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**ELECTIONS:** Administration of election laws; investigation thereof by Secretary of State; report of violations of election laws and regulations.  
**WORDS AND PHRASES:** "Administration."

Section 31(8) of the Michigan election law confers upon the Secretary of State the authority, and imposes upon him the responsibility, to investigate only "administration of the election laws," not miscellaneous complaints of violations of the election laws in general, unless the subject matter of such latter complaints also, or impliedly, involves said "administration of the election laws."

No. 4551

December 20, 1966.

Honorable James M. Hare  
Secretary of State  
State Capitol  
Lansing, Michigan

This will acknowledge your letter requesting an opinion interpreting Section 31(8) of the Michigan election law (CLS 1961 § 168.31(8) and MSA 1956 Rev Vol § 6.1031(8), as amended) so as to afford guidelines for the proper discharge of your statutory authority and responsibility with respect thereto.

As correctly recited in your inquiry, pertinent Section 31(8) provides as follows:

"The secretary of state in addition to other powers and duties conferred upon him shall have the power and it shall be his duty:

"(8) To investigate, or cause to be investigated by local authorities, the administration of election laws, and to report violations of the election laws and regulations to the attorney general or prosecuting attorney, or both, for prosecution; \* \* \*."

Specifically you inquire "What matters are covered by the phrase 'the administration of election laws?'," noting that whereas it is simple for your Election Bureau thus to classify any matters involving, for example, the political composition of election boards, the hours the polls shall be open, etc., serious concern arises as to your responsibility, if any, under the terms of the statute, to investigate charges such as that "a candidate paid another to run, a candidate lives at a place other than he claims, and the like." Complaints such as those last mentioned, if made obligatory for your investigation by the statute, would open up an area of action by your Election Bureau sufficiently extensive to pose problems in at least the number of personnel required to do such policing on a state-wide basis.

Applying accepted rules of statutory construction, particularly including the intent of the legislature as expressed throughout the lengthy and comprehensive provisions of the entire Michigan election law, it is my opinion that the essential authority conferred, and responsibility imposed, by the quoted section of the statute, direct you "To investigate, or cause to be investigated by local authorities, *the administration* of election laws." Accordingly, miscellaneous individual complaints of the nature last herein-

above specifically noted (a candidate falsifying his address so as to run in a given district; one candidate paying another to run in a primary; etc.) are *not* matters for your investigative concern under the statute, *unless* a specific complaint *also, or impliedly*, involves some administrative dereliction or other violation of the election laws or regulations by one or more of the several state or local administrative boards (canvassers, election commissions, election inspectors, etc.) or any other such state or local officials bearing any administrative responsibility under said laws or regulations.

The latter part of pertinent Section 31(8) clearly enjoins you "to report violations of the election laws and regulations to the attorney general or prosecuting attorney, or both, for prosecution," and it is my opinion that this language is sufficiently broad to require you to report not only administrative violations but any other kind or nature of violations which engage your attention as the result of your "administration" investigations or otherwise. The operative word in this latter part of said statutory provision appears to be "violations." Thus in my view, if knowledge or information in your possession, from whatever source, has sufficient substance or stature evidentially, in your judgment, to report as a "violation," report it as prescribed.

If you receive information indicating a possible violation of the election laws which does not involve the *administration* thereof, you should immediately forward such information to the proper investigative authorities (local or state police) unless it is clear that no purpose can be served by an investigation. At the same time you should notify the complainant that if he desires remedial action civilly he should consult an attorney.

Just as "the administration of election laws" is the key phrase of the pertinent portion of above quoted Section 31(8), so too is "administration" the key word of that phrase. Its definition affords guidance in our quest of legislative intent.

In *People v. Salsbury*, 134 Mich. 537, 550, the Michigan Supreme Court considered "administration" to be "practical management and direction."

Likewise, in *Webb v. Frohmiller*, 79 P 2d 510, 514, "administration" was interpreted as meaning "managing or conduct of an office or employment; the performance of the executive duties of an institution, business, or the like."

More comprehensively perhaps, "administration of law" was defined in *A. H. Belo & Co. v. Lacy* (Court of Civil Appeals of Texas), 111 SW 215, 217, to include "the performance of acts or duties required by the law of officers in the discharge of the required duties of the office; all of the steps taken, and all of the things done, wherein legal procedure is required or authorized by law \* \* \*." Similar definitions are to be found in *2 Words and Phrases (Permanent Edition)* p. 656 et seq.

Some uncertainty as to your authority and responsibility under pertinent Section 31(8) of the Michigan election law may quite conceivably have arisen from the fact that its statutory predecessor (CL 1948 § 146.1(8), which originated as Act 200, PA 1931) authorized, and charged responsibility for, the Secretary of State's investigation of not only "the administration of election laws," but (immediately following that phrase) "frauds

and irregularities" as well. The immeasurably broader scope of the earlier statute is obvious, and the deliberate omission by the legislature of those wide-ranging terms, "frauds and irregularities," from the present law when it was enacted (at least by intendment as a totally comprehensive primary and election code; close to a thousand sections, covering one hundred fifty-three solid print pages) as Act 116, PA 1954, would appear to be strongly indicative of positive legislative intent as to your narrower investigative function under pertinent Section 31(8) thereof. In so construing the present statute, support is found in the following legal authorities:

*50 Am. Jur., Statutes*, § 276, p. 263

*"Omissions in Amended Statutes.* — The omission of a word in the amendment of a statute will be assumed to have been intentional. Where the meaning of the prior law is intended to be continued, its terminology is also usually continued, so that an omission of words implies an intended change in the meaning of the statute. Under these rules, the courts may not add a restriction found in a prior statute, but omitted from a later one. Where it is apparent that substantive portions of a statute have been omitted by process of amendment, the courts have no express or implied authority to supply omissions that are material and substantive, and not merely clerical and inconsequential, because that would in effect be the enactment of substantive law."

