



STATE OF MICHIGAN
TERRI LYNN LAND, SECRETARY OF STATE
DEPARTMENT OF STATE
LANSING

July 31, 2006

Gary R. Campbell
Lippert, Humphreys, Campbell, Dust & Humphreys, P.C.
Plaza North, Suite 410
4800 Fashion Square Boulevard
Saginaw, Michigan 48604-2604

Dear Mr. Campbell:

In correspondence dated May 19, 2006, you submitted a request to the Department of State (Department), asking it to issue a declaratory ruling or interpretive statement pursuant to the Michigan Campaign Finance Act (MCFA or Act), MCL 169.201 et seq., to resolve the question of whether a ballot question committee may use its funds to pay for legal expenses incurred in defending a lawsuit. A copy of your request was publicized on the Department's website for public comment beginning May 26, 2006; no comments were filed with the Department.

The MCFA and corresponding administrative rules, as well as the Administrative Procedures Act, authorize the Department to issue a declaratory ruling in limited circumstances. MCL 169.215(2); Mich. Admin. Code R 169.6; and MCL 24.263. A person who submits a request for a declaratory ruling must qualify as an interested party, recite a complete statement of actual facts, provide a succinct statement of the legal question presented, and put forth the request in a signed writing. MCL 169.215(2); Mich. Admin. Code R 169.6(1); and MCL 24.263. The Department has carefully reviewed your letter of May 19, 2006 and determined that it does not include a complete statement of actual facts and accordingly, denies your request for a declaratory ruling. Instead, the Department issues the following as an interpretive statement.

Your request indicates that the YES Saginaw Committee, a ballot question committee registered with the Saginaw County clerk, intends to use its funds to pay for legal expenses incurred by the committee in its defense of a lawsuit filed by an individual associated with an opposing ballot question committee. In that litigation, the complainant alleges that the YES Saginaw Committee disrupted the opposing committee's picket and removed the opposing committee's campaign signage. Your firm was retained by the YES Saginaw Committee to defend against the lawsuit.

You submitted the following question for the Department's consideration:

"Is the YES Saginaw Committee, a ballot question committee, permitted to use excess contributions received by the committee to pay for legal expenses incurred in defending the committee in a lawsuit brought against the committee because of its alleged activities?"

In response to your inquiry, the Department has concluded that the committee may, consistent with the MCFA, expend any portion of its remaining account balance for the payment of legal fees. The Department's affirmative answer is supported by its determination in an earlier Interpretive Statement issued to Jon Jenkins (October 23, 1981), which established that the MCFA does not prohibit a political committee from dispersing its unexpended funds for any lawful purpose. The statutory provision governing the disbursement of surplus funds, MCL 169.245(2), provides in pertinent part that "[u]pon termination of a candidate committee, unexpended funds in the candidate committee that are not eligible for transfer to another candidate committee of that person under subsection (1) shall be dispersed as follows:" returned to contributors or given to a political party, charity, or a caucus, independent or ballot question committee. By its terms, MCL 169.245(2) is limited in its application to candidate committees. In the absence of authority restricting the use of funds held by other types of committees, the Department has concluded that:

"[T]he disposition of unexpended funds of a candidate committee is governed by section 45 of the Act. Political committees are not limited by section 45 in disposing of unexpended funds upon dissolution of the committee ... Section 45 as clarified by [Mich. Admin. Code R. 169.1(c)] does not include within its ambit the regulation of committees other than candidate committees. *Such a committee may dispose of unexpended funds in any lawful way.*"

Interpretive Statement issued to Jon Jenkins (October 23, 1981), p.4 (*emphasis added*). Like the political committee at issue in the *Jenkins* Interpretive Statement, the YES Saginaw Committee – as a ballot question committee – is not subject to the restrictions set forth in MCL 169.245(2). The Department therefore concludes that contributions received by the YES Saginaw Committee may be used for any lawful purpose, including remittance for legal fees.

The Department notes that legal fees that are incurred "in assistance of, or in opposition to ... the qualification, passage, or defeat of a ballot question," must be treated as expenditures and reported in accordance with the MCFA. MCL 169.206(1), 169.226(1)(j). However, the statement of facts provided in your correspondence is not specific enough to allow the Department to conclude whether the legal expenses paid by or charged to the YES Saginaw Committee constitute expenditures.

As your correspondence did not include a statement of facts sufficient to form the basis of a declaratory ruling, the foregoing is offered as the Department's interpretive statement.

Sincerely,

Brian DeBano
Chief of Staff / Chief Operating Officer
Michigan Department of State