

June 3, 1983

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DEPARTMENT
OF STATE

LANSING, MICHIGAN 48918

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Gentlemen:

This is in response to your request for a declaratory ruling with respect to the public funding provisions of the Campaign Finance Act (the "Act"), 1976 PA 388, as amended.

Your letter asks approval of the following "proposed transaction" in a "ruling request:"

"PROPOSED TRANSACTION"

Several vendors supplied services to the Committee in the course of both the primary and general elections. These vendors, because of their ongoing relationship to the Committee, and the large volume of work being performed for the Committee had significant account balances with the Committee on or immediately after the primary election held August 10, 1982. To enable these vendors to continue performing work for the Committee, it was necessary to make payments as soon as possible to them. Their need for working capital made it unrealistic for them to wait until public funds were received and applied to their primary campaign balances, since the time period from application to receipt of public funds was, at that time, approximately four to six weeks. The Committee therefore made payments out of the "private-general" account (ie. funds received during the general election campaign from private contributions) to these vendors, with the understanding the Committee would later pay them out of primary public funds when it was feasible to do so (ie. when the public funds were received by the Committee). It was anticipated this would be accomplished in compliance with the statute, by having a vendor issue a check to the Committee which would be deposited in the private funds account as a reimbursement of the prior payment from that account. The vendor would then be paid with primary public funds in the same amount. The money which was redeposited in the private funds account would then be used for general election debts of the Committee. Our objective of paying these vendors with public funds for primary election expenditures would then be accomplished, without the cash flow problem necessitated by the normal time wait to receive the public funds.

When presented with this set of facts, CER stated public funds would not be available to the Committee.

RULING REQUEST

The Headlee for Governor Committee submits this transaction is sufficient to allow the release of public funds for reasons based in the statute, public policy, and equity. We therefore request our application for public funds be granted in total and any further application be granted up to the \$660,000.00 maximum."

The materials submitted with your request contend that there is no statutory provision which would prohibit the proposed transaction. However, the Department of State has consistently interpreted the provisions of the Act to preclude the transaction you propose.

This interpretation was included in the manual "Gubernatorial Candidate Committees: Standards and Practices Under the Campaign Finance Act" which was supplied to your committee. The interpretation is based on the combined effect of various provisions of the statute.

Section 6 of the Act (MCL 169.206) defines the term "expenditure." That definition consistent with the reporting and disclosure purposes of the Act, establishes the time of the expenditure as the date a committee becomes obligated to pay a person for any goods or services provided to the committee. Subsequent sections of the Act require that all expenditures be included on campaign statements filed by a committee. When a committee ultimately pays the debt in full no future reporting is required by the Act.

Gubernatorial candidate committees which accept public funds pursuant to sections 61 through 69 of the Act (MCL 169.261-169.269) subject themselves to the provisions of those sections. Section 67 limits expenditures by candidate committees accepting public funding to \$1,000,000 per election plus an additional 20% for expenditures made solely for the solicitation of contributions. Violation of this section is a misdemeanor: in addition the attorney general may petition the circuit court for an order prohibiting a violator of the sections from assuming a public office or receiving compensation, or both.

Since its inception the Department has administered the public funding provisions of the Act to insure that committees do not exceed the limit on expenditures set forth in section 67. Candidates have been advised verbally and in writing of the accounting practices to be followed.

Section 66(3) of the Act (MCL 169.266) requires that public funds be kept in a separate account. Section 66 also limits the use of public funds to the payment of qualified campaign expenditures. The purpose of these provisions is to make it as easy as possible to account for the public funds which are provided to the committee for the limited purpose of making qualified campaign expenditures in a single election.

The transaction you describe in your letter would permit a gubernatorial committee to transfer expenditures that had already been incurred from the private funds account of the committee to the primary public funds account well after the debt had been incurred and the funds had actually been paid. In effect a debt already paid from privately raised funds would be reincurred so that public funds subject to the overall limitation in effect for the primary could be used to pay it. Revival of the obligation previously paid is inconsistent with the need to provide for the orderly administration of the Act.

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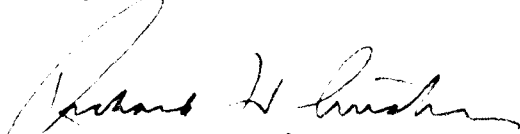
The end result is a transfer of funds from the primary public funds of the committee to the private funds account of the committee. Such a transfer undermines the limitations on spending imposed on candidates who receive public funding. If permitted in this case it would also establish the principle that transfers between accounts may be made on an unlimited basis. The risk in permitting such an interpretation is not only that the expenditure limits would be exceeded but that accountability for public funds would be lost in a sea of transfers between accounts. For the reasons set forth above the transaction that you propose cannot be approved.

The only transfers between accounts that candidates receiving public funding may make are as follows:

1. Transfers to correct an error by a committee in either depositing funds in the wrong account, or making an expenditure from the wrong account. Such transfers may only be made after obtaining the prior written approval of the Campaign Finance Reporting Section.
2. Asset "purchases" made with funds subject to a general election limit from the assets used by the same candidate in the primary. This procedure was previously addressed in the attached interpretative statement to Wallace Long on September 29, 1978.

This response is a declaratory ruling concerning the applicability of the Act to the specific set of facts you have submitted.

Very truly yours,



Richard H. Austin
Secretary of State