

M I C H I G A N D E P A R T M E N T O F S T A T E

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING



LANSING

MICHIGAN 48918

August 7, 1978

Mr. William R. Lukens
Milliken for Michigan Committee
P.O. Box 40078
Lansing, Michigan 48901

Dear Mr. Lukens:

On June 28, 1978, you wrote to Secretary of State Richard H. Austin requesting a declaratory ruling as to whether the costs of a contract between the Milliken for Michigan Committee and a firm specializing in direct mail fund solicitation are "expenditures" for the purpose of the expenditure limitation set forth in Section 67 of the Campaign Finance Act ("the Act"), P.A. 388 of 1976, as amended.

On the same day, you also forwarded a memorandum identifying several types of solicitation costs in order to assist the Department of State in determining which expenditures are "made by a candidate committee solely for the solicitation of contributions." Such expenditures are not included in the aggregate \$1,000,000.00 limit for each election for a gubernatorial candidate committee. This exclusion of expenditures of not more than 20% of the candidate committee's expenditure limit is set forth in Section 67(2) of the Act (MCLA § 169.267).

Section 67(2) is applicable to those expenditures made by a candidate committee solely for the solicitation of contributions. To understand its application it is necessary to understand the meaning of "solely" and "solicitation" as used in the Act. The ordinary meaning of "solely" is expressed in The American Heritage Dictionary of the English Language, (New College Edition 1976) as "alone; singly, entirely; exclusively." "Solicit" is defined in Black's Law Dictionary (4th Edition 1968) as follows:

"To appeal for something; to apply to for obtaining something; to ask earnestly; to endeavor to obtain by asking or pleading; to entreat, implore, or importune; to make petition to; to plead for; to try to obtain; and though the word implies a serious request, it requires no particular degree of importunity; entreaty, imploration or supplication; the term implies personal petition and importunity addressed to a particular individual to do some particular thing. Golden & Co. v Justices Ct. of Woodland Tp., Yolo County, 23 Cal App. 778, 140 p. 49, 58." (Emphasis supplied)

Applying the ordinary meaning to the words illustrates the personal and limited nature of the appeals which may be paid for with funds excluded from the expenditure limitation by Section 67(2). A candidate committee in determining whether an expenditure falls within the 20% exclusion must examine the content of the message as well as evaluating the audience to whom the message is directed. A message



which is excludable when delivered through a particular medium may not be excluded when another medium is used. It is clear, however, a message delivered by radio, television or a newspaper of general circulation reaches the audience in such an unselective way that it cannot be determined to be solely for the solicitation of contributions; therefore, its cost is not to be excluded from the expenditure limitation.

A message which requests contributions may be included within the 20% exclusion if it is aimed at a limited, particular audience, i.e., persons sharing a common limited interest, goal, or concern.

These principles are best understood if applied to specific examples of expenditures. I will, therefore, use the list you supplied in your June 28, 1978, memorandum.

I. General

A. Accounting fees and other costs associated with receipting and processing contributions.

These fees and costs will not be included in the 20%. Section 67(2) reads "solely for the solicitation" As used in the Act, "solicitation" connotes the reaching out, outgoing request from someone (the candidate committee) to someone else, and not that individual's response to the solicitation.

B. Fees or salaries paid to person whose sole campaign responsibilities are to solicit campaign contributions.

These fees or salaries will be included in the 20%, but only to the extent that the particular committee can establish and document this "sole" campaign responsibility. The burden will be upon the committee to provide documentation upon request.

C. Fees or salaries paid to persons whose duties include the solicitation of contributions provided the actual time spent on such duties can be determined and only that portion of the fee or salary is considered a fund raising cost.

Those expenditures which fall outside the \$1,000,000.00 and within the 20% will be so treated only upon receipt of documentation that the "actual time spent" upon soliciting contributions may be established with reasonable certainty. Only that portion so documented will be considered a "fund raising cost" by the department.

D. Reimbursement for costs of office use, telephone, travel, and the like, incurred by persons whose only campaign function is to solicit contributions.

See answers to "B" and "C" above. Such reimbursements will be treated as a "fund raising cost" only to the extent that they may be segregated from other expenditures and documented.

