



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

March 2, 2015

Thomas E. Klunzinger
P.O. Box 585
Okemos, Michigan 48805

Dear Mr. Klunzinger:

The Department of State (Department) has concluded its review of the complaint you filed against Linda Lee Tarver, 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 Ms. Tarver violated section 24 of the MCFA by failing to timely file a statement of organization. In support of your complaint you provided the results of a Michigan Candidate Committee search from the Michigan Department of State campaign finance website. This search was performed on August 15, 2014. With your rebuttal statement, you provided a blank Michigan Republican Party Convention Candidate Affidavit of Candidacy, the 2014 Pre-Primary campaign statement filed by Rick Johnson, and an email from the Michigan Republican Party, which did not pertain to Ms. Tarver, but discussed complaints filed against other candidates.

The Act's definition of a candidate includes an individual who "[r]eceives a contribution, makes an expenditure, or gives consent for another person to receive a contribution or make an expenditure with a view to bringing about the individual's nomination or election to an elective office, whether or not the specific elective office for which the individual will seek nomination or election is known at the time the contribution is received or the expenditure is made." MCL 169.203(1)(c). The Act requires an individual to form a candidate committee within 10 days once the individual becomes a candidate under the definition provided in the Act. MCL 169.203(2), 169.221(1). A committee shall file a statement of organization within 10 days of its formation. MCL 169.224(1). Late fees may be incurred if the statement of organization is filed late. *Id.* Failure to file a statement of organization for more than 30 days is a misdemeanor. *Id.*

You filed your complaint on August 15, 2014. Ms. Tarver filed an answer on August 27, 2014 and you filed a rebuttal statement with the Department on September 11, 2014. Ms. Tarver submitted additional information at the request of the Department on January 21, 2015.

You asserted that Ms. Tarver became a candidate for the State Board of Education on or about April 22, 2014 via an affidavit filed with the Michigan Republican Party. You indicated in your rebuttal statement that after this filing Ms. Tarver publically announced or declared her candidacy. You assert that this announcement and filing triggered the registration and reporting requirements contained in the Act.

Ms. Tarver filed a Statement of Organization with the Department on August 26, 2014 which listed a committee formation date of August 18, 2014.

The MCFA required Ms. Tarver to file a statement of organization within 10 days after she met any one of 5 criteria used by the Act to define "candidate." Two of those criteria do not apply to Ms. Tarver as they only apply to a current office holder, which Ms. Tarver is not. The Department must then look to the other 3 criteria to determine whether Ms. Tarver met the definition of "candidate" on a date earlier than August 16, 2014 (10 days prior to her filing her Statement of Organization).

First, a person becomes a candidate when she "[f]iles a fee, an affidavit of incumbency, or a nominating petition for an elected office." MCL 169.203(1)(a). There is no evidence that Ms. Tarver filed a fee or a nominating petition for any elective office, nor is she a sitting judge to whom the affidavit of incumbency would apply. While Ms. Tarver admits that she filed an affidavit with the Michigan Republican Party on April 22, 2014, this affidavit is not one of the items listed in section 203(1)(a) that triggers the designation of "candidate" upon filing under this subsection. Although political party rules may have required her to file this affidavit, she was not required by the Michigan Election Law (1954 PA 116, MCL 168.01 *et seq.*) to do so. Each political party, at its state convention, may nominate 2 candidates for the State Board of Education in each even year. MCL 168.282a. Not more than one business day after its convention, each political party certifies the names of its nominees for the State Board of Education to the Secretary of State. MCL 168.283. The Michigan Election Law contains no filing requirement of a State Board of Education candidate prior to his or her nomination by the party. Therefore, the affidavit filed by Ms. Tarver with the Michigan Republican party did not make her a "candidate" as defined by the Act.

A person also becomes a candidate when she "[i]s *nominated* as a candidate for elective office by a political party caucus or convention and whose nomination is certified to the appropriate filing official." (Emphasis added.) MCL 169.203(1)(b). Ms. Tarver was not nominated nor certified by the Republican Party as a candidate for any elective office.

Finally, a person becomes a candidate once she "[r]eceives a contribution, makes an expenditure, or gives consent for another person to receive a contribution or make an expenditure with a view to bringing about the individual's nomination or election . . ." In her answer, Ms. Tarver indicated that her committee received no direct contributions and the first expenditure made on behalf of her committee was on August 18, 2014.

When asked by the Department to provide additional information regarding her candidate website and Post Office Box, Ms. Tarver provided evidence that suggests the website was updated to reflect her candidacy for the State Board of Education on August 18, 2014, and that the Post Office Box was obtained on August 13, 2014 and paid for by Tarver Consulting. Ms. Tarver asserts that this Post Office Box was not listed on the website until August 18, 2014, when the updates to the website were made.

Ms. Tarver indicated that her committee received an in-kind contribution for the expenses related to the change to her website on August 18, 2014. She further indicated these changes included the addition of the Post Office Box address, also triggering an in-kind contribution from Tarver

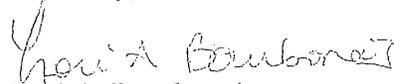
Consulting on August 18, 2014. Although there was a "donate" button on her candidate website, Ms. Tarver asserts that no direct contributions were received through the website or Post Office Box.

In the absence of evidence to the contrary, the Department takes Ms. Tarver at her word that her committee received no direct contributions through the website or Post Office Box. It appears to the Department that the evidence also supports a conclusion that the first in-kind contributions to Ms. Tarver's committee occurred on August 18, 2014 for the website and Post Office Box. Additionally, no evidence has been provided to indicate Ms. Tarver made any expenditures before this date.

Based on the evidence provided, the Department has determined that under the definition of candidate provided in the Act, Ms. Tarver became a candidate on August 18, 2014. She then filed her Statement of Organization for her committee on August 26, 2014, within the timeframe required by section 24 of the Act. MCL 168.224.

Because the evidence supports a conclusion that Ms. Tarver timely filed her Statement of Organization, your complaint is dismissed.

Sincerely,



Lori A. Bourbonais
Bureau of Elections
Michigan Department of State

c: Linda Lee Tarver