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ELECTIONS: Candidates – campaign expense.
POLITICAL COMMITTEES: Candidates – contribution to campaign funds.

A candidate may contribute his own money to a political committee sponsoring the candidacy of several candidates, including the contributor, without being required to list and report such contribution as a campaign expense, it being considered within his rights to make a contribution as an individual.

A citizen, not a candidate, may expend his own funds in support of a political campaign or political candidate and it is not unlawful to incur expense or pay the cost of mailing campaign literature, including the cards of political candidates.

No. 4135 April 23, 1963.

Honorable James M. Hare
Secretary of State
Lansing, Michigan

You have requested an opinion upon the following:

"1. Must a candidate who contributes money to a political committee which spends funds to foster the candidacy of several candidates, including the candidate who made the contribution, list such a contribution as an expenditure on his own expense statement? In other words, can such a contribution by a candidate to a political committee be construed as a contribution by the candidate as an individual or must it be construed as a campaign expense of the candidate?

"2. Does a general letter relating to city problems containing a card advocating the election of specific individuals, constitute campaigning by the signer of the letter in violation of Section 905 of the Election Law?"

Your first question may be illustrated by a factual situation where a candidate for the office of city councilman makes a cash contribution to a political committee identified as, say, the Citizens Committee for Civic Improvement. The political committee is supporting and making expenditures on behalf of four candidates for positions as councilman, one such candidate being the individual in question. The candidate does not report the contribution in the detailed statement of nomination and election expenses which he files with the city clerk but the amount is shown as a receipt with the candidate's name as the donor on the detailed statement filed by the political committee with the city clerk.

The obligations of candidates and political committees are prescribed in Chapter XXXIV of the Michigan Election Law, being Act 116, P.A. 1954, as amended.[1] Section 901 of the Election Law defines the terms "candidate" and "political committee" in these words:

" 'Candidate' shall apply to any person whose name is printed on an

[1] Mason's 1961 Supp., Vol. 1A, § 168.1 et seq.; M.S.A. 1956 Rev. Vol., M.S.A. 1961 Cum. Supp., § 6.1001 et seq.

official ballot for public office or whose name has been presented for public office, with his consent, for nomination or election;

" 'Political committee' or 'committee' shall apply to every combination of 2 or more persons who shall aid or promote the success or defeat of a candidate, or a political party or principle or measure."

Section 904 of the Election Law provides:

"No candidate and no treasurer of any political committee shall pay, give or lend, or agree to pay, give or lend, either directly or indirectly, any money or other valuable thing for any nomination or election expenses whatever, except for the following purposes:"

[Next follows a schedule of 11 paragraphs of authorized purposes, none of which includes contributions to a political committee.]

The delineation of these purposes by legislative action completes the list and no additional purpose may be included by implication or for expediency. Not being included in the list of lawful items of expense set out in Section 904, it logically follows that a contribution to a political committee by a candidate from his own funds, reported by him as a permissible expense, would be for a purpose not authorized by Section 904 and therefore unlawful.

Consideration should also be given to Section 902 of the Election Law which limits the expenses of candidates and says in part that no sums of money shall be paid by any candidate in order to secure or aid in securing his nomination or election to any public office in excess of the amount computed at the rate of $40.00 for each 1,000 votes cast at the general election in the last preceding presidential year for the office of governor in the state or political subdivision thereof in which he is a candidate for nomination. Under a proviso clause, no candidate shall be restricted to less than 25% of 1 year's compensation nor in any case to less than $100.00 in his campaign for nomination or his campaign for election. It is to be noted that Section 902 imposes a restriction upon the candidate and the sums of money *to be paid by him.* It does not include a political committee in its proscription. Nor does Chapter XXXIV of the Election Law limit the amount which a political committee may expend or the number of political committees which can be formed. This being the state of the statutes, it becomes obvious that a candidate may make contributions from his private funds to a political committee sponsoring his campaign in such sums as he desires and thereby subvert the limitations placed on him by Section 902.

