8-84-CI

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING

MICHIGAN 48918

November 2, 1984

Senator John Kelly
The Senate
Office of the Majority Whip
P.O. Box 30036
Lansing, Michigan 48909

Dear Senator Kelly:

This is in response to your request for information and an interpretation concerning the applicability of the Campaign Finance Act (the "Act"), 1976 PA 388, as amended, to donations made by corporations to an officeholder expense fund ("OEF").

Specifically, you request a copy of any declaratory ruling or interpretive statement regarding corporate contributions to an OEF, especially concerning the "tainting" of an OEF by acceptance of a corporate donation and any method by which an OEF can "purge the taint." You also ask whether the FIFO accounting method may be used to "purge the taint" of corporate donations to an OEF.

The Department has issued two interpretive statements concerning corporate donations to an OEF, copies of which accompany this letter. In a letter to Senator Gary G. Corbin, dated February 1, 1980, the Department stated:

> " . . . the inclusion of corporate contributions will 'taint' the O.E.F. and thereby greatly limit the uses for which the O.E.F. may be utilized. For example, funds from an O.E.F. into which corporate contributions have been deposited may not thereafter be used to purchase tickets to the fundraiser of another candidate or utilized for any other purpose for which corporate contributions may not be used."

This letter also pointed out that these corporate funds should more accurately be called "donations" and must be distinguished from "contributions" and "expenditures" under sections 4 and 6 of the Act (MCL 169.204 and 169.206). This letter indicates that the corporate "taint" cannot be purged by creating two separate OEF accounts.

A letter to Mr. Douglas K. Weiland, dated August 6, 1980, states that section 54(1) of the Act (MCL 169.254) prohibits corporate contributions or expenditures

as defined in sections 4 and 6 of the Act. This letter further states, "Since it is improper for your candidate committee to receive this corporate contribution, it would also be improper for the committee to accept the contributions and pass it along to an officeholder expense fund."

Under section 49(1) of the Act (MCL 169.249) an OEF " . . . may not be used to make contributions and expenditures to further the nomination or election" of the officeholder who established it. However, an OEF may be used to purchase tickets to another candidate's fundraiser unless the OEF is "tainted" by corporate funds. The concept of "tainting" is necessary to preclude the possibility of corporate funds being converted into prohibited disbursements, and thus accomplishing indirectly what is prohibited directly. It has been consistently stated by the Department that corporate funds cannot be commingled with funds that otherwise could be used for expenses incidental to the officeholder's office which are also contributions to another candidate. Any commingling will "taint" all funds in the account.

There are only two acceptable methods by which an OEF may "purge the taint" of corporate funds. Either the OEF must reduce its account balance to zero and start a new account, or the OEF must return all funds donated by corporations. The acceptance of FIFO or any other accounting method based on sequence or segregation will not "purge the taint" of corporate funds because the acceptance of such a method would make available a greater portion of the OEF for purchase of fundraiser tickets than would otherwise be available. Section 49(1) of the Act (MCL 169.249) states, an OEF "may be used for expenses incidental to the person's office." A sequential or segregated accounting method would allow a "tainted" OEF to use corporate money for officeholder expenses and make available for the purchase of fundraiser tickets money which would otherwise have to be used to pay these expenses. This substitution of corporate funds for non-corporate funds would allow corporate funds to be indirectly converted to disbursements to candidate committees for fundraiser tickets. Corporate disbursements to candidate committees are prohibited under the Act. It is a basic principle of law that one cannot do indirectly what he is prohibited from doing directly.

This letter is informational only and does not constitute a declaratory ruling.

Very truly yours,

Phillip T. Frangos
Director
Office of Hearings and Legislation

PTF/cw