

Campaign Finance Complaint Form
Michigan Department of State

2018 SEP -5 AM 10:26

This complaint form may be used to file a complaint alleging that someone violated the Michigan Campaign Finance Act (the MCFA, 1976 PA 388, as amended; MCL 169.201 *et seq.*). All information on the form must be provided along with an original signature and evidence. **Please print or type all information.**

I allege that the MCFA was violated as follows:

Section 1. Complainant		
Your Name	Judith Daubenmier	
Daytime Telephone Number	734-612-7137	
Mailing Address	4490 Lakeshore Ct.	
City	State	Zip
Brighton	MI	48116

Section 2. Alleged Violator		
Name	Sheriff Mike Murphy	
Mailing Address	150 S. Highlander Way	
City	State	Zip
Howell	MI	48843

Section 3. Alleged Violations (Use additional sheet if more space is needed.)

Section(s) of the MCFA violated:
Sec. 57

Explain how those sections were violated:
See attached.

Evidence that supports those allegations (attach copies of pertinent documents and other information):

See enclosed photos. One photo is from The commercial and the other is of a county sheriff's vehicle.

Section 4. Certification (Required)

I certify that to the best of my knowledge, information, and belief, formed after a reasonable inquiry under the circumstances, each factual contention of this complaint is supported by evidence.

X Judith M. Daubennier Aug. 28, 2018
Signature of Complainant Date

Section 5. Certification without Evidence (Supplemental to Section 4)

Section 15(6) of the MCFA (MCL 169.215) requires that the signed certification found in section 4 of this form be included in every complaint. However, if, after a reasonable inquiry under the circumstances, you are unable to certify that certain factual contentions are supported by evidence, you may also make the following certification:

I certify that to the best of my knowledge, information, or belief, there are grounds to conclude that the following specifically identified factual contentions are likely to be supported by evidence after a reasonable opportunity for further inquiry. Those specific contentions are:

X _____
Signature of Complainant Date

Section 15(8) of the MCFA provides that a person who files a complaint with a false certification is responsible for a civil violation of the MCFA. The person may be required to pay a civil fine of up to \$1,000.00 and some or all of the expenses incurred by the Michigan Department of State and the alleged violator as a direct result of the filing of the complaint.

Mail or deliver the completed complaint form with an **original signature and evidence** to the following address:

Michigan Department of State
Bureau of Elections
Richard H. Austin Building – 1st Floor
430 West Allegan Street
Lansing, Michigan 48918

Sec. 3 Alleged Violation

Livingston County Sheriff Michael Murphy, who is the head of the Livingston County Sheriff's Office, appeared in a television commercial in late July and August 2018 for the campaign of Attorney General Bill Schuette for governor. Sheriff Murphy appears in the ad standing next to a vehicle of the Livingston County Sheriff's Department. The markings of the vehicle are clearly visible in the enclosed photograph from the commercial. The entire commercial is available here: <https://www.youtube.com/watch?v=JbksIJsKiyY>

The enclosed photo of two Livingston County Sheriff's Department vehicles is from the county website and shows vehicles with the same markings of the vehicle in the Schuette commercial.

Appendix I of the Michigan Campaign Finance Candidate Manual from the Michigan Secretary of State's office states:

“Can a public official campaign using a publicly funded vehicle such as a patrol car? No. A publicly funded vehicle such as a patrol car must not be used to campaign. The prohibition would extend to attending campaign events, transporting campaign materials or any other exclusively campaign related use.”

The full Appendix is available here:

<https://mertsplus.com/mertsuserguide/index.php?n=MANUALS.AppendixI>

Sheriff Murphy, as head of the Livingston County Sheriff's Office, is covered by Sec. 57 of the Michigan Campaign Finance Act. Allowing a Livingston County Sheriff's Department vehicle in a television commercial for Bill Schuette's campaign for governor falls under the category of “any exclusively campaign-related use.”



