680806.2

ELECTIONS: Filing of detailed account and statement of campaign contributions.

CORPORATIONS: Political contributions for elections.

POLITICAL COMMITTEES: Filing of detailed account and statement.

Both candidates for Congress and committees formed to aid such candidates must file separate detailed account and statement as required by law for both primary and general elections.

A committee formed for the purpose of raising money to be contributed to a candidate or a campaign committee is required to file detailed account and statement as required by law.

A committee formed for political education purposes which does not actively participate in an election campaign is not required to file campaign account.

A committee formed for political education purposes which, incident to its primary purpose makes a campaign contribution, is not required to file a campaign account and statement.

A committee formed to support or oppose propositions submitted in local elections are political committees within the meaning of the corrupt practices act, and corporations are prohibited from making contributions to such committees.

No. 4622 August 6, 1968.

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

You have requested an opinion on the following questions:

"1. Does the law require both a candidate for Congress and committees formed to aid such candidate to file campaign expense statements for both the primary and general elections?

"2. Does the law require the filing of campaign expenses by committees formed to raise money, which is in turn distributed to candidates or to campaign committees of one or more candidates? Committees of this nature do not engage in the actual campaign process, but rather provide money to candidates or committees which do.

"3. Does the law require a campaign filing by committees or organizations formed for political education purposes which raise their money through voluntary contributions of its members? If such committees donate part of the money so raised to candidates or political committees, is the answer the same? Would it make a difference if the contribution is an assessment?

"4. Are committees formed to aid or defeat local or school propositions, especially relating to millage, included within the meaning of Paragraph 2 of Section 901 of Chapter XXXIV? If so, are corpora-

tions forbidden to contribute to such committees under Section 919 of the chapter?"

In answering your questions it would be advantageous to first summarize the key sections of the Michigan election law, which are now contained in Chapter XXXIV of the Michigan election law, Act 116, P.A. 1954, as amended, being C.L.S. 1961 and M.C.L.A. § 168.901 et seq.; M.S.A. 1956 Rev. Vol. and M.S.A. 1968 Cum Supp. § 6.1901 et seq. Section 901 defines the terms "candidate", "political committee" and "public office" as those terms are used in the chapter. Section 902 limits the nomination and election expenditures that may be incurred by a candidate or a committee acting on his behalf. Section 903 requires that every political committee appoint a treasurer. Section 904 enumerates lawful nomination or election expenses. Section 905 prohibits persons from giving their own or other persons' money for election expenses to anyone other than a candidate or political committee. Section 906 requires candidates and treasurers of political committees to file detailed account and statement of receipts, disbursements, and unpaid debts and obligations after every caucus, convention, primary and general election. Section 917 prohibits anonymous contributions for nomination or election expenses. Section 919 prohibits corporate contributions to candidates or political committees, except in the case of corporations formed for political purposes.

It is also important to note that while there is a so-called federal corrupt practices act of 1925, Title 2 U.S.C.A. § 241 et seq., which is applicable to candidates for congress. Section 254 of that act expressly provides that:

> "This chapter and section 208 of Title XVIII shall not be construed to annul the laws of any State relating to the nomination or election of candidates, unless directly inconsistent with the provisions of this chapter, and section 208 of Title XVIII, or to exempt any candidate from complying with any State laws."

With that as a background, I will answer your questions seriatum.

Section 901 of the corrupt practices act defines "candidate" so as to include all those seeking public office. That section defines "public office" to include a national office. Accordingly, a candidate for congress is a "candidate" within the meaning of Chapter XXXIV of the Michigan election law.

Section 906 of the act is explicit in requiring that:

> "Every candidate *and* every treasurer of a political committee shall . . . after any primary election, caucus or convention, and . . . after every general election . . . prepare and file . . . a[n] . . . account and statement . . . setting forth each and every sum of money received or disbursed by him for nomination or election expenses, . . ." (Emphasis supplied)

Occasionally the word "and" has been judicially construed to mean "or". However, such construction is not favored when a literate reading makes sense:

> "The popular use of 'or' and 'and' is so loose and so frequently inaccurate that it has infected statutory enactments. *While they are not*

> *treated as interchangeable, and should be followed when their accurate reading does not render the sense dubious,* their strict meaning is more readily departed from than that of other words, and one read in place of the other in deference to the meaning of the context. . ." *Heckathorn v. Heckathorn,* 284 Mich. 677, 681 (1938) (Emphasis supplied)

The purpose of the corrupt practices act is manifest on its face. That purpose is stated in *In re Woodbury,* 160 N.Y.S. 902, 903 (1916); aff'd 220 N.Y. 675, 116 N.E. 1084 (1917).

> ". . . . The caption of the act, 'Corrupt Practices,' indicates its purpose. It was intended to do away with the improper use of money with reference to elections, by requiring publicity as to receipts and disbursements . . ."

Election expenses may be independently incurred by either political committees or candidates[1] and the purpose of the act requires that all such expenditures be subject to public scrutiny.

The requirement that both a candidate and a treasurer of a political committee formed to aid such candidate file a detailed account and statement of receipts, disbursements and unpaid debts and obligations for primary and general elections is not in any way incompatible with the provisions of the federal corrupt practices act.[2] Accordingly, in answer to your first question, it is my opinion that both candidates for congress and treasurers of political committees formed to aid such candidates must file campaign detailed account and statement of receipts and disbursements and unpaid debts and obligations for both primary and general elections.

