

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN

SECRETARY OF STATE

STATE TREASURY BUILDING



LANSING

MICHIGAN 48913

October 31, 1984

Philip Van Dam
 Riecker, George, Hartley, Van Dam & Camp, P.C.
 414 Townsend Street
 P.O. Drawer 632
 Midland, Michigan 48640

Dear Mr. Van Dam:

This is in response to your inquiry concerning the applicability of the Campaign Finance Act (the "Act"), 1976 PA 388, as amended, to funds received by the Republican Party from labor and business corporations and to certain payments made by the Republican Party. You also inquire whether the Republican Party, or its political party committee, is subject to certain reporting requirements under the Act and whether certain payments made by the Republican Party are contributions or expenditures and, therefore, reportable under the Act.

You ask whether a political party, or a political party committee, must file a campaign statement if these organizations did not receive contributions or make expenditures. You further ask whether the Act distinguishes between a political party and a political party committee, and, if so, does the distinction lie in the fact that a political party committee, as a committee under the Act, is engaged in activity influencing specific elections, whereas, a political party is engaged in general political activity and not in activity which influences a specific election.

The important distinction is not between a political party and a political party committee, but rather between an entity which is a committee under the Act and one which is not. It is not the case that a political party may engage in activities which influence specific elections only through political party committees. The Act contemplates five types of committees: candidate committees, ballot question committees, independent committees, political committees and political party committees. Under the Act, a political party may form and operate as any type of committee, except a candidate committee which can only be formed by a candidate.

The Republican Party is a committee under the Act if it is formed by a candidate.

vides in part, "committee" means a person who receives contributions or makes expenditures for the purpose of influencing or attempting to influence the action of the voters . . . , if contributions received . . . or expenditures made total \$200.00 or more in a calendar year".

Your letter states that the political party in question received no contributions and made no expenditures for the purpose of influencing voters in a specific election. However, once a person qualifies as a committee under the Act, committee status continues for subsequent calendar years for purposes of the reporting requirements of the Act, even though no contributions are received and no expenditures are made. Once committee status is achieved, the committee must file a campaign statement at least annually under section 35 of the Act (MCL 169.235) whether or not it received contributions or made expenditures during the filing period. A committee can avoid filing an annual campaign statement only if it qualifies under Rule 37, 1979 AC R169.37, and files a waiver under section 24(4) of the Act (MCL 169.224) and does not expend or receive an amount in excess of \$500 for any election, or if it files a dissolution statement under section 24(5) of the Act and Rule 28, 1979 AC R169.28.

Rule 3(1), 1979 AC R169.3(1), provides, "A statement, report . . . required to be filed by the act shall be filed . . . on a form prescribed or approved previously by the secretary of state." The Department provides campaign statement forms, and other reporting forms, with pre-printed headings for information required under the Act. Rule 3(3), 1979 AC R169.3(3), states, "A person filing a statement or report . . . shall complete each item of information requested or shall note clearly that the item of information is not applicable to the filer." In accordance with Rule 3(3), when the amount of money or value is requested and the filer has zero amount to report, then zero amount should be entered.

You ask whether the state Republican organization must report funds expended for producing and distributing newsletters, organizational materials, campaign materials, campaign manuals, fund raising manuals and other similar materials which are sent to Republicans or other interested individuals and organizations, but which do not support or oppose a ballot issue or candidate by name or clear inference. You also ask whether donations received from business and labor corporations may be used to produce and distribute these materials or other communications which do not support or oppose any ballot question or candidate by name or clear inference, or which are not made for the purpose of influencing an election, or which are not in assistance or opposition thereof.

Under section 4(1) of the Act (MCL 169.204), a contribution is an "expenditure . . . made for the purpose of influencing the nomination or election of a candidate, or for the qualification, passage, or defeat of a ballot question." Under section 6(1) of the Act (MCL 169.206), an expenditure is a "donation . . . of . . . anything of ascertainable monetary value for . . . materials . . . in assistance of, or in opposition to, the nomination or election of a candidate, or the qualification, passage, or defeat of a ballot question." Additionally, section 6(2) of the Act states, "Expenditure includes a contribution or a trans-

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fer of anything of ascertainable monetary value for purposes of influencing the nomination or election of any candidate or the qualification, passage or defeat of a ballot question."

The principal purpose of a political party is to promote the election of its adherents to public office. Another important purpose is to establish its political philosophy as public policy by supporting or opposing ballot questions. The materials described in your inquiry are clearly produced and distributed for the purpose of influencing an election. Likewise, they are materials in assistance of, or in opposition to, a candidate or ballot question. But for electoral activity, there would be no need for these materials.