Screen Shot from Schuette Commercial

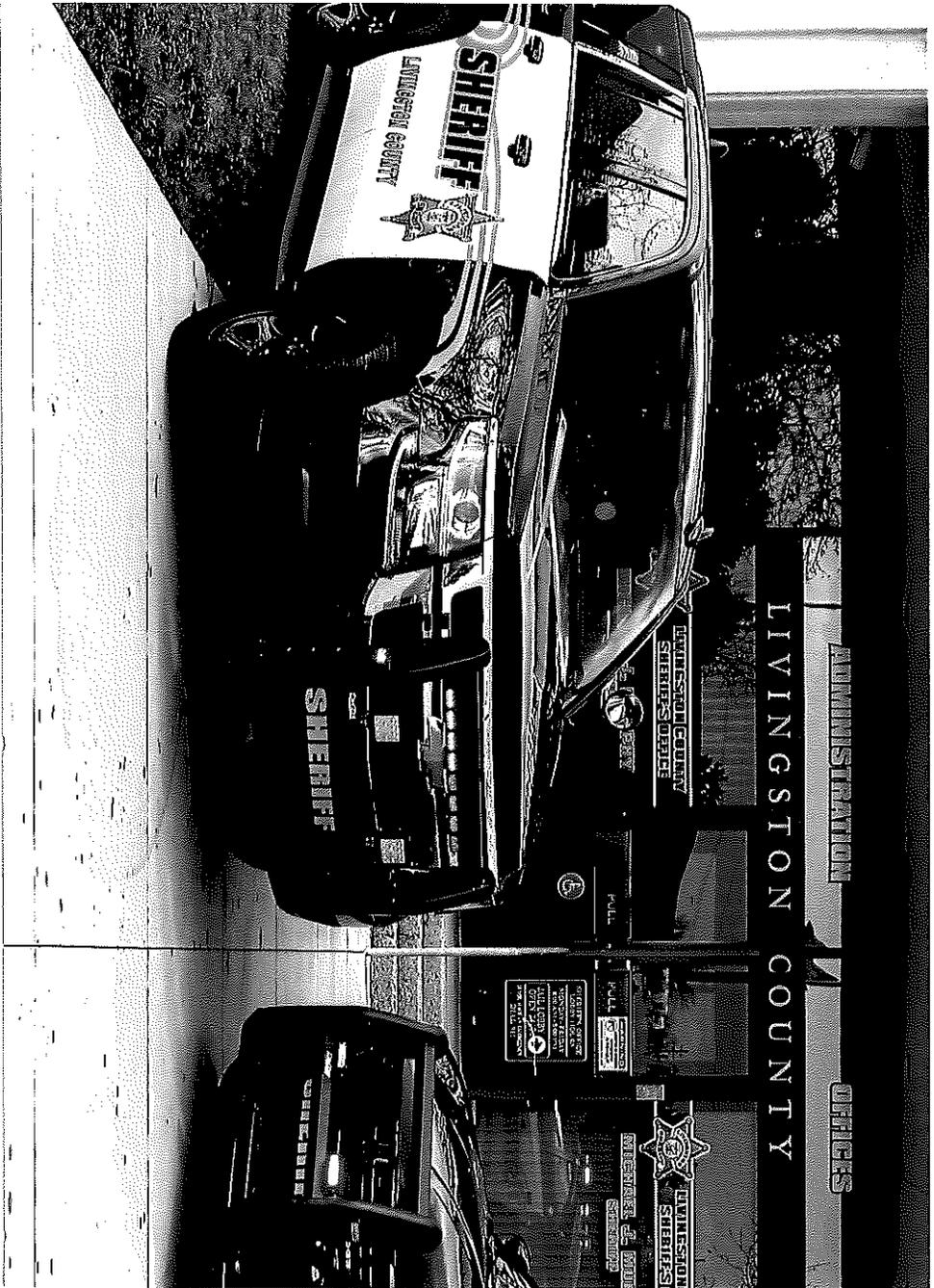


Photo of Livingston County Sheriff's Vehicle from
County website: <https://livingstoncountysheriffs.com>



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

September 12, 2018

Sheriff Mike Murphy
150 South Highlander Way
Howell, Michigan 48843

Re: *Daubenmier v. Murphy*
Campaign Finance Complaint
No. 2018-09-70-57

Dear Mr. Murphy:

The Department of State (Department) received a formal complaint filed by Judith Daubenmier against you alleging that you violated the Michigan Campaign Finance Act (MCFA or Act), 1976 PA 388, MCL 169.201 *et seq.* The investigation and resolution of this complaint is governed by section 15 of the Act and the corresponding administrative rules, R 169.51 *et seq.* A copy of the complaint and supporting documentation is enclosed with this letter.

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). 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). A knowing violation of this provision is a misdemeanor offense. MCL 169.257(4).

Ms. Daubenmier alleges that the Livingston County Sheriff Department appeared in a television commercial for Bill Schuette standing next to Sheriff vehicles in violation of section 57.

The purpose of this letter is to inform you of the Department's examination of these matters and your right to respond to the allegations before the Department proceeds further. It is important to understand that the Department is neither making this complaint nor accepting the allegations as true.

If you wish to file a written response to this complaint, you are required to do so within 15 business days of the date of this letter. Your response may include any written statement or additional documentary evidence you wish to submit. All materials must be sent to the Department of State, Bureau of Elections, Richard H. Austin Building, 1st Floor, 430 West Allegan Street, Lansing, Michigan 48918. If you fail to submit a response, the Department will render a decision based on the evidence furnished by the complainant.

Mike Murphy
September 12, 2018
Page 2

A copy of your answer will be provided to Ms. Daubenmier, who will have an opportunity to submit a rebuttal statement to the Department. After reviewing all of the statements and materials provided by the parties, the Department will determine whether “there may be reason to believe that a violation of [the MCFA] has occurred [.]” MCL 169.215(10). Note that the Department’s enforcement powers include the possibility of entering a conciliation agreement, conducting an administrative hearing, or referring this matter to the Attorney General for enforcement of the criminal penalty provided in section 57(4) of the Act.