From the foregoing analysis, it is clear that if a candidate makes a contribution from his own funds to a political committee which he reports as a lawful item of campaign expense he has violated Section 904 and if he makes the same contribution in his individual capacity and not as a candidate the amount is free from the restriction of Section 902. In this dilemma it is necessary to seek the legislative intent. Section 920 of the Election Law imposes a criminal penalty for violation of any of the provisions of Chapter XXXIV. Therefore, under the rules of statutory construction, these provisions must be strictly construed. It seems unbelievable that the legislature intended a candidate to report contributions to a political committee as lawful items of expense and thereby run the risk of criminal prosecution. Since there would be no direct violation if the contributions to the political

committee can be made by a candidate in his individual capacity as distinguished from campaign expense, I conclude that such a construction of the statutes is in accord with the legislative intent and that the contribution made from the individual's private funds to a political committee need not be reported by him on his detailed statement of nomination and election expenses. This result will not withhold the contribution from public scrutiny since the individual may not make it anonymously but instead in his own name and the amount so contributed must be reported as a receipt in the detailed statement of expenses filed by the political committee. The confusion in these statutes might well be brought to the attention of the legislature by your office.

Your second question asks in effect whether it is a violation of Section 905 of the Election Law to enclose the campaign card of a candidate in an envelope with a letter commenting on city finances and civic affairs. The letter was signed by a resident of the city and addressed "Dear Voter" and presumably had a general mailing in the community.

Section 905 of the Election Law reads in its entirety:

> "No person who is not a candidate or the treasurer of a political committee shall pay, give or lend, or agree to pay, give or lend, any money whether contributed by himself or by any other person for any election expenses whatever, except to a candidate or to a political committee."

It does not appear from the information furnished me whether or not the signer of the letter paid for the printing of the candidate's card which was enclosed with the mailing but it is a fair assumption that he at least paid for postage.

Section 905 of the Election Law has its origin in Act 109, P.A. 1913, where the identical language appears as Section 11. The title of Act 109, P.A. 1913, reads as follows:

> "AN ACT to regulate and limit nomination and election expenses; to define and prevent corrupt and illegal practices in nominations and elections; to secure and protect the purity of the ballot, and to require accounts of nomination and election expenses to be filed, and providing penalties for the violation of this act."

That act is commonly known as the Corrupt Practices Act and follows the pattern of similar acts adopted in many of the states. The first state to enact a law limiting the expenditure of campaign funds to specified objects was New York which by an act of 1829 made it unlawful for any candidate or other person to contribute money for any other election purpose than for defraying the expenses of printing, and the circulation of ballots, handbills, and other papers previous to any election. Violation of the act was a misdemeanor.[2] The New York Supreme Court was called on in 1843 to construe this statute in the case of *Jackson v. Walker,* 5 Hill's Reports 27. In that case the plaintiff had erected a log cabin which was being used by the Whig party in furtherance of the campaign of General Harrison for president. Upon plaintiff's threat to tear the log cabin down unless contributions were

[2] New York Stats., 1829, c. 373.

received toward its cost, defendant agreed to pay plaintiff $1,000.00 if plaintiff kept the log cabin open for use for entertainment and political meetings until after the election. Plaintiff agreed and when defendant refused to pay, brought suit to recover. Recovery was denied, the court holding the agreement illegal and within the prohibition of the statute. The court said:

> "It is said that the statute only forbids the contribution of money for *corrupt* purposes. But the statute says nothing about corruption. It declares that the thing shall not be done."

The same statute was again before the court in 1858 and this time the court did not construe the statute as literally as it had before. In the 1858 case, *Hurley v. Van Wagner*, reported in 28 Barbour's Supreme Court Reports 109, the court began its opinion by reviewing its prior decision in *Jackson v. Walker* and said that the holding in the earlier case should not be extended beyond the circumstances out of which it arose. The proceeding before the court in 1858 was an action to recover compensation for services rendered under a contract in putting up and taking down a tent used by the employer as a place of holding public meetings of political friends in advocating the candidacy of John C. Fremont for the presidency in 1856. The court allowed recovery on the contract and expressed its views by saying:

