MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN   •   SECRETARY OF STATE

MUTUAL BUILDING
208 N. CAPITOL AVENUE

LANSING

MICHIGAN 48918

March 4, 1983

Mr. David M. Savu
Attorney at Law
105 S. First Street
Ishpeming, Michigan 49849

Dear Mr. Savu:

This is in response to your request for a declaratory ruling concerning the applicability of the Campaign Finance Act (the "Act"), 1976 PA 388, as amended. Your question is "whether or not a group of persons circulating either an initiatory or referendary petition to be submitted to the Marquette City Commission constitute a 'Ballot Question Committee' as that term is defined in the . . . Act" and second, "are such persons, as a group, required to file a statement of organization under section 24 of the . . . Act prior to the time the City of Marquette might take action under Charter Section 7.12 to refer an initiatory or referendary petition to the electors."

It is your position that a ballot question cannot exist as a matter of law until the City Commission decides "to put the question to the electorate" and further, if the City Commission decides to adopt or repeal an ordinance, no ballot question exists because the question was never put to the voters. You further opine that a group "supervising the circulation of such petitions" does not come within the ambit of the Act and is therefore not required to file a statement of organization or anything else until the City Commission determines to put the question before the voters.

You included a copy of sections 7.10-7.14 of the City Charter which apparently establishes the procedure for "Initiatory and Referendary Petitions." In summary, these sections provide that such petitions are to be signed by not less than 10% of the registered electors, as of the last regular city election, are to be addressed to the (City) Commission, are to be attached to a sworn affidavit by the circulator and are to be filed with the Clerk, who has 15 days to "canvass the signatures thereon." When a petition with sufficient signatures is appropriately filed, the Clerk is to present it to the Commission at the next regular meeting. Upon receipt of such a petition from the Clerk, the Commission has (generally) 30 days to either (a) adopt the ordinance (initiatory petition), (b) repeal all or part of the ordinance (referendary petition), or (c) "Determine to submit the proposal provided for in the petition to the electors." If the Commission determines that the proposal is to be submitted to the electors, it is to be submitted to the voters at the "next election held in the city for any other purpose" or at a special election called for that purpose.

Section 2 of the Act (MCL 169.202) provides (in part):

> "(1) 'Ballot question' means a question which is submitted or which is intended to be submitted to a popular vote at an election whether or not it qualifies for the ballot."

> "(2) 'Ballot question committee' means a committee acting in support of, or in opposition to, the qualification, passage or defeat of a ballot question but which does not receive contributions or make expenditures or contributions for the purpose of influencing or attempting to influence the actions of the voters for or against the nomination or election of a candidate."

A third definition which must be considered is that of "committee," found in section 3(4) of the Act (MCL 169.203)(4):

> "'Committee' means a person who receives contributions or makes expenditures for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate, or the qualification, passage, or defeat of a ballot question, if contributions received total $200.00 or more in a calendar year or expenditures made total $200.00 or more in a calendar year. An individual, other than a candidate, shall not constitute a committee."

MCL 169.202(2) includes committees acting in support of or opposition to "the qualification" of a ballot question. Qualification is preliminary to the actual decision to place a question before the voters. A ballot question committee may come into existence prior to the time that, in your case, the City Commission exercises its option of determining to submit a proposal to the electorate. This follows from the definition of "ballot question committee" quoted earlier. An issue may be a ballot question "whether or not it qualifies for the ballot" - in your case, whether or not the City Commission determines to submit the issue to the voters.

At the time action is taken which may result in the qualification of a question which may be submitted to a popular vote at an election, the person taking such action is a ballot question committee if the other requirements of a committee are met; that is, if the "person . . . receives contributions or makes expenditures for . . . the qualification, passage or defeat of a ballot question, if contributions received . . . or expenditures made total $200.00 or more in a calendar year." MCL 169.203(4)

Until the $200.00 threshold is crossed, the person is not a committee and therefore the filing requirements of the Act do not come into play. Section 24 of the Act requires that a statement of organization be filed "within 10 days after a committee is formed." Pursuant to the above analysis a statement of organization is required within 10 days after the person receives or spends $200.00 in a calendar year.

In response to your specific question, you should be advised that, at the time a person other than an individual circulating the referendary or initiatory petitions, receives or expends $200.00 or more in a calendar year for the purpose of qualifying a ballot question, the person constitutes a ballot question committee as defined in the Act; within 10 days after receiving or expending $200.00 in a calendar year, the committee must file a statement of organization with the appropriate filing official.

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

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings and Legislation