



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

MEMORANDUM

DATE: October 12, 2015
TO: Candidate Committees Registered on the State Level
FROM: Michigan Department of State, Bureau of Elections
SUBJECT: **INFORMATION FOR INCUMBENT OFFICEHOLDERS**

The following memorandum provides information on the Michigan Campaign Finance Act (MCFA) concerning officeholders who are:

- 1) currently serving and are not term limited;**
- 2) serving their final terms due to term limits; and**
- 3) who have left office.**

The information pertains to officeholders in the following offices: Governor, Lt. Governor, Secretary of State, Attorney General, State Board of Education, UofM Board of Regents, MSU Board of Trustees, WSU Board of Governors, State Senator and State Representative. This information does not apply to incumbent judicial officeholders.

Covered in this memo:

- Officeholders Currently in Office who are not Term Limited**
- Officeholders Currently in Office serving their Final Terms due to Term Limits**
- Former Officeholders who have left Office**
- Statements Owed**
- Seeking Another Office**
- Transferring Funds from one Candidate Committee to Another Candidate Committee belonging to the same Officeholder**
- Disposing of Debts from a Previous Election Cycle**
- Leadership PACs**
- Dissolving the Candidate Committee**
- Questions?**

Officeholders Currently in Office who are not Term Limited

- An officeholder who is presently in office and not term limited can use the funds in the candidate committee to pay for election expenses that further the candidate's nomination or election only for the office currently held, as a candidate is presumed to be seeking re-election for that particular office. The candidate committee cannot be used for the**

purpose of seeking a different office. If the candidate desires to seek another office, he or she needs to form a separate candidate committee for that new office. See the **“Seeking Another Office”** and **“Transferring Funds from one Candidate Committee to Another Candidate Committee belonging to the same Officeholder”** sections below.

The committee funds can also be used to make incidental office expenses as outlined in Section 9 of the MCFA, MCL 169.209. Section 9 reads:

- (1) "Incidental expense" means an expenditure that is an ordinary and necessary expense, paid or incurred in carrying out the business of an elective office. Incidental expense includes, but is not limited to, any of the following:
 - (a) A disbursement necessary to assist, serve, or communicate with a constituent.
 - (b) A disbursement for equipment, furnishings, or supplies for the office of the public official.
 - (c) A disbursement for a district office if the district office is not used for campaign-related activity.
 - (d) A disbursement for the public official or his or her staff, or both, to attend a conference, meeting, reception, or other similar event.
 - (e) A disbursement to maintain a publicly owned residence or a temporary residence at the seat of government.
 - (f) An unreimbursed disbursement for travel, lodging, meals, or other expenses incurred by the public official, a member of the public official's immediate family, or a member of the public official's staff in carrying out the business of the elective office.
 - (g) A donation to a tax-exempt charitable organization, including the purchase of tickets to charitable or civic events.
 - (h) A disbursement to a ballot question committee.
 - (i) A purchase of tickets for use by that public official and members of his or her immediate family and staff to a fund-raising event sponsored by a candidate committee, independent committee, political party committee, or a political committee that does not exceed \$100.00 per committee in any calendar year.
 - (j) A disbursement for an educational course or seminar that maintains or improves skills employed by the public official in carrying out the business of the elective office.
 - (k) A purchase of advertisements in testimonials, program books, souvenir books, or other publications if the advertisement does not support or oppose the nomination or election of a candidate.
 - (l) A disbursement for consultation, research, polling, and photographic services not related to a campaign.
 - (m) A fee paid to a fraternal, veteran, or other service organization.
 - (n) A payment of a tax liability incurred as a result of authorized transactions by the candidate committee of the public official.
 - (o) A fee for accounting, professional, or administrative services for the candidate committee of the public official.
 - (p) A debt or obligation incurred by the candidate committee of a public official for a disbursement authorized by subdivisions (a) to (o), if the debt or obligation was reported in the candidate committee report filed for the year in which the debt or obligation arose.

Additionally, committee funds may only be used to pay legal expenses of the officeholder that relate to a recall election; a recount of votes as provided in the Michigan election law;

compliance with this act or the Michigan election law; or that tangibly benefit the nomination or election of a candidate.

Care must be taken to ensure that all committee funds are used appropriately, either to make expenditures, pay incidental expenses, or for transfers expressly authorized by section 45 of the MCFA, MCL 169.245; disbursements for any other purpose are prohibited. In addition, committee funds cannot be treated as the candidate's personal funds or disbursed for the candidate's personal use.

A committee of an incumbent officeholder who is not serving his or her final term of office due to term limits is not eligible for dissolution while the candidate remains in office. However, an officeholder who is not term limited and fails to file for the ballot may dissolve the candidate committee after the deadline for filing for the ballot elapses.