However, your inquiry indicates that the materials you describe do not support or oppose a ballot issue or candidate by name or clear inference. Section 6(3)(c) of the Act states:

"(3) Expenditure does not include:

* * *

"(c) An expenditure for communication on a subject or issue if the communication does not support or oppose a ballot issue or candidate by name or clear inference".

"Funds received from corporations cannot be used in assistance of a candidate. . . . While it is conceivable a political party committee could publish a newsletter which does not support or give assistance to a candidate ('candidate' includes all incumbents), this seems unlikely." Letter to Mr. David A. Lambert, dated September 21, 1983. Nevertheless, if newsletters, organizational materials, campaign materials, campaign manuals, fundraising manuals and other communications do not support or oppose a candidate or ballot issue by name or clear inference, then funds expended for producing and distributing these communications are not expenditures under the Act and are not reportable. If these communications qualify for the exclusion under section 6(3)(c) of the Act, then corporate donations may be used for the production and distribution of these communications.

You ask whether funds received by the Republican Party which are not contributions, as defined in the Act, or funds expended by the Republican Party which are not contributions or expenditures, as defined in the Act, are reportable under the Act. And also, you ask whether funds received by the Republican Party from a donor, who clearly designates the funds as given for other than campaign purposes, are reportable under the Act.

It was stated in a letter to you, dated April 12, 1982, "While it is obvious the Michigan Republican Party ('MRP') is a committee as defined in section 3(4) of the Act (101,152,000), it is not covered by the Act." A political party

functions which are entirely independent of supporting, opposing or assisting the nomination or election of a candidate, or the qualification, passage or defeat of a ballot question. Whether funds received or expended by a political party are reportable under the Act depends upon whether the funds are contributions or expenditures as defined in the Act. If funds received by a political party are not contributions, as defined in the Act, then these funds are not reportable under the Act. Similarly, if funds expended by a political party are not contributions or expenditures, as defined in the Act, then these funds are not reportable under the Act. However, in a letter to Mr. James C. VanHeest, dated December 1, 1981, the Department stated,

"Unless the contributor clearly designates the funds as being for other than campaign purposes, the Department presumes that contributions to a political party are made for the purpose of influencing the nomination or election of a candidate for state or local office, or the qualification, passage or defeat of a ballot question."

A contribution to a political party which is clearly designated as being for other than campaign purposes is not a contribution under the Act, and, therefore, is not reportable under the Act. Concurrently, a disbursement for activity which is not within the ambit of the Act is not subject to the Act's reporting or record-keeping requirements.

You ask whether payments by the Republican Party for purchase or construction of party headquarters and attendant moving costs, headquarters rent, state and local ad valorem property taxes, party administration, office supplies, workmen's compensation, unemployment compensation, medical and health insurance, and employees' salaries are expenditures or contributions under the Act, if not made for the purpose of influencing an election.

Your inquiry is premised upon the fact that the funds described are not expended "for the purpose of influencing an election." If, in fact, these funds are not expended for the purpose of influencing an election, then they are neither contributions nor expenditures under the Act and are not reportable.

Since your premise is conclusory, it is beyond the scope of this response to make the more basic determination whether the funds expended are for the purpose of influencing an election. You have described items for which funds are expended, but you have not disclosed the use to which these items are put. As has been stated in a letter to Mr. Timothy Downs, dated October 12, 1982, "[T]he use to which funds are to be put is the primary determinant of whether a payment . . . is a contribution under 4(1)." You identify certain funds as expended for party administration without disclosing the particular function being performed. For instance, the maintenance of membership records could be considered an aspect of party administration. However, membership records of a political party are also maintained for the purpose of influencing an election. Funds expended for this purpose would be an expenditure under the Act and would be reportable.

You ask whether payments by the Republican Party to auditors, lawyers, accountants, and other such professionals, made for the purpose of compliance with the Act are contributions or expenditures under the Act, and if not, must such payments be reported.

An integral part of an election campaign for any candidate or committee is compliance with the Act. A payment made for the purpose of compliance with the Act is made in assistance of the nomination or election of a candidate, or the qualification, passage, or defeat of a ballot question and is an expenditure under section 6(1) of the Act. Therefore, payments to auditors, lawyers, accountants, and other such professionals, made for the purpose of compliance with the Act are expenditures under the Act and must be reported.

You ask whether payments made by the Republican Party for expenses incurred at party organizational meetings are contributions or expenditures under the Act, and whether they must be reported if no candidates will be nominated and no ballot resolution adopted.

