

## STATE OF MICHIGAN



CANDICE S. MILLER, Secretary of State  
MICHIGAN DEPARTMENT OF STATE  
TREASURY BUILDING, LANSING, MICHIGAN 48918-9900

May 10, 1995

The Honorable Curtis Hertel  
Democratic Leader  
Michigan House of Representatives  
State Capitol Building  
Lansing, Michigan 48913

Dear Representative Hertel:

This is in response to your inquiry regarding the purchase of fundraiser tickets under the Michigan Campaign Finance Act (the Act), 1976 PA 388, as amended. Your inquiry has been treated as a request for an interpretive statement because it requires an interpretation of an amendatory act, 1994 PA 411, that will affect all candidate committees.

Although not expressly stated, you essentially ask whether a candidate committee may purchase fundraiser tickets or make contributions to other types of committees in excess of the \$100.00 limitation imposed upon fundraiser tickets that are purchased as incidental expenses.

The Department of State concludes:

If an officeholder's candidate committee pays for a ticket to a fundraiser sponsored by a candidate committee, independent committee, political party committee, or a political committee and the ticket purchase is an incidental expense, the payment may not exceed \$100.00 per committee in any calendar year.

If a candidate committee purchases a fundraiser ticket or makes a contribution to an independent committee, political party committee, or a political committee for the purpose of assisting the candidate's nomination or election, the \$100.00 limit does not apply. However, the ticket purchase or contribution must tangibly benefit the candidate's nomination or election.

A candidate committee may purchase a ticket to another candidate committee's fundraiser as an incidental expense but is otherwise prohibited from contributing to another candidate committee. The ticket purchase may not exceed \$100.00 per committee in a calendar year.

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### Discussion

I am informed that under my predecessor's administration, the Act was construed to mean that all campaign expenditures must be made from an officeholder's candidate committee.

"Expenditure" is defined in section 6 of the Act to include any payment in assistance of the nomination or election of a candidate. As explained below, this would include the purchase of tickets to fundraisers held by other types of committees. However, until recently a candidate committee could not be used to purchase a ticket to another candidate's fundraiser.

Prior to the enactment of 1994 PA 411, an officeholder was authorized to establish and maintain an officeholder expense fund (OEF) to be used for expenses incidental to office. The OEF could not be used to make an expenditure to assist the officeholder's reelection.

In 1981, the propriety of using either a candidate committee or an OEF to purchase political party fundraiser tickets was specifically addressed in an interpretive statement issued to Senator James DeSana. The interpretive statement concluded:

... 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.

Thus, at least since 1981 it has been the Department's consistent position that campaign expenditures include the purchase of fundraiser tickets if the purchase is made to assist the candidacy of the officeholder purchasing the ticket. Indeed, if a ticket was purchased so that the officeholder could attend a fundraiser and solicit support from those in attendance, the ticket purchase met the definition of "expenditure" and had to be made from the candidate committee. It could not be made from the officeholder's OEF.

The authority to purchase political party fundraiser tickets from an OEF was subsequently embraced in administrative rules promulgated by the Department of State. Specifically, rule 62(1)(j) defined the term "expense incidental to office" as used in section 49 of the Act to include the purchase of tickets to fundraisers held by other types of committees - including candidate committees - for use by the officeholder and his or her family and staff. The rule defining incidental expenses in no way affected the Act's definition of "expenditure." Therefore,

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officeholders continued to purchase fundraiser tickets from their candidate committee accounts when the ticket purchased was campaign related, as required by the Act.

1994 PA 411 amended the Act by establishing a single account for both campaign expenditures and incidental office expenses. This was accomplished by eliminating OEFs and authorizing the candidate committee to pay for incidental expenses. "Incidental expense" was defined by incorporating the administrative rule promulgated by the Department, with some minor revisions.

One such revision changed the limit on fundraiser tickets from the size of the officeholder's family and staff to \$100.00 per committee per year. Again, however, the amendatory act did nothing to alter the test for determining whether a payment from a candidate committee is an expenditure made to assist the nomination or election of the officeholder.

As a consequence, an officeholder may purchase a political party fundraiser ticket from his or her candidate committee if the ticket is acquired as an expense incidental to office. If the ticket purchase is considered to be an incidental expense, the \$100.00 limitation established in section 9(1)(i) would apply.

On the other hand, if the ticket is purchased for the purpose of assisting the officeholder's nomination or election, the payment meets the Act's definition of expenditure. In this circumstance, the \$100.00 limit does not apply except with respect to tickets purchased for another candidate's fundraiser. The limitation on candidate committee fundraiser tickets exists as an exception to the prohibition against candidate to candidate contributions. Specifically, section 44(2) now states:

A candidate committee shall not make a contribution to or an independent expenditure on behalf of another candidate committee. This subsection does not prohibit the purchase of tickets to another candidate committee's fundraising event that does not exceed \$100.00 per candidate committee in any calendar year.

While your inquiry specifically addresses the purchase of political party fundraiser tickets, the same logic would apply to the purchase of tickets to fundraisers sponsored by independent or political committees. Therefore, fundraiser tickets are subject to the \$100.00 limit if purchased as an expense incidental to office.

This is not to suggest that there is no restriction on ticket purchases or direct contributions made to political party, independent, political or ballot question committees. As explained by Elections Director Christopher Thomas in an informational letter to Representative Shirley Johnson, dated October 1, 1990:

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An expenditure by a candidate committee to an independent committee, whether as a direct donation or a purchase of a fundraiser ticket, may only be made if it influences the nomination or election of the candidate whose committee makes the expenditure. Therefore, the candidate and the candidate committee treasurer must be able to specifically substantiate how an expenditure to an independent committee furthers the nomination or election of the candidate.

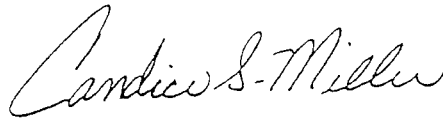
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Whether it is proper to make an expenditure to an independent committee will depend exclusively on an identifiable, tangible benefit that furthers your reelection.

You take exception to the Department's longstanding construction of the Act, suggesting that the purchase of political party fundraiser tickets may only be considered an incidental expense. If construed in this manner, a candidate who is not an officeholder would be prevented from purchasing any fundraiser tickets because, as a non-incumbent, the candidate does not incur expenses incidental to office.

This response is an interpretive statement and does not constitute a declaratory ruling because a ruling was not requested.

Sincerely,



Candice S. Miller  
Secretary of State