

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



DANA NESSEL
ATTORNEY GENERAL

Warrant Denial Memorandum

August 16, 2021

TO: Fadwa Hammoud
Solicitor General

FROM: Danielle Hagaman Clark
Division Chief
Criminal Trials & Appeals

RE: **Possible criminal charges related to Ron Weiser's payments to Stan Grot in exchange for his dropping out of the SOS race**

Attached: SOS announcement of conciliation

Summary and Denial Recommendation:

On July 2, 2021, open media sources began reporting that the Michigan GOP (MIGOP) had agreed with the Secretary of State (SOS) to resolve a campaign finance violation complaint by paying a \$200,000 fine. MIGOP Chairman Ron Weiser publicly agreed to contribute the \$200,000 payment from his personal funds to resolve the complaint. You have requested whether a criminal investigation could reasonably be expected to warrant charges. After a thorough review of the statutes that apply to these facts, I am recommending no further action be taken.

Facts:

On February 4, 2021, MIGOP Chairwoman Laura Cox wrote a letter to Jonathon Brater, Director, Bureau of Elections for the Michigan Department of State claiming there was a possible violation of the Michigan Campaign Finance Act and that if the SOS determined there was a violation, then the Michigan Republican Party (MIGOP) wished to enter into a conciliation agreement with the SOS.

Mrs. Cox indicated in her letter that in December 2020 the MIGOP discovered payments made to Stan Grot from the MIGOP that "could constitute "expenditures" as defined in the "Michigan Campaign Finance Act" and that the disclosure was an effort to "resolve any possible violations that may have occurred." The letter did not

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include any additional records, papers or materials related to the possible expenditure or details surrounding the payment.

In response, SOS employee Melissa Malerman, Director of the Disclosure, Filings and Compliance Division of the Michigan Department of State, Bureau of Elections authored a letter to then MIGOP Chairman Ron Weiser acknowledging receipt of Mrs. Cox's letter and requesting all the documents related to the expenditure to Stan Grot.

SOS eventually received documents from the MIGOP that showed a personal service agreement executed between MIGOP Chairman Ronald Weiser and Stanley Grot wherein Grot would withdraw from the statewide Secretary of State race in exchange he would be paid up to \$230,000 with payments of \$10,000 being made monthly starting in July 2018. This agreement was signed by both parties on July 3, 2018. The agreement provided that Grot would be available as an "Advisor" and that he must keep the existence of the agreement secret. This "personal service agreement" was released via signed agreement between the parties on February 13, 2019, with the payment of \$140,000. Seven payments were made from the MIGOP's administrative account to Stanley Grot, between August 20, 2018 and February 12, 2019 totaling \$200,000.00. This amount was paid to Mr. Grot pursuant to a Memorandum of Agreement (MOA) executed by Mr. Grot and MIGOP Chairman Ron Weiser on July 3, 2018, which was expressly made "contingent upon the execution of a letter withdrawing from the Secretary of State race no later than August 17, 2018."

Malerman, in a letter dated May 3, 2021 indicated the findings of the SOS:

"The registration, disclosure and enforcement provisions of the MCFA apply to "contributions" and "expenditures," which are defined respectively as "a payment ... expenditure, contract, payment for services ... of money or anything of ascertainable monetary value, or a transfer of anything of ascertainable monetary value to a person, made for the purpose of influencing the nomination or election of a candidate" and "a payment ... 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 169.204(1), 169.206(1).

Payments made pursuant to a personal services contract that by its express terms "is contingent upon the execution of a letter withdrawing from the Secretary of State race" constitute expenditures in opposition to the nomination of Mr. Grot, 3 as evidenced by the parties' agreement that no payments were due under the MOA unless and until Mr. Grot terminated his campaign for Secretary of State. MRP promised to pay Mr. Grot to induce him to withdraw his candidacy and in return, Mr. Grot promised to refrain from denigrating other candidates and to endorse the Republican nominee. Although the MOA purported to

engage Mr. Grot to perform services exempt from MCFA regulation, 4 no payments would have been made to or services owed by Mr. Grot if he continued his pursuit of the Republican nomination beyond August 17, 2018. Therefore, payments made to Mr. Grot under the MOA represent expenditures that should have been made from and disclosed by the MRP's state account.

