



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

December 17, 2013

Gideon D'Assandro
P.O. Box 14162
Lansing, Michigan 48901

Dear Mr. D'Assandro:

The Department of State (Department) has concluded its review of the complaint you filed against Sheriff Gene Wriggelsworth, 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 Sheriff Wriggelsworth improperly used public funds in connection with Lansing City Council candidate Chong-Anna Canfora's campaign. In Michigan, it is unlawful for a public body or individual acting on its behalf to use public resources to make a contribution or expenditure. MCL 169.257(1). A knowing violation of section 57 is a misdemeanor offense. MCL 169.257(3).

You filed your complaint on August 7, 2013. Mattis Nordfjord filed an answer on behalf of Sheriff Wriggelsworth on September 5, 2013, and you filed a rebuttal statement on September 19, 2013.

As evidence, you provided the Department a copy of two pieces of Ms. Canfora's campaign literature, which contained a picture of Sheriff Wriggelsworth holding a sign which states "KEEP CALM AND VOTE FOR CHONG [.]". The picture appears to have been taken in Sheriff Wriggelsworth's office.

In his response to your complaint, Mr. Nordfjord asserted that one of the narrow exceptions to section 57 of the Act applies, and that "only incidental public resources, if any, were used by Sheriff Wriggelsworth when he posed for the picture." He further asserted that the act of posing for a picture is not a contribution or expenditure as defined by the MCFA.

The MCFA prohibits a public body or an individual acting on its behalf from "us[ing] or authoriz[ing] the use of funds, personnel, office space, computer hardware or software, property, stationery, postage, vehicles, equipment, supplies, or other public resources to make a contribution or expenditure." MCL 169.257(1). The words "contribution" and "expenditure" are generally defined, in pertinent part, to include anything of ascertainable monetary value that is used to influence or assist a candidate's nomination or election. MCL 169.204(1), 169.206(1).

Section 57 of the Act specifically covers elected officials, but does provide some narrow exceptions.¹ One of the exceptions is for “[t]he expression of views by an elected or appointed public official who has policy making responsibilities.” MCL 169.257(1)(a). Mr. Nordfjord first asserts that this exception applies to Sheriff Wriggelsworth and the pictures in the campaign literature in question.

However, the Department addressed whether the endorsement of a candidate by a public official using public funds falls under this exception in its Interpretive Statement to Mr. David E. Murley, issued October 31, 2005. *Interpretive Statement to David Murley* (Oct. 31, 2005).² The Department determined that the use of public funds to endorse a candidate does not fall within this exception.

The Department reasoned:

Consistent with the First Amendment, section 57(1)(a) makes it clear that public officials are entitled to express their views on policy issues. Indeed, public officials have an obligation to take positions on controversial political questions so that constituents are fully informed and better able to assess their qualifications for office. [See OAG, 1969-1970, No 4647, p 87 (September 29, 1969)]. The occasional, incidental use of public resources to communicate with a constituent or the media on a ballot question falls within this exemption, as there are no resources devoted to an effort to assist or oppose the qualification passage or defeat of that question.

However, sending a mass e-mail or mailing that expressly advocates support for a ballot question or candidate or urges constituents to vote for or against a candidate or ballot question would result in the use of public resources to make an expenditure. The use of public resources in this manner falls squarely with the section 57 prohibition against using anything of ascertainable monetary value in assistance of, or opposition to, the nomination or election of a candidate, or the qualification, passage or defeat of a ballot question.

Interpretive Statement to David Murley, p 3 (Oct. 31, 2005). If public funds were expended in the course of posing for a picture to be used in campaign literature to endorse Ms. Canfora, it would be the type of expenditure that section 57 prohibits.

Additionally, the Department has concluded that there is no exception to section 57 to allow an incidental or *de minimis* expenditure of public funds. To the contrary, section 57 prohibits a public body or an individual acting on its behalf from using public money to make a contribution

¹ See MCL 169.257(1)(a)-(f).

² http://www.mi.gov/documents/2005_-_Interpretive_Statement_142179_7.pdf.

or expenditure, the definitions of which encompass "*anything of ascertainable monetary value*," to influence or assist a candidate's nomination or election. MCL 169.204(1), 206(1), 257(1).³

However, after reviewing the evidence submitted by the parties, the Department concludes that no evidence has been offered that would show an ascertainable monetary value in connection with a picture being taken of Sheriff Wriggelsworth while he met with a candidate for Lansing City Council, or his posing for that picture. Further, if the Department was able to assign a monetary value to the use of Sheriff Wriggelsworth's office to take the picture, section 57 of the MCFA contains an exception that allows the use of a public facility if any candidate has the same opportunity to use that facility. MCL 169.257(1)(d). No evidence has been provided that would support a determination that another candidate was denied the use of any Ingham County Sheriff public facility for a photograph.

As a result, your complaint is dismissed. The Department's file in this matter has been closed and no further enforcement action will be taken.

Sincerely,



Lori A. Bourbonais
Bureau of Elections
Michigan Secretary of State

c: Mattis D. Nordfjord

³ See *Declaratory Ruling to Kathleen Corkin Boyle*, p. 4 (Nov. 20, 2006);
http://www.michigan.gov/documents/sos/Kathleen_Corkin_Boyle_Final_Response_11-20-2006_178712_7.pdf.