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COLLINS & SMITH, P.C.**

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93 JUL 6 11:38

What's Direct Mail

FAX TRANSMITTAL SHEET

TO: Mr. Jonathan M. Levin
Senior Attorney

COMPANY: Federal Election Commission

FAX TELEPHONE NUMBER: (202) 219-3923

FROM: Eric E. Doster

DATE: July 6, 1993

PAGES (INCLUDING COVER SHEET): 15

Supplement To
AOR 1993-09

RECEIVED
FEDERAL ELECTION COMMISSION
93 JUL 6 - 1 11:18:51

ADDITIONAL COMMENTS/DIRECTIONS: Mr. Levin: I apologize for this arriving after business hours -- I just received approval to send this.

Eric Doster

SENDING FROM DEX 2500 - (517) 371-8200

IF YOU HAVE ANY QUESTIONS OR TRANSMISSION IS INCOMPLETE, PLEASE CALL:

Connie at (517) 371-8100, Ext. 239

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July 6, 1993

VIA FACSIMILE AND REGULAR MAIL

Mr. Jonathan M. Levin
Senior Attorney
Federal Election Commission
Office of General Counsel
999 E. Street, N.W.
Washington, D.C. 20463

Dear Mr. Levin:

**RE: Request for Advisory Opinion: Corporate Donations
to Building Fund; Supplemental Information**

Pursuant to our recent conversations in the above-referenced matter, you have asked clarification concerning the following:

1. The nature of the land contract interest held by the Michigan Republican State Committee (the "MRSC");
2. If the MRSC exercises option (2) set forth on page 1 of our June 15, 1993 Advisory Opinion Request, more details of such an arrangement; and
3. In reference to our representation set forth on page 5 of our June 15, 1993 Advisory Opinion Request that the Michigan Department of State "could prohibit the establishment of the building fund(s) described herein", rulings to substantiate this representation.

These clarifications are set forth below.

1. The Nature of the MRSC's Land Contract Interest.

The MRSC currently utilizes a building (the "Building") located at 2121 E. Grand River, Lansing, Michigan as headquarters for its Federal and non-Federal activity. On September 20, 1983, Crawford W. Hertel and Caroline E. Hertel, as sellers, and Romaine E. Hicks and Clifford W. Taylor, as purchasers, entered into a land contract for the eventual purchase of the Building (Attachment 1). On December 30, 1986, the land contract for the Building was assigned to E. Spencer Abraham and Densil L. Hammond. On April 24, 1987, the land contract for the Building was re-assigned to the MRSC.

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ATTORNEYS AT LAW

Mr. Jonathan N. Levin
July 6, 1993
Page 2

To answer your question about land contract interests under Michigan law, a land contract is a contract in which the sellers/vendors (i.e. the Hertels) agree to sell and a purchaser/vendee (i.e. the MRSC) agrees to buy land described in the contract for a price paid over a period of time on terms defined in the contract. As far as the legal interests of the parties are concerned, the land contract vendor (i.e. the Hertels) retains legal title to the real property covered by the land contract as security for payment of the purchase price. General Electric Company v Levine, 50 Mich App 733, 736; 213 NW2d 811, 813 (1973). The land contract vendee (i.e. the MRSC) holds equitable title to the real property covered by the land contract. Barker v Klingler, 302 Mich 282, 288; 4 NW2d 596, 599 (1942). Once the land contract vendee (i.e. the MRSC) makes all payments under the land contract (in this case, the last payment is due no later than January 1, 2003), the land contract vendor (i.e. the Hertels) will execute a warranty deed to the MRSC, giving the MRSC title to the real estate in question.

As indicated above, the MRSC's land contract interest is, in effect, an interest in real estate. If the MRSC wishes to sell this real estate interest, it merely assigns its interest in the land contract. For example, assume that the fair market value of a certain piece of real estate is \$100,000 and the land contract purchaser must make \$90,000 in additional payments under the terms of the land contract to receive title. Under such an example, the real estate interest of the land contract purchaser is worth \$10,000--the value of the real estate less the remaining payments to be made to acquire ownership.

