

## MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING


 LANSING  
 MICHIGAN 48918

March 17, 1987

Senator Basil W. Brown  
 P.O. Box 30036  
 Lansing, Michigan 48909

Dear Senator Brown:

Your Administrative Assistant, Janet Lockwood, has recently requested a declaratory ruling on your behalf with respect to the operation of the Campaign Finance Act, 1976 PA 388, as amended (the Act). This request apparently asks whether it is permissible for a state senator's candidate committee and officeholder expense fund to make "loans" to the candidate/officeholder who established the committee and the officeholder expense fund (OEF).

Rule 6 of the administrative rules promulgated to implement the Act, 1979 AC R169.6, authorizes the Secretary of State to issue a declaratory ruling "on written request of an interested person." The declaratory ruling is issued with respect to the "applicability of the Act or these rules to an actual statement of facts."

Ms. Lockwood's request does not set forth an actual statement of facts. Therefore, it would be inappropriate for the Secretary of State to issue a declaratory ruling in response to Ms. Lockwood's request. However, the issues which appear to be of concern can be addressed in the form of an interpretative statement. The following analysis is issued so that you and other candidates can better understand the way in which candidate committee accounts and officeholder expense funds may spend money they hold.

#### Candidate Committees

The Act has been in effect for nearly ten years. In the course of administering the Act the Department of State has issued numerous declaratory rulings and interpretative statements in response to questions about the applicability of the Act. Some of the inquiries have involved the use of money in a candidate committee's account.

On November 2, 1978, an interpretative statement (enclosed) was issued to Christopher L. Rose. That letter makes it clear that "the moneys in a committee's official account or assets held by a committee are for a single purpose, i.e., to influence an election."

Subsequently, on May 29, 1979, Senator Mitch Irwin received a declaratory ruling which discussed whether some of the expenses of his campaign met the test of being "made to influence an election." This ruling is also enclosed.

Since that time the Department has on numerous occasions published summaries of these and other letters which make it clear that committee funds are only to be used to influence an election.

Four exceptions to this requirement are spelled out in the Act and the rules. As the cited letters indicate, section 45 of the Act (MCL 169.245) provides three possible ways to distribute remaining funds when a committee dissolves. Rule 39(8), 1979 AC R169.39, also permits an officeholder to transfer money from the candidate committee to the officeholder expense fund.

The candidate committee is limited to making expenditures to influence the candidate's own election or the four purposes indicated above. Personal or business loans to the candidate are well outside these enumerated purposes, just as outright payments to the candidate are prohibited. An individual who has received such loans must pay them back immediately so that he or she can come into compliance with the Act.

Section 21 of the Act (MCL 169.221) contains a number of requirements for the administration and accounting of funds of a committee. Included is a provision in section 21(g) which prohibits funds of committee from being commingled with the funds of any other person. The emphasis of section 21 is on cash control and accountability through the appointment of a treasurer, the use of a single depository and the prohibition of commingling.

#### Officeholder Expense Fund

Section 49 of the Act (MCL 169.249) and rule 39, 1982 AACS R169.39, contain the provisions governing OEFs. Since the inception of the Act, questions have arisen with respect to the purposes for which an officeholder expense fund may be used lawfully.

Section 49(1) provides:

"Sec. 49. (i) An elected public official may establish an officeholder expense fund. The fund may be used for expenses incidental to the person's office. The fund may not be used to make contributions and expenditures to further the nomination or election of that public official."

There is no definition in the Act of the phrase "incidental to the person's office." When no specific definition of a term is provided the term has the same meaning it has when it is commonly used. Resorting to dictionary definitions is an appropriate way to ascertain this "common and approved usage," K Mart Corp. v Department of State, 127 Mich App 390, 395 (1983).

Webster's New World Dictionary, Second College Edition, Simon and Schuster, New

York, 1982 defines "incidental" as follows:

"incidental adj. 1. happening as a result of or in connection with something more important; casual (incidental benefits) b. likely to happen as a result or concomitant (with to) [troubles incidental to divorce] 2. secondary or minor, but usually associated (incidental expenses)."

In Blacks' Law Dictionary, Fifth Edition, West Publishing Co., St. Paul, Minnesota, 1979 "incidental" means:

"Incidental. Depending or appertaining to something else as primary; something necessary, appertaining to, or depending upon another which is termed the principal; something incidental to the main purpose. The Robin Goodfellow, D.C. Wash., 20 F2d 924, 925."

Since the Act first became effective on June 1, 1977, the Department of State has issued numerous rulings regarding appropriate uses of OEFs. Although none of these rulings have dealt with whether making loans is incidental to a person's office because the question has never been asked previously, it is obvious the use of an OEF for making loans is not incidental to holding a public office. Making loans to the officeholder or others is a personal activity.

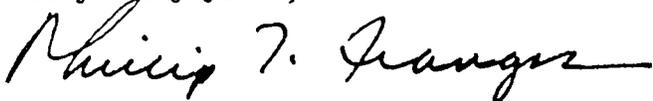
Enclosed for your information are a number of declaratory rulings and interpretative statements which discuss expenses which are incidental to a person's office as distinguished from personal expenses.

Rule 39 provides administrative and accounting requirements that parallel those included in section 21 for committees. Rule 39(3) mandates the segregation of committee funds from monies held by an OEF. It follows that these funds are not to be commingled with the personal funds of the officeholder or any other person.

Any ruling issued to you based on the facts currently available would conclude with a directive to repay all monies borrowed by you from either your candidate committee or your OEF. In addition, you would be directed to recover all other funds loaned by either account to other persons.

This letter, as previously indicated, is informational only and does not constitute a declaratory ruling.

Very truly yours,



Phillip T. Frangos  
Director  
Office of Hearings and Legislation

PTF/WB/cw