If you have any questions concerning this matter, you may contact me at (517) 373-2540

Sincerely,

A handwritten signature in black ink, appearing to read "Adam Fracassi". The signature is written in a cursive style with a large, looping initial "A".

Adam Fracassi
Bureau of Elections
Michigan Department of State

c: Judith Daubenmier



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

October 3, 2018

Judith Daubenmier
4490 Lakeshore Court
Brighton, Michigan 48116

Dear Ms. Daubenmier:

The Department of State received a response to the complaint you filed against Mike Murphy, which concerns an alleged violation of the Michigan Campaign Finance Act (MCFA), 1976 P.A. 388, MCL 169.201 *et seq.* A copy of the response is provided as an enclosure with this letter.

If you elect to file a rebuttal statement, you are required to send it within 10 business days of the date of this letter to the Bureau of Elections, Richard H. Austin Building, 1st Floor, 430 West Allegan Street, Lansing, Michigan 48918.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam Fracassi".

Adam Fracassi
Bureau of Elections
Michigan Department of State

c: Mattis Nordfjord, Counsel for Mike Murphy

COHL, STOKER & TOSKEY, P.C.
ATTORNEYS AND COUNSELORS
601 NORTH CAPITOL AVENUE
LANSING, MICHIGAN 48933
(517) 372-9000

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COURTNEY A. GABBARA
SARAH K. OSBURN

OF COUNSEL
RICHARD D. McNULTY

September 26, 2018

Michigan Department of State
Bureau of Elections
c/o Adam Fracassi
Richard H. Austin Building, 1st Floor
430 W. Allegan
Lansing, MI 48918

RECEIVED
MICHIGAN DEPARTMENT OF STATE
SEP 27 2018 10:10 AM
BUREAU OF ELECTIONS

Re: Formal Complaint filed by Judith Daubenmier; Michigan Campaign Finance Act

Dear Mr. Fracassi:

The undersigned represents the Livingston County Sheriff, Mike Murphy, in his capacity as an elected public official. The allegations contained in the formal complaint filed by Judith Daubenmier do not constitute a violation of the Michigan Campaign Finance Act (MCFA), MCL 169.201 *et seq.* The allegations misinterpret Michigan law and lack legal merit. The formal complaint fails to demonstrate facts in support of the claim that Sheriff Murphy provided a quantifiable contribution or expenditure of public funds in connection with the Sheriff's appearance, along with the Sheriff's Office vehicle he is authorized to use, in a television commercial for Bill Schuette. Further, Sheriff Murphy's participation (standing and talking outside and in public) while a commercial was filmed at the expense of a candidate for public office, is protected by both the plain language of the MCFA (see MCL 169.247(1)(a)) and the First Amendment to the United States Constitution. US Const, AM I.

I. ANSWER TO COMPLAINT:

Sheriff Murphy's responses to each of the allegations contained in the formal complaint are as follows:

1. Admitted that the Livingston County Sheriff appeared in a television commercial for Bill Schuette and during the filming of the commercial, the Sheriff's official vehicle was parked in the background.
2. The allegation that the Sheriff's vehicle was used "to campaign" is denied. The vehicle was parked. Only the incidental use of public resources, if any, occurred when Sheriff Murphy was filmed speaking with Bill Schuette for a commercial. Further, the "political advocacy" of the Sheriff is expressly exempt for the prohibitions of the MCFA in light of the facts in

this case. The commercial is an expression of the Sheriff's views as an elected public official and these views, which are exempt from the prohibitions of the MCFA in light of the facts, were subsequently communicated by Bill Schuette's commercial.

3. Admitted Sheriff Murphy is an individual who, in his position as an elected public official, may act for a public body (the Livingston County Sheriff's Office) as contemplated by the language of MCL 169.257(1), which speaks for itself. Notably, this subsection **does not apply** to any of the following:

(a) **The expression of views by an elected or appointed public official who has policy making responsibilities.** [*emphasis added*] MCL 169.257(1) and (1)(a)

II. CONCLUSION AND REQUEST FOR RELIEF:

The complaint against Sheriff Murphy is without merit. No evidence was produced to show the Sheriff's actions fall outside the exemption to the MCFA. (MCL 169.257(1)(a)). Further, no support exists for Ms. Daubenmier's claim that an expenditure or contribution of public resources was made by the Sheriff. By standing and speaking with Bill Schuette while being filmed for a commercial the Sheriff provided only the incidental use of public resources, if any.