2. The Possible Establishment of a Building Fund to Pay Off the Balance of the MRSC's Land Contract.

As illustrated by the above discussion on land contract interests under Michigan law, the land contract is just another method to purchase real estate. Similar to a mortgage, real property is not "purchased" by the buyer until the final payment is made. Thus, if the MRSC were to establish a building fund to pay off the balance of its land contract, and sufficient funds were raised, then the MRSC would be able to "purchase" or take complete title to the Building. Therefore, it makes no difference whether the real estate purchaser purchases outright, constructs, obtains a mortgage, or obtains a land contract--the purchaser does not completely own the real estate until complete payment is made.

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Mr. Jonathan M. Levin
July 6, 1993
Page 3

3. Michigan Department of State Rulings.

Attached as Attachment 2 are the rulings which substantiate our earlier representation that the Michigan Department of State could prohibit the establishment of the building fund(s) described in our June 15, 1993 Advisory Opinion Request.

If you require any further information or if we can be of any further assistance in this matter, please do not hesitate to contact the undersigned. Thank you once again for your diligence.

Sincerely,

FOSTER, SWIFT, COLLINS & SMITH, P.C.


Eric E. Doster

EED:csr
cc w/end: David Doyle
Gary Reed

ATTACHMENT 1

**GREATER LANSING BOARD OF REALTORS
LAND CONTRACT**



THIS CONTRACT made this 26 day of September 19 23 BETWEEN
Crawford W. and Caroline E. Hertel, husband and wife here in called SELLER

Romayne E. Hicks, a married man, and Clifford W. Taylor, here in called PURCHASER
a married man

In consideration of the mutual covenants herein contained, witnesseth:

1. Seller hereby agrees to sell and convey to purchaser all that certain piece(s) of land (hereinafter named the
piece) situated in the Township of Lansing, County of Ingham, State of
Michigan, described as:

... 250 feet of Lot 118 and the

The East 49 feet of the South 250 feet of Lot 119 Hopwood Acres
West 21 feet of the South 250 feet of Lot 119 Hopwood Acres
Sub. No. 5 more commonly known as 2121 East Grand River Ave.

2. Purchaser agrees to buy the premises and to pay seller or his legal representatives therefor at Lansing
the sum of Two Hundred Thirty Two
Thousand Five Hundred and 00/100 Dollars (\$232,500.00) as
down Twenty Thousand and 00/100 Dollars (\$20,000.00)
signing this contract, the receipt of which is acknowledged; and the balance in monthly installments of Two Thousand Three
Hundred and 81/100 Dollars (\$2,339.81), or more at Purchaser's discretion, commencing on the 1st day
November 1983, and continuing on the same day of each month thereafter until the entire amount due hereunder is
paid, including interest at the rate of Twelve (12%) per cent per annum to be computed
on Oct. 1, 1983. Each installment shall be applied first to interest, then to principal. The seller may collect a late charge not to
exceed five cents (\$.05) for each dollar of each payment not paid when due to cover the extra expense involved in handling delinquent
payments.

3. Purchaser shall not commit or allow any other person to commit waste or damage to the premises or to any appurtenance
thereof. Purchaser shall not add to or change buildings thereon without the previous written consent of seller which shall not be un-
reasonably withheld. Purchaser shall provide fire and extended coverage insurance for all buildings now or hereafter placed on the pre-
mises in the names of all parties of interest, as their respective interests may appear, in an amount approved by seller, and leave the pol-
icy with seller. In case of loss the insurance shall be used to repair or rebuild, if adequate. If not adequate and if purchaser does not
provide sufficient amounts therefor, the funds shall be paid to seller and credited on this contract to the extent of the amount unpaid there-
on, and the balance, if any, shall belong and be paid to purchaser.

4a. Purchaser shall enter the premises for taxation in his name and shall pay, prior to the imposition of any interest or penalty
hereon, all taxes and assessments which become a lien on the premises after date hereof including specifically 1/6th of the 1983
taxes and all of the 1984 taxes. Any special assessment may be paid in installments if permitted by the taxing author-
ity.

