



STATE OF MICHIGAN
TERRI LYNN LAND, SECRETARY OF STATE
DEPARTMENT OF STATE
LANSING

December 17, 2007

Mr. David E. Murley, President
Michigan Political History Society
Post Office Box 4684
East Lansing, Michigan 48826

Dear Mr. Murley:

On September 19, 2007, the Department of State (Department) received your request for a declaratory ruling pursuant to the Michigan Campaign Finance Act (MCFA or Act), 1976 PA 388, MCL 169.201 et seq., to advise whether the candidate committee of an individual who holds a state elective office, or an independent or political committee, may use its funds to pay for membership in, a fundraiser ticket for, or a donation to the Michigan Political History Society (MPHS). A copy of your request was published on the Department's website for public comment beginning September 21, 2007. The Department did not receive any written comments pertaining to your inquiry.

The Department may issue a declaratory ruling when an interested party submits a written request describing the precise legal question presented and a reasonably complete statement of facts. MCL 169.215(2), R 169.6(1). "An interested person is a person whose course of action would be affected by the declaratory ruling." R 169.6(1). The Department and the requester are obliged to act in accordance with a declaratory ruling unless the ruling is modified or invalidated by a court. MCL 24.263. Should the Department refuse to issue a declaratory ruling, section 15(2) of the Act compels the Department to give an interpretive statement "providing an informational response to the question presented [.]" MCL 169.215(2).

Your request presents four questions for the Department's consideration, each of which concern the ability of committees registered under the MCFA to disburse funds to the MPHS for membership dues, fundraiser events, and charitable donations. The MPHS is not a "committee" for purposes of the Act, and the charitable solicitation activities of the MPHS are not governed by the MCFA. The method by which a candidate committee reports its donation to the MPHS – as an expenditure or incidental expense – has no obvious bearing on the "course of action" of the MPHS. The practical effect of issuing a declaratory ruling that binds the Department and the MPHS on that point is meaningless: neither party would be obligated to act or refrain from acting in a particular manner. While the Department may, for example, entertain a declaratory ruling request filed on behalf of a committee registered under the Act seeking clarification on whether a donation to charity constitutes an expenditure or incidental expense, it is not apparent that the MPHS is an interested person whose conduct would be affected by a declaratory ruling

as required by R 169.6(1). For this reason, the Department offers the following as an interpretive statement.

According to your letter, the MPHS is a domestic non-profit corporation committed to the research, analysis, and preservation of this state's political history. The MPHS intends to raise funds by inviting individuals currently holding state elective office¹ to join the organization, purchase a ticket to attend a fundraiser, or make a charitable donation to the MPHS. Though the public officials you intend to solicit are free to use their own personal funds for these purposes, you specifically ask whether such a payment: (1) if made using candidate committee funds constitutes an expenditure under section 6 of the MCFA; (2) if made using candidate committee funds is an incidental expense under section 9(1) of the MCFA; (3) may be made to the MPHS upon dissolution of a candidate committee; and (4) may be made on behalf of another person by a political or independent committee. This interpretive statement addresses each of your questions separately below.

Question 1: "If a candidate believes that joining the Michigan Political History Society might be viewed favorably by one or more of his or her potential/current constituents, and thus would assist the candidate's chances for election or re-election, can the candidate, pursuant to the MCFA's definition of 'expenditure', use candidate committee funds to: (a) Join the MPHS? (b) Purchase a ticket to a MPHS fundraiser? (c) Make a donation to MPHS?"

You argue that "[t]he Department's long-standing interpretation of the term 'expenditure' indicates that a candidate can make a disbursement from his or her committee to join, donate to, or purchase a ticket from a charitable organization such as MPHS so long as that candidate believed that such activity would assist his or her campaign." In support of your argument, you cite a number of interpretive statements and declaratory rulings that were issued shortly after the enactment of the MCFA. In these early rulings, the Department indicated that a payment construed by the candidate as assisting his or her nomination or election may be treated as an expenditure. See, e.g., Interpretive Statement to Raymond Hood (March 21, 1978), Interpretive Statement to Thaddeus Stopczynski (March 21, 1978). The Act generally defines expenditure as a "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 [.]"² MCL 169.206(1). Those particular interpretive statements permitted candidate committees to make expenditures for sponsorship of a baseball team and award of a \$100.00 scholarship to a high school graduate, if the candidate believed that the activity assisted the candidate's nomination or election. Noting that the Act (at the time) recognized only one permissible use of candidate committee funds – the making of expenditures² – the Department subsequently refined its interpretation by concluding that an expenditure was authorized "so long as the expense may in good faith be interpreted as influencing an election". Declaratory Ruling to Mitch Irwin (May 29, 1979).

¹ Under the Act, "state elective office" includes the offices of governor, lieutenant governor, secretary of state, attorney general, supreme court justice, state board of education member, University of Michigan regent, Michigan State University trustee, Wayne State University governor, state senator, or state representative. MCL 169.212(3), (4).

