

## 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

48918-2110

September 13, 1993

Honorable John D. Pridnia  
 State Senator  
 Lansing, Michigan

Dear Senator Pridnia:

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. You ask whether assets purchased by your officeholder expense fund (OEF) may be transferred directly to the Michigan State Senate upon dissolution, and, if so, whether you may condition the transfer upon the right to use the assets while you remain in office.

Section 49(1) of the Act (MCL 169.245) 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 official."

Rule 62, 1989 AACS R169.62, regulates disbursements from an OEF.

Rule 65, 1989 AACS R169.65, prescribes the method to be used for the dissolution of an OEF and the disposition of its assets. Rules 65(2) and (3) provide:

"(2) After an official leaves public office, his or her officeholder's expense fund shall not accept donations or make disbursements, except to dispose of debts incurred before the date on which the official leaves public office.

(3) An asset purchased with money donated to an officeholder's expense fund which is no longer used in a manner incidental to office, either during an official's term of office or when the official leaves public office, shall be sold at fair market value. A public official may purchase, at fair market value, an asset acquired by the official's officeholder's

expense fund. As used in this subrule, 'fair market value' is the price that an asset of like type, quality, age, and quantity would bring in a particular market at the time of acquisition."

You identify the assets purchased by your OEF which you would donate to the Michigan State Senate as "office furniture, a filing cabinet, and etc." Although you did not expressly state, it is assumed the purchase of these assets were disbursements for expenses incidental to your elective office, as authorized by section 49 of the Act and rule 62(1)(c).

You are dissolving your OEF but will remain in office as an elected official after your OEF is dissolved.

Rule 65(3) governs the disposition of assets "no longer used in a manner incidental to office", and its provisions apply whether or not the OEF which purchased the assets is dissolving or continuing. An Asset purchased by an OEF must be used in a manner incidental to office. If the asset is not "used in a manner incidental to office", then the asset must be "sold at fair market value". The proceeds of the sale must be kept in the OEF depository account, in accordance with OEF rule 61(3), or must be disbursed in accordance with OEF rule 62.

However, this does not mean, in all cases, that assets purchased by OEF funds must be used by the officeholder or reduced to cash. It means the asset must be used "in a manner incidental to office", which includes disbursement as authorized under rule 62.

What you are proposing is a disbursement from your OEF in the form of a gift to the Michigan State Senate.

62(1)(h) provides:

"Rule 62. (1) An officeholder's expense fund shall be used only for disbursements which are incidental to the office of the elected public official who established the fund. A disbursement is incidental to the office of the official if it is traditionally associated with, or necessitated by, the holding of a particular public office and is included within 1 or more of the following categories:

\* \* \*

(h) Donations to a tax-exempt charitable institution, including the purchase of tickets to charitable or civic events."

The Internal Revenue Code provides in 26 USC 170(a)(1):

"(1) There shall be allowed as a deduction any charitable contribution (as defined in subsection (c)) payment of which is made within the taxable year."

"Charitable contribution" is defined in 26 USC 170(c):

"(c) For purposes of this section, the term 'charitable contribution' means a contribution or gift to or for the use of . . .

(1) A State, a possession of the United States, any political subdivision of any of the foregoing, or the United States or the District of Columbia, but only if the contribution or gift is made for exclusively public purposes."

The State of Michigan and its agencies are constitutionally exempt from federal taxation. McCulloch v Maryland, 4 Wheat 316, 4 L Ed 579 (1819).

Therefore, gifts to the Michigan State Senate are "donations to a tax-exempt charitable institution" for purposes of rule 62(1)(h). Assets of an OEF may be transferred directly to the Michigan State Senate.

No disbursements under rule 62 will be allowed after an official leaves public office, except for debts previous incurred. This may be termed an involuntary dissolution, as compared to the dissolution of an OEF before an official leaves public office, which may be termed a voluntary dissolution. In the case of a voluntary dissolution, the officeholder may dispose of funds in the OEF by any disbursement allowed under rule 62.

You also ask whether you may donate OEF assets to the Michigan State Senate but continue to use them while you remain in public office.

Neither the Act, nor the rules, would allow you to dissolve your OEF and transfer the assets to the Michigan State Senate but continue to use the assets while you remain in public office. This is because assets purchased with OEF funds and continued to be used in a manner incidental to public office constitute an active OEF. An OEF is not dissolved if assets purchased with OEF funds are still being used by the elected public official who established the OEF in a manner incidental to his or her office.

This principle governs assets transferred upon dissolution of an OEF and would apply whether the assets were used by you while in public office because you donated the assets upon condition you retain the right to use them during your term of office, or whether the assets were allocated to you by the Michigan State Senate for your use while in public office.

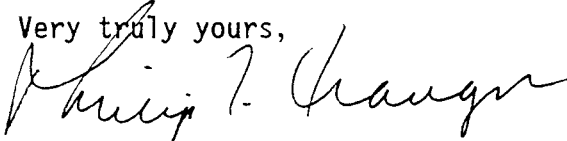
You may transfer these assets directly to the Michigan State Senate and continue to use them while in public office, but your continued use of these

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assets while in public office will constitute an ongoing OEF subject to all the provisions of the Act and rules governing OEFs.

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  
Deputy Secretary of State  
State Services