II. Fund Raising Costs

A. Dinners and receptions where an entrance fee is charged and the candidate is present.

"Fund raising events" are defined in Section 7(4) of the Act (MCLA § 169.207). Events meeting that definition will be so treated by the Department and included in the 20% whether the candidate is present or not.

B. Entertainment provided for potential contributors who are being solicited to make campaign contributions (including receptions for large groups).

If the "entertainment" falls within the definition of "fund raising event" as provided in Section 7(4) of the Act, it will be treated as set forth above, as will expenditures incidental to such events.

C. Costs associated with sales of political merchandise when the profits are treated as contributions.

These costs will not be included in the 20%. The purpose of such promotional items is to generate political support for the candidate whose name, message, etc., appears thereon through dissemination of the merchandise, regardless of how the profits are used.

III. Advertising

A. Broadcast

1. Radio and T.V. ads promoting the candidate and asking for financial support.

2. Short ads consisting solely of a fund raising request, i.e., "John Doe needs your help. Please send contributions to"

For the reasons set forth above, the pervasive nature of the media chosen precludes the selectivity of the audience or the direction of a particular message toward a particular segment of that audience. All who happen to be watching or listening receive the same message. Therefore, regardless of content, all expenditures on radio or television are outside the exclusion provided by Section 67(2) of the Act and, therefore, within the \$1,000,000.00 expenditure limit.

It must also be pointed out that the nature of the media makes it difficult, if not impossible, to differentiate between a request for "support" and a plea for funds - by the audience, the candidate or the Department.

B. Printed Media

1. General circulation newspaper

For the same reasons as were set forth with respect to broadcast media, papers of general circulation reach far too broad an audience to fall within the 20% limit - again, regardless of message content.

2. Limited circulation media such as political party journals and campaign newsletters.

These types of printed materials may be included within the 20% exclusion depending upon the message (the content must be a plea for contributions) and the audience (must be a limited, select audience).

The content of the ad is significant in the case of papers of limited or selective circulation, but has no significance in the case of mass media presentations. As indicated above, the type of circulation, both as to audience and area, is significant. A campaign newsletter which includes materials other than a solicitation for contributions or which is distributed to a large untargeted audience cannot be included in the 20%.

C. Circulars and Handouts.

1. Is anything other than a request for campaign contributions permissible?

Circulars and handouts are excluded from the 20% because of the "mass media" principles stated previously, unless limited to a specific audience (other than geographic area, with common interests and goals, etc.) and limited solely to a plea for funds.

The addition to a plea for funds of "Doe also needs your vote" will move a "message" from within to outside of the 20% (or from outside to inside the \$1,000,000.00).

D. Direct Mail

1. Costs of letters soliciting financial support which are sent to:

- a. General population
- b. General population only within elective district
- c. General population only outside elective district

The three examples above are outside of the 20% exclusion due to lack of specificity of audience to whom addressed. The examples below are included, however, because a greater specificity of audience.

d. Categories selected on the basis of the likelihood to contribute:

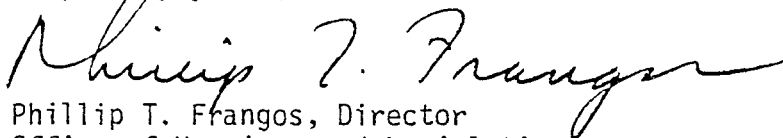
- 1) prior contributors to that candidate
- 2) prior contributors to candidates of the same party
- 3) prior contributors to candidates generally
- 4) party members
- 5) members of groups though to be friendly to that candidate
- 6) individuals who indicated support of the candidate
- 7) group identified with a certain issue explaining a candidate's stand on that issue and soliciting funds.

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The subjective purpose of the mailing is a consideration in determining whether it is solely to solicit funds, but certainly not the only consideration. The above guidelines should be used for guidance and direction. Despite hardships to candidates, a case by case analysis may be unavoidable. Because of the delay that this may cause, it is hoped that the above information may be helpful in most cases.

Since your request did not include sufficient facts to apply the provisions of Section 67(2), this response has been limited to a general discussion of the issues and is not a declaratory ruling. Hopefully, however, you will find the information provided in this interpretive statement helpful in complying with the provisions of the Act.

Very truly yours,

A handwritten signature in cursive script that reads "Phillip T. Frangos". The signature is written in black ink and is positioned above the typed name and title.

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF:pk