*Voorhies v. Judge of Recorder's Court*, 220 Mich. 155, at 157, 158:

"The rule, *in pari materia*, does not permit the use of a previous statute to control by way of former policy the plain language of a subsequent statute; *much less to add a condition or restriction thereto found in the earlier statute and left out of the later one. The contention made, if allowed, would go beyond the construction of the statute, and engraft upon its provisions a restriction which the legislature might have added but left out.*"

(Emphasis supplied)

The opinion finds indirect, but nevertheless positive, support from any full consideration of all provisions of the Michigan election law. It is pertinent Section 31(8) thereof, and that alone, which in any way qualifies your generally administrative, as distinguished from specifically investigative or police, functions under the act. The keynote of your essential authority and responsibility is struck by Section 21 (CL 1948 § 168.21; MSA 1956 Rev Vol § 6.1021), which provides:

"The secretary of state shall be the chief election officer of the state and shall have supervisory control over local election officials in the performance of their duties under the provisions of this act."

Thereafter, in Section 31 (CL 1948 § 168.31; MSA 1956 Rev Vol § 6.1031) your powers and duties [exclusively administrative except for pertinent Section 31(8)] are prescribed. In order to emphasize the otherwise entirely executive character of your functions as "chief election officer of the state" with "supervisory control over local election officials in the performance of their duties under the provisions of this act," and

to sustain my aforesaid opinion that your one exceptional function of investigation [under Section 31(8)] is itself accordingly, and more reasonably as a matter of legislative intent, confined to "the administration of election laws," it is deemed appropriate to recite your said powers and duties [omitting, of course, already quoted Section 31(8)] as follows:

"The secretary of state in addition to other powers and duties conferred upon him shall have the power and it shall be his duty:

"(1) To prepare rules, regulations and instructions for the conduct of elections and registrations in accordance with the laws of the state;

"(2) To advise local election officials upon request as to the proper methods of conducting elections;

"(3) To publish and furnish for the use in each election precinct prior to each state primary and election a manual of instruction;

"(4) To publish indexed pamphlet copies of the registration, primary and election laws and to furnish to the various county, city, township and village clerks a sufficient number of copies for their own use and to enable them to include 1 copy with the election supplies furnished each precinct board of election inspectors under their respective jurisdictions, and he may furnish single copies of the publications to organizations or individuals who request the same for purposes of instruction or public reference;

"(5) To prescribe and require such uniform forms, notices and supplies as he shall deem advisable for use in the conduct of elections and registrations;

"(6) To prepare the form of ballot for any proposed amendment to the constitution or proposal under the initiative or referendum provisions of the constitution to be submitted to the voters of the state;

"(7) To require such reports from the local election officials as may be deemed necessary;

"(8) \* \* \*

"(9) To publish in the legislative manual the vote for governor and secretary of state by townships and wards and the vote for members of the state legislature cast at the preceding November election, which shall be returned to the secretary of state by the several county clerks on or before the first day of December following such election, and it shall be the further duty of all clerks to furnish to the secretary of state, promptly and without compensation, any further information requested of them, to be used in the compilation of the manual."

It is further briefly noted, as a matter at least consistent with, if not actively sustaining, my opinion that your functions under the act are exclusively administrative [with the single exception hereinabove interpreted under Section 31(8)], that Chapter XXV of the Michigan election law (CL 1948 § 168.931 through § 168.943; MSA 1956 Rev Vol § 6.1931 through § 6.1943) concerning itself with offenses, penalties, criminal complaints, prosecution, furnishing information, etc., nowhere makes reference

to any other investigation, report, or other action of a police or prosecution nature authorized to, or enjoined upon, you.

The distinctions above made between the generally "administrative" nature of your powers and duties under the election law, and the specifically "investigative or police" aspect of your function under pertinent Section 31(8) thereof, are mere arbitrary devices adopted to the ends of specific statutory interpretation herein. They, of course, carry no implication or suggestion whatsoever that investigative or police activity itself is anything other than administrative in nature as far as our general governmental concept of separation of powers is concerned.

In final comment, and for the purpose of dispelling any uncertainty or confusion that might otherwise arise from the fact that Section 31(8) carries, as a seeming part of its text, the heading "Investigation and report of election law violations," you are herewith further advised that such headings are no more than subsequently interpolated indices for reading and reference convenience; they were, and are, no part of the law as enacted and effective. *People v. Nick*, 374 Mich. 664 (CL 1948 § 8.4b; MSA 1961 Rev Vol § 2.215).

Even as herein restrictively interpreted by accepted canons of legislative intent, your powers and correlative duties under pertinent Section 31(8) of the Michigan election law remain comprehensive indeed. For example, and although I have for purposes of this opinion adopted the "complaint" or "charge" approach to this subject suggested by the specific form of your inquiry, it is entirely clear that, independently of any individual or other complaint or charge, your statutory authority and duty "to investigate (or cause to be investigated, etc.) the administration of election laws" represent an abiding function of your office, continuously enjoined upon you by legislative mandate.

Likewise, while your fair judgment, applied by the standard sought to be set by this opinion, may well determine that many or most miscellaneous individual complaints of election law violations fall outside your proper investigative authority or responsibility under the statute, any other such complaints which, in your said judgment, also or impliedly, involve or may involve "the administration of the election laws," either through active complicity of state or local administrative officials in the alleged violation or through their dereliction, default or negligence in performance of duty, must necessarily be viewed as properly invoking your investigative concern and/or action under this provision of the election law.

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