

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN

SECRETARY OF STATE

STATE TREASURY BUILDING



LANSING

MICHIGAN 48918

December 3, 1982

George O. Von Frank, Treasurer
Citicorp Voluntary Political Fund-Federal
399 Park Avenue - 32nd Floor
New York, New York 10043

Dear Mr. Von Frank:

This is in response to your letter seeking a declaratory ruling pursuant to the Campaign Finance Act (the "Act"), 1976 PA 388, as amended, with respect to participation by your political action committee in Michigan elections.

In your letter you ask a number of specific questions. Your questions generally focus on the necessity of forwarding and filing certified statements when a committee located out-of-state makes contributions or expenditures in a Michigan election as specified in sections 28(3) and 42(2) of the Act (MCL 169.228 and 169.242).

The Act's provisions with respect to participation in Michigan elections by committees located out-of-state have been the subject of litigation initiated by the Michigan State Chamber of Commerce and other plaintiffs. On May 11, 1982 the Ingham County Circuit Court issued an Amended Opinion and Order with respect to the issue of out-of-state committee activities in Michigan elections. I have attached a copy of the Court's order as well as a copy of the January 29, 1980 declaratory ruling which was at issue.

In determining the amount of detailed information to be included on the certified statement an out-of-state committee must supply to a candidate, any reasonable accounting method may be utilized to ascertain the information that must be supplied. Two methods in particular will meet the Act's requirements.

First, a committee may use the so-called LIFO method. A committee using this approach would start with the most recent contribution it has received and go back through its contributors. The detailed information for those contributing more than \$20.00 or \$200.00 of the contribution would then be forwarded as required by section 42(2).

Mr. George O. Von Frank
Page two

Another method is to divide the expenditure being made by the number of persons contributing to the committee. If the average contribution exceeds \$20.00 or \$200.00 then the detailed name, address and occupation information must be supplied.

Your remaining questions are answered seriatem below.

(3) Your assumption is correct. The statement of organization is due within 10 days of receiving contributions or making expenditures in Michigan that equal or exceed \$200.00 in a calendar year.

(4) No annual campaign statement is required by an independent committee, see section 35 of the Act (MCL 169.235).

(5) The 25 persons contributing to an independent committee do not have to be Michigan residents.

(6) You may submit all expenditures made or you may list only those made to Michigan state or local candidates or Michigan ballot questions.

(7) Contributors need to be listed only to the extent their contribution was utilized in a Michigan election. No special rules apply for Michigan contributors.

(8) The summary page must only show activity taking place in Michigan, if your report reflects the information provided above it should balance.

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

Very truly yours,



Phillip T. Frangos
Director
Office of Hearings and Legislation

PTF/cw

Attachments

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

MICHIGAN STATE CHAMBER OF COMMERCE,
a Non-Profit Michigan Corporation
and its Separate Segregated Fund,
the Michigan Business Political
Action Committee; MICHIGAN ASSOCIATION
OF REALTORS, a Non-Profit Michigan
Corporation and its Separate Segregated
Fund, Realtors Political Action Commit-
tee of Michigan; MICHIGAN FARM BUREAU,
a Non-Profit Michigan Corporation and
its Separate Segregated Fund, Michigan
Farm Bureau Political Action Committee,

Plaintiffs,

and

NATIONAL BANK OF DETROIT, a National
Banking Association, and NBD Good
Citizenship Committee,

Intervening Plaintiffs,

vs

RICHARD H. AUSTIN, Secretary of
State, and FRANK J. KELLEY, Attorney
General,

Defendants.

At a session of said Court held in the
Circuit Courtrooms, City of Lansing,
County of Ingham, State of Michigan,
on the 11th day of May, A.D., 1982.

PRESENT: HONORABLE RAY C. HOTCHKISS, Circuit Judge

The Court, having reviewed the file and briefs submitted
by counsel and having heard oral argument in open Court, is of the
opinion that Plaintiffs' Motion for Partial Summary Judgment be
denied.

Plaintiffs, in Count V of their First Amended Complaint
challenge a January 29, 1980, declaratory ruling of the Secretary
of State which held that out-of-state persons and committees who
make expenditures of \$200 or more for the purpose of influencing
Michigan elections are required to file a Statement of Organization

AMENDED
OPINION AND ORDER

Docket No. 80-25671-CZ

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DEPT. OF THE
ATTORNEY GENERAL

and comply with periodic filing requirements of the Campaign Financing and Practises Act, MCLA 169.201 et seq. Plaintiffs contend that out-of-state persons and committees who provide the certified Statement required by §§28(3) and 42(2) of the act are not required to register under §24 of the act.

Plaintiffs now move for Summary Judgment as to Count V and allege that Defendants have failed to state a valid defense to the claims asserted therein.

Plaintiffs assert that §§28(3) and 42(2) were intended by the legislature to be the exclusive regulation of out-of-state contributors. This court does not agree. §28(3); MCLA 169:228(3) provides:

"(3) Accompanying a campaign statement reporting the receipt of a contribution of \$20.01 or more from a committee or person whose treasurer does not reside in, whose principal office is not located in or whose funds are not kept in this state, shall be a statement certified as true and correct by an officer of the contributing committee or person setting forth the full name, address, along with the amount contributed, of each person who contributed \$20.01 or more of the contribution. The occupation, employer, and principal place of business shall be stated for each person who contributed \$200.01 or more."

§42(2); MCLA 169.242(2) provides:

"(2) A contribution of \$20.01 or more from a committee or person whose treasurer does not reside in, whose principal office is not located in, or whose funds are not kept in this state, shall not be accepted by a person for purposes of supporting or opposing candidates for elective office or the qualification, passage, or defeat of a ballot question unless accompanied by a statement certified as true and correct by an officer of the contributing committee or person setting forth the full name and address along with the amount contributed, of each person who contributed \$20.01 or more of the contribution. The occupation, employer, and principal place of business shall be listed for each person who contributed \$200.01 or more of the contribution. A person who knowingly violated this subsection is guilty of a misdemeanor and shall be punished by a fine of not more than \$1,000.00, or imprisoned for not more than 90 days, or both, and if the person is other than an individual the person shall be fined not more than \$10,000.00."

The disclosure requirements of §28(3) are similar to those required by §26 (MCLA 169.226) except that §28(3) requires a certified statement from the out-of-state source to verify that the information disclosed is true. Without this certification,

a committee is prohibited by §42(2) from accepting the contribution. It is clear that §§ 42(2) and 28(3) were not intended to be exclusive. They merely impose a requirement that the information provided by certified as true. This Court is of the opinion that if an out-of-state contributor meets the definition of a committee under the Act, they are required to file a Statement of Organization and make periodic campaign statements under the Act. This court does not feel that §28(3) and 42(2) require an out-of-state committee to move its funds into the state or appoint a Michigan elector as its treasurer.

Plaintiffs contend that to require full registration of out-of-state contributors would render §§ 28(3) and 42(2) void. This Court does not agree. As noted above, these two sections merely impose additional requirements on committees whose treasurer, principal office or funds are located outside the state. This Court is of the opinion that Plaintiffs have failed to demonstrate, as a matter of law, that they are entitled to Partial Summary Judgment as to Count V.

NOW, THEREFORE;

IT IS ORDERED that Plaintiffs' Motion for Partial Summary Judgment as to Count V be denied.

RAY C. HOTCHKISS, Circuit Judge