4b. ~~Purchaser shall pay seller each month in addition to the stipulated monthly payments, Dollars~~
~~which is presently estimated to be the cost of taxes and assessments~~

~~The payment shall be credited by seller on the balance then due hereon. If purchaser is not in default seller shall pay on purchaser's behalf, all taxes and assessments which become a lien on the premises before penalty attaches, and submit receipts therefor to the purchaser upon demand. All amounts so paid shall be added to the balance then due on this contract and shall be a lien on the premises. The amount of the estimated monthly payment may be adjusted from time to time to produce approximately the total sum required annually for taxes and assessments.~~

~~Any deficiencies shall be paid by purchaser upon seller's written demand.~~
5. If purchaser defaults in making any required payments of taxes, assessments, or insurance premiums, or if purchaser fails to
pay any deficiencies required by Section 4b, within ten (10) days after seller's written demand, seller may pay same, including any in-
terest or penalty, and the amount so paid shall be due at once, shall be added to the unpaid balance of this contract, and shall be a lien
on the premises.

6. Seller reserves the right to convey his interest in this contract; the conveyance thereof shall not be cause for rescission. Seller
may, at any time, place one or more mortgages on the premises which, together with any mortgages existing on date hereof, shall secure
not more than the balance owing hereon at the time such mortgages are executed; provided that no mortgage, hereafter executed, either
singularly or in the aggregate, shall provide for interest rates or payments of interest and principal in excess of the interest rate and
installment payments required hereby. Any such mortgages shall be liens superior to purchaser's right hereunder. Seller shall promptly
notify purchaser of the prior existence or of the execution of any such mortgages, the identity of the mortgagee and of the amount,
interest rate, and payment terms thereof. If seller defaults on any mortgage or if seller is presently purchasing the premises on an am-
ortment contract and defaults under its terms, purchaser may pay to the mortgagee or antecedent contract vendor the amount necessary
to cure the default, credit the payment to the balance due hereunder and allocate it to installment payments required hereby. When the
amount owed on this contract is paid down to the amount secured by any mortgage or mortgages, presently existing or hereafter exe-
cuted, providing for interest rates and payments of interest and principal not in excess of those provided by this contract, and if the
mortgage indebtedness can lawfully be assumed by the purchaser (a) seller may execute and deliver a warranty deed to purchaser sub-
ject to such mortgage or mortgages which purchaser shall assume and agree to pay. Any mortgage assumption fees shall be paid by seller,
or (b) purchaser may demand a warranty deed from seller subject to such mortgage or mortgages which purchaser shall assume and
agree to pay; seller shall execute and deliver such deed. Any mortgage assumption fees shall be paid by the purchaser.

7. Upon full performance of purchaser's covenants, seller shall deliver to purchaser (1) ~~an abstract of title showing marketable~~
~~title insurance policy, in the amount of the purchase price herein specified, certified or dated~~
to current date, and (2) a good and sufficient warranty deed, excepting only from the warranty re-
strictions, easements of record at date hereof, taxes which purchaser is obligated to pay any defects in title due to fault or
neglect of purchaser or purchaser's assignee, and any mortgage which purchaser is obligated to assume. The deed shall convey the pre-
mises to purchaser or, at his option, to such other person as he may designate. Notwithstanding any other provision of this contract,
seller shall execute and deliver a good and sufficient warranty deed and a title insurance policy at seller's expense.

114 NEW YORK STATE REAL ESTATE BOARD 1913-14

8. Purchaser may take possession of the premises immediately and occupancy ~~XXXX~~ at time of closing subject to rights of present tenants or lawful occupants, if any, and remain thereon as long as he shall perform all the covenants and agreements herein mentioned, upon his part to be performed and no longer.

~~9. The transfer by purchaser shall release purchaser from liability to seller except in the case of explicit written release by seller.~~

10. If purchaser defaults in making any payment required hereunder or commits any other material default of this contract, seller may give purchaser or the person holding possession under him written notice of forfeiture of this contract in the manner prescribed by law. If the default is not cured within such time as is permitted by law, said contract shall be forfeited to seller, all payments made on said contract shall belong to seller as stipulated damages for breach of said contract and purchaser and all persons holding possession under him shall be liable to be removed from possession of the premises in any manner provided by law.

11. Notwithstanding the provisions of the preceding paragraph 10, seller may elect to pursue any other legal or equitable remedy which seller may have available to him in consequence of purchaser's default hereunder, and, in conjunction therewith, seller may elect to declare the entire unpaid portion of the purchase price to be immediately due and payable.

