MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

January 16, 1978

Honorable Patrick H. McCollough
c/o McCollough-Michigan Committee
P.O. Box 10039
Lansing, Michigan 48901

Dear Mr. McCollough:

The Department has received your letter of December 22, 1977, requesting a declaratory ruling concerning P.A. 388 of 1976, the Campaign Finance Act ("the Act"). The request is made pursuant to P.A. 306 of 1969, the Administrative Procedures Act, as provided in R169.6 of the General Rules promulgated to implement the Act.

Your letter states: "There may, however, be a need for clarification as to the point at which a loan may become a contribution. I seek a declaratory ruling on that point."

In addition, the Department has received a request from Mr. Steven R. Bartholomew, Treasurer of the McCollough-Michigan Committee. This letter, also dated December 22, 1977, raises several questions concerning the status of loans made to a candidate committee under several provisions of the Act.

After examining both letters, it is concluded that neither presents a proper request for a declaratory ruling. Section 63 of the Michigan Administrative Procedures Act provides:

> "On request of an interested person, an agency may issue a declaratory ruling as to the applicability to an actual state of facts of a statute administered by the agency or of a rule or order of the agency. An agency shall prescribe by rule the form for such a request and procedure for a submission, consideration and disposition. A declaratory ruling is binding on the agency and the person requesting it unless it is altered or set aside by any court. An agency may not retroactively change a declaratory ruling, but nothing in this subsection prevents an agency from prospectively changing a declaratory ruling. A declaratory ruling is subject to judicial review in the same manner as an agency final decision or order in a contested case."

The Administrative Procedures Act and the Department's rules, which govern the procedural aspects of declaratory rulings, allow the Department to issue a declaratory ruling only upon presentation of a specific factual situation and not upon a hypothetical set of facts. The requests as outlined in the two letters of December 22, 1977, do not set forth any facts and, therefore, cannot be acknowledged with the issuance of declaratory rulings as requested.

However, if the requests are modified to present actual factual situations, the Department may then be able to issue declaratory rulings which are binding on the requestors and the Department consistent with the requirements of the Administrative Procedures Act.

Although the Department may not respond with declaratory rulings in the case of these two letters, the issues presented therein merit some attention at this time. They relate to administration of the state campaign fund which became operational on January 1, 1978. In view of the fact the issues raised in the two letters have been of concern on several occasions, the Department at this time takes the opportunity to present its reading of the statute with respect to several questions in the form of an interpretive statement. This statement is rendered pursuant to the Department's authority as administrative supervisor of the several provisions of the Act.

In responding to the issues raised, the several questions in the two letters of December 22 have been modified to reflect the pertinent questions which need clarification at this time. The questions to which this statement is addressed are as follows:

1. Should a loan made to a candidate committee be treated as a contribution or expenditure under the provisions of the Act?

2. If considered a contribution, is a loan to a candidate committee subject to the various contribution limits provided in the Act?

3. May a loan to a gubernatorial candidate committee, which has filed a statement of organization indicating an intent to seek qualifying contributions in order to receive monies from the state campaign fund, be construed to be a qualifying contribution for purposes of the Act?

4. May funds received by a gubernatorial candidate committee from the state campaign fund be used for the repayment of a loan?

Section 4(1) of the Act defines "contribution" to include a loan, whether or not conditional or legally enforceable, made for the purpose of influencing the nomination or election of a candidate. With one major exception, a loan should be reported as a contribution consistent with the reporting provisions of Section 26(b) of the Act. In addition to general language for the reporting of contributions, this section provides specifically that if a loan is repaid during the period covered by the campaign statement, the amount of the repayment shall be subtracted from the total amount of contributions received. In short, a loan to a candidate committee should be reported as a contribution.

The one exception to the above is a loan made by a corporate lender in the ordinary course of business. Section 54(1) of the Act prohibits corporate financial involvement in political activity except as specifically authorized by the Act. An exception permitted by the Act is a loan made in the ordinary course of business by a corporate lender. The Department interprets the Act as requiring a corporate lender to be in the business of making loans.

This exception is consistent with the other provisions of the Act in that if a loan from an established corporate lender were treated as a contribution to a candidate, the lender would have to establish itself as a committee pursuant to the provisions of Section 3(4) in any instance where the loan exceeded $200.00 in a calendar year. A reading of the several relevant statutory sections does not support such a conclusion.

Therefore, a loan from a corporate lender in the business of making loans and made in the ordinary course of business, should not be reported as a contribution for purposes of the Act. Rather, a loan of this type should be reported as a receipt by the candidate committee pursuant to the provisions of Section 28(2) of the Act. This provision requires the reporting of a loan on a separate schedule and prescribes a number of reporting requirements.

It should be noted that Section 6(1) defines "expenditure" to include a loan made for the nomination or election of a candidate, or the qualification, passage or defeat of a ballot question. This statutory provision is intended to require the reporting as an expenditure of a loan made by an independent committee or a political party committee to a candidate, or by any committee for or against a ballot question. It does not include the situation where a candidate committee receives a loan on its own behalf. Repayment of a loan by a candidate committee does not constitute an expenditure. The statute contemplates this result in Section 26(b) which was cited previously. The amount of any repayment during the period covered by a campaign statement should be subtracted from the total amount of contributions received during that period.

Turning to the second question, it may be answered by stating that a loan made by a lender other than a corporate lender established for the purpose of making loans, and made during the course of its business, is subject to the contribution limits set forth in Sections 52(1) and 69(1) of the Act. Thus, a person other than an independent committee or a political party committee cannot make contributions to the candidate committee of a gubernatorial candidate which exceed $1,700.00 with respect to a single election. In the instance of a loan subject to the contribution limits of the Act, repayment of any part of the loan by the candidate committee frees the contribution limit available to the maker of the loan to the extent that repayment is made. For example, if a person lends the candidate committee of a gubernatorial candidate $1,700.00 on July 1 and $500.00 is repaid by July 15, the maker of the loan may contribute an additional amount up to $500.00 with respect to the single election covered by that contribution limit.

The third question is concerned with monies available to a gubernatorial candidate from the state campaign fund. The fund was created by the Act for the purpose of providing matching funds to gubernatorial candidates for their campaign upon the meeting of certain requirements. Section 12(1) of the Act defines what constitutes a "qualifying contribution" for purposes of receiving money from the fund. This provision expressly states that qualifying contribution does not include a loan.

The last question is concerned with whether monies received from the state campaign fund may be used towards the repayment of a loan. Section 66(1) of the Act states that a candidate may only apply the monies received from the fund against a "qualified campaign expenditure." Section 66(2) indicates what constitutes and what does not constitute a qualified campaign expenditure.

In view of the fact that repayment by a candidate committee of a loan does not constitute an expenditure, it does not constitute a qualified campaign expenditure. Thus, monies received from the state campaign fund by the candidate committee of a gubernatorial candidate may not be used for the repayment of a loan to that committee.

As stated previously, this letter does not constitute a declaratory ruling. It should be considered informational as to the interpretations relied upon by the Department in its enforcement of the Act.

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF:pk

cc: Mr. Steven R. Bartholomew, Treasurer
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