

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN

SECRETARY OF STATE

STATE TREASURY BUILDING



7-81-CI

LANSING

MICHIGAN 48918

September 5, 1981

Deane Baker
4944 Scio Church Road
Ann Arbor, Michigan 48103

Dear Mr. Baker:

This is in response to your inquiry concerning applicability of the Campaign Finance Act (the "Act"), 1976 PA 388, as amended, to certain expenditures you made in reaction to Lieutenant Governor James H. Brickley's call for a ballot proposal to reduce the number of elected officials in Michigan state government.

On January 30, 1981, Mr. Brickley spoke before the Michigan Press Association and suggested "the time is ripe for placing before the voters a proposal to shorten Michigan's ballot." Specifically, Mr. Brickley indicated that certain elected officials, including members of the governing boards of Wayne State University, Michigan State University and the University of Michigan, should be appointed by the governor. Further, he stated that "in the months ahead" he would launch a petition drive to place a constitutional amendment which would accomplish this plan before the voters.

As a concerned citizen and regent of the University of Michigan, you felt compelled to respond to Mr. Brickley's comments. In a speech before the Detroit Rotary Club on April 1, 1981, you offered several rationales for opposing the proposed constitutional amendment. You also incurred expenses totalling \$233.31 to reproduce and distribute copies of your remarks. After conferring with members of the Department, you filed an Independent Expenditure Report with the Washtenaw County clerk disclosing the exact nature of the expenditures you made. You now ask if you were actually required, under the circumstances, to file this report.

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"Independent expenditure" is defined in section 9 of the Act (MCL 169.209) as an expenditure which is not made at the direction or control of another person and which is not a contribution to a committee. Section 51 of the Act (MCL 169.251) requires certain independent expenditures to be reported. Specifically, section 51 provides:

"(1) A person, other than a committee, who makes an independent expenditure, advocating the election of a candidate or the defeat of a candidate's opponents or the qualification, passage, or defeat of a ballot question, which totals an amount of \$100.01 or more in a calendar year shall file a report of the independent expenditure, within 10 days, with the clerk of the county of residence of that person. The report shall be made on an independent expenditure report form provided by the secretary of state and shall include the date of the expenditure, a brief description of the nature of the expenditure, the amount, the name and address of the person to whom it was paid, the name and address of the person filing the report, together with the name, address, occupation, employer, and principal place of business of each person who contributed \$100.01 or more to the expenditure. The filing official receiving the report shall forward copies, as required, to the appropriate filing officers as described in section 36.

(2) A person who violates this section is subject to a civil penalty of not more than \$500.00."

Thus, a person who makes independent expenditures totalling \$100.00 or more advocating the qualification, passage or defeat of a ballot question must file a report of those expenditures with the appropriate filing official.

You indicate that to the best of your knowledge "at the time of my response to Lieutenant Governor Brickley on April 1st, his was an idea for an amendment rather than an actual ballot item." However, according to section 2 of the Act (MCL 169.202):

"(1) 'Ballot question' means a question which is submitted or which is intended to be submitted to a popular vote at an election whether or not it qualifies for the ballot."
(emphasis added)

The Department's records indicate Mr. Brickley actually formed a ballot question committee, known as Citizens For An Improved Ballot, on March 11, 1981. According to the Statement of Organization filed on that date, the committee was established to support the following ballot question or issue:

"Appointment by the Governor of Supreme Court Justices, Appellate Judges, members of the State Board of Education and the governing boards of Wayne State University, Michigan State University and The University of Michigan"

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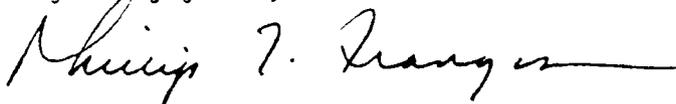
It is clear that by the time a ballot question committee is formed the relevant issue is no longer an idea but is a question "intended to be submitted to a popular vote at an election." Consequently, the \$233.31 you expended after March 11, 1981, to copy and distribute your speech were expenditures advocating the qualification, passage or defeat of a ballot question. Since these expenditures totalled more than \$100.00, you were required to file an independent expenditure report within 10 days, provided the expenditures were not made at the direction or control of another person. As an individual, you were not required to register as a committee, even though you expended more than \$200.00, because section 3(4) of the Act excludes individuals who are not candidates from the definition of committee.

On the other hand, if the University of Michigan or another group or organization directed, controlled or paid for these expenditures, the university or organization would be a committee subject to the reporting requirements of the Act. Similarly, if the reproduction and distribution costs were paid by your company rather than by you as an individual, your company would be required to register as a ballot question committee. Finally, if the expenditures you made were directed or controlled by, or made in concert with another person, you and that person would constitute a committee and would have to file a statement of organization.

Please note the above restrictions do not impinge upon your right to express opinions regarding issues of public concern. The Act simply requires you to disclose certain threshold amounts of money you may receive or expend in an effort to influence an election.

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

Very truly yours,



Phillip T. Frangos
Director
Office of Hearings and Legislation

PTF/cw