Instead, MRP used administrative account funds for seven expenditures to Mr. Grot totaling \$200,000.00. Administrative accounts are separate bank accounts used for depositing funds received from prohibited sources, such as corporate or labor union treasury funds. Payments from administrative accounts are strictly limited to "paying administrative expenses that are totally unrelated to the party's political activity. These funds ... may not be used for candidate support or opposition."5

In addition to constituting an improper expenditure to Mr. Grot, this disbursement also represents an excess contribution in violation of MCL 169.252, which prohibits a state political party from giving a contribution in excess of 20 times the limitation for individuals. For 2018, the applicable contribution limit for the MRP to a statewide candidate was \$136,000. *Id.* A violation of this section is a misdemeanor. MCL 169.252(9). Here, by making a direct payment to Mr. Grot totaling more than \$136,000, the party has given a contribution in excess of the contribution limitation."

Malerman requested additional information from the MIGOP and MIGOP contested the findings of the SOS relative to the payment. The parties ultimately entered into a conciliation agreement on or about June 30, 2021 where MIGOP agreed to pay the State of Michigan \$200,000.00 to resolve the complaint.

The documents setting forth these facts were made publicly available by the SOS here: https://www.michigan.gov/documents/sos/MRP_Web_Posting_729548_7.pdf

Legal Analysis

The Michigan Campaign Finance Act is codified at MCL 169.201 and regulates political activity, campaign financing, restricts campaign contributions and expenditures, requires campaign statements and reports, regulates anonymous contributions, regulates campaign advertising and literature, provides for segregated funds for political purposes, provides for the use of public funds for political purposes, creates certain funds, provides for reversion, retention, or refunding of unexpended balances in certain funds, requires other statements and reports, regulates acceptance of certain gifts, payments, and reimbursements, prescribes the powers and duties of certain state departments and state and local officials and employees, provides appropriations, prescribes penalties and provide remedies, and repeals certain acts and parts of acts. The conduct engaged in by Mr. Weiser and Mr. Grot is covered by this Act.

The Act proscribes a procedure that must be followed in the event the SOS deems a violation has occurred. That procedure is described at MCL 169.215(10). It states in pertinent part:

“If the secretary of state determines that there may be reason to believe that a violation of this act occurred, the secretary of state shall endeavor to correct the violation or prevent a further violation by using informal methods such as a conference, conciliation, or persuasion, and may enter into a conciliation agreement with the person involved. Unless violated, *a conciliation agreement is a complete bar to any further civil or criminal action* with respect to matters covered in the conciliation agreement.” (emphasis added).

Because the payment to the State of Michigan has been made, there can be no violation of the conciliation agreement entered into by the MIGOP and the SOS. This acts as a complete bar to any criminal action that could be undertaken by the MDAG.

Notwithstanding the procedure as defined in MCL 169.215(10), I was asked to determine if any other criminal statutes could apply to the actions of Mr. Grot and Mr. Weiser.

MCLA 168.931(1)(i) was reviewed for possible violation of criminal law. Sec. 931. (1) states:

A person who violates 1 or more of the following subdivisions is guilty of a misdemeanor: (i) A delegate or member of a convention shall not solicit a candidate for nomination before the convention for money, reward, position, place, preferment, or other valuable consideration in return for support by the delegate or member in the convention. A candidate or other person shall not promise or give to a delegate money, reward, position, place, preferment, or other valuable consideration in return for support by or vote of the delegate in the convention.

The Republican Convention in which the delegates elected the candidate for Secretary of State was held on August 25, 2018. The delegates to that State convention were elected at County Conventions held throughout the state on Thursday, August 16, 2018. Mr. Grot made his deal with Mr. Weiser on July 3, 2018, well before the county convention. Thus he was not then a “delegate”, as would be required by the statute. Therefore, MCLA 168.931(1)(i) was not violated by their conduct in this case.

