

MICHIGAN DEPARTMENT OF STATE

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SECRETARY OF STATE

STATE TREASURY BUILDING



LANSING

MICHIGAN 48918

November 3, 1981

Charles Perlow
Honigman, Miller, Schwartz and Cohn
2290 First National Building
Detroit, Michigan 48226

Dear Mr. Perlow:

This is in response to your inquiry concerning applicability of the Campaign Finance Act (the "Act"), 1976 PA 388, as amended, to the return of certain late filing fees which were paid after July 1, 1981. Before addressing the issue you have raised, a brief review of relevant provisions of the Act is in order.

Pursuant to section 3(4) of the Act (MCL 169.203), a person other than an individual who receives or expends \$200.00 or more for the purpose of influencing the action of the voters for or against the qualification, passage or defeat of a ballot question is a committee subject to the reporting requirements of the Act. Thus, a person who contributes (i.e., expends) \$200.00 or more to a ballot question committee becomes a ballot question committee and must file a statement of organization as required by section 24 of the Act (MCL 169.224). A person who fails to file a statement of organization within 10 days is subject to late filing fees of up to \$300.00. Failure to file for more than 30 days is a misdemeanor which may result in a fine of not more than \$1,000.00.

Ballot question committees are also required by sections 34 and 35 of the Act (MCL 169.234 and 169.235) to file certain other statements and reports on a periodic basis. Failure to do so may result in the assessment of late filing fees and other penalties.

Section 82 (MCL 169.282) establishes the effective dates of certain penalty provisions contained in the Act. This section was recently amended by 1981 PA 102 to read in pertinent part:

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"(2) A penalty or late filing fee imposed pursuant to section 24, 34, or 35 shall neither be enforceable nor due or payable as a result of a person making expenditures of \$200.00 or more as a contribution to a ballot question committee before October 15, 1981. If a person has paid a late filing fee as a result of an expenditure of \$200.00 or more as a contribution to a ballot question committee before July 1, 1981, the late filing fee imposed pursuant to section 24, 34, or 35 shall be returned by the person who collected the late filing fee upon written request of the person who paid it."

Thus, a person who contributes \$200.00 or more to a ballot question committee by October 15, 1981, and who fails to timely file a statement of organization or other report is immune from any penalty or late filing fee which would otherwise be assessed.

1981 PA 102 was signed by the Governor on July 16, 1981, and given immediate effect. Since that date, the Secretary of State and other filing officials have been without authority to collect late filing fees from persons contributing to ballot question committees.

In addition, 1981 PA 102 provides "if a person has paid a late filing fee as a result of an expenditure of \$200.00 or more as a contribution to a ballot question committee before July 1, 1981," the person is entitled to a refund upon written request. You have asked whether this sentence authorizes a person who paid a late filing fee after July 1st to obtain a refund. You point out that the above-quoted language is ambiguous and can be construed in either one of two ways.

First, the sentence can be interpreted to mean that a person who pays a late filing fee before July 1, 1981, is entitled to a refund. If this interpretation prevails, there are persons who paid late filing fees after July 1st but before July 16th (the effective date of the amendment) who are not entitled to reimbursement. On the other hand, the sentence can be construed to mean that a person who contributes to a ballot question committee before July 1, 1981, may apply for a refund. The latter construction would entitle persons who filed a statement of organization before July 1, 1981, to obtain a refund without regard to the date on which the penalty was paid.

The courts in this state have consistently held that an ambiguous statute must be construed to carry out the legislature's intent. Moreover, when the meaning of a statute is in doubt:

"The spirit and intention of the statute should prevail over its strict letter (citations omitted). Ordinarily, if a statute is open to construction at all, it will be construed if possible as to prevent injustice (citations omitted) and obviate absurd circumstances." Smith v City Commission of Grand Rapids, 281 Mich 235, 240-241 (1937).

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It is clear that the underlying purpose of 1981 PA 102 was to grant relief to all persons who inadvertently became committees by contributing \$200.00 or more to a ballot question committee before October 1, 1981. If 1981 PA 102 is construed to mean that only those persons who paid late filing fees before July 1, 1981, are entitled to refunds, an absurd result follows. That is, a group of persons within the designated class (those who paid late filing fees after July 1st but before the effective date of the amendment) would be barred from relief. This injustice could not have been intended by the legislature. Consequently, 1981 PA 102 must be construed as permitting a person who paid a late filing fee after July 1, 1981, as a result of contributing to a ballot question committee to apply for and obtain a refund.

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

cc: Mary McLean