Minimally, the MCFA definitions for "contribution" and "expenditure" require "anything of ascertainable monetary value" to apply (see MCL 169.204(1) and MCL 169.206(1)). Sheriff Murphy met with a candidate for office and was filmed outside and in public while speaking to him in footage that was subsequently used for a commercial. This action is consistent with his role as an elected official and is expressly exempt from the prohibitions in section 57 of the MCFA. (MCL 169.257(1)(a)). Further, the Department of State has articulated the following position which has direct application to the facts at issue:

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, 1969-1070, No 4647, p 87 (September 29, 1969)]. **The occasional, incidental use of public resources to communicate with a constituent or 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. [*emphasis added*] *Interpretive Statement to David Murley* (Oct. 31, 2005)

The former Michigan Attorney General Frank Kelly authored OAG, 1969-1070, No 4647, p 87 (September 29, 1969) regarding freedom of speech of elected officers. Attorney General Kelly provides a summary of the fundamental protections of the First Amendment as follows:

The highest court in the land has ruled in *Wood v. Georgia*, (1962), 370 U.S. 375¹, **that elected public officials, as well as private citizens, have a federally protected right to freedom of speech guaranteed by the First Amendment to the Constitution of the United States.** This freedom extended to written statements of public officials criticizing other public officials. [*emphasis added*] OAG, 1969-1070, No 4647, p 87 at p 88 (September 29, 1969)

...

The court concluded that the utterances of the elected officials were entitled to be protected.

“The First Amendment envisions that persons be given an opportunity to inform the community of both sides of the issue under such circumstances.” (p. 391) OAG, 1969-1070, No 4647, p 87 at p 88 (September 29, 1969)

...

The First Amendment to the Federal Constitution forbidding the abridgement of freedom of speech protects expressions by elected public officials on controversial subjects. **The First Amendment in a representative government has been held to protect the rights of elected officials to express their views on issues of policy with the widest latitude.** [*emphasis added*] OAG, 1969-1070, No 4647, p 87 at p 89 (September 29, 1969)

Ms. Daubenmier’s complaint seeks a ruling which ignores more than 50 years of judicial interpretation of the First Amendment to the United States Constitution and the plain language of the MCFA; excepting the type of communication at issue from the prohibitions of the statute. Nothing of ascertainable monetary value was provided by Sheriff Murphy in this case. The incidental use of public resources, if any, which occurred during a meeting outside and in public with a candidate and speaking with him while being filmed for a commercial is covered by the exemption in MCL 169.257(1)(a). Nothing was produced by the Sheriff, the candidate used his own production methods, and no public funds were used to produce the campaign commercial attached to Ms. Daubenmier’s complaint.

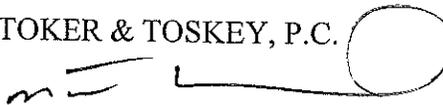
Sheriff Murphy respectfully requests that the Department of State find as follows:

1. That the actions by the Sheriff did not violate MCL 169.257(1) or any other provision of the MCFA;
2. Dismiss the complaint filed by Ms. Daubenmier’s and close this investigation; and
3. Grant Sheriff Murphy any other relief that is justified under the circumstances.

¹ *Wood v Georgia*, 370 US 375, 82 S Ct 1364, 8 L. Ed. 2d 569 (1962) *this case has not been overruled or superseded and remains controlling legal precedent.

Sincerely,

COHL, STOKER & TOSKEY, P.C.

A handwritten signature in black ink, consisting of a series of loops and a large circle at the end, positioned below the firm name.

Mattis D. Nordfjord

MDN/nam

cc Sheriff Mike Murphy

Ken Hinton, Livingston County Administrator/Controller

N:\Client\Livingston\Sheriff\Campaign Finance Complaint\Answer to Complaint.doc



STATE OF MICHIGAN
JOCELYN BENSON, SECRETARY OF STATE
DEPARTMENT OF STATE
LANSING

January 11, 2019

Mattis D. Nordfjord
Attorney for Sheriff Mike Murphy
Cohl, Stoker & Toskey, P.C.
601 North Capitol Avenue
Lansing, Michigan 48933

Re: *Daubenmier v. Murphy*
Campaign Finance Complaint
No. 2018-09-70-57

Dear Mr. Murphy:

The Department of State's (Department) investigation into the recently filed complaint against filed by Judith Daubenmier against Sheriff Mike Murphy alleging violations of the Michigan Campaign Finance Act (MCFA or Act), 1976 PA 388, MCL 169.201 *et seq.*, remains ongoing.

In order to assist the Department in reaching a determination, the Department requests answers to the following questions:

- 1. Please provide the date, time of day, and location where the commercial was filmed.**
- 2. Please identify the total number of sheriff vehicles that appeared in the commercial.**
- 3. Please identify whether the event was staged, the number of hours it took to stage the event, and whether the vehicle appearing in the commercial was taken out of service during that time.**
- 4. Please identify the length of time spent to record the commercial or the portion thereof in which Sheriff Murphy participated.**
- 5. Please indicate whether Sheriff Murphy or any county employee was paid to record the commercial or to assist in preparing for the commercial.**
- 6. Provide the hourly wage (including benefits) for Sheriff Murphy and any individual that assisted in preparing for the commercial.**

Mike Murphy
January 11, 2019
Page 2

The questions are designed to assist the Department in resolving the complaint. Answers may be provided to me by mail or via email at FracassiA@michigan.gov and **should be provided no later than January 25, 2019**. If you have any questions concerning this matter, you may contact me at (517) 335-3234.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam Fracassi". The signature is written in a cursive style with a large, looping initial "A".

