MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING

MICHIGAN 48918

July 18, 1986

Mr. Maurice Kelman
Professor of Law
Wayne State University
Detroit, Michigan 48202

Dear Mr. Kelman:

This is in response to your request for an interpretive statement concerning the provisions of the Campaign Finance Act (the Act), 1976 PA 388, as amended. Specifically, you ask whether an elected official may convert money held in an officeholder expense fund to personal use, either during the official's term of office or upon leaving office. You also ask what disposition can be made of surplus funds held in an officeholder account after the official leaves office or in the case of death while in office.

In order to respond to your questions, it is first necessary to review the campaign finance requirements imposed upon candidates for state and local elective office. Pursuant to section 21 of the Act (MCL 169.221), a person must form a candidate committee within 10 days after becoming a candidate. In addition to persons seeking office, "candidate" is defined by section 3(1) (MCL 169.203) to include elected officeholders. Consequently, an officeholder is required to maintain a candidate committee throughout his or her tenure in office.

Section 21(3) requires a candidate committee to establish a single official depository. The committee must deposit any contribution it receives into this account. Similarly, any expenditure made must be drawn from funds held in the official depository. Money flowing into and out of the committee's account must be reported in a series of campaign statements filed according to the schedule established by sections 33 and 35 of the Act (MCL 169.233 and 169.235).

As explained in a declaratory ruling to Senator Mitch Irwin, dated May 29, 1979, a candidate committee may only use its funds to further the nomination or election of the candidate, except as otherwise provided by the Act and rules. Upon leaving office, surplus funds held by the candidate committee must be disbursed as required by section 45 of the Act (MCL 169.245). This section states:

> "Sec. 45. (1) A person may transfer any unexpended funds from 1 candidate committee to another candidate committee of that person if the contribution limits prescribed in section 52 for the candidate committee receiving the funds are equal to or greater than the contribution

limits for the candidate committee transferring the funds and if the candidate committees are simultaneously held by the same person. The funds being transferred shall not be considered a qualifying contribution regardless of the amount of the individual contribution being transferred.

(2) Unexpended funds in a campaign committee that are not eligible for transfer to another candidate committee of the person, pursuant to subsection (1), shall be given to a political party committee, or to a tax exempt charitable institution, or returned to the contributors of the funds upon termination of the campaign committee."

To summarize, a candidate for public office is required to finance his or her campaign entirely through an account held in a single official depository. Funds held in that account may only be used to further the candidate's campaign activities. Surplus funds may, in some circumstances, be transferred to another candidate committee held by the same individual. Otherwise, excess funds must be returned to the contributors of the funds, donated to a tax exempt charitable institution, or given to a political party upon dissolution of the candidate committee.

As noted previously, a successful candidate is not allowed to dissolve his or her candidate committee upon assuming public office. However, an officeholder may not tap funds held in the candidate committee account except to make expenditures to further the officeholder's presumed re-election effort. Recognizing this limitation, the legislature authorized an elected official to establish a separate account to be used for expenses incidental to the person's office. Specifically, section 49 of the Act (MCL 169.249) provides, in relevant part:

"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 official.

(2) The contributions and expenditures made pursuant to subsection (1) are not exempt from the contribution limitations of this act but any and all contributions and expenditures shall be recorded and shall be reported on forms provided by the secretary of state and filed not later than January 31 of each year and shall have a closing date of January 1 of that year."

Section 49(1) prohibits an official from using an officeholder expense fund (OEF) for campaign purposes. Therefore, funds held by the official's candidate committee and OEF must be kept in separate accounts, to be used for separate purposes. The only exception is found in rule 39(8) of the Department's administrative rules (1979 AC R169.39), which allows money to be transferred from an elected official's candidate committee to the official's OEF. There is no similar provision authorizing transfers from the OEF to the committee.

The only use of OEF funds authorized by the legislature is to defray expenses incidental to the holding of public office. While the statute fails to define "expenses incidental to office", it cannot seriously be argued that the phrase includes the conversion of funds to the personal use of the officeholder. It is therefore abundantly clear that an elected official is prohibited from using OEF funds for his or her personal benefit while in office. The issue raised by your inquiry is whether a different result should obtain when the official leaves office either before or after the term of office has expired.

In cases too numerous to mention, the courts have indicated that the primary rule of statutory construction is to discover and give effect to the legislative intent. A logical starting point is to look to the object of the statute and the evil which it is designed to remedy, and then to apply a reasonable construction which best accomplishes the statute's purpose. Erickson v Department of Social Services, 108 Mich App 473 (1981).

