit, Michigan 48226

Dear Mr. Hancock:

This is in response to your request for a declaratory ruling pursuant to the Campaign Finance Act ("the Act"), 1976 P.A. 388, as amended, concerning the filing requirements of a person appointed to an elective office.

You state Andrew Frostic was appointed to an unexpired term on the Wyandotte School Board of Education in January, 1979. He later decided to seek election to a full term and filed a statement of organization on April 25, 1979. Mr. Frostic was assessed a late filing fee of \$300.00 by the Wayne County Clerk because he had not filed a statement of organization by February 7, 1979, twenty days after appointment to the school board.

You ask if Mr. Frostic became a "candidate" under the Act upon appointment to the school board or upon deciding to seek election to the school board.

Section 3(1) of the Act (MCLA §169.203) defines "candidate" (in part):

"'Candidate' means an individual: (a) who files a fee, affidavit of incumbency, or nominating petition for an elective office; (b) whose nomination as a candidate for elective office by a political party caucus or convention is certified to the appropriate filing official; (c) who receives a contribution, makes an expenditure, or gives consent for another person to receive a contribution or make an expenditure with a view to bringing about the individual's nomination or election to an elective office, whether or not the specific elective office for which the individual will seek nomination or election is known at the time the contribution is received or the expenditure is made; or (d) who is an officeholder who is the subject of a recall vote. Unless the officeholder is constitutionally or legally barred from seeking reelection or fails to file for reelection to that office by the applicable filing deadline, an elected officeholder shall be considered to be a candidate for re-election to that same office for the purposes of this act only."
(Emphasis added.)

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Section 5(2) of the Act (MCLA §169.205) states (in part):

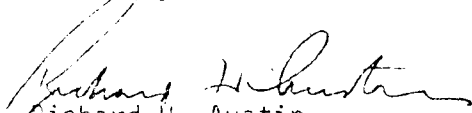
" . . . A person who is appointed to fill a vacancy in a public office which is ordinarily elective holds an elective office . . ."

You argue that a person who holds an elective office is not an elected officeholder. Your argument is contrary to the plain meaning of the statute. Accepting your reading of the Act would make the above language of section 5(2) mere surplusage. You state the purpose of the language quoted from section 5(2) is "to prevent an appointed officeholder who decides to run for a full term from escaping the filing requirements of the Act. Such a person cannot claim that he is not a candidate for 'elective office' simply by virtue of his appointment thereto." However, section 5(2) is not needed to accomplish that goal as a person in that position would be a "candidate" upon "filing a fee, affidavit of incumbency, or nominating petition." The purpose of section 5(2) is to clarify that a person appointed to an elective office is to be treated as if he or she were elected to the office.

Mr. Frostic became a "candidate" upon his acceptance of the appointment to the school board. Within ten days of his acceptance, Mr. Frostic was required to form a candidate committee by section 21(1) of the Act and then had ten more days in which to file a statement of organization under section 24 of the Act. The Wayne County Clerk was correct in assessing Mr. Frostic \$300.00 in late filing fees. The Act does not authorize either the county clerks or the Secretary of State to waive late filing fees.

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

Sincerely,


Richard H. Austin
Secretary of State

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