



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

November 19, 2014

Clifford Jones
5944 Dailey Road
Indian River, Michigan 49749

Dear Mr. Jones:

The Department of State (Department) has concluded its review of the complaint you filed against Rep. Frank Foster, concerning an alleged violation of the Michigan Campaign Finance Act (MCFA or Act), 1976 PA 388, MCL 169.201 *et seq.* This letter concerns the disposition of your complaint.

You alleged that Rep. Foster violated section 57 of the MCFA by “using publicly-funded State resources to further the election of a candidate.” In support of your complaint you provided a copy of an email sent from one of Rep. Foster’s Legislative Aide’s email account and an attachment to the email which indicates that it was paid for by Rep. Foster’s candidate committee.

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). Expenditure is a term of art which includes “a payment, donation, loan, or promise of payment of money or anything of ascertainable monetary value for goods, materials, services, or facilities in assistance of, or in opposition to the nomination or election of a candidate [.]” MCL 169.206(1). A knowing violation of section 57 is a misdemeanor offense. MCL 169.257(3).

You filed your complaint on July 11, 2014. Rep. Foster filed an answer on August 7, 2014, and you did not file a rebuttal statement.

You asserted that the attachment to the email promoted Rep. Foster’s candidacy.

In his answer, Rep. Foster asserted that the attachment to the email did not include express advocacy and merely set forth his views on two controversial topics. He further asserted that as a legislator it is his duty “to take positions on public issues and proposed legislation and to explain those views to [his] constituents.”

The Department applies the “express advocacy test” to communications to determine if they are subject to the Act. *Interpretive Statement to David Murley* (Oct. 31, 2005).¹ The MCFA provides that a communication that “does not support or oppose a ballot question or candidate by name or clear inference” is not subject to the requirements and limitations of the MCFA. MCL 206(2)(b): The Act specifically excludes from the definition of “expenditure” the payment for a communication that does not contain “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)(j).

The Department has reviewed the attachment to the email and has determined that it does not contain words of express advocacy, and the use of a public email account to send the attachment does not give rise to an expenditure.

Because the attachment to the email sent by Rep. Foster’s Legislative Aide did not contain express advocacy, the Department has determined that there is no evidence that Rep. Foster authorized the use of public funds to further his nomination or election. Therefore, your complaint is dismissed.

Sincerely,



Lori A. Bourbonais
Bureau of Elections
Michigan Department of State

c: The Honorable Frank Foster

¹<http://www.mi.gov/documents/2005 - Interpretive Statement 142179 7.pdf>.