This question was answered in a letter to Mr. Richard D. McLeilan, dated August 21, 1979, a copy of which is attached. If none of the offices at stake at this particular organizational meeting are public offices, and if none of the resolutions to be adopted are ballot questions, then payments made by the Republican Party for expenses incurred at this party organizational meeting are not expenditures under section 6 of the Act, and they need not be reported.

You also ask whether payments made by the Republican Party for these expenses are contributions or expenditures under the Act, if made during a period of time when there is no campaign.

The Act does not contemplate a period of time when there is no campaign. A campaign is an operation undertaken to influence an election. Section 5(1) of the Act (MCL 169.205) states, "'Election' means a primary, general, special, or mileage election held in this state or a convention or caucus of a political party held in this state to nominate a candidate. Election includes a recall vote." Under section 3(1) of the Act (MCL 169.203), "[A]n elected officeholder shall be considered to be a candidate for reelection to that same office". Election includes reelection. For reporting purposes under the Act, there is no hiatus between campaigns. Especially for a political party, an election marks the end of one campaign and the beginning of another.

You ask whether the Republican Party may receive donations from business and labor corporations, and if so, whether the donated funds may be used for the following: (1) payments to professionals to ensure compliance with the Act; (2) payment of expenses incurred at party organizational meetings at which candidates will not be nominated and no ballot resolutions adopted; (3) office supplies, headquarters rent, purchase or construction of party headquarters, and state or local ad valorem property taxes; (4) party administration; (5) salaries of employees, workmen's compensation, unemployment compensation, medical and health insurance.

Under the provisions of section 54(1) of the Act (MCL 169.254), a corporation is prohibited from making a contribution or expenditure, unless it qualifies for an exception pursuant to section 54(2) or (3) or operates within the provisions of section 55 of the Act (MCL 169.255). However, unlike other committees, a political party engages in some activities which are outside the ambit of the Act. Therefore, a political party may accept corporate funds which are not contributions or expenditures under the Act, and may expend these funds for non-campaign purposes only. But, corporate funds may not be commingled with funds which are or will be subject to the Act.

The questions you pose were answered in a letter to Mr. David A. Lambert, dated October 31, 1984, a copy of which is attached for your convenience. (1) Corporate funds may not be used for legal or accounting expenses associated with Campaign Finance Act compliance, except when these expenses are incurred by a ballot question committee. Under the exception of section 54(3) of the Act, a corporation may make a contribution not in excess of \$40,000.00 to each ballot question committee. (2) Corporate funds may be used for expenses incurred at party organization meetings only if no candidate will be nominated and no ballot resolution will be adopted. (3) Corporate funds may be used for office supplies, headquarters rent, purchase or construction of party headquarters, and state and local ad valorem property taxes only if these expenses are incurred exclusively in the performance of non-campaign activity. (4) Corporate funds may be used for expenses of party administration only when the particular function performed is exclusively non-campaign related. You have not described party administration activities in sufficient detail to make any specific interpretation. For example, as indicated previously, maintenance of membership records may be a function of party administration, but this function is not exclusively for non-campaign purposes. (5) Corporate contributions may not be used to pay the wages and benefits of party employees who do not work exclusively in non-campaign activity. As was stated in the Lambert letter, supra, "in summary, political parties may receive and spend money from corporations for activity which is exclusively outside the Act."

You also ask whether corporate funds donated to the Republican Party may be used for voter registration drives conducted by the political party, but which are not undertaken in support of or in opposition to a ballot question or candidate by a name or clear inference, and which is not undertaken for the purpose of influencing an election.

Section 5(3)(e) of the Act states:

"(3) Expenditure does not include:

* * *

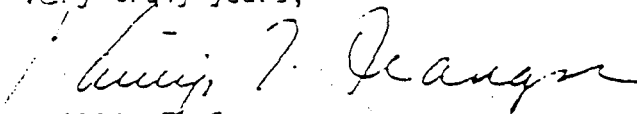
(e) An expenditure for nonpartisan voter registration or nonpartisan get-out-the-vote activities."

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The legislative history of the Act reflected in this exclusion indicates an awareness by the Legislature of the public importance and public service value of non-partisan activities of the type traditionally conducted by organizations like the League of Women Voters. Such activities include voter registration and get-out-the-vote drives. The use of the term "nonpartisan" clearly eliminates political parties from this exclusion. The primary purpose of a voter registration drive is to influence an election. Funds expended for a voter registration drive by a political party are expenditures in assistance of party-designated candidates. Therefore, political parties may not use corporate donations to fund get-out-the-vote or voter registration drives.

This letter is informational only and does not constitute a declaratory ruling.

Very truly yours,



Phillip T. Frangos
Director
Office of Hearings and Legislation

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