

Fracassi, Adam (MDOS)

From: Quiroga, Evelyn (MDOS)
Sent: Thursday, July 5, 2018 4:44 PM
To: Fracassi, Adam (MDOS)
Cc: Lovegrove, Amy (MDOS)
Subject: FW: Alpena Township

Hey there. I sent you an email earlier today from Bonnie Fredricks, the county clerk and she had received a flier that was put in with the township tax bills. The township clerk and supervisor contacted me with the following information. They are seeking guidance to address the issue before a complaint is filed.

The flyer was inserted without going through the proper approval channels and they are prepared to put additional controls in place to avoid the issue happening again. e

From: SOS, Disclosure
Sent: Thursday, July 5, 2018 4:39 PM
To: Quiroga, Evelyn (MDOS) <QuirogaE1@michigan.gov>
Subject: FW: Alpena Township

From: Kari Bleau <bleauk@alpenatownship.com>
Sent: Thursday, July 5, 2018 3:35 PM
To: SOS, Disclosure <Disclosure@michigan.gov>
Cc: Nathan Skibbe <skibben@alpenatownship.com>
Subject: Alpena Township

Hello Evelyn –

Per our conversation earlier today...the costs associated with the preparation of our tax bills which included the millage proposal flyer are as follows: Postage= \$3,139.13, folding/stuffing = \$3,072.34.

We look forward to hearing back from you regarding the next step in the process to resolve this situation.

Thank you
Karie Bleau
Alpena Township Clerk
989 356 0297 ext. 6
bleauk@alpenatownship.com



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

September 14, 2018

Dana Malcomson
Alpena Township Deputy Clerk

Laura Ellery-Somers
Alpena Township Treasurer
4385 U.S. 23 North
Alpena, Michigan 49707

Via Email: malcomsond@alpenatownship.com; ellerysomersl@alpenatownship.com

Re: *Alpena Township Self Report*
Campaign Finance Complaint
No. 2018-07-29-57

Dear Ms. Malcomson & Ms. Ellery-Somers:

The Department of State (Department) has completed its initial investigation of your self-report of potential violations of section 57 of the Michigan Campaign Finance Act (MCFA or Act), 1976 PA 388, MCL 169.257. This letter concerns the disposition of the Township's self-reported violation.

Prior Clerk Karie Bleu contacted our office on approximately July 5, 2018 and indicated that Alpena Township (Township) had sent a letter requesting voters to "Vote YES" for the Alpena Township Fire Department Millage. This letter was distributed through a property tax bill that was mailed to township residents. By request of the Department, Ms. Bleu indicated that postage to mail the tax bill was \$3,139.13¹, and employees were paid approximately \$3,072.34 to fold the letters and stuff envelopes.

Moreover, the investigation determined that the committee was given permission to place the millage letter into the tax bill by the Township Supervisor and the Board of Trustees. It was determined that the Board approved the mailing and the committee was originally going to hand out the flyers by going door to door.

At issue in the present complaint is whether the letter was improperly mailed out using Township resources in violation of MCL 169.257. The Department finds that the evidence supports a conclusion that a violation of the Act has occurred because the information was disseminated using township resources.

¹ Postage was billed at the normal rate rather than through a bulk mailing.

In Michigan, it is unlawful for a public body or an individual acting on its behalf to use or authorize the use of equipment, supplies, personnel, funds, or other public resources to make a contribution or expenditure. MCL 169.257(1). A public body is allowed to produce or disseminate factual information concerning issues relevant to the function of the public body. MCL 169.257(1)(b). The words “contribution” and “expenditure” are terms of art that are generally defined to include a payment or transfer of anything of ascertainable monetary value made for the purpose of influencing or made in assistance of the qualification, passage, or defeat of a ballot question. MCL 169.204(1), 169.206(1). If not an individual, a person who knowingly violates this section is guilty of a misdemeanor punishable by a fine up to \$20,000 or a fine equal to the amount of the improper expenditure – whichever is greater. MCL 169.257(4).

The flyer at issue states the following:

Vote YES on August 7th
Support The Alpena Township Fire
Department Millage

The letter then provides factual information about the millage and asks voters two more times to “Vote YES on August 7th.”

The flyer was produced by the committee members, but it was sent using public funds and resources, are the exact type of activity that section 57 of the Act prohibits. A public body or a person acting on its behalf may not expend public funds or use public resources to expressly advocate for the passage of a ballot question. Under the MCFA, express advocacy is defined as language that specifically urges voters to “vote yes,” “vote no,” “elect,” “defeat,” “support,” or “oppose” a ballot question or candidate, using these or equivalent words and phrases. MCL 169.206(2)(j). The flyer meets this standard and thus are not factual in nature as they expressly request a “yes vote” on three different occasions. The Department therefore finds that this flyer was not factual in nature.

Based upon your admission and self-report that the flyer was mailed with the tax bill, the Department also concludes that the evidence provided supports a conclusion that the Township used public resources to disseminate this letter. Your self-report indicates that this letter went out with the County/Township tax bill. This supports the conclusion that Township resources were utilized to disseminate this flyer.