Officeholders Currently in Office and serving their Final Terms due to Term Limits

An officeholder who currently holds office and is serving a final term due to term limits is prohibited from using committee funds to pay for expenditures (i.e., election expenses that further his or her nomination or election), as the committee exists for the purpose of assisting the candidate's nomination or election to *this particular office*. The committee cannot be used to seek a different office. If the candidate desires to seek another office, he or she must form a separate candidate committee for that new office. See the "**Seeking Another Office**" section below.

Again, care must be taken to ensure that all committee funds are used appropriately, either to pay incidental expenses or make transfers as authorized by section 45 of the MCFA, MCL 169.245. In addition, committee funds cannot be treated as the candidate's personal funds or disbursed for the candidate's personal use.

A candidate seeking another office and wishing to transfer funds from one candidate committee to another candidate committee should review the requirements for transferring the funds and seek advice from the Bureau of Elections with any questions or concerns. See the sections below titled "**Seeking Another Office,**" and "**Transferring Funds from one Candidate Committee to Another Candidate Committee belonging to the same Officeholder.**"

Former Officeholders who have left Office

Once the candidate is no longer holding office, the candidate committee cannot be used to make expenditures or pay incidental expenses. Instead, the committee must dispose of the funds in compliance with section 45 of the MCFA, MCL 169.245, as described below. See the "**Dissolving the Committee**" section below.

Former officeholders who have left office are encouraged to dissolve the committee as soon as possible to avoid late filing fees. A committee that is not dissolved and does not maintain a Reporting Waiver will be required to file campaign statements regardless of the committee's financial activity.

Statements Owed

Unless a committee maintains a Reporting Waiver, all candidate committees must file campaign statements according to the following schedule:

| Statement | Filing Schedule |
|--|---|
| Annual Campaign Statement | Each year by January 31 |
| Pre and Post-Election Campaign Statements | Before and after each election where the candidate's name appears on the ballot |
| Late Contribution Reports | Before each election where the candidate's name appears on the ballot. |
| July and October Quarterly Campaign Statements | In years where the candidate's name does <i>not</i> appear on the ballot |
| Dissolution Campaign Statement | Required of a committee that does not maintain a Reporting Waiver and is closing the committee account. |

Seeking a Another Office

As explained above, a candidate committee can only be used for a single office. If another office is being sought, the candidate must form a separate candidate committee for that new office by filing a new Statement of Organization as soon as the one of the following requirements is met:

- the candidate receives a contribution or makes an expenditure to further his or her nomination or election to the new office;
- the candidate gives someone else permission to receive a contribution or make an expenditure to further his or her nomination or election to the new office; or
- the candidate files for the ballot.

The officeholder must not deposit contributions intended for a new elective office into a candidate committee organized for the purpose of seeking the current or former elective office.

The funds of the separate candidate committees cannot be comingled, and the new committee must establish a separate bank account to accept contributions and make expenditures for the new office.

In addition, each candidate committee must separately file all required statements and reports.

Transferring Funds from one Candidate Committee to Another Candidate Committee belonging to the same Officeholder

Under certain circumstances, funds can be transferred from one candidate committee to another candidate committee belonging to the same individual. Such transfers are authorized if both of

the conditions below are met:

1. The contribution limits for the Candidate Committee receiving the funds equals or exceeds the contribution limits for the Candidate Committee transferring the funds; and
2. The Candidate Committees are simultaneously held by the same individual.

If both conditions are met, the transfer(s) can be made anytime and there is no limit on the amount that can be transferred. Once transferred to the new candidate committee, the funds cannot be transferred back to the original committee.

For disclosure purposes, the committee receiving the transfer must determine if the funds can be reported as a lump sum or if the source of the funds must be itemized and attributed to the original contributor. It is possible for a single transfer to include both funds that are reported as a lump sum transfer and itemized by contributor.

- When are Lump Sum Transfers Authorized?
 - Contributions received by a committee during a previous election cycle may be transferred as a lump sum. Lump sum transfers are reported by the transferring committee as a direct expenditure (Schedule 1B) and the receiving committee reports the funds as an Other Receipt (Schedule 1A-1).
- When must a Committee Itemize the Transferred Funds?
 - **Officeholders Currently in Office but not Term Limited:** If the officeholder is not prohibited from seeking re-election due to term limits and contributions were received after the candidate filed (or should have filed) a new Statement of Organization for a different office, then the transferred funds must be attributed to specific contributors. An acceptable accounting method must be used to identify the particular contributions (by source and amount) that comprise the transferred amount. The amount attributed to each person counts towards that person's contribution limit for the new committee. Acceptable accounting methods include FIFO (First-In-First-Out), LIFO (Last-In-First-Out) or another generally accepted accounting method.
 - **Officeholders Currently in Office serving their Final Terms due to Term Limits:** If the officeholder is currently serving his or her final term due to term limits and contributions were received after the General Election of the final term, the transferred funds must be attributed to specific contributors. An acceptable accounting method must be used to identify the particular contributions (by source and amount) that comprise the transferred amount. The amount attributed to each person counts towards that person's contribution limit for the new committee. Acceptable accounting methods include FIFO (First-In-First-Out), LIFO (Last-In-First-Out) or another generally accepted accounting method.
 - In both instances, itemized transfers are reported by the transferring committee as a direct expenditure (Schedule 1B) and the receiving committee reports the funds on the Itemized Contribution Schedule (Schedule 1A) from each contributor. The date of the transfer is used as the date of the contribution (Schedule 1A). While not