The Campaign Finance Act is a product of the reform movement whose genesis can be traced to the Watergate scandal. After the legislature's first attempt at campaign finance reform was struck down by the Michigan Supreme Court for technical reasons, Advisory Opinion on Constitutionality of 1975 PA 227, 396 Mich 123 (1976), the legislature swiftly reenacted the present statute. The legislative purpose is explained by the Act's history:

> "Michigan's elections are currently conducted according to Public Act 116 of 1954, an election law which 2 sessions of the legislature have agreed is too broad, vague, unenforceable, and generally inadequate. The first major revision of this election law, Public Act 272, was enacted in 1974 with an effective date of July 1, 1975. Before this law took effect, it was superseded by the passage of an even more comprehensive political reform bill, Public Act 227 of 1975. Before this law took effect, however, it was nullified by an advisory opinion of the Supreme Court on the grounds that the single bill violated the State Constitution by embracing more than 1 object.
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> The concerns which prompted the legislature to enact 2 political reform bills still exist. They include a crisis of confidence in elected officials among voters today, and the growing influence of 'big money' in increasingly expensive political campaigns . . . ." Second Analysis of SB 1570 (12-17-76) at 1.

Other analyses prepared in connection with the various reform bills considered by the legislature suggest the Act was intended to reduce corruption and the appearance of corruption in Michigan elections, preserve electoral integrity, and restore citizen confidence in government.

It is difficult to imagine how these statutory objectives could be accomplished if the Act is construed to allow an officeholder to convert OEF funds to his or her personal use upon leaving office. Allowing officeholders to personally enrich themselves by diverting money donated for other purposes could certainly create the appearance of corruption and destroy citizen confidence in elected

officials. Persons who contribute funds to an OEF have the right to expect the contributions will be used as they were intended - to pay for expenses incidental to the holding of public office.

Moreover, construing the Act in this manner conflicts with the statutory prohibition against converting OEF funds to personal use while in office. The legislative intent expressed in section 49(1) would be seriously undermined if a public official, simply by retiring from office, is permitted to line his or her pockets with money which is not otherwise available for the official's personal use.

This interpretation would also allow an elected official to avoid the requirements of section 45 of the Act. As noted above, section 45 provides for the disbursement of unexpended funds held in an officeholder's candidate committee account. If the funds are not transferred to another candidate committee held by the same official, the money must be returned to its contributors, donated to a charitable institution, or given to a political party.

However, rule 39(8) creates a fourth possiblity - the funds could be transferred to the officeholder's OEF. If the officeholder is then allowed to convert the OEF account to his or her personal use, the candidate committee's surplus funds will have been disbursed in a manner which directly contravenes the requirements of section 45.

The only permissible use of OEF money is to pay for expenses incidental to the holding of public office. Personal enrichment is not an expense incidental to office. Therefore, it must be concluded that the Act prohibits an elected official from converting unexpended OEF funds to his or her personal use upon leaving office. Similarly, if an officeholder should die while in office, money held in an OEF cannot be considered part of the officeholder's personal estate.

The only persons authorized to establish OEF's are elected public officials. An official who leaves office has no authority to maintain an officeholder account. Thus, a public official must dissolve his or her OEF upon leaving office. The remaining issue presented by your inquiry is how to dispose of surplus funds held in the OEF upon death or retirement.

As you note, section 49 does not contain specific directions "of the kind contained in counterpart section 45 for campaign funds, spelling out what is to be done when the [officeholder expense] fund is terminated." However, since the Act does not allow the conversion of surplus funds to the officeholder's personal use, there must be a procedure for ridding the OEF of unspent money.

You suggest there are three acceptable disposition methods. First, the excess funds may be returned, pro rata, to the OEF's contributors. Second, the funds may be donated to a tax exempt charitable institution. And third, the balance may be donated to the State's general fund or to the treasury of the appropriate governmental unit. A fourth alternative, which you do not mention, would be to incorporate the disbursement methods prescribed by the legislature in section 45 of the Act into section 49.

In the absence of express legislative direction, it has been determined that questions concerning the disposition of surplus OEF funds should be addressed by the Attorney General. Therefore, Secretary of State Austin will ask the Attorney General for his opinion regarding the lawful disposition of surplus funds held in an officeholder account.

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

Very truly yours,

Phillip T. Frangos
Director
Office of Hearings and Legislation

PTF/AC/cw