Adam Fracassi
Bureau of Elections

Fracassi, Adam (MDOS)

From: Nicole Moles <nmoles@cstmlaw.com>
Sent: Monday, January 28, 2019 11:41 AM
To: Fracassi, Adam (MDOS)
Cc: 'Mike Murphy (MMurphy@livgov.com)'; 'Ken Hinton (KHinton@livgov.com)'; Matt Nordfjord; Courtney Gabbara
Subject: Daubenmier v. Murphy; Campaign Finance Complaint; No. 2018-09-70-57
Attachments: Fracassi Ltr re Answers.pdf

Mr. Fracassi:

Attached please find correspondence regarding the above matter.

Thank you,

Nicole A. Moles
Legal Assistant to Mattis D. Nordfjord, Robert D. Townsend
and Courtney A. Gabbara
Cohl, Stoker, & Toskey, P.C.
(517) 372-9000
nmoles@cstmlaw.com

This transmission is intended to be delivered only to the named addressee(s) and may contain information that is confidential, proprietary, attorney work-product or attorney-client privileged. If this information is received by anyone other than the named addressee(s), the recipient should immediately notify the sender by E-MAIL and by telephone (517-372-9000) and obtain instructions as to the disposal of the transmitted material. In no event shall this material be read, used, copied, reproduced, stored or retained by anyone other than the named addressee(s), except with the express consent of the sender or the named addressee(s). Thank you.

COHL, STOKER & TOSKEY, P.C.
ATTORNEYS AND COUNSELORS
601 NORTH CAPITOL AVENUE
LANSING, MICHIGAN 48933
(517) 372-9000

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MATTIS D. NORDFJORD

ASSOCIATES
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COURTNEY A. GABBARA
SARAH K. OSBURN
OF COUNSEL
RICHARD D. McNULTY

January 28, 2019

Sent Via E-Mail

Michigan Department of State
Bureau of Elections
c/o Adam Fracassi
Richard H. Austin Building, 1st Floor
430 W. Allegan
Lansing, MI 48918
FracassiA@michigan.gov

Re: Daubenmier v. Murphy; Campaign Finance Complaint
No. 2018-09-70-57

Dear Mr. Fracassi:

In response to your letter dated January 11, 2019, the answers to your questions are set forth below:

1. Please provide the date, time of day, and location where the commercial was filmed.

Answer: The commercial was filmed late August of 2017 from roughly 12:00 p.m. to 12:45 p.m. at Wixom Christian School located at 620 N. Wixom Rd., Wixom, MI 48393.

2. Please identify the total number of sheriff vehicles that appeared in the commercial.

Answer: Only one vehicle appeared in the commercial.

3. Please identify whether the event was staged, the number of hours it took to stage the event, and whether the vehicle appearing in the commercial was taken out of service during that time.

Answer: While the event was staged, Sheriff Murphy is not aware of the number of hours it took to stage the event. At some point prior to the shoot, Sheriff Murphy received a phone call from someone working with Mr. Schuette. This individual provided Sheriff Murphy with logistical details regarding the commercial.

When Sheriff Murphy arrived at Wixom Christian School, he was told where to park his vehicle. Once he parked his vehicle, Sheriff Murphy was asked to stand outside his vehicle while the crew shot supplemental footage with him in the background. Sheriff Murphy's role in the commercial consisted of participating in the filming of said supplemental footage. At no point was Sheriff Murphy's vehicle taken out of service to participate in the commercial.

In his professional capacity, Sheriff Murphy is able to utilize Sheriff's Office vehicles on a day-to-day basis.

4. Please identify the length of time spent to record the commercial or the portion thereof in which Sheriff Murphy participated.

Answer: Sheriff Murphy spent less than one hour of time participating in the recording of the commercial.

5. Please indicate whether Sheriff Murphy or any county employee was paid to record the commercial or to assist in preparing for the commercial.

Answer: Sheriff Murphy did not receive any compensation for participating in the recording of the commercial or to assist in preparing for the commercial. No other County employees were involved or paid.

6. Provide the hourly wage (including benefits) for Sheriff Murphy and any individual that assisted in preparing for the commercial.

Answer: Sheriff Murphy's hourly wage, including fringe benefits, comes to \$81.23.

Please do not hesitate to contact me should you have any questions.

Sincerely,

COHL, STOKER & TOSKEY, P.C.



Mattis D. Nordfjord

MDN/nam

cc Sheriff Mike Murphy

Ken Hinton, Livingston County Administrator/Controller

N:\Client\Livingston\Sheriff\Campaign Finance Complaint\Fracassi Ltr re Answers.doc

Fracassi, Adam (MDOS)

From: Fracassi, Adam (MDOS)
Sent: Thursday, January 24, 2019 3:37 PM
To: 'Nicole Moles'
Cc: 'Mike Murphy (MMurphy@livgov.com)'; 'Ken Hinton (KHinton@livgov.com)'; Courtney Gabbara; Matt Nordfjord
Subject: RE: Daubenmier v. Murphy; Campaign Finance Complaint; No. 2018-09-70-57

A seven day extension is fine. Let me know if you have any questions.