² 1994 PA 411 amended the Act to permit the candidate committee of a person who serves in an elective office to disburse funds for incidental expenses.

The test for determining whether a transaction constitutes an expenditure under the Act evolved further in the next decade. In considering whether to approve a candidate committee's transfer of funds to a political party committee, the Department reiterated a candidate committee could only use its funds to pay for expenditures made to assist the candidate's nomination or election, "provided the candidate receives an identifiable benefit, product, or service which furthers his or her nomination or election." Interpretive Statement to Lee Schwartz (October 26, 1983). In that particular instance, the Department concluded that because the candidate committee failed to present evidence tending to establish the nature of the "identifiable benefit" the candidate derived from the proposed transfer, it could not be treated as an expenditure. *Id.* When asserting that a payment constitutes an expenditure under section 6 of the Act, the candidate carries the burden of demonstrating that he or she obtained "an identifiable benefit, product, or service which furthers his or her nomination or election."

More recently, the Department repeated the standard by which an expenditure will be measured in determining whether it is made in assistance of the candidate's nomination or election:

"[T]he candidate and the candidate committee treasurer must be able to specifically substantiate how an expenditure to an independent committee furthers the nomination or election of the candidate ... Whether it is proper to make an expenditure to an independent committee will depend exclusively on an identifiable, tangible, benefit that furthers [the candidate's] reelection."

Interpretive Statement to Curtis Hertel (May 10, 1995). This principle endures today because it reflects the statute's requirement that expenditures be made "in assistance of ... the nomination or election of a candidate [.]" MCL 169.206(1).

The Department's understanding of the activities of the MPHS is insufficient for purposes of determining whether a candidate's charitable donation to that organization can be characterized as an expenditure under the Act. The *Schwartz* and *Hertel* interpretive statements, however, contradict your assertion that a candidate's subjective belief that as few as one of his or her constituents may look favorably upon the candidate's association with the MPHS is adequate to establish an expenditure. Whether the donation will be treated as an expenditure depends upon the ability of the candidate committee to demonstrate an identifiable, tangible benefit that advances the candidate's nomination or election.

Question 2: "May a candidate, acting pursuant to MCL 169.209(1)'s definition of 'incidental expense', use candidate committee funds to do any of the following: (a) Join the MPHS? (b) Purchase a ticket to a MPHS fundraiser? (c) Make a donation to MPHS?"

It is worth noting that the MCFA does not allow a candidate committee to make disbursements for incidental expenses unless the candidate actually holds elective office. Section 21a of the MCFA provides,

"[a] candidate committee of a candidate who is elected or appointed to an elective office may make an expenditure for an incidental expense for the elective office to which that candidate was elected or appointed. Except as otherwise specifically provided in this act, an expenditure for an incidental expense by a

candidate committee pursuant to this section is considered an expenditure under this act.”

The phrase “incidental expense” is defined to include “[a] donation to a tax-exempt charitable organization, including the purchase of tickets to charitable or civic events.” MCL 169.209(1)(g). Without question, the Act allows the candidate committee of a person who presently holds elective office to treat as an incidental expense a charitable donation to the MPHS, including the purchase of a membership or fundraiser ticket.

Question 3: “May a candidate, upon dissolution of his or her candidate committee, donate some or all of his or her unexpended funds to MPHS? (Assume that the candidate does not serve as a director or officer of, and does not receive compensation from, MPHS).”

Your third question pertains to the disbursement of a candidate committee’s unexpended funds upon termination. Section 45(2)(b) of the MCFA allows a candidate committee to transfer funds to a tax exempt charity, “as long as the candidate does not become an officer or director of or receive compensation, either directly or indirectly, from that organization.” Consistent with these statutory restrictions, a candidate committee may donate funds to the MPHS or other 501(c)(3) organizations upon dissolution, provided that the candidate does not subsequently serve as an officer or director of and is not compensated by the organization.

Question 4: “May a political or independent committee do the following: (a) Pay for a person to join MPHS? (b) Purchase tickets to a MPHS fundraiser? (c) Make a donation to MPHS?”

Finally, you ask whether a political or independent committee may use its funds to pay another person’s MPHS membership dues, purchase tickets to fundraisers, or donate to the MPHS. According to the Department’s longstanding interpretation of section 45 of the Act, a political committee or ballot question committee may disburse unexpended funds for any lawful purpose. Interpretive Statement to Jon Jenkins (October 23, 1981), Declaratory Ruling to Gary Campbell (August 21, 2006). Section 45 of the Act, which restricts the distribution of a candidate committee’s surplus funds, does not similarly limit the purposes for which other types of committee funds may be expended. Thus, a political or independent committee may donate its funds to the MPHS in the manner described in your letter unless the payment is otherwise prohibited by law.

The foregoing represents the Department’s informational response to the questions you presented.

Sincerely,



Brian DeBano
Chief of Staff / Chief Operating Officer