I then reviewed the criminal statutes related to extortion, bribery and misconduct in office. None of these crimes fit based on the facts of this case and therefore would not apply.

Extortion is the exaction of money, under color of official right from an unwilling payor. *People v. Ritholz* (1960) 103 N.W.2d 481, 359 Mich. 539, certiorari denied 81 S.Ct. 275, 364 U.S. 912, 5 L.Ed.2d 226. MCLA 750.214, extortion by public officers is a misdemeanor punishable by up to 90 days in jail. It can be found at Sec. 214:

“Any person who shall willfully and corruptly demand and receive from another for performing any service, or any official duty, for which the fee or compensation is established by law, any greater fee or compensation than is allowed or provided for the same, and any public officer, for whom a salary is provided by law in full compensation for all services required to be performed by him, or by his clerks or deputies, who shall willfully and corruptly demand and receive from any person any sum of money as a fee or compensation for any services required by law to be performed by him in his said office, or by his clerks or deputies, shall be guilty of a misdemeanor; but no prosecution for such offense shall be sustained unless it shall be commenced within 1 year next after the offense was committed.”

In a prosecution for bribery, a payor voluntarily presses his money upon the public official hoping thereby to influence his official action, and while “bribery” and “extortion” are distinct offenses the same facts may be made basis for charge of either extortion or bribery depending upon the intent with which the money is paid. *People v. Ritholz* (1960) 103 N.W.2d 481, 359 Mich. 539, certiorari denied 81 S.Ct. 275, 364 U.S. 912, 5 L.Ed.2d 226. MCLA 750.117 public officer; bribery is a felony punishable by up to 4 years in prison. It can be found at Sec. 117:

“Any person who shall corruptly give, offer or promise to any public officer, agent, servant or employee, after the election or appointment of such public officer, agent, servant or employee and either before or after such public officer, agent, servant or employee shall have been qualified or shall take his seat, any gift, gratuity, money, property or other valuable thing, the intent or purpose of which is to influence the act, vote, opinion, decision or judgment of such public officer, agent, servant or employee, or his action on any matter, question, cause or proceeding, which may be pending or may by law be brought before him in his public capacity, or the purpose and intent of which is to influence any act or omission relating to any public duty of such officer, agent, servant or employee, shall be guilty of a felony.”

Neither extortion nor bribery are applicable in this case because the only person who could be considered a public official would be Mr. Weiser. But as the Chairman of the MIGOP he would not be a public official for purposes of the criminal statutes. See below for full analysis of what constitutes a public official. Because it is Mr. Weiser who is the payor, neither of these crimes apply.

Misconduct in Office is a common law offense found at MCL 750.505 having a penalty of 5 years. For someone to be guilty of misconduct in office they must have

been a public officer that committed misconduct. Misconduct can be malfeasance, which is committing a wrongful act, misfeasance which is performing a lawful act in a wrongful manner or nonfeasance which is failing to do an act required by the duties of the office. The misconduct must have been committed while exercising the duties of the office or under the color of the office and it must have been done with corrupt intent. A corrupt intent is intentional or purposeful misbehavior or wrongful conduct pertaining to the requirements or duties of an office by an officer. It is one where the act is done with a sense of depravity, perversion or taint. A taint is a trace of something bad or offensive.

The analysis begins and ends with what legally constitutes a "public official." The question of whether Mr. Weiser is a public official is a purely legal one, *People v Coutu*, 459 Mich 348, (1999) ("[A] determination whether defendant is a public officer is a question of law "), and it is here that the charge will ultimately fail.

Under the common law, the crime of misconduct in office is defined as "corrupt behavior by an officer in the exercise of the duties of his office or while acting under color of his office." *People v Perkins*, 468 Mich 448, 456 (2003), quoting *People v Coutu*, 459 Mich 348, 354 (1999). The universe of individuals subject to this common-law crime extends to "public officers," also called "public officials." *Coutu*, 459 Mich at 358 n 12 (there is "no distinction between the terms 'public officer' and 'public official'"). Only those stationed to act in the public trust qualify as "public official" or "public officer" for purposes of misconduct in office.