required, the committee is encouraged to send a correspondence to the Bureau of Elections stipulating the date and amount of the transfer when the campaign statement disclosing the transfer is filed.

Disposing of Debts from a Previous Election Cycle

Debts may be carried forward and paid in subsequent election cycles. Section 52(6) of the MCFA, MCL 169.252(6), sets out the requirements for paying debts from a previous election cycle with funds received in a current election cycle.

A contribution received by a candidate committee is considered to be for the current election cycle unless designated by the contributor for a previous election cycle. A contributor can designate a contribution for a previous election cycle if:

- The designation is made in writing for a specific election cycle identified by the contributor by the date of the election or the year of the election.
- It can be substantiated that the contributor did not reach the contribution limit set for the candidate in the election cycle identified in the designation; and
- The designated contribution does not exceed the candidate committee's outstanding debts from the election cycle identified in the designation.

Committees are encouraged to resolve all debts promptly to avoid future filing requirements and potential violations.

Leadership PACs

It has become common practice for officeholders to establish a "Leadership PAC." The MCFA does not define a Leadership PAC. Because of this, a Leadership PAC is registered as either a Political Committee or Independent Committee. An officeholder that chooses to establish a Leadership PAC must maintain separation between their candidate committee and the Leadership PAC.

A PAC is established by two (2) or more persons to collect and spend money to influence Michigan elections. Contributions received and expenditures made from the Leadership PAC must comply with the MCFA and all reporting requirements must be met. The Leadership PAC cannot be established to replace or perform the functions of the officeholder's candidate committee. Nor can a Leadership PAC be used to subvert the requirements, prohibitions or limits set by the MCFA. While not required, the committee is encouraged to include the officeholder's last name in the committee name.

A candidate committee cannot simply transfer funds to a Leadership PAC. A candidate committee can pay or reimburse the Leadership PAC for providing goods or services to the candidate committee that can be shown to either:

- tangibly benefit the candidate committee by furthering the candidate's nomination or election, or

- comply with the incidental expense provisions of the MCFA.

Committees will be asked to explain the transaction in response to a Notice of Error or Omission if a clear and acceptable justification is not provided at the time of filing the original campaign statement disclosing the transaction.

A Leadership PAC should be dissolved once it is no longer participating in Michigan elections. A committee that is not dissolved and does not maintain a reporting waiver must continue to file campaign statements as required by the MCFA.

Dissolving the Candidate Committee

A candidate committee can be dissolved when:

1. The officeholder is term limited and unable to seek this particular office;
2. The officeholder has left office; or
3. The officeholder has chosen not to seek election and the ballot access filing date has elapsed.

While in office during the final term, the remaining funds can continue to be used for incidental expenses as authorized by section 9 of the MCFA, MCL 169.209 and/or transferred in accordance with section 45 of the MCFA, MCL 169.245. However, once a candidate has left office, the disposition of the remaining funds must comply with section 45, which authorizes the following:

- Transferred to another eligible candidate committee belonging to that candidate.
- Given to a political party committee.
- Given to a tax exempt charitable organization, as long as the candidate does not become an officer or director of or receive compensation, either directly or indirectly, from that organization.
- Returned to the contributors of the funds upon termination of the campaign committee.
- If the person was a candidate for the office of state representative, given to a house political party caucus committee.
- If the person was a candidate for the office of state senator, given to a senate political party caucus committee.
- Given to an independent committee.
- Given to a ballot question committee.

To be eligible for dissolution, a committee that does not maintain a reporting waiver must file a request for dissolution. The request for dissolution is reviewed and granted or denied based on the requirements set out in the MCFA. A committee that does not maintain a reporting waiver must file a detailed campaign statement showing that the committee has a zero ending balance and zero debts. The committee must also have:

- no outstanding late filing fees due,
- no outstanding Notices of Failure to File, and
- no outstanding Notices of Error or Omission on file with the Bureau of Elections.

A committee with a reporting waiver will be automatically dissolved if the committee otherwise qualifies for dissolution.

Questions?

If you have any questions, please phone us at (517) 373-2540 or write us at the address indicated below.

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If you would like to visit our office or use an overnight delivery service, the address below is provided.

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