



**House
Legislative
Analysis
Section**

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CLARIFY ALLOWABLE OEF EXPENDITURES

House Bill 4509 as passed by the House
Second Analysis (8-13-87)

RECEIVED

Sponsor: Rep. Lewis N. Dodak
Committee: House Oversight

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H.B. 4509 (8-13-87)

THE APPARENT PROBLEM:

Earlier this year, the Secretary of State's office, which is responsible for monitoring officeholders' expense funds (OEFs), sent notices to 75 public officials requesting more detailed explanations of reported expenditures for 1986. In addition, some state officials failed to file any reports at all, in violation of state requirements.

Partly as a result of the Secretary of State's actions, a series of newspaper articles also criticized a number of state lawmakers for using their officeholder expense funds (OEFs) in questionable, if not improper, ways or for failing altogether to file reports.

Michigan's campaign finance act allows any elected public official to establish and use an OEF for "expenses incidental to the person's office". Money for an OEF generally comes from transferring whatever remains in the official's campaign fund after election, along with other private donations. Some officials also hold fundraisers for their OEFs. There is no upper limit to the size of an OEF. The law does not define what kind of expenses are "incidental" to holding office, and the only statutory restriction on the use of the fund is the prohibition against using an OEF to further the officeholder's reelection.

The Secretary of State's office has reported some of the kinds of expenditures made by lawmakers from their funds. These expenditures have included clothing, shoes, and tuxedos, cellular car telephones, computers, office furniture (including typewriters, coffee makers, pictures, lamps, and refrigerators for the office), television sets, car and home mortgage payments, cameras, books, luggage, jewelry and craft items, hearing aids and reading glasses, out-of-state and overseas trips, wedding and birthday presents, Rose Bowl tickets, country club dues, family vacations, and livestock purchases. In addition, some lawmakers hire additional staff from their OEFs, and one lawmaker invested his OEF and kept the interest.

In response to public criticism over some of these expenditures, state lawmakers have proposed legislation that would clarify the kinds of expenditures that would be allowable from OEFs.

THE CONTENT OF THE BILL:

The bill would amend section 49 of the Campaign Finance Act, basically adopting certain sections of the federal Internal Revenue Service Code as guidelines for state officeholder expense funds.

Allowable expenditures. The bill would define "expenses incidental to the person's office" in terms of "ordinary and necessary" business expenses allowed as deductions under section 162 of the Internal Revenue Code of 1986. The bill also would allow

- the purchase of tickets to fundraisers (subject to the individual contribution limits of the act), with a limit of up to \$1,000 a year to or for an independent or political party committee;

- charitable contributions allowed under section 170 of the Internal Revenue Code (though without regard to the percentage limitations of the code); and
- capital expenditures (as defined by section 263 of the Internal Revenue Code) of up to \$1,500 a year.

Prohibited expenditures. The bill would continue to prohibit using OEFs to further the fund holder's re-election and would further prohibit

- expenditures for personal, living, or family expenses (as defined by section 262 of the Internal Revenue Code);
- capital expenditures greater than \$1,500 a year;
- payment of debts more than 90 days after the end of the calendar year in which the debt was incurred unless the debt were properly recorded; and
- more than \$1,000 a year to or for an independent or political party committee.

Recordkeeping and reporting. OEF contributions and expenditures would remain subject to the contribution limits of the act and would be subject to the same recordkeeping and reporting requirements as candidate committee accounts. However, limitations and cumulative amounts would be based on the calendar year rather than on an election year basis and reports for each year would still have to be filed by January 31 of the following year.

Enforcement. The Secretary of State would continue to have the authority to decide whether or not a receipt or an expenditure complied with the law. If the secretary ruled that an expenditure or receipt was in violation of the law, he or she would notify the fund holder (including sending a notice of noncompliance by first class mail to the fundholder's residential address). The fundholder then would be required to pay back the fund or return the receipt within 20 days of notification. Violations would continue to be misdemeanors punishable by up to 90 days in jail and fines of up to \$1,000.

Miscellaneous. The bill would require that the OEF be kept in a single account, separate from the officeholder's candidate committee account, and would explicitly allow officeholders to transfer funds from their candidate committees to their OEFs. The bill would take effect on January 1, 1988.

MCL 169.249

FISCAL IMPLICATIONS:

The House Fiscal Agency reports that the bill has no fiscal implications. (8-13-87)

ARGUMENTS:

For:

The present law governing OEFs is very (some would say, deliberately) vague. Consistent, comprehensive guidelines for holders of OEFs have been sorely needed for a long time. OEFs have been allowed since the campaign finance

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law went into effect in 1977, and there are virtually no statutory or administrative guidelines defining allowable expenditures. Instead, the Secretary of State's office, which collects and reviews the required annual OEF reports, decides what is and is not allowable on a case by case basis. Even so, department representatives have publicly emphasized that such interpretations do not have the legal force of declaratory statements, and a state elections official has acknowledged that enforcement has been inconsistent. If the Secretary of State is to be able to consistently enforce the law, and if officeholders are to be free of arbitrary harassment, clear guidelines are needed now.

Since many officeholders already run their funds with an eye to the possibility of being audited by the Internal Revenue Service, it only makes sense to adopt IRS requirements as guidelines for OEFs. What is more, adopting the IRS "ordinary and necessary business expenses" as the standard for OEFs means that the considerable body of case law on such expenses would be available for reference should questions arise.

Against:

Although both the Attorney General and the Secretary of State have said that officials may not take leftover OEF money with them when they leave office, present law — and the present bill — says nothing about what should happen to items such as computers and cellular phones bought with OEF money. Any bill attempting to tighten OEF regulation should address this issue. In fact, proper dissolution of OEFs needs to be more clearly spelled out in order to prevent possible abuses such as have occurred in the past.

Response: Although the bill does not deal completely with the issue of dissolution of OEFs, it does partially address possible abuses by prohibiting future instances of at least one past questionable practice. In the past, at least one lawmaker who was leaving office billed his OEF for thousands of dollars of unrecorded debts, a move that many considered to be highly questionable. Such a practice would no longer be possible under the bill, which would prohibit paying unrecorded debts from an OEF.

Against:

The potential for abuse of OEFs for personal gain or unfair political influence is simply too great. Such funds should be abolished altogether. Some officials argue that, as public figures, they are expected by the public to entertain constituents and supporters and to join a variety of social organizations (such as country clubs), but that they cannot afford to do so without OEFs. But not all state lawmakers have OEFs (about 70 percent do), so clearly it is possible to serve in office without an OEF. What is more, should officeholders decide to make expenditures beyond what they can afford on their salaries and expense accounts, they still are free to use their campaign committee accounts. The negative publicity over alleged abuse of OEFs erodes public confidence in public officials and simply invites the perception of public corruption. It would be better to do away with the cause of all this, rather than try to reform OEFs.

Response: It has been the absence of clear and consistent guidelines for their use, rather than the OEFs themselves, that has caused the present problems. Completely abolishing OEFs would just be a case of throwing the baby out with the bathwater. OEFs play a vital role in public officials' ability to serve their constituents and the citizens of the state and should be retained, though reformed.

POSITIONS:

The Department of State does not oppose the bill. (8-14-87)