



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

Draft

Andrew C. Richner
Clark Hill PLC
500 Woodward Avenue, Suite 3500
Detroit, Michigan 48226

Dear Mr. Richner:

The Department of State (Department) acknowledges receipt of your correspondence dated October 9, 2009, in which you asked the Department to issue a declaratory ruling pursuant to the Michigan Campaign Finance Act (MCFA or Act), 1976 PA 388, MCL 169.201 *et seq.*, concerning a candidate committee's disposition of funds upon its termination. A copy of your request was published on the Department's website on October 14, 2009 yet no written comments were submitted.

The Department is authorized to issue a declaratory ruling if the person requesting the ruling is as an interested party, provides a reasonably complete statement of facts and a succinct description of the legal question presented, and makes the request in the form of a signed writing. MCL 24.263, 169.215(2). The omission of a reasonably complete statement of facts from your correspondence precludes the Department from granting your request for a declaratory ruling; however, the Act requires the Department to issue an interpretive statement "providing an informational response to the question presented" as a substitute. MCL 169.215(2). Accordingly, the Department offers the following interpretive statement in response to your request.

You asked, "whether a candidate committee may give unexpended funds to an organization that is tax exempt under Section 501(c)(4) of the Internal Revenue Code ('IRC') and that compensates a spouse or child of the candidate for services performed on behalf of the organization."

The provision governing the disbursement of a candidate committee's surplus funds, MCL 169.245(2)(b), permits the transfer of such funds "[u]pon termination ... to a tax exempt charitable organization, as long as the candidate does not become an officer or director of or receive compensation, either directly or indirectly, from that organization."¹ The limitation

¹ The Act also authorizes a candidate committee, upon termination, to return its excess funds to contributors or contribute to a political party committee, legislative caucus committee, independent committee, or a ballot question committee. MCL 169.245(2)(a)-(g).

which prohibits a candidate committee from donating unexpended funds to a charitable organization that appoints the candidate as an officer or director, or compensates him or her directly or indirectly, was added by 1996 PA 590. This amendment was designed in part to prevent a candidate from using candidate committee funds to personally enrich himself or herself, "directly or indirectly," when terminating the candidate committee.

It is reasonable to presume that compensation paid by the recipient charitable organization to a candidate's spouse or dependent child will always benefit the candidate, whether the benefit derived by the candidate is direct or indirect. In these circumstances, the candidate may not transfer unexpended funds to that charitable organization. On the other hand, it is possible that a candidate would not benefit from compensation paid to a non-dependent child or to a child who does not reside in the same household as the candidate. The transfer of unexpended funds could be allowed depending upon the specific facts of each case.

The foregoing represents the Department's informational response to the question you presented.

Sincerely,

[SIGNATURE]