12. It is hereby expressly agreed that time is of the very essence of this contract. It is further agreed that all notices shall be conclusively presumed to be served upon purchaser when deposited in the United States mails, enclosed in an envelope with postage fully prepaid thereon, addressed to purchaser at the address given in the heading of this contract or at such other address as may be specified by purchaser, in writing, from time to time.

13. If more than one joins in the execution hereof as seller or purchaser, or either be of the feminine sex or a corporation, or partnership, the pronouns and relative words herein used shall be read as if written in plural, feminine or neuter, respectively.

14. The Purchasers may assign to the Republican State Committee, or an entity holding the property on their behalf. Upon presentment of an executed assignment, the Sellers shall release, in writing, Purchasers from any further liability to the Sellers.

15. Sellers warrant that the heating and air conditioning systems are in operating condition and that there are no mechanical defects or deferred maintenance which make all or part of these systems inoperable or obsolete.

IN WITNESS WHEREOF, the said parties have hereunto set their hands and seals the day and year first above written. In duplicate.)

Signed, Sealed and Delivered
In the Presence of:

| | |
|-------|----------------------------------|
| _____ | <u>Crawford W. Hartel</u> (L.S.) |
| _____ | <u>Caroline E. Hartel</u> (L.S.) |
| _____ | <u>Romayne E. Hicks</u> (L.S.) |
| _____ | <u>Clifford W. Taylor</u> (L.S.) |

ATTACHMENT 2

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN SECRETARY OF STATE
STATE TREASURY BUILDING



LANSING
MICHIGAN 48918
48918-2110

July 20, 1992

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JUL 22 1992

COLLINS & SMITH, P.C.

Eric E. Doster
Foster, Swift, Collins & Smith, P.C.
313 South Washington Square
Lansing, MI 48933-2193

Re: Request for Declaratory Ruling: Corporate Donations to Building Fund

Dear Mr. Doster:

You have requested a declaratory ruling concerning the applicability of the Campaign Finance Act (the Act), 1976 PA 388, as amended, to corporate donations to be used to purchase or construct a headquarters building for the Michigan Republican State Committee (the MRSC). You state the MRSC is engaged in state election activity. You state,

"Consequently, even though the federal law expressly preempts the application of the Michigan Campaign Finance Act to the MRSC's proposed building fund, we respectfully request your interpretation as to whether the Michigan Campaign Finance Act is applicable to donations to the MRSC's proposed building fund. In other words, please verify that the Michigan Campaign Finance Act would not apply to the MRSC's proposed building fund even without the preemption of the Michigan Campaign Finance Act by federal law."
(Emphasis added.)

Your question has been previously answered in an interpretive statement issued to David A. Lambert on October 31, 1984. A copy of the interpretive statement is enclosed. The letter states:

"The second issue you have raised is whether corporate funds may be used by political party committees in certain identified instances. Specifically, you asked:

'I would also like to know if a political party committee may use corporate contributions for any of the following:

3. For the rental of or purchase of a party office/headquarters?'

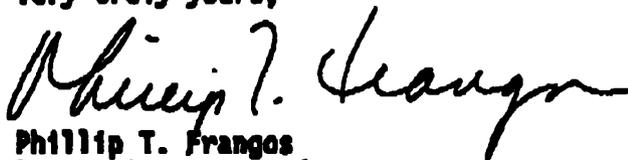
Corporate funds may be used for office supplies and expenses, if the supplies and expenses (telephone, heat, lights, etc.) are used or incurred exclusively for non-campaign purposes. Similarly, the rental or purchase of office space and the payment of attendant insurance premiums and property taxes may be made with corporate funds, provided the space is used only for non-campaign purposes. However, an office, a telephone or stationery which is used even occasionally for campaign purposes, such as soliciting support for a candidate or fundraising, which will be used for campaigning may not be purchased or rented with funds commingled with corporate money.

* * *

In summary, political parties may receive and spend money from corporations for activity which is exclusively outside the Act."

Since your inquiry specifically requests the issue of federal preemption not be addressed in this response, your question is answered by the interpretive statement issued to David A. Lambert on October 31, 1984. Therefore, this response does not constitute a declaratory ruling or an interpretive statement.

Very truly yours,



Phillip T. Frangos
Deputy Secretary of State
State Services
(517) 373-8141

Enc.