Thank you,

Adam Fracassi
Election Law Specialist
Bureau of Elections
Michigan Department of State
430 West Allegan Street
Lansing, Michigan 48918
(517) 373-2540

From: Nicole Moles <nmoles@cstmlaw.com>
Sent: Thursday, January 24, 2019 9:51 AM
To: Fracassi, Adam (MDOS) <FracassiA@michigan.gov>
Cc: 'Mike Murphy (MMurphy@livgov.com)' <MMurphy@livgov.com>; 'Ken Hinton (KHinton@livgov.com)' <KHinton@livgov.com>; Courtney Gabbara <cgabbara@cstmlaw.com>; Matt Nordfjord <mnordi@cstmlaw.com>
Subject: Daubenmier v. Murphy; Campaign Finance Complaint; No. 2018-09-70-57

Mr. Fracassi:

Attached please find correspondence regarding the above matter.

Thank you,

Nicole A. Moles
Legal Assistant to Mattis D. Nordfjord, Robert D. Townsend
and Courtney A. Gabbara
Cohl, Stoker, & Toskey, P.C.
(517) 372-9000
nmoles@cstmlaw.com

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COHL, STOKER & TOSKEY, P.C.
ATTORNEYS AND COUNSELORS
601 NORTH CAPITOL AVENUE
LANSING, MICHIGAN 48933
(517) 372-9000

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MATTIS D. NORDFJORD

ASSOCIATES
GORDON J. LOVE
COURTNEY A. GABBARA
SARAH K. OSBURN

OF COUNSEL
RICHARD D. McNULTY

January 24, 2019

Sent Via E-Mail

Michigan Department of State
Bureau of Elections
c/o Adam Fracassi
Richard H. Austin Building, 1st Floor
430 W. Allegan
Lansing, MI 48918
FracassiA@michigan.gov

Re: Daubenmier v. Murphy; Campaign Finance Complaint
No. 2018-09-70-57

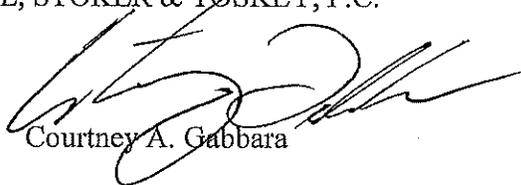
Dear Mr. Fracassi:

I am writing to request a 7 day extension to respond to the questions set forth in your letter dated January 11, 2019. The original response deadline was January 25, 2019; my office will provide a response on or before February 1, 2019.

Thank you for your anticipated cooperation in granting the extension and please feel free to contact me with any questions or concerns.

Sincerely,

COHL, STOKER & TOSKEY, P.C.



Courtney A. Gabbara

CAG/nam

cc Sheriff Mike Murphy

Ken Hinton, Livingston County Administrator/Controller

N:\Client\Livingston\Sheriff\Campaign Finance Complaint\Fracassi Ltr re Extension to Answers.doc

Fracassi, Adam (MDOS)

From: Fracassi, Adam (MDOS)
Sent: Thursday, February 7, 2019 5:07 PM
To: Matt Nordfjord
Cc: 'Nicole Moles'
Subject: RE: Daubenmier v. Murphy; Campaign Finance Complaint; No. 2018-09-70-57
Attachments: Determination Letter.pdf; Proposed Conciliation Agreement.pdf

Mr. Nordfjord:

Please find attached correspondence regarding the above matter. If you have any questions, please do not hesitate to contact me.

Adam Fracassi
Election Law Specialist
Bureau of Elections
Michigan Department of State
430 West Allegan Street
Lansing, Michigan 48918
(517) 335-3234

From: Nicole Moles <nmoles@cstmlaw.com>
Sent: Monday, January 28, 2019 11:41 AM
To: Fracassi, Adam (MDOS) <FracassiA@michigan.gov>
Cc: 'Mike Murphy (MMurphy@livgov.com)' <MMurphy@livgov.com>; 'Ken Hinton (KHinton@livgov.com)' <KHinton@livgov.com>; Matt Nordfjord <mnordi@cstmlaw.com>; Courtney Gabbara <cgabbara@cstmlaw.com>
Subject: Daubenmier v. Murphy; Campaign Finance Complaint; No. 2018-09-70-57

Mr. Fracassi:

Attached please find correspondence regarding the above matter.

Thank you,

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Legal Assistant to Mattis D. Nordfjord, Robert D. Townsend
and Courtney A. Gabbara
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STATE OF MICHIGAN
JOCELYN BENSON, SECRETARY OF STATE
DEPARTMENT OF STATE
LANSING

February 7, 2019

Mattis D. Nordfjord
Attorney for Sheriff Mike Murphy
Cohl, Stoker & Toskey, P.C.
601 North Capitol Avenue
Lansing, Michigan 48933

Via Email: mnordi@cstmlaw.com

Re: *Daubenmier v. Murphy*
Campaign Finance Complaint
No. 2018-08-70-57

Dear Mr. Nordfjord:

The Department of State (Department) has completed its initial investigation of the complaint filed against Sheriff Mike Murphy by Judith Daubenmier, which alleged 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 Ms. Daubenmier's complaint.

