



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

March 11, 2016

Vincent Calabrese
17926 Breezeway
Fraser, Michigan 48026

Dear Mr. Calabrese:

The Department of State (Department) has concluded its investigation of the complaint filed by you against Matthew Hemelberg, which alleged that Mr. Hemelberg violated the Michigan Campaign Finance Act (MCFA or Act), 1976 PA 388, MCL 169.201 *et seq.* This letter concerns the disposition of your complaint, which was filed on October 21, 2015. Mr. Hemelberg filed an answer on November 24, 2015 and you filed a rebuttal statement on January 8, 2016.

Your complaint alleged that Mr. Hemelberg used his candidate committee funds to “to send inflammatory fliers against one of the mayoral candidates [,]” in contravention of sections 21a and 66 of the Act. MCL 169.221a and 169.266.

The notice of the complaint sent to Mr. Hemelberg referred to section 44(2) of the Act, which prohibits a candidate committee from making a contribution to or independent expenditure in behalf of another candidate committee. MCL 169.244(2). Mr. Hemelberg denied violating section 44 of the Act.

In your rebuttal statement, you reiterated that your complaint specifically alleged a violation of section 21a and 66 of the Act, and not a violation of section 44 of the Act.

MCL 169.221a provides, in its entirety:

- (1) A candidate committee of a candidate who is elected or appointed to an elective office may make an expenditure for an incidental expense for the elective office to which that candidate was elected or appointed. Except as otherwise specifically provided in this act, an expenditure for an incidental expense by a candidate committee under this section is an expenditure under this act.
- (2) A candidate committee of a candidate who is elected or appointed to an elective office shall not make an expenditure to defend the elected or appointed official in a civil or criminal action or to pay legal costs unless the action or legal costs do any of the following:

(a) Relate to a recall election.

(b) Relate to a recount of votes as provided in the Michigan election law, 1954 PA 116, MCL 168.1 to 168.992.

(c) Relate to compliance with this act or the Michigan election law, 1954 PA 116, MCL 168.1 to 168.992.

(d) Tangibly benefit the nomination or election of a candidate.

(3) Any legal costs not authorized under subsection (2) shall be paid from a legal defense fund as provided in the legal defense fund act, 2008 PA 288, MCL 15.521 to 15.539.

(4) In addition to any other requirements of this act, a campaign statement of a candidate committee shall contain the purpose of any expenditure for legal costs made by that committee as described in subsection (2).

(5) An individual who violates subsection (2) is guilty of a misdemeanor punishable by a fine of not more than \$1,000.00 or imprisonment for not more than 90 days, or both.

The prohibition in this section makes it unlawful for a candidate to make an expenditure "to defend the elected or appointed official in a civil or criminal action or to pay legal costs unless the action or legal costs" relate to a recall election, a recount, or a compliance matter, or tangibly benefit the nomination or election of the candidate. The expenditure for the flyer is not an expenditure for a legal matter, and the prohibition contained in this section simply does not apply.

MCL 169.266 provides, in its entirety:

(1) A candidate may only apply the funds received under this act from the state campaign fund against qualified campaign expenditures.

(2) As used in this section, "qualified campaign expenditure" means an expenditure for services, materials, facilities, or other things of value by the candidate committee to further the candidate's nomination or election to office during the year in which the primary or general election in which the candidate seeks nomination or election is held. Qualified campaign expenditure does not include any of the following:

(a) An expenditure in violation of any law of the United States or of this state.

(b) A payment made to the candidate or a relative within the third degree of consanguinity of the candidate, or to a business with which the candidate or the relative is associated.

(c) A payment to the extent clearly in excess of the fair market value of services, materials, facilities, or other things of value received in exchange.

(d) That portion of any salary or wage to an individual in excess of \$5,000.00 per month.

(e) Payment from petty cash.

(f) Gifts, except brochures, buttons, signs, and other printed campaign material.

(g) Payment to a defense fund.

(h) An expenditure by a candidate committee for an incidental expense under section 21a.

(3) A candidate shall keep the funds received under this act from the state campaign fund in a separate account. The candidate's qualified expenditures may be paid from the separate account unless the account does not have a balance. An unexpended balance in the separate account shall be refunded and credited to the general fund within 60 days after the election for which the funds were received. Payment received from the state campaign fund for expenditures in 1 election shall not be used for expenditures in a subsequent election.

(4) A person who knowingly violates this section is guilty of a felony punishable, if the person is an individual, by a fine of not more than \$2,000.00, or imprisonment for not more than 3 years, or both, or, if the person not an individual, by a fine of not more than \$10,000.00.

Additionally, MCL 169.262(3) states, “[a] candidate who does not apply for moneys from the state campaign fund is not subject to sections 61 to 71 [,]” and MCL 169.203(1) clarifies that,

For purposes of sections 61 to 71, "candidate" only means, in a primary election, a candidate for the office of governor and, in a general election, a candidate for the office of governor or lieutenant governor. However, the candidates for the office of governor and lieutenant governor of the same political party in a general election shall be considered as 1 candidate.

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Because Mr. Hemelberg is not and was not a candidate for Governor and not entitled to apply for moneys from the state campaign fund, Mr. Hemelberg did not receive moneys from the state campaign fund and sections 61 to 71 do not apply to Mr. Hemelberg or the flyer in question.

Because your complaint alleges a violation of two sections which do not apply to the flyer or activity in question, your complaint is dismissed.

Sincerely,

A handwritten signature in black ink that reads "Lori A. Bourbonais". The signature is written in a cursive style with a large initial "L".

Lori A. Bourbonais
Bureau of Elections
Michigan Department of State

c: Matthew Hemelberg