



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

DRAFT

Brett McRae
Campaign Finance Services
403 W. Fourth Street
Charlotte, MI 48813

Dear Mr. McRae:

In correspondence dated May 23, 2011, you submitted a request to the Department of State (Department), asking it to issue a declaratory ruling pursuant to the Michigan Campaign Finance Act (MCFA or Act), MCL 169.201 et seq. Your request asked the Department to resolve the question of whether an ordinance adopted by the Wayne County Commission imposing electronic reporting requirements on those committees required by the MCFA to file campaign statements with the county clerk and who meet a particular monetary threshold violates Section 56 of the MCFA.

The Department may issue a declaratory ruling when an interested party submits a written request describing the precise legal question presented and a reasonably complete statement of facts. MCL 169.215(2), Mich. Admin. Code R 169.6. The Department has carefully reviewed your letter of May 23, 2011 and determined that your request does not contain a sufficient statement of facts to issue a declaratory ruling. However, the Act requires the Department to issue an interpretive statement that gives an informational response to your question. MCL 169.215(2).

Your request indicates that the Wayne County Commission has adopted an ordinance which imposes electronic reporting requirements on those committees required by the MCFA to file campaign statements with the Wayne County Clerk and that do not invoke the \$1,000 reporting waiver.¹

You submitted the following question for the Department's consideration:

¹ An independent, political, or political party committee that "does not expect in a calendar year to receive or expend an amount in excess of \$1,000.00 [,]" may qualify for a reporting waiver. MCL 169.224(6). A reporting waiver for other types of committees may be granted if the committee "does not expect for each *election* to receive ... or expend an amount in excess of \$1,000.00." MCL 169.224(5) (emphasis added). A reporting waiver excuses a committee from filing campaign statements unless it exceeds the monetary threshold; once it receives or spends more than \$1,000.00 in any reporting period, the committee is obligated to file campaign statements. MCL 169.233(6), 169.235(4).

“In view of the fact that Section 18(15) of the MCFA only requires electronic reports to be filed by committees which (1) file with the Secretary of State, and (2) which receive or expend \$20,000.00 or more in a year, does the Wayne county ordinance violate Section 56 of the MCFA, which provides that a local unit of government may not adopt an ordinance or resolution that is more restrictive than the provision contained in the MCFA?”

Section 56 of the MCFA, which restricts the power of local units of government to enact campaign financing ordinances or resolutions, provides:

“A county, city, township, village, or school district may not adopt an ordinance or resolution that is more restrictive than the provisions contained in this act.”

In other words, a local unit of government is prohibited from enacting an ordinance which, when compared to the MCFA, is more restrictive or confining.² Our research did not uncover case law construing MCL 169.256 or similar laws,³ but the Attorney General interpreted this provision in relation to a provision of the Detroit City Charter that purported to require candidates for city offices to disclose the sources of all contributions, even though state law at the time⁴ only required the disclosure of contributors who gave more than \$20.00. Op Atty Gen No 5211 (August 16, 1977). Comparing the (former) state law to the Detroit ordinance and applying section 56, the Attorney General concluded, “the ordinance may not require the disclosure of the names of campaign contributors who contribute less than \$20.01.” Id. It was the Attorney General’s opinion that Detroit City Charter ordinance requiring the disclosure of all campaign contributions was more restrictive than the MCFA provision in effect at the time that mandated the disclosure of the names of only those contributors who donated \$20.01 or more.

In addition to the section 56 limitation on the authority of a local government to regulate campaign financing, it is a general rule of law that ordinances of a local level of government may not be in conflict with the general law of the State. *McNeil v. Charlevoix County*, 275 Mich App 686 (2007). To determine if there is a conflict, the test is whether the ordinance prohibits an act which the statute permits, or permits an act which the statute prohibits. *Miller v. Fabius Township Board*, 366 Mich. 250 (1962). “Mere differences in detail do not render them conflicting. If either is silent where the other speaks, there can be no conflict between them. Where no conflict exists, both laws stand.” *Walsh v. River Rouge*, 385 Mich. 623 (1971).

Thus, in order to determine whether the Wayne County ordinance that is the subject of your request violates MLC 169.256, one must compare the ordinance to relevant provisions of the MCFA. Under MCL 169.218(3),

² “Restrictive” means “serving or tending to restrict,” and the word “restrict” is defined as, “to confine within bounds, or to place under restrictions as to use or distribution.” *Merriam-Webster’s Collegiate Dictionary, Eleventh Edition* (online edition available at www.merriam-webster.com).

³ The Lobby Act, 1978 PA 472, provides, “[a] county, city, township, village, or school district may not adopt an ordinance or resolution that is more restrictive than the provisions contained in this act.” MCL 4.425. A comparable law is codified in the Fire Prevention Code, 1941 PA 207, which provides, “[a] local unit of government shall not enact an ordinance or ordinances more restrictive than the requirements included in sections 5j to 5n [MCL 29.5j to 29.5n].” MCL 29.5o(3).

⁴ Until 2000, the disclosure requirements of the MCFA only applied to “contributions received ... from persons who contributed more than \$20.00.” MCL 169.226(1)(d)-(f) (repealed by 1999 PA 237, eff. March 10, 2000); see also former MCL 169.229(1)(a)-(b) (amended by 1999 PA 237, eff. March 10, 2000).

“each committee required to file with the secretary of state that received or expended \$20,000.00 or more in the preceding calendar year or expects to receive or expend \$20,000.00 or more in the current calendar year shall electronically file⁵ all statements and reports required under this act [.]”

Certain committees are required to file campaign statements with the county clerk, including a ballot question committee supporting or opposing a local ballot question or “a committee reporting contributions or expenditures for a candidate within only one county [.]” MCL 169.236(2), (5). The MCFA does not specify the method of filing campaign statements with the county clerk.

Section 3(b) of Wayne County Enrolled Ordinance 2011-048,⁵ the Campaign Finance Reporting Ordinance, states:

“Beginning with the annual campaign statement due January 31, 2012, each committee required to file with the Wayne County Clerk that received or expended \$1,000 or more in the preceding calendar year or expects to receive or expend \$1,000 or more in the current calendar year shall electronically file all statements and reports required by the Campaign Finance Act.”

The Campaign Finance Reporting Ordinance further provides, “[n]othing herein is intended to conflict with or supersede any provision of the Campaign Finance Act, including the filing, coding and cross-indexing system developed by the Michigan Secretary of State pursuant to MCL 169.215(b).” Wayne County Enrolled Ordinance 2011-048, section 3(f).

Comparing the Campaign Finance Reporting Ordinance of Wayne County to the MCFA, it appears that the Wayne County ordinance imposes a more restrictive reporting requirement by making the threshold for electronic reporting receiving or expending \$1,000.00, while the Act’s threshold for electronic reporting is receiving or expending \$20,000.00. Because of this more restrictive requirement, it is the Department’s opinion that the ordinance conflicts with MCL 169.256. The statement of intent embodied in section 3(f) of the Campaign Finance Reporting Ordinance does not alter our conclusion.

Furthermore, since the MCFA is silent on the method of filing campaign statements with the county clerk, a county may pass an ordinance that specifies the method. It is the Department’s opinion that the method for filing may include electronic filing, but the requirements triggering the electronic filing must not be more restrictive than the provisions contained in the MCFA.

⁵ Appended to your request was “Proposed Ordinance No. 2011-___” dated February 24, 2011. The enacted version is available online at <http://library.municode.com/index.aspx?clientID=13032&stateID=22&statename=Michigan>.