121573

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN SECRETARY OF STATE

STATE TREASURY BUILDING



**LANSING
MICHIGAN 48918**

October 31, 1984

**Mr. David A Lambert
639 N. Hayford
Lansing, Michigan 48912**

Dear Mr. Lambert:

You have requested an interpretative statement under the Campaign Finance Act (the "Act"), 1976 PA 388, as amended, regarding hypothetical questions to clarify an interpretative statement issued to you on September 21, 1983.

The initial issue you raise is:

"May a political party committee hold a fundraiser at which it uses a program booklet to sell advertising to corporations, if the proceeds (if any) from said program advertising are segregated into an account for non-campaign purposes? Or, does the fundraising event have to be held for the sole purpose of raising money for non-campaign purposes."

As indicated in the September 21, 1983, letter, section 6 of the Act (MCL 169.206) states, in part, "'Expenditure' means a payment . . . of money . . . for . . . services . . . in assistance of . . . the nomination or election of a candidate, or the qualification, passage, or defeat of a ballot question." The letter went on to state:

"Funds received from corporations cannot be used in assistance of a candidate. Because the purchase of an advertisement assists the recipient, a corporation may not purchase an advertisement in a program book, ad book, or newsletter which supports or opposes candidates. While it is conceivable a political party committee could publish a newsletter which does not support or give assistance to a candidate ("candidate" includes all incumbents), this seems unlikely. If a political party committee wants to designate a specific

fundraiser or method of fundraising as being for non-campaign purposes, it may do so and accept corporate contributions. But it may not merely pull corporation contributions out of the receipts for a fundraiser (or for newsletter ads), and put the corporate funds into a separate account. If a newsletter which does not support a candidate or ballot question could somehow be published, a political party committee could designate all advertising income for a separate account for non-campaign purposes." (emphasis added)

Unlike other types of committees, political party committees are not required to file separate reports for fundraisers. Political party committees report contributions received at a fundraiser and expenditures made to hold the fundraiser the same as all other contributions and expenditures. A political party committee must report contributions received or expenditures made when the contributions and expenditures involve fundraising for campaign purposes. Receipts and disbursements resulting from non-campaign fundraising are not contributions and expenditures and should not be reported under the Act.

As indicated in the quote above, a political party committee may designate a "method of fundraising as being for non-campaign purposes". A fundraiser is a method of fundraising. The entire fundraiser may be designated for non-campaign purposes, in which case corporate contributions would be accepted and none of the fundraiser's receipts or expenses would be reported by the political party committee. Alternatively, all or part of the fundraiser's receipts could be used for campaign purposes, no corporate contributions could be received in connection with the fundraiser, and the political party committee would report only those receipts and expenditures which are or will be used for campaign purposes. However, a fundraiser may not be split between campaign and non-campaign purposes with corporate contributions received and channeled to non-campaign purposes. Just as an officeholder expense fund which receives corporate money is "tainted" and may not purchase tickets to candidate fundraisers, a political party committee's method of fundraising may not commingle corporate and non-corporate funds and be utilized in candidate elections.

In conclusion, a political party committee may not have a program booklet for which corporate funds are received in connection with a fundraiser which otherwise is used to raise campaign funds.

The second issue you have raised is whether corporate funds may be used by political party committees in certain identified instances. Specifically, you asked:

- "I would also like to know if a political party committee may use corporate contributions for any of the following:
1. For the purchase of office supplies such as stationery, envelopes, etc.
 2. For office expenses such as telephone, fire and/or liability insurance?

3. For the rental of or purchase of a party office/headquarters?
4. For covering the costs of party officers to attend party-related meetings or events (travel, lodging, and meals)?
5. For legal and/or accounting expenses associated with compliance with the campaign finance law?
6. For wages and employee-related expenses (such as unemployment and workers compensation insurance) for party employees?
7. For the payment of ad valorem property taxes on any property owned by the party?
8. For the expenses associated with the maintenance of membership records such as computer record-keeping costs?
9. For the purchase of such office items as computers, copying machines, office furniture, and filing cabinets?