Ms. Daubenmier filed her complaint on September 5, 2018 alleging that Sheriff Murphy violated section 57 of the MCFA. Specifically, Ms. Daubenmier alleged that Sheriff Murphy improperly used Livingston County resources to make a contribution to Bill Schuette's campaign for Governor of Michigan by appearing in a television advertisement in uniform while walking in front of a county sheriff vehicle. As evidence, Ms. Daubenmier provided a screen shot of the video.

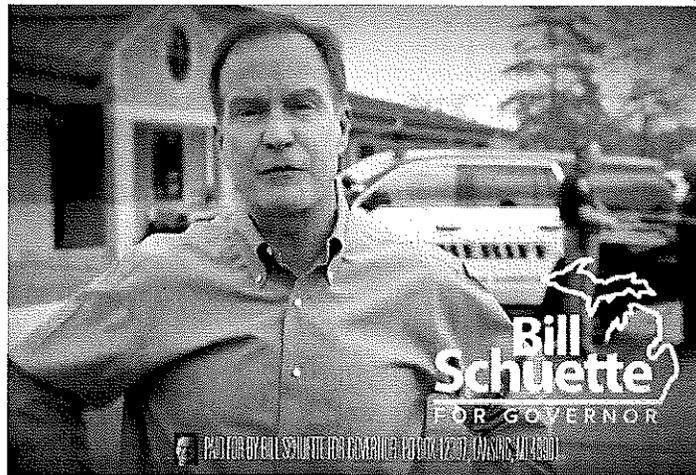
By letter dated September 26, 2018, you responded on behalf of the sheriff admitting that Sheriff Murphy appeared in the television commercial but denied that the Sheriff's vehicle was used to campaign. You further argued that the Sheriff's political advocacy is exempted under section 57 of the Act, MCL 169.257(1). You alleged that the commercial was an expression of Sheriff Murphy's views, and that if any county resources were expended, they were incidental. Ms. Daubenmier did not file a rebuttal statement.

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). 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

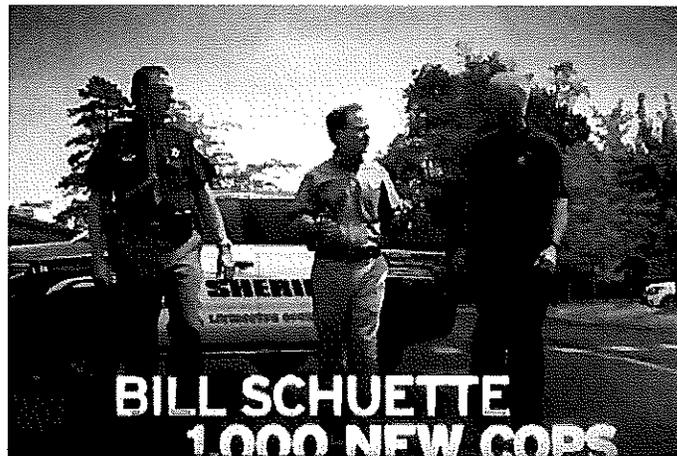
individual, a person who knowingly violates this section is guilty of a misdemeanor punishable by a fine up to \$20,000 or a fine equal to the amount of the improper expenditure – whichever is greater. MCL 169.257(4).

At issue is whether the appearance of Sheriff Murphy in a commercial constitutes an improper contribution to Bill Schuette for Governor using Livingston County resources, and whether such can be classified as an expression of Sheriff Murphy's view that is exempt from the MCFA under MCL 169.257(1)(a).

The commercial was sponsored and paid for by Bill Schuette for Governor and discusses safety. In the video, Mr. Schuette can be seen speaking directly to camera while Sheriff Murphy is in the background speaking to an unknown individual in front of a Livingston County Sheriff vehicle¹:



Additional shots are featured of Mr. Schuette speaking to Sheriff Murphy in front of the county-owned vehicle:



¹ The full commercial is available here:

https://www.youtube.com/watch?time_continue=15&v=JbksIJsKiyY

As pictured, Sheriff Murphy is featured in the advertisement walking in front of the county sheriff vehicle, and as you indicated, “[w]hen Sheriff Murphy arrived at Wixom Christian School, he was told where to park his vehicle. Once he parked his vehicle, Sheriff Murphy was asked to stand outside his vehicle while the crew shot supplemental footage with him in the background.” Murphy’s Response to Department’s Request for Supplemental Information, January 28, 2019. You further admitted that the event was “staged.” *Id.*

As a result, the evidence supports a conclusion that public resources were improperly used to advocate for Bill Schuette’s campaign. The fact that this event was staged and not “b-roll” footage, that Sheriff Murphy appeared numerous times in uniform for the commercial, and that a Livingston County Sheriff’s vehicle was featured prominently through most of the commercial and all of this was staged, leads the Department to determine that public resources were used to make a contribution to Bill Schuette for Governor.

