

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN

SECRETARY OF STATE

STATE TREASURY BUILDING



LANSING

MICHIGAN 48918

December 14, 1987

George Hubka
7950 Marshall Road
Nashville, Michigan 49073

Dear Mr. Hubka:

This is in response to your request for a declaratory ruling under the Campaign Finance Act (the Act), 1976 PA 388, as amended. Rule 6 of the administrative rules promulgated to implement the Act, 1979 AC R169.6, establishes the procedure for requesting a declaratory ruling. This rule states, in relevant part:

"Rule 6. (1) The secretary of state, on written request of an interested person, may issue a declaratory ruling as to the applicability of the act or these rules to an actual statement of facts. An interested person is a person whose course of action would be affected by the declaratory ruling. A brief or other reference to legal authorities, upon which the person relies for determination of the applicability of the act or of a rule to the statement of facts, may be submitted with the request."

Rule 6 corresponds with section 63 of the Administrative Procedures Act, 1969 PA 306, as amended, which further governs the issuance of declaratory rulings. Under section 63, an "interested person" may request a ruling as to an actual statement of facts. If issued, the interested person and agency are bound by the declaratory ruling.

Your questions appear to concern the manner in which a certain political committee has conducted its affairs. There is no indication that you are affiliated with the committee or that you are an "interested person" who would be affected or bound by the requested ruling. Moreover, your inquiry does not include an actual statement of facts, as required by rule 6. Therefore, the Secretary of State declines to issue a declaratory ruling in response to your request.

However, enclosed for your use is a copy of the Act and rules, including a digest of declaratory rulings and interpretive statements issued by the Department. You may be particularly interested in sections 4 and 6 (the definitions of "contribution" and "expenditure"), sections 15 and 16 (the responsibilities and authority of the Secretary of State and county clerks), sections 21, 22 and 24 (the organization of a committee and duties of its treasurer), and section 26 (the required contents of campaign statements filed by non-political party committees). You may also find other sections and rules useful in addressing your concerns.

If after reviewing these materials you have further questions concerning the Act's reporting obligations or the completion of reports, you should contact

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your county clerk or the Bureau of Elections, Disclosure and Public Records Section, for additional information. If your review leads you to believe that a violation of the Act may have occurred and you have evidence in support of your belief, you may file a complaint with the Department's Compliance and Rules Division in accordance with Part 5 of the rules.

You have also asked whether the Freedom of Information Act (FOIA), 1976 PA 442, as amended, applies to "items" supplied to the Secretary of State pursuant to the Campaign Finance Act and "material secured by [the Secretary of State] in investigating illegal activity" under the Act.

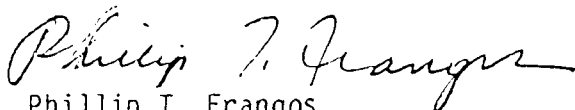
Pursuant to section 3 of FOIA (MCL 15.233), a state agency must make public records available to a person upon oral or written request, unless the record is exempt from disclosure under section 13 (MCL 15.243). Section 13(1)(b) provides that a public body may exempt from disclosure investigating records compiled for law enforcement purposes. Therefore, the Department does not disclose information secured during the course of investigating an alleged violation of the Act until after the investigation is completed.

Section 13(1)(s) further provides that records of any campaign committee may be exempt from disclosure. However, pursuant to section 13(2) an agency may not withhold information otherwise required by law to be made available to the public.

Section 16(1) of the Campaign Finance Act requires a filing official to "make statements and reports required to be filed under this act available for public inspection and reproduction, commencing as soon as practicable, but not later than the third business day following the day on which they are received, during regular business hours of the filing official." Therefore, even if campaign statements and reports filed with the Secretary of State are exempt from disclosure under FOIA, they must be made available to the public pursuant to section 16(1). Copies of these records may be obtained from the Bureau of Elections at a current cost of 16¢ per page.

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

Very truly yours,



Phillip T. Frangos
Director
Office of Hearings and Legislation
(517) 373-8141

PTF/AC/cw

Enc.

Sec. 26. A campaign statement of a committee, other than a political party committee, required by this act shall contain the following information.

(a) The filing committee's name, address, and telephone number; and the full name, residential and business addresses, and telephone numbers of its committee treasurer.

(b) Under the heading "receipts," the total amount of contributions received during the period covered by the campaign statement; under the heading "expenditures," the total amount of expenditures made during the period covered by the campaign statement; and the cumulative amount of those totals for that election. If a loan was repaid during the period covered by the campaign statement, the amount of the repayment shall be subtracted from the total amount of contributions received. Forgiveness of a loan shall not be included in the totals. Payment of a loan by a third party shall be recorded and reported as a contribution by the third party but shall not be included in the totals. In-kind contributions or expenditures shall be listed at fair market value and shall be reported as both contributions and expenditures. A contribution or expenditure which is by other than completed and accepted payment, gift, or other transfer, which is clearly not legally enforceable, and which is expressly withdrawn or rejected and returned before a campaign statement closing date need not be included in the campaign statement if included may, in a later or amended statement be shown as a deduction, but adequate records of each instance shall be kept.

