

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE
STATE TREASURY BUILDING



LANSING
MICHIGAN 48918

November 2, 1978

Mr. Ivy Thomas Riley
Hartz Building, Fourth Floor
1529 Broadway
Detroit, Michigan 48226

Dear Mr. Riley:

This is in response to your request concerning the applicability of the Campaign Finance Act, P.A. 388 of 1976, as amended ("the Act"), to an individual whose name has not appeared on a ballot.

You indicate your law firm represented Mr. Juan Torres in his unsuccessful attempt to be elected State Representative for the 85th District, as well as the Communist Labor Party in their unsuccessful attempt to gain a position on the ballot for the November, 1978, general election. The Communist Labor Party was required under Section 560a of the Michigan Election Law (MCLA § 168.560a) to run in the party qualification section of the August, 1978, primary election ballot in order to qualify to run candidates in the November, 1978, general election.

It is your position that since Mr. Torres would have been a candidate of the Communist Labor Party only if the Party qualified for the general election, reporting is not required of Mr. Torres under the Act as the Communist Labor Party was unsuccessful in the August primary election. You contend Mr. Torres cannot now become a candidate since the Communist Labor Party was unsuccessful and Mr. Torres' name will never have appeared on any ballot in 1978.

Section 3(1) of the Act (MCLA § 169.203) provides:

"(1) 'Candidate' means an individual: (a) who files a fee, affidavit of incumbency, or nominating petition for an elective office; (b) whose nomination as a candidate for elective office by a political party caucus or convention is certified to the appropriate filing official; (c) who receives a contribution, makes an expenditure, or gives consent for another person to receive a contribution or make an expenditure with a view to bringing about the individual's nomination or election to an elective office, whether or not the specific elective office for which the individual will seek nomination or election is known at the time the contribution is received or the expenditure is made; or (d) who is an officeholder who is the subject of a recall vote. Unless the officeholder is constitutionally or legally barred from seeking reelection or fails to file for reelection to that office by the applicable filing deadline, an elected officeholder shall be considered to be a candidate for reelection to that same office for the purposes of this act only."

Mr. Ivy Thomas Riley
Page Two

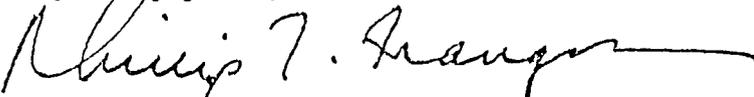
In the present case, Mr. Torres would be a candidate pursuant to Section 3(1)(b) if the Communist Labor Party had obtained sufficient votes in the primary election to gain a place on the general election ballot and Mr. Torres was certified by the Communist Labor Party as a candidate. These events did not occur in the present case.

However, an examination of Section 3(1) reveals several other methods by which an individual becomes a candidate for purposes of the Act. For example, Section 3(1)(c) defines "candidate" as including an individual who receives a contribution or makes an expenditure with a view to effecting his or her nomination or election to an elective office, even though the person doesn't know the office he or she will seek at the time the contribution is received or the expenditure is made. In view of this language, Mr. Torres would be a candidate for purposes of the Act if he received a contribution or made an expenditure for the purpose of seeking elective office. Your letter does not indicate whether Mr. Torres engaged in this type of activity.

This is the first time the Department addresses specifically the issue of compliance by individuals identified with a political party seeking unsuccessfully a position on the general election ballot. Therefore, if Mr. Torres is a candidate by virtue of the provisions of Section 3(1), other than Subsection (b), he shall have ten days from the receipt of this interpretation to file his statement of organization. Compliance with the preceding will constitute timely compliance for meeting the requirements of the Act as they apply to this particular factual situation.

The absence of certain information, i.e., with respect to whether Mr. Torres engaged in financial activity of the type contemplated by Section 3(1)(c), precludes this response from constituting a declaratory ruling.

Very truly yours,



Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF:pj