

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

September 8, 1987

Roger Short
Office of the Auditor General
204 City-County Building
2 Woodward Avenue
Detroit, Michigan 48226

Dear Mr. Short:

This is in response to your inquiry concerning the applicability of the Campaign Finance Act (the Act), 1976 PA 388, as amended, to the disbursement of money from a public official's candidate committee and officeholder's expense fund (OEF) after the official leaves office to accept a position as probate judge. Specifically, you ask whether Freddie Burton, a former county commissioner, may use unexpended funds in his local candidate committee or officeholder's account "to give a farewell party for those who have worked on behalf of the Commissioner, including office workers and campaign staff."

With respect to candidate committees, the Department indicated in a declaratory ruling to Senator Mitch Irwin, dated May 29, 1979, that committee funds may only be used to influence a campaign. Subsequently, in an October 12, 1981, letter to Ms. Dorothea Sherman, the Department stated:

"A thank-you dinner for [a] candidate's committee soon after the election is sufficiently tied to election activity so as to serve to influence his or her nomination or election. Consequently, the use of campaign funds to pay for such an event would be appropriate under the Act's provisions."

The farewell party you describe is not tied to election activity and is not intended to influence the commissioner's nomination or election. As such, excess candidate committee funds may not be used to pay for the party.

The disposition of residual candidate committee money is governed by section 45 of the Act (MCL 169.245). This section provides:

"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 contri-

tribution 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."

Pursuant to sections 24 and 36 of the Act (MCL 169.224 and 169.236), upon meeting the definition of "candidate" Mr. Burton must form a probate judge candidate committee and file a statement of organization with the Secretary of State. The Act does not limit contributions made to the candidate committees of local officials or probate judges. Therefore, the Act would allow Mr. Burton to transfer unexpended funds in his local committee to his probate judge committee. (You may, however, wish to request an ethics opinion from the State Bar of Michigan concerning the propriety of transferring the funds to the probate judge committee under the Code of Judicial Conduct.) If the unexpended money is not transferred pursuant to section 45(1), it must be returned to the contributors of the funds or given to a political party or charitable institution.

Officeholder expense funds, on the other hand, may only be used to pay expenses incidental to office, as stated in section 49 of the Act (MCL 169.249). Money transferred or donated to an OEF is not subject to the requirements of section 45. However, the Attorney General recently issued an opinion concerning the disposition of funds remaining in an OEF when an officeholder leaves office. The Attorney General indicated in OAG, 1987, No 6447, p _____ (June 16, 1987) that "neither the treasurer of an officeholder expense fund nor the elected official after departure from office is authorized to use or dispose and thus withdraw any residual moneys in such elected official's officeholder expense fund." The Attorney General concluded that "residual moneys" remaining in an official's OEF after the official leaves office escheat to the State of Michigan.

The Attorney General's opinion did not address the propriety of using OEF funds to dispose of office-related debts incurred before the officeholder vacated his or her office. This issue was previously addressed by the Department in an interpretive statement issued to Mr. Richard D. McLellan, dated February 23, 1987.

In the McLellan letter, the Department noted that while a departing officeholder's OEF must be dissolved, dissolution cannot be accomplished unless the OEF's assets are dispersed, its debts are paid, and a dissolution statement is filed. During the winding up process, the Department warned that disbursements from the OEF are strictly limited:

" . . . an OEF may only be used 'for expenses incidental to the person's office.' An ex-official can no longer incur expenses incidental

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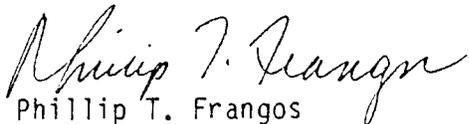
to office. Accordingly, an OEF maintained during the dissolution process by a retired public official is limited to accepting donations and making disbursements for the purpose of satisfying debts incurred prior to the expiration of the official's term of office. Any new activity is strictly prohibited."

The McLellan letter is not inconsistent with the Attorney General's opinion. As indicated previously, the Attorney General stated that "residual moneys" in an OEF may not be withdrawn after the officeholder who created the account leaves office. "Residual," of course, refers to the residue. According to both Black's Law Dictionary and The American Heritage Dictionary of the English Language, when used in its legal sense "residue" means the remainder of an estate after all claims, debts and bequests have been satisfied. Similarly, in the Department's view, the "residual" funds in an OEF are those funds remaining in the account after office-related debts and obligations incurred by the officeholder prior to leaving office have been paid.

Expenses for a farewell party attended by an official's staff and former campaign workers may be considered incidental to office. Therefore, funds remaining in the commissioner's OEF may be used to pay debts related to the farewell party, provided the debts were incurred prior to the date on which the commissioner left office. However, funds remaining in the account after the OEF's pre-existing debts and obligations are satisfied will escheat to the state in accordance with the Attorney General's opinion.

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