

## MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

MUTUAL BUILDING  
208 N. CAPITOL AVENUELANSING  
MICHIGAN 48918

48918-9902

December 20, 1991

William J. O'Neil  
Wayne County Commission  
County Building, Suite 450  
600 Randolph Street  
Detroit, Michigan 48226

Dear Mr. O'Neil:

This is in response to your request for information concerning the applicability of the Michigan Campaign Finance Act (the Act), 1976 PA 388, as amended, to the payment of legal fees and court costs incurred to review an apportionment plan approved by a county apportionment commission. Specifically, you ask whether an elected official may pay such expenses from the official's officeholder expense fund or candidate committee. If not, you ask whether the official may receive "contributions" to pay apportionment related legal fees and court costs without violating the Act's requirements.

Disbursements from an officeholder's expense fund are governed by section 49 of the Act (MCL 169.249) and rule 62, 1989 AACS R169.62, of the administrative rules promulgated to implement the statute. Section 49 provides that an elected public official may use his or her officeholder's expense fund "for expenses incidental to the person's office." Pursuant to rule 62(1), an expense is incidental to office if it is "traditionally associated with, or necessitated by, the holding of a particular public office" and is included within 1 or more of the 17 categories listed in the rule.

Under current law, a county commissioner has no role in the apportionment of county commissioner districts. As a consequence, an expense related to the apportionment of county commissioner districts is not an expense 'traditionally associated with, or necessitated by' the office.

Moreover, apportionment related legal fees and court costs do not fall within any of the categories described in rule 62(1). Therefore, an officeholder expense fund may not be used to pay legal fees and court costs incurred to review an apportionment plan.

Similarly, the Act does not permit an elected official to pay apportionment expenses from his or her candidate committee. In a May 29, 1979, declaratory ruling issued to Senator Mitch Irwin, the Secretary of State ruled that funds held by a candidate committee may only be used for the purpose of influencing an election. Since that ruling, the Department of State has consistently interpreted the Act as limiting a candidate committee to receiving

contributions and making expenditures as defined, respectively, in sections 4 and 6 (MCL 169.204 and 169.206). If apportionment related legal fees and court costs fall outside these definitions, they cannot be paid with candidate committee funds.

In an interpretive statement issued to Phillip Van Dam, dated April 12, 1982, the Department was asked whether the Michigan Republican Party's (MRP) efforts to influence the State Commission on Legislative Apportionment were subject to the Act. The letter to Mr. Van Dam stated, in pertinent part:

" . . . . Whether or not MRP activity to influence the State Commission on Legislative Apportionment (the Commission) is subject to the Act depends on the definitions of 'contribution' and 'expenditure' in sections 4 and 6 of the Act (MCL 169.204, MCL 169.206). A contribution is a payment, etc., 'made for the purpose of influencing the nomination or election of a candidate, or for the qualification, passage, or defeat of a ballot question.' Similarly, an expenditure is a payment, etc., 'in assistance of, or in opposition to, the nomination or election of a candidate, or the qualification, passage, or defeat of a ballot question.' Since redistricting has nothing to do with ballot questions, it must be determined if MRP's reapportionment activity influences, assists, or opposes the nomination or election of a candidate.

It is quite clear the Commission's decisions (or the Supreme Court's decisions) affect the outcome of elections to be held in this decade; otherwise, MRP would not be attempting to influence those decisions. However, affecting the outcome of future elections in which the candidates are not identified, and influencing the election or nomination of a candidate are two different things."

The interpretive statement concluded that disbursements to influence the Commission or the Supreme Court were not expenditures subject to the Act. In reaching this conclusion, the letter cited a previous interpretive statement issued on September 4, 1981, to Olivia Maynard, which stated that apportionment activity "is entirely independent of supporting the election of candidates and opposing or supporting the enactment of ballot questions, and is not reportable under the Act."

While the Van Dam and Maynard letters addressed the payment of apportionment expenses by political party committees, the determination that such expenses were not governed by the Act depended upon the definitions of "contribution" and "expenditure." These definitions do not depend upon the nature of the committee receiving or spending the funds but apply equally to all types of committees.

Legal fees and court costs related to the review of an apportionment plan may be incurred for the purpose of protecting an elected official's political interests, but they are not for the purpose of assisting or opposing the nomination or election of a candidate. Consequently, apportionment expenses

are not contributions or expenditures as defined in the Act, and they cannot be paid by a candidate committee.

It is interesting to note that the Federal Election Commission (the F.E.C.) has also concluded that reapportionment expenses, including legal fees, are not expenditures under the Federal Election Campaign Act. "Expenditure" is defined in 2 USC §431(9)(A) as "any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office." The F.E.C. has repeatedly stated that this definition does not include the influencing of reapportionment decisions or the financing of litigation which relates to reapportionment decisions. Advisory Opinion 1981-35 (September 28, 1981); Advisory Opinion 1981-58 (January 25, 1982); Advisory Opinion 1982-14 (April 9, 1982); Advisory Opinion 1982-37 (May 27, 1982).

While the Michigan and federal acts define "expenditure" in similar terms, the statutes differ in one significant respect. As previously noted, a candidate committee organized under the Michigan statute is limited to making election related expenditures. The committee of a federal candidate is not subject to a similar restriction but is authorized to make disbursements for any lawful purpose. Therefore, Advisory Opinion 1990-23 (November 5, 1990) held that a federal committee may choose to pay redistricting expenses and legal fees from contributed funds, provided they are reported as disbursements. The opinion reiterated, however, that redistricting expenses are not for the purpose of influencing an election and are not subject to the requirements of the Federal Election Campaign Act.

In response to your final question, please be advised that it would not be violative of the Michigan Campaign Finance Act to accept donations or use personal funds to pay for legal fees and court costs incurred to review an apportionment plan as the Act does not regulate such expenses as explained in this letter.

This response is informational only and does not constitute a declaratory ruling because none was requested.

Very truly yours,

  
Phillip T. Frangos, Deputy  
State Services