



STATE OF MICHIGAN
RUTH JOHNSON, SECRETARY OF STATE
DEPARTMENT OF STATE
LANSING

October 3, 2014

Lee Bourgoin
447 Saline River Road
Saline, Michigan 48176

Dear Mr. Bourgoin:

The Department of State (Department) acknowledges receipt of your letter dated July 28, 2014, concerning your request for a declaratory ruling or interpretive statement regarding the application of the Michigan Campaign Finance Act (MCFA), 1976 PA 388, MCL 169.201 *et seq.*, which was received in this office on August 1, 2014. A copy of your request was published on the Department's website for public comment beginning August 4, 2014 but no comments were submitted in response to your letter.

The Administrative Procedures Act (APA), 1969 PA 306, MCL 24.201 *et seq.*, and MCFA authorize the Department to issue a declaratory ruling upon the request of an interested person who submits a reasonably complete statement of facts and a succinct statement of the legal question presented. MCL 24.263, 169.215(2). The MCFA further requires the Department to issue an interpretive statement "providing an informational response to the question presented" if it declines to provide a declaratory ruling. MCL 169.215(2). "A declaratory ruling is binding on the agency and the person requesting it unless it is altered or set aside by any court." MCL 24.263. Although you explain that you are "a concerned member of the Saline City Council," your letter does not indicate that your request for a declaratory ruling is made on behalf of the City of Saline or the Council. Because your request is made in your individual capacity as one of seven members of the Saline City Council and cannot bind that body, the Department issues this interpretive statement as an informational response to the questions posed in your letter.

Your request includes a detailed recitation of the actions of the Saline City Council with respect to Proposal 14-1, a referendum of Public Act 80 of 2014 that appeared on the August 5, 2014 primary ballot. According to your letter, the City Council collectively considered and adopted a resolution expressing the Council's support for Proposal 14-1 at its July 21, 2014 meeting.¹ It is your contention that in doing so, City resources were expended in the drafting of the resolution and the preparation and dissemination of meeting materials. In addition, you allege that the City hosted a forum for area businesses on July 25, 2014 to discuss the topic of "personal property tax reform" as well as the City's efforts in relation to business "recruitment, job training resources, tax abatement, expediting government procedures," and so on.² Your letter also indicates that the Mayor spoke favorably of Proposal 14-1 at a City Council meeting held on June 23, 2014.

¹ See Saline City Council Resolution No. 14-142 at <http://salinecitymi.minutesondemand.com/Document/4a3a7d57-8937-48f0-b057-cf024784f24f/City%20Council%20Agenda%20Packet%20July%2021.%202014.pdf>.

² Letter from the Mayor of the City of Saline dated June 30, 2014, provided as an attachment to your request.

Your request poses a number of questions which may be summarized as follows: Did the City of Saline make a contribution or expenditure of public funds by expressly advocating the passage of Proposal 14-1, in violation of the MCFA?

The MCFA prohibits a public body or an individual acting on its behalf from “us[ing] or authoriz[ing] the use of funds, personnel, office space, computer hardware or software, property, stationery, postage, vehicles, equipment, supplies, or other public resources to make a contribution or expenditure”. MCL 169.257(1). A violation cannot be remedied by paying the cost of the illegal contribution or expenditure in advance or through reimbursement. MCL 169.257(1).

The words “contribution” and “expenditure” are terms of art that are generally defined, in pertinent part, to include anything of ascertainable monetary value that is used to influence or assist the qualification, passage or defeat of a ballot question. MCL 169.204(1), 169.206(1). By law, a communication is not treated as an expenditure unless it “support[s] or oppose[s] a ballot question or candidate by name or clear inference [,]” or unless it contains “express words of advocacy of election or defeat, such as ‘vote for,’ ‘elect,’ ‘support,’ ‘cast your ballot for,’ ‘Smith for governor,’ ‘vote against,’ ‘defeat,’ or ‘reject.’” MCL 169.206(2)(b), (j). Communications that omit words and phrases of express advocacy generally are exempt from MCFA regulation³ and may be produced or disseminated by a public body without running afoul of MCL 169.257.

