

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN

SECRETARY OF STATE

STATE TREASURY BUILDING



LANSING

MICHIGAN 48918

December 3, 1980

Mr. David P. Hohendorf
Spinal Column Newsweekly
Box 14
Union Lake, Michigan 48084

Dear Mr. Hohendorf:

This is in response to your request for an interpretation of the Campaign Finance Act (the "Act"), 1976 PA 388, as amended, with respect to who is responsible for the payment of late filing fees assessed under the Act.

You observe that under the Act late filing fees are levied at a rate of \$10 a day up to a maximum of \$300 when certain reports which are required to be filed under the Act are not filed in a timely manner. Your five questions are quoted and dealt with below.

"1. In what sense, if any, are those incurred late filing fines considered a debt to the state (or to the county for local campaign committees)?"

Late filing fees are a debt owed to the state or county from the time they become due until they are actually paid. They are like any other fee, fine, or tax which must be paid to a unit of government.

"2. Who is responsible for paying the fines, the candidate, the committee chairman of the committee treasurer?"

Late filing fees for candidate committees are assessed under sections 24 (MCL 169.224), section 33 (MCL 169.233), and section 35 (MCL 169.235) of the Act. Each of these sections begins with such language as "A committee shall file" a campaign statement or a statement of organization. Thus, it is the committee which is required to make the filing under the Act. However, these sections go on to say, "A person who fails to file" a required statement shall pay the appropriate late filing fee (emphasis added). Thus, the statutory sections differentiate between a committee which must file and a person who fails to file.

The definition of "person" which appears in section 11(1) of the Act (MCL 169.211(1)) includes a committee. The Legislature's use of the term "person" immediately after requiring the statements to be filed by the "committee" indicates an intent to hold some other person, as well as the committee, responsible for the late filing fee. When discussing a candidate committee, this fact is buttressed by the language in section 3(2) of the Act (MCL 169.203(2)), the definition of "candidate committee," which states:

"A candidate committee shall be presumed to be under the control and direction of the candidate named in the same statement of organization."

It is the Department's view that a candidate is responsible for the late filing fees of the candidate's committee. A recent amendment to section 35 (1980 PA 215, effective July 17, 1980) expressly confirms this view with respect to annual campaign statements:

"As used in subsections (3) and (5), 'person' means for a committee other than a candidate committee, that committee and that committee's treasurer, and for a candidate committee, that committee, that candidate, and that candidate committee's treasurer."

This amendment clarifies what was always the legislative intent, the committee, the candidate, and the treasurer are all liable for any late filing fees.

"3. Until the fines are paid in full, is the person who is responsible for paying the fines considered to be in default to the state (or county)? What constitutes 'default' in relation to late filing fees?"

"4. If the person is in default, is there any state law that prohibits a person from running for or assuming public office if he or she is in default to the state?"

"5. In your opinion, if a person owes late filing fines and were to seek public office or is in public office in a city with the following (or similar) city charter provision, would he or she be considered ineligible to run or hold public office?"

These three questions deal with the definition of "default" and the consequences of a default. While there is a limited amount of ambiguous case law on this subject, the subject is outside the purview of the Act and the expertise of the Department of State. Therefore, it would not be appropriate for this Department to respond to these three questions.

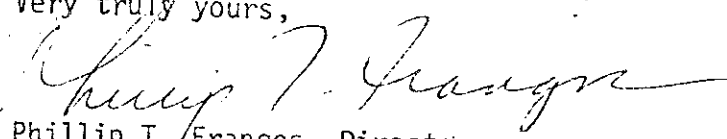
There is one provision in the Act which may interest you. Section 33(4) provides the following consequence when a person is found guilty of violating section 33:

"(T)he circuit court of that county, on application by the attorney general or the prosecuting attorney of that county, may prohibit that person from assuming the duties of a public office or from receiving compensation from public funds, or both."

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

Very truly yours,



Phillip T. Frangos, Director
Office of Hearings & Legislation

PTF/jmp