In your answer, you alleged that this was exempt from section 57 because of the exemption outlined in 57(1)(a) which provides that the expression of views by an elected or appointed official with policymaking responsibility is exempted from section 57. You cite to the interpretative statement issued to David Murley on October 31, 2005 in support which provided that “[t]he occasional, incidental use of public resources to communicate with a constituent or media on a ballot question falls within this exemption.” In that interpretive statement, the Department went on to explain that the type of occasional, incidental use described includes, for example, a response to an individual constituent who is inquiring about an elected official’s views on a public policy issue, and is distinguishable from the mass distribution of an email, or the mass mailing of a brochure, postcard or flyer. *Interpretive Statement to David Murley*, issued October 31, 2005.

Based upon this interpretive statement, the Department concludes that this exemption does not apply to Sheriff Murphy because this was not an occasional or incidental use consistent with *Murley*. Section 57 plainly bars “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*, issued October 31, 2005. Additionally, “incidental” is defined as “being likely to ensue as a change or minor consequence; occurring merely by chance or without intention or calculation.” Merriam-Webster Dictionary, available at: <https://www.merriam-webster.com/dictionary/incidental>. Here, the use and appearance of the county vehicle was not “incidental” as defined above. The commercial was staged and intentionally featured Sheriff Murphy in his full uniform in addition to a Livingston County Sheriff’s vehicle parked to be specifically used for the commercial. The commercial did not happen “by chance” and the vehicle’s usage was not a “minor consequence” of the commercial. Therefore, the Department concludes that this was not an incidental use, and therefore the exemption does not apply.

Accordingly, the Department concludes that there is sufficient evidence to support the conclusion that a potential violation of the MCFA has occurred. 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 offers to resolve Ms. Daubenmier’s complaint against Sheriff Murphy informally through the execution of the enclosed conciliation agreement. The agreement requires Livingston County to be reimbursed a total of \$100 (representing the total cost of Sheriff Murphy’s time spent, in uniform, and with a vehicle) and payment of a \$100 fine to the State of Michigan. The purpose of this settlement is to correct the violation, ensure taxpayers are made whole, and deter Sheriff Murphy 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 your client wishes to enter into the conciliation agreement, please return the original signed document to this office, along with proof of reimbursement of \$100 to the County and the \$100 fine to the State of Michigan by March 1, 2019.

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 Sheriff Murphy to the Attorney General with a request that her office prosecute him 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 amount outline in 169.257(4), plus up to \$1,000.00 for each violation of the Act.

Sincerely,



Adam Fracassi
Bureau of Elections
Michigan Department of State

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SARAH K. OSBURN

OF COUNSEL
RICHARD D. McNULTY

February 14, 2019

Sent Via U.S. Mail

Michigan Department of State
Bureau of Elections
c/o Adam Fracassi
Richard H. Austin Building, 1st Floor
430 W. Allegan
Lansing, MI 48918
FracassiA@michigan.gov

Re: Daubenmier v. Murphy; Campaign Finance Complaint
No. 2018-09-70-57

Dear Mr. Fracassi:

Enclosed please find the Conciliation Agreement signed by Sheriff Mike Murphy and a check in the amount of \$100.00 payable to the State of Michigan. Also enclosed is a receipt from Livingston County showing the Sheriff's payment to the County.

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

Sincerely,

COHL, STOKER & TOSKEY, P.C.



Mattis D. Nordfjord

MDOS 5876491-1 02/22/2019
ELEC NY \$100.00

MDN/nam

cc Sheriff Mike Murphy

Ken Hinton, Livingston County Administrator/Controller

N:\Client\Livingston\Sheriff\Campaign Finance Complaint\Fracassi Ltr re Conciliation Agreement.doc



STATE OF MICHIGAN
JOCELYN BENSON, SECRETARY OF STATE
DEPARTMENT OF STATE
LANSING

In the Matter of:

**Judith Daubenmier
4490 Lakeshore Court
Brighton, Michigan 48116**

v.

**Sheriff Mike Murphy
150 S. Highlander Way
Howell, Michigan 48843**

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 Sheriff Mike Murphy (Respondent) hereby enters 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 using Livingston County resources to make a contribution to the Bill Schuette for Governor campaign.

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

By executing this conciliation agreement, Respondent certifies that Livingston County has been repaid a total of \$100 which represents the amount of the improperly used County

resources. Additionally, Respondent certifies that a civil fine in the amount of \$100.00 has been paid to the State of Michigan.

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 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 Respondents' 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.

**JOCELYN BENSON
SECRETARY OF STATE**

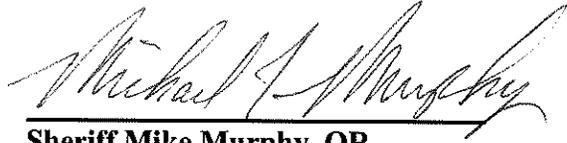


**Sally Williams, Director
Bureau of Elections**

Date:

3/8/19

RESPONDENT



**Sheriff Mike Murphy, OR
Authorized Representative**

Date:

2/11/19