Therefore, the evidence provided to the Department supports a conclusion that the Township expended public resources to advocate for the passage of a ballot question. Because the Township used public resources to produce and mail a flyer urging readers to “vote yes” on a township millage, the Department finds that there is a reason to believe that you violated section 57 of the Act.

Upon the finding of a potential violation, the Act requires the Department to “endeavor to correct the violation or prevent a further violation by using informal methods [,]” if it finds that there may be reason to believe that a violation has occurred, and if the Department is unable to correct or prevent additional violations, it must ask the Attorney General to prosecute if a crime has been

committed. MCL 169.215(10)(a). The objective of an informal resolution is “to correct the violation or prevent a further violation [.]” *Id.*

The Department has reviewed your submission and recognizes that the Township has already taken steps to put an audit process in place and ensure that this conduct does not occur in the future. Because of this, the Department offers to resolve this through execution of the enclosed conciliation agreement, which requires that the cost of postage be reimbursed to the Township. The purpose of this settlement is to correct the violation and deter the city from committing any further violations of section 57 in the future. (These funds may be raised through a MCFA committee or from a person’s personal funds, or both.)

If you wish to enter into the conciliation agreement, please return the original signed document to this office, along with proof of reimbursement of \$3,139.13 to the Township by October 5, 2018.

Please be advised that if the Department is unable to resolve this informally, it is required by MCL 169.215(10)-(11) to:

- 1) Refer the Township to the Attorney General with a request that his office prosecute it for the crime of expending public funds to make an expenditure, a misdemeanor violation of MCL 169.257(1); or
- 2) Conduct an administrative hearing to enforce the civil penalty provided in MCL 169.215(11), which provides that the Secretary of State may seek a civil fine of triple the penalty, plus up to \$1,000.00 for each violation of the Act.

If you have any questions, please do not hesitate to contact me.

Sincerely,



Adam Fracassi
Bureau of Elections
Michigan Department of State



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

July 31, 2018

Nathan Skibbe, Supervisor
Charter Township of Alpena

Via email: skibben@alpenatownship.com

Dear Mr. Skibbe:

Enclosed is a signed copy of the conciliation agreement entered into in response to the self-reported violation of the Michigan Campaign Finance Act (MCFA), 1976 P.A. 388, MCL 169.201 *et seq.* The Department considers this matter closed and resolved. If you have any further questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink that reads "Adam Fracassi".

Adam Fracassi
Bureau of Elections
Michigan Department of State

c: Timothy Gulden



RECEIVED/FILED
MICHIGAN DEPT OF STATE

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

JUN 14 AM 10:50

HS/GREAT SEAL

In the Matter of:

Alpena Township: Self Report
4385 US 23 North
Alpena, Michigan 49707

CONCILIATION AGREEMENT

Pursuant to MCL §169.215(10) of the Michigan Campaign Finance Act (the Act), MCL §169.201 *et seq.*, the Secretary of State and Alpena Township (Respondent) hereby enter into a conciliation agreement with respect to certain acts, omissions, methods, or practices prohibited by the Act.

The Secretary of State alleges that there may be reason to believe that Respondent violated MCL §169.257 by improperly spending township funds to mail a flyer to voters urging voters to support a local millage.

Therefore, Respondent, without admitting any issue of law or fact, except as stated herein, hereby voluntarily enter into this conciliation agreement and assure the Secretary of State that it will comply with the Act and the Rules promulgated to implement the Act.

By executing this conciliation agreement, Respondent certifies that a down-payment in the amount of \$750 has been paid to the Township. Respondent further certifies that starting on November 1st and continuing for the next six months, equal payments of \$398.19 will be made to the Township, with a grand total of \$3,139.13 being paid back to the township. This amount

represents the total amount of the township funds spent to mail the flyer. Proof of each payment shall be provided to the Secretary of State.

The Secretary of State and Respondent further agree that this agreement is in effect and enforceable for four years from the date it is signed by the Secretary of State or her duly authorized representative.

The Secretary of State and Respondent further agree that this agreement, unless violated, shall constitute a complete bar to any further action by the Secretary of State with respect to the alleged violation that resulted in the execution of this agreement.

The Secretary of State and Respondent further agree that the self-reported complaint and investigation that resulted in this agreement are disposed of and will not be the basis for further proceedings, except pursuant to this agreement.

The Secretary of State and Respondent further agree that this agreement will not prevent the Secretary of State from taking action for violations of this agreement.

The Secretary of State and Respondent further agree that Respondent's performance under this agreement shall be given due consideration in any subsequent proceedings.

The Secretary of State and Respondent further agree that this agreement, when signed, shall become a part of the permanent public records of the Department of State.

The Secretary of State and Respondent finally agree that the signatories below are authorized to enter into and bind the parties to this agreement and have done so by signing this agreement on the date below.



RUTH JOHNSON
SECRETARY OF STATE



Sally Williams, Director
Bureau of Elections

Date: 11/15/18

RESPONDENT

 Supervisor
Michelle P. Palvick


Authorized Representative
Alpena Township

Date: 11/8/2018