In answering your second question, I point out first that it is a fundamental rule of statutory construction that when a statute defines its own terms, the court cannot look elsewhere for their meanings. *W. S. Butterfield Theatres, Inc. v. Department of Revenue,* 353 Mich. 345 (1958).

Section 901 of the act defines "political committee" as:

> " '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;"

There can be no question but that a committee formed to raise money which is in turn distributed to a candidate or a campaign committee falls within this definition. The manifest purpose of such a committee is to "aid or promote the success or the defeat of a candidate or political party or principle or measure." Accordingly, it is my opinion in answer to your second question that a committee formed for the purpose of raising money to be contributed to a candidate or campaign committee is required to file a detailed account and statement of receipts, disbursements and unpaid debts and obligations.

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[1] O.A.G. 1957-1958 No. 2829, Vol. I, p. 12, holds that the limitation of campaign expenditures by or on behalf of a candidate is not applicable to campaign expenditures incurred by individuals or committees whose actions are undertaken without authorization of the candidate.

[2] O.A.G. No. 2829, *supra,* held that expenditures by congressional candidates in primary elections are subject to the limitations of the Michigan corrupt practices act.

In the first part of your third question you ask whether the law requires the filing of a detailed account and statement by committees or organizations formed for political education purposes.

Section 901 of the Michigan election law, *supra,* defines the term "political committee" or "committee" as every combination of two or more persons who shall aid or promote the success or defeat of a candidate, or a political party or principle or measure.

A comparable question was considered by the court in *In re Woodbury, supra,* where a home rule tax association made expenditures directly in connection with an election. The court held that insofar as the particular expenditures made directly in connection with the election were concerned, the organization was a "political committee" within the controlling New York statute and the organization was required to report as to any receipts and expenditures which entered into the campaign carried on by it to defeat the proposition in which it was interested. At the same time there was no requirement in the law that the organization report as to its general receipts and disbursements which are made in the prosecution of its ordinary affairs.

Under such holding it is clear that a committee or organization organized for political education purposes is not a political committee within the provisions of the Michigan election law where its expenditures are not made directly in connection with the aid and promotion of the success or defeat of a candidate, or political party or principle or measure.

In answer to the second part of your third question, it is my opinion that an *unincorporated* committee or organization formed for political education purposes which, incident to such purposes, makes campaign contributions, whether from a general fund or assessment of its membership, does not thereby become a political committee within the meaning of the controlling statute. Accordingly, it would not be subject to the filing provisions of the act. However, such contributions can only be made to a candidate or the treasurer of a political committee as required by Section 905 of the Michigan election law, and the receipt of such contribution by a candidate or the treasurer of a political committee would have to be shown on the detailed account and statement to be filed by either of them as provided in Section 906 of the Michigan election law.

The answer to the first part of your fourth question is found in *People v. Gansley,* 191 Mich. 357, 364 (1916), wherein the Michigan Supreme Court ruled that the corrupt practices act applied to any election where ". . . the electors are called upon to decide any measure or measures that may be before the people to be voted upon, . . ." Accordingly, a committee formed to aid or promote the success or defeat of any proposition which is to be put to the vote of the people at a municipal or school election would be a political committee as defined in Section 901 of the corrupt practices act.

The second part of your fourth question is answered by Opinion No. 4605 issued by this office on March 1, 1968, wherein I held that an incorporated chamber of commerce could not make campaign contributions to commit-

tees promoting either the success or defeat of a proposition submitted to the electors in a local school millage election.

FRANK J. KELLEY,
Attorney General.

680807.1

PUBLIC OFFICES AND OFFICERS: Incompatibility
Conflict of Interest
STATE BOARD OF EDUCATION: Office of Member of

Persons employed by Michigan institutions of higher education granting baccalaureate degrees may simultaneously serve as members of the State Board of Education.

Office of member of a state professional licensing board and the office of member of the State Board of Education are not incompatible.

A member of the State Board of Education who has a contractual relationship with a local school district may be in conflict of interest if his interest in such a contract is substantial.

The doctrine of incompatibility applies to public offices and public positions; it does not apply to private employment.

No. 4620 August 7, 1968.

Honorable Jack Faxon
State Representative
State Capitol
Lansing, Michigan

You have requested my opinion on a number of questions involving the office of member of the State Board of Education. Each of your questions will be answered separately.

For the purpose of all the questions that you have asked, it would be well to expound the controlling principles relating to incompatibility of public offices and conflict of interest, since one or both concepts appear to be implicit in the questions that you ask.

Incompatibility

Based upon the common law, it is the public policy of the state of Michigan that the same person may not simultaneously occupy two public offices where the nature of the duties of such offices renders it improper from considerations of public policy for one person to retain both. The test of incompatibility is described as the character and relationship of the two offices. There is incompatibility where one office is subordinate to another, subject in some degree to its supervisory power, or where the functions of the two offices are inherently inconsistent and repugnant, so that the same person may not occupy them simultaneously. When such incompatibility exists, acceptance of the second office vacates *ipso facto* the first office. *Attorney General ex rel Moreland v. Common Council of*