(c) The balance of cash and cash equivalents on hand at the beginning and the end of the period covered by the campaign statement.

(d) The total amount of contributions received during the period covered by the campaign statement from persons who contributed \$20.01 or more.

(e) The total amount of contributions received during the period covered by the campaign statement from persons who contributed \$20.00 or less.

(f) The total amount of contributions of \$20.00 or less received during the period covered by the campaign statement and the cumulative amount of the contributions received by the filer for that election pursuant to section 41(3).

(g) The total amount of contributions of \$20.00 or less received during the period covered by the campaign statement for each fund raising event held during that period. The following information regarding each fund raising event shall be included in the report:

(i) The type of event, date held, address and name, if any, of the place where the activity was held, and approximate number of individuals participating or in attendance.

(ii) The full name of each person who, though making a contribution or expenditure in connection with the event, made a total contribution of \$20.01 or more, and the total of all such contributions. This requirement is in addition to, and not in lieu of, the requirements of this section relating to the recording and reporting of contributions.

(iii) Moneys received in connection with the event or activity from persons in amounts of \$20.00 or less shall be listed by general category such as tickets, beverages, bumper stickers, or other, and the total of those contributions shall be recorded.

(iv) The gross receipts of the fund raising event.

(v) The expenditures incident to the event.

(h) The full name of each person from whom contributions totaling \$20.01 or more are received during the period covered by the campaign statement, together with the person's street address, the amount contributed, the date on which each contribution was received, and the cumulative amount contributed by that person for that election. The occupation, employer, and principal place of business shall be stated if the person's total contributions for the period is \$200.01 or more.

(i) The cumulative amount contributed and the name and address of each person, except those persons or names reported under subdivision (h), who contributed a total of \$20.01 or more for that election. The occupation, employer, and principal place of business, shall be stated for each person who contributed \$200.01 or more for that election.

Sec. 16. (1) A filing official shall make statements and reports required to be filed under this act available for public inspection and reproduction, commencing as soon as practicable, but not later than the third business day following the day on which they are received, during regular business hours of the filing official.

(2) Copies of statements or parts of statements shall be provided by a filing official at a reasonable charge.

(3) A statement open to the public under this act shall not be used for purposes of commercial solicitation or any commercial purpose. A person who violates this subsection is subject to a civil penalty of not more than \$1,000.00.

(4) A statement or report filed under this act shall be preserved by the filing official for 5 years or for 1 year beyond the term of office for which the statement or report is filed, whichever is longer. Statements and reports filed under this act may be microfilmed. After the required preservation period the statements and reports, microfilmed or otherwise, shall be destroyed.

(5) A charge may not be collected by a filing official for the filing of a required statement or report, or for a term upon which the statement or report is to be prepared except for a late filing fee required by this act.

(6) A filing official shall determine whether a statement or report filed under this act complies, on its face, with the requirements of this act and the rules promulgated under this act. The filing official shall determine whether a statement or report which is required to be filed under this act is in fact filed. Within 4 days after the deadline for filing a statement or report under this act, the filing official shall give notice to the filer by registered mail of an error or omission in the statement or report and give notice to a person the filing official has reason to believe is a person required to and who failed to file a statement or report. A failure to give notice by the filing official under this subsection is not a defense to a criminal action by the person required to file.

(7) Within 9 days after the report or statement is required to be filed, the filer shall make any corrections in the statement or report filed with the appropriate filing official. If the report or statement was not filed, then it shall be late filed within 9 days after the time it was required to be filed and shall be subject to late filing fees.

(8) After 9 days and before 12 days have expired after the deadline for filing the statement or report, the filing official shall report errors or omissions which were not corrected and failures to file to the attorney general.

(9) A statement or report required to be filed under this act shall be filed not later than 5 p.m. of the day in which it is required to be filed. A statement or report which is postmarked by registered mail at least 2 days before the deadline for filing shall be considered filed within the prescribed time regardless of when it is actually delivered.

Sec. 26 (cont.)

(j) The name and street address of each committee and the full name and street address of the treasurer of each committee which is listed as a contributor.

(k) The name, address, and amount given by a person who contributed \$20.01 or more of the total amount contributed by a person who is other than a committee or an individual. The occupation, employer, and principal place of business shall be stated if the person contributed \$200.01 or more.

(l) A listing, by general category, of expenditures of \$50.00 or less made during the period covered by the campaign statement and the total of those expenditures.

(m) The full name and street address of each person to whom expenditures totaling \$50.01 or more were made, together with the amount of each separate expenditure to each such person during the period covered by the campaign statement; the purpose of the expenditure; the full name and street address of the person providing the consideration for which any expenditure was made if different from the payee; and the full name and street address of the treasurer of a committee which is listed.

(n) The amount of expenditures for or against a candidate or ballot question during the period covered by the campaign statement and the cumulative amount of expenditures for or against the candidate or ballot question. An expenditure made in support of more than 1 candidate or ballot question, or both, shall be apportioned reasonably among the candidates or ballot questions, or both.