It is appropriate to consider what procedures are available under the Federal Election Campaign Act in similar fact situations. The Federal Election Commission (the "FEC") has promulgated rules which allow allocation of expenditures among candidates and allocation of a candidate's travel expenses between campaign and non-campaign purposes (UCFR 106.1-106.4). The FEC has extrapolated from these rules which allow allocation of expenditures in specific instances to create, by advisory opinion, allocations of corporate and union treasury funds between federal and state expenditures. The FEC stated in AO 1978-10 that federal get-out-the-vote and voter registration drives may not be paid for with corporate or union funds, but those same efforts directed to non-federal elections could be supported by corporate or union funds unless prohibited by the state. When corporate and union involvement is not prohibited by state law, the FEC rules the costs of get-out-the-vote and registration drives should be allocated between federal and non-federal elections in a manner similar to rules 106.1 through 106.4.

In AO 1978-46 the FEC continued with this approach in ruling corporate and union contributions to a party convention, such as the purchase of advertising and exhibition space, are permissible only if they can be apportioned to state and local candidates. Allocation of corporate and union contributions to non-federal expenditures at a national party conference and workshop was approved more recently in AO 1982-5.

These decisions by the F.E.C. permitting allocation between federal and nonfederal campaigns were made in a context that differs from that presented here. Political party organizations traditionally carry on joint federal-state campaigns. The same party activists and voters participate in the simultaneous election of public officials at all levels. The F.E.C. Advisory Opinions and regulations covering allocation are a recognition of this fact.

Campaign and non-campaign activities of Michigan party organizations can be carried on independently. Unlike integrated campaign efforts it is feasible for a party to separate its non-campaign activities from the major function of the party, helping elect its nominees to public office.

Neither the Act nor the Department's rules expressly or impliedly permit allocation. In addition, corporate involvement in elections, which was prohibited in Michigan prior to adoption of the Act, is strictly controlled by sections 54 and 55 of the Act, MCL 169.254 and 169.255. Since the major objective of any political party is to nominate and elect its member to local, state, and federal office, and corporations are prohibited from using treasury funds to influence Michigan and federal candidate elections, there are very few instances where corporations may contribute to political party committees.

Corporate funds may be used for office supplies and expenses, if the supplies and expenses (telephone, heat, lights, etc.) are used or incurred exclusively for non-campaign purposes. Similarly, the rental or purchase of office space and the payment of attendant insurance premiums and property taxes may be made with corporate funds, provided the space is used only for non-campaign purposes. However, an office, a telephone or stationery which is used even occasionally for campaign purposes, such as soliciting support for a candidate or fundraising, which will be used for campaigning may not be purchased or rented with funds commingled with corporate money.

Whether corporate funds may be used to pay party officers attending party related meetings depends upon the purpose of the meeting. For example, corporate funds may be used to pay party officer costs at an odd year party convention where the only business conducted is electing party officers and passing rules and resolutions, but corporate funds may not be used if people are nominated for state or local office at the convention. (See the August 21, 1979, declaratory ruling issued to Mr. Richard D. McLellan which is attached.)

Legal or accounting expenses associated with Campaign Finance Act compliance may not be paid with funds containing corporate contributions. The only exception to this would be when a political party created a ballot question committee which incurred legal or accounting expenses because section 54(3) permits a corporation to contribute up to \$40,000 to a ballot question committee.

Wages and expenses of party employees who work exclusively in non-campaign activities may be paid with corporate contributions; otherwise, corporate funds may not be used for employee wages, expenses, and benefits.

While membership records may be used for non-campaign purposes, they are also maintained and utilized for the purpose of influencing elections, thus they are expenditures which cannot be paid with corporate funds.

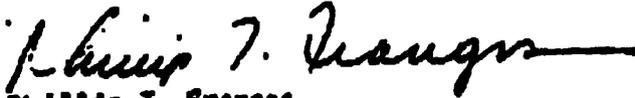
Office equipment, e.g., computers, copiers, furniture, and file cabinets, are treated the same as office supplies, office space, and related insurance and property taxes as discussed above.

In summary, political parties may receive and spend money from corporations for activity which is exclusively outside the Act. In addition, a political party ballot question committee (as distinguished from the "political party committee"

Mr. David A. Lambert
Page 5

as defined in section 11(5) of the Act, MCL 169.211) may receive corporate contributions consistent with section 54 of the Act, MCL 169.254, without either the committee or the corporation violating the Act.
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