> "* * * A person who pays money for his board, or railroad or steam boat fare while going to or from a political meeting; or who pays for the use of a room for such meetings, or for the lights or attendance thereat, in one sense contributes money to promote the election of a particular ticket or candidate. But is it a contribution of money in the sense intended by the act? Did the legislature intend to prohibit, and punish as a misdemeanor, every expenditure of money which might indirectly promote, or be intended to promote, the election of particular candidates? Public meetings, large assemblies of the people, constant and almost universal intercommunication, one with another, and journeys from one part of the country to another, are the usual and customary means by which the election of particular candidates is secured, and they necessarily involve the expenditure of large sums of money, which may be said to be contributed. Is this the evil that the act was designed to suppress? If it was, it may be safely said to have utterly failed of its object; for during the twenty-nine years it has been upon the statute book, hardly an attempt has been made to enforce it; and the evil practice, if it be one, has gone on and gained additional strength with each additional year.
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> "I therefore infer that these are not the contributions in money forbidden by the act. That its provisions were designed to prohibit contributions in money to a common fund to be expended for election purposes, and which might be employed by unscrupulous men to demoralize and corrupt the electors and to defeat the public will. If the payment of a sum of money for the use of a room in which to hold a public meeting for political objects, or for the lights used thereat, or for the attendance of a person to prepare such room and keep it in proper order, is a contribution of money to promote an election, within the meaning of the statute, so is the money a man may expend upon himself in the payment of tavern bills and the expense of transportation, in

going to and returning from such meetings, equally a contribution of money to promote an election; because all such expenditures tend to the same result, and the money is disbursed for the same object, and that is to aid in the election of a particular candidate or ticket. * * * If, on the other hand, the act be interpreted to prohibit contributions in money to a common fund for the uses indicated, then it will have a rational and sensible construction, will command the respect due to sensible and practical legislation, and its effect will be to diminish, and perhaps in the progress of time, to extinguish a practice which obtains to a greater or lesser extent during the progress of an election canvass, and which all unite in condemning as a great evil. This construction conforms to the primary and popular signification of the word contribute which is, to give in common with others to a common fund to be employed and expended for a common purpose. * * *."

There is a dearth of Michigan court decisions construing the provisions of the Corrupt Practices Act. Shortly after this act was adopted in Michigan in 1913 the then Attorney General construed its provisions and particularly Section 11 thereof which the Attorney General quoted and then said:

> "From this section, it follows that individuals from whom detailed statements cannot be required are not permitted to expend money to promote the campaign of a candidate for office. Rather it is the obvious intent of the law that all money paid out for campaign purposes shall be handled either by the candidate himself or by a political committee through its treasurer."

The Attorney General concluded that it would be unlawful for friends of a candidate to expend money for cigars with the idea of distributing them among the electors so as to promote the interests of such candidate.[3]

The Corrupt Practices Act of 1913 was before the Supreme Court in the case of *People v. Gansley,* 191 Mich. 357, decided June 1, 1916. In its opinion the Court said:

> "It is further claimed that section 14 of the act is in conflict with section 4, art. 2, of the State Constitution. The individual activities of the officers of corporations are not prohibited. They may freely speak, write, and publish their views as provided for in the last clause of section 3. Section 11 provides how they may make their contributions, thus distinguishing *Louthan v. Commonwealth,* 79 Va. 196 (52 Am. Rep. 626)."

Section 14 of the Corrupt Practices Act, to which the Court made reference in the above quotation, prohibited any officer, director, stockholder, attorney, agent or other person acting on behalf of a corporation from paying, giving or lending any money belonging to the corporation to any candidate or to any political committee for the payment of any election expenses whatever. Section 11, to which reference is also made in the above quotation, was and is identical with Section 905 of the present Election Law.

The case of *Louthan v. Commonwealth,* cited by our Court, was decided by the Supreme Court of Appeals of Virginia in 1884. In that case the

[3] O.A.G. 1914, p. 617.

Virginia court held unconstitutional an act of the legislature which made it unlawful for the judge of any court, the superintendent of public instruction, any superintendent of schools, and the superintendent, manager or employee of a state institution of learning to participate actively in politics, to make political speeches, or to take active part in political meetings. The defendant Louthan, a county superintendent of schools, has been indicted and convicted as being in violation of this act in that he had participated in a political meeting, or convention, which had assembled in the city of Richmond. The Attorney General of Virginia in his attempt to sustain the legislation had cited and relied on the case of *Ex Parte Curtis,* 106 U.S. Reports 371, in which the Supreme Court of the United States had upheld the constitutionality of an act of congress prohibiting employees of the federal government from giving to or receiving from any other officer or employee of the government, moneys for political purposes. The Virginia court, in commenting on the decision in the *Curtis case,* said:

> "Mr. Chief-Justice Waite, delivering the opinion of a majority of the court, said: 'The act is not one to prohibit all contributions of money or property by the designated officers and employees of the United States for political purposes, neither does it prohibit them altogether from receiving or soliciting money or property for such purposes. It [the act of Congress] simply forbids their receiving from or giving to each other. *Beyond this no restrictions are placed on any of their political privileges.*' That the evident purpose of congress in such enactments was to promote efficiency and integrity in the discharge of official duties, and to maintain proper discipline in the public service; that those in office can contribute as liberally as they please, provided their payments are not made to any of the prohibited officers or employees."