In addition, it is important to note that MCL 169.257 contains a number of exceptions to this prohibition which render it inapplicable in certain circumstances. For example, the law “does not apply to ... the expression of views by an elected or appointed public official who has policy making responsibilities” or “the production or dissemination of factual information concerning issues relevant to the function of the public body.” MCL 169.257(1)(a)-(b) (emphasis added). Thus, under MCL 169.257(1)(a), an elected official possessing the authority to formulate governmental policy is authorized by law to express his or her views on matters of public import.

Indeed, public officials have an obligation to take positions on controversial political questions so that constituents are fully informed and better able to assess their qualifications for office. The *occasional, incidental* use of public resources to communicate with a constituent or the media on a ballot question falls within this exemption, as there are no resources devoted to an effort to assist or oppose the qualification, passage or defeat of [a ballot] question.

Interpretive Statement to David Murley (Oct. 31, 2005) (emphasis added; internal citation omitted).⁴ The Department went on to explain that the type of occasional, incidental use described above is distinguishable from the mass distribution of an email message or the mass mailing of a brochure, postcard or flyer that in express terms advocates the passage or defeat of a ballot question at public expense, which would constitute a violation of the MCFA. *Id.*

Additionally, MCL 169.257(1)(b) specifically authorizes a public body to create and publish factual information that pertains to its official functions. This exception has been construed to

³ Communications that omit words of express advocacy must nonetheless comply with the identification requirements of the MCFA. See MCL 169.206(2)(j), 169.247.

⁴ Available at http://www.michigan.gov/documents/sos/Murley_2005_428421_7.pdf.

permit a public body such as a school district, which possesses separate legal authority to expend funds in this manner, to produce and disseminate factual information that is relevant to the functioning of the public body “as long as the information is limited to facts and does not include express advocacy.” *Interpretive Statement to David Murley* (Oct. 31, 2005).

These two statutory exceptions also address your concern regarding the City Council’s debate and adoption of a resolution that expressly advocates a particular position on a ballot proposal. In the *Interpretive Statement to Steven Daunt* (Aug. 17, 2000),⁵ the Department concluded that the legislative body of a local unit of government may consider and vote on a resolution that supports or opposes a ballot question:

It is therefore clear that at council meetings individual council members are free to discuss their opposition to or support of a ballot question that relates to ‘municipal concerns, property and government.’ Indeed, a city council could devote an entire meeting to a discussion of the ballot question. The council meeting would obviously use city equipment, office space, and other public resources during the course of this discussion. If every council member can use those resources without limitation, it would be absurd to conclude that equipment, office space, and the like have been illegally used by the simple act of raising one’s hand. The mere act of voting on a resolution that encompasses matters discussed at a meeting does not constitute a misuse of public resources within the meaning of [MCL 169.257(1)].

The city council may only publicize its action through the ordinary means that it publicizes other council actions, such as the recording the adoption of the resolution in the meeting minutes, publishing copies of the meeting minutes in the customary fashion, and so on. See *Interpretive Statement to Steven Daunt* (Aug. 17, 2000) and *Interpretive Statement to David Murley* (Oct. 31, 2005) (“the use of public resources to distribute or publicize that resolution beyond the regular provision of factual information regarding actions taken by the city council would result in a violation of [MCL 169.257].”)

Another exception to the MCFA’s general prohibition against using public resources to make a contribution or expenditure is found at MCL 168.257(1)(d), which permits “[t]he use of a public facility owned or leased by, or on behalf of, a public body if any candidate or committee has an equal opportunity to use the public facility.” This provision authorizes a public body to make a building or other property available for use by a candidate or committee, including a committee organized for the purpose of supporting or opposing a ballot question, provided that any candidate or committee is afforded an equal opportunity for such use. Your letter does not indicate that the City of Saline or Saline City Council denied a request from a committee opposing Proposal 14-1 to use a public facility.

In sum, the MCFA’s prohibition against using public resources to make a contribution or expenditure includes a number of important exceptions that recognize the societal benefit of inviting public discussion of issues confronting government agencies and public officials, thus enabling voters to make informed decisions based on an official’s expression of views or factual information concerning government operations. The City Council’s discussion and adoption of a

⁵ http://www.michigan.gov/documents/2000_126235_7.pdf.

resolution expressing support for Proposal 14-1, its hosting of a forum to discuss personal property tax reform and other issues including business recruitment and worker training, and the Mayor's favorable comments regarding Proposal 14-1 made during a City Council meeting fall squarely within the exceptions of MCL 169.257(1)(a)-(d).

Sincerely,