

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

MUTUAL BUILDING
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3-86-CI

LANSING
MICHIGAN 48918

July 15, 1986

Michael J. Hodge
Miller, Canfield, Paddock and Stone
Suite 900, One Michigan Avenue
Lansing, Michigan 48933

Dear Mr. Hodge,

This is in response to your inquiry concerning the applicability of the Campaign Finance Act (the Act), 1976 PA 388, as amended, to the following questions:

- (1) "Is it permissible for an elected public official's campaign fund to loan money to the official's officeholder expense fund?"
- (2) "If such a transaction is permissible, would the repayment of the loan be deemed to be a contribution or expenditure subject to contribution and expenditure limitations of the Act."

Pursuant to section 3(1) of the Act (MCL 169.203), an elected officeholder is a "candidate" and is required to maintain a "candidate committee" during his or her term of office.

In a declaratory ruling issued to Ms. Kathy Wilbur on October 14, 1983, the Secretary of State ruled:

"[I]t is impermissible for Committee funds to be expended or assets used other than to further the nomination or election of the candidate, except as provided by the Act and rules. The only exceptions are in section 49 and rule 39(8) providing for transfers to officeholder expense funds and section 45 of the Act (MCL 169.245) allowing transfers of unexpended funds to another committee of the same candidate, a political party committee, a tax exempt charitable institution, or the contributors of the funds."

Section 49(1) of the Act (MCL 169.249) provides:

"Sec. 49. (1) An elected public official may establish an officeholder expense fund. The fund may be used for expenses incidental to the person's office. The fund may not be used to make contributions and expenditures to further the nomination or election of that public

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official."

The Secretary of State promulgated rule 39(8), 1979 AC R169.39, which is intended to implement section 49(1) of the Act. The rule provides:

"(8) Money may be transferred from the candidate committee of an elected public official to the officeholder expense fund of that public official in accordance with the provisions of the act."

In interpreting the relationship between a candidate committee and that candidate's officeholder expense fund (OEF) as controlled by section 49 of the Act and rule 39(8), the Secretary of State stated in the declaratory ruling to Ms. Wilbur:

"While the officeholder expense fund may not contribute to the officeholder's candidate committee, the candidate committee may transfer funds into the officeholder expense fund.

* * *

[T]here is nothing to prohibit the Committee from transferring unlimited funds to the OEF.

* * *

It should be noted that transfers can go only from the candidate committee to the officeholder expense fund; they may not go the other direction because to do so would result in the officeholder expense fund making contributions or expenditures to further the nomination or election of the officeholder."

The declaratory ruling to Ms. Wilbur addressed the issue of a candidate committee's sale of its computer or the use of its computer to that candidate's OEF.

The Secretary of State declared,

"The Committee may sell its assets for fair market value ... but ...the Committee may not sell the computer to the OEF."

* * *

The final issue raised with this assertion is whether the OEF may pay the Committee either the Committee's costs or fair market value for the computer services it receives. It would be improper for the OEF to purchase a service or asset from the Committee because that is not an arm's length transaction and the OEF could use that mechanism to transfer funds to the committee. The funds could then be used for campaigning by the Committee, resulting in a violation of section 49 by the OEF."

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In a letter to Mr. Timothy Downs, dated March 21, 1978, it was stated:

"Funds in an officeholder's expense fund may not be transferred to the same officeholder's candidate committee."

Under section 9(3) of the Act (MC^L 169.209),

"(3) "Loan" means a transfer of money, property, or anything of ascertainable monetary value in exchange for an obligation conditional or not, to repay in whole or part." (Emphasis added.)

Therefore, a "loan" is not just "a transfer of money", but "a transfer of money ...in exchange for an obligation conditional or not, to repay in whole or part." The answer to your first inquiry depends upon whether a candidate committee and that candidate's OEF may enter into a contractual agreement under the act for the loan and repayment of money.

The candidate committee and the OEF are separate accounts created for separate and mutually exclusive purposes but controlled by and for the same person. Since both accounts are controlled by and for the same person, a candidate committee and that candidate's OEF are incapable of entering into an arm's length transaction.

Money may be transferred between a candidate committee and that candidate's OEF only in conformity with rule 39(8), which allows only a one-way transfer of funds. Pursuant to rule 39(8), money may be transferred from the candidate's committee to the candidate's OEF, but money may not be transferred from the OEF to the committee. The rule contemplates that an intentional transfer of funds from the committee to the OEF is irrevocable and unconditional.

A loan is a transfer of money in exchange for an obligation to repay, and the repayment of that loan is also a transfer of money. If an OEF repays a loan made to it by its officeholder's candidate committee, then the OEF has made a transfer of its funds that is prohibited under the Act and rules.

Therefore, it is impermissible for a candidate committee to make a loan to that candidate's OEF.

Since a transfer of money from a candidate committee to the candidate's OEF in the form of a loan is impermissible, it is unnecessary to respond to your second question.

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Your request for a declaratory ruling did not contain an actual statement of facts, as required by rule 6(1), 1979 AC R169.6. Therefore, this response is informational only and does not constitute a declaratory ruling.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Phillip T. Frangos".

Phillip T. Frangos
Director
Office of Hearings and Legislation
(517) 373-1841