The Virginia court, further commenting on the holding of the Supreme Court of the United States in the *Curtis case,* remarked that the act of congress was, in effect, an act to preserve and to protect the political privileges of the persons included in the provisions; that the purpose of the act was to prevent oppression and to leave the employees of the government free to contribute or not to contribute, according to their own uncontrolled desire, to any political party, or to no political party, as a free inclination might suggest or dictate. Proceeding further, the Virginia court pointed out that the organic law of Virginia had guaranteed to her citizens for many years freedom of speech, and the right to peacefully assemble, to freely speak and freely write their sentiments on all subjects. The court held that these rights of Virginia citizens could not be abrogated as to certain of them who might be public officeholders.

It thus appears that the Michigan Supreme Court in its decision in *People v. Gansley,* supra, distinguished the Virginia case of *Louthan v. Commonwealth* by pointing out that although Section 14 of the Michigan Corrupt Practices Act proscribed the paying, giving or lending of corporate funds to a candidate or political committee by the named individuals who were associated with the corporation, nevertheless such persons were at liberty to make personal contributions in accordance with Section 11.

It seems to logically follow from the approach taken by the Michigan Supreme Court that if a citizen of Michigan desires to contribute money toward the payment of election expenses he shall do so by making his contribution to a candidate or to a political committee as stated in Section 905 of the Election Law. Section 905 speaks of "money contributed." The word "contribute" is defined in Webster's Dictionary[4] as:

> "To give or grant in common with others (as to a common fund or for a common purpose),"

and it is to be noted that the "election expenses" to which the statute refers are expenses incident to the election of a candidate or the adoption or rejection of a proposal. They are not the expenses which a citizen incurs on his own behalf in the exercise of his personal privilege to speak and write freely on political issues or in support of a candidate of his choosing.

The Supreme Court of Wisconsin took a similar view in the case of *State ex rel. LaFollette v. Kohler* (1930), 200 Wis. 518, 228 N.W. 895, 69 A.L.R. 348, in construing a portion of the Wisconsin Corrupt Practices Act and used the following language:

> "In the act, particularly that part relating to the amount which may be spent and the filing of accounts, the phrase, 'by and on his behalf,' is used. There is no difficulty in understanding what is meant by the term[5] 'by;' the phrase 'on his behalf,' when it refers to a candidate, means by someone who acts for him in the sense that an agent acts for and on behalf of his principal. The authority may be express or implied but it must exist; otherwise the disbursement is not made on behalf of the person sought to be charged. Even after a person has announced or declared himself a candidate for a public office, the statute makes no limitation upon the disbursements made by citizens who may, upon their own initiative and on their own behalf, support the candidacy of any person of their choice."

In my opinion the interpretation placed on Section 11 (now Section 905) of the Michigan Corrupt Practices Act by the Attorney General in 1914 was too narrow and restrictive. I differentiate between a contribution of money which is to be expended by a candidate or a political committee and the payment or incurring of expense by an individual in the exercise of his political privileges as a citizen. In my opinion the money spent or the expense incurred by the citizen is not prohibited by Chapter XXXIV of the Michigan Election Law and is not required to be reported. I conclude that there was no violation of this chapter on the facts submitted by you in support of your second question. The opinion of the Attorney General issued in 1914 and reported at page 617 in the 1914 Annual Report is hereby modified to the extent set forth in this opinion.

FRANK J. KELLEY,
Attorney General.

[4] Webster's Third New International Dictionary, Unabridged — 1963.

[5] The last sentence of Sec. 902 of the Michigan Election Law reads: "No sum of money shall be paid and no expenses authorized or incurred by or on behalf of any candidate contrary to the provisions of this act."