In elemental form, Michigan courts evaluate the "five indispensable elements" when evaluating whether a position constitutes a public office:

- (1) It must be created by the Constitution or by the legislature or created by a municipality or other body through authority conferred by the legislature;
- (2) it must possess a delegation of a portion of the sovereign power of government, to be exercised for the benefit of the public;
- (3) the powers conferred, and the duties to be discharged, must be defined, directly or impliedly, by the legislature or through legislative authority;
- (4) the duties must be performed independently and without control of a superior power other than the law, unless they be those of an inferior or subordinate office, created or authorized by the legislature, and by it placed under the general control of a superior officer or body;
- (5) it must have some permanency and continuity, and not be only temporary or occasional. [*Coutu*, 459 Mich at 354-355 (citation omitted).]

The existence of an oath or bond requirement is "of assistance in determining whether a position is a public office." *Id.* at 355. Notably, the status of "public officer" is not limited to those in the upper reaches of government. Michigan courts have found a broad and varying group of offices qualify as public offices, including inferior local and municipal offices. See, e.g., *Council of Organizations & Others for*

Ed About Parochiaid, Inc v Governor, 455 Mich 557, 585 (1997) (public school academy board members); *Dosker v Andrus*, 342 Mich 548, 552 (1955) (deputy register of deeds); *People v Milton*, 257 Mich App 467, 468 (2003) (city police officer); *Coutu*, 459 Mich at 356 (deputy sheriff). The "correct rule" focuses on the duties delegated and the functions performed by the individual. *People v Freedland*, 308 Mich 449, 455 (1944). If the officer is "invested with some portion of the sovereign functions of the government," *id.*, he is eligible for status as "public officer."

In turning to the facts of this case, Mr. Weiser is the Chairman of the Michigan GOP. This position is not statutorily created, requires no oath and is not invested with any sovereign function of the government. Our government does not require the creation or maintenance of political parties. First, the position "must be created by the Constitution or by the legislature or created by a municipality or other body through authority conferred by the legislature." *Coutu*, 459 Mich at 354.

Second, the position "must possess a delegation of a portion of the sovereign power of government, to be exercised for the benefit of the public." *Coutu*, 459 Mich at 354. As the Chairman of the MIGOP there is no delegation of a portion of the sovereign power of government. The MIGOP does not serve a government function. While it seeks to help candidates that would serve in elected positions of the government, presumably for the benefit of the public, there is no power delegated from the government to the MIGOP.

Third, "the powers conferred, and the duties to be discharged, must be defined, directly or impliedly, by the legislature or through legislative authority." *Coutu*, 459 Mich at 354. The powers and duties held by Mr. Weiser are not legislatively determined.

Fourth, "the duties must be performed independently and without control of a superior power other than the law" or they must "be those of an inferior or subordinate office, created or authorized by the legislature, and by it placed under the general control of a superior officer or body." *Coutu*, 459 Mich at 354.

Fifth, the position "must have some permanency and continuity, and not be only temporary or occasional." *Coutu*, 459 Mich at 354

In sum, the analysis for whether or not Mr. Weiser is a public official fails on its face and therefore a charge of misconduct in office fails.

The actions of Mr. Weiser are no doubt offensive. Paying someone to step down from a statewide election is corrupt behavior. Paying a less favored candidate, to drop out of the primary in order for a stronger candidate to prevail reeks of offensive behavior. But because he is not a public official, this charge fails.

Conclusion:

While the questionable behavior of Mr. Weiser and Mr. Grot is grounds for a violation of the Michigan Campaign Finance Act, the Act itself lays out the procedure by which violations must be handled. Because the MIGOP and the SOS were able to reach a conciliation agreement regarding the \$200,000 payment, it acts as a complete bar to any criminal action related to this behavior. Considering other criminal statutes, they simply do not apply to the facts of this case because Mr. Weiser is not a public officer as defined by law,