



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

January 19, 2017

Robert Davis
180 Eason
Highland Park, Michigan 48203

Dear Mr. Davis:

The Michigan Department of State (Department) acknowledges receipt of your letter dated October 17, 2016 in which you requested declaratory ruling or interpretive statement regarding the Department's interpretation of the Michigan Campaign Finance Act (MCFA or Act), 1976 PA 388, MCL 169.201 *et seq.*, concerning your desire to make anonymous contributions. The Department posted a copy of your request on its website on October 17, 2016 for public comment purposes, but none were submitted.

Under both the MCFA and Administrative Procedures Act (APA), 1969 PA 306, MCL 24.201 *et seq.*, the Department must issue a declaratory ruling when an interested person submits a written request that presents a question of law and a reasonably complete statement of facts. MCL 24.263, 169.215(2). If the Department declines to issue a declaratory ruling, it shall issue an interpretive statement "providing an informational response to the question presented [.]" MCL 169.215(2).

Your letter indicates that you intended to make two anonymous contributions of \$25.00 each to a candidate for District Court Judge and a candidate for the Detroit Community School District Board of Education prior to the November 8, 2016 general election. This statement of facts is sufficient to warrant the issuance of a declaratory ruling regarding your ability to make anonymous contributions.

It is important to note that while you asked the Department to "issue an emergency declaratory ruling" within 5 days, the MCFA establishes a mandatory sequence of steps that precede the issuance of any declaratory ruling or interpretive statement. These integral steps include an initial public comment period of 10 business days, publication of a preliminary response, and an additional public comment period lasting 5 business days. MCL 169.215(2). In view of these timeframes and the fact that the general election was rapidly approaching, the Bureau of Elections provided a provisional response to your questions on October 28, 2016.

Every contribution made to a candidate committee must be disclosed in accordance with the MCFA. The law requires a candidate committee to file periodic campaign statements and late contribution reports containing the name and address of each contributor (plus employment information if an individual's contribution exceeds \$100.00), the dates of receipt for each

contribution, the amount of each contribution (plus the contributor's cumulative total for the election cycle), and further itemization if applicable. MCL 169.226, 231, 232 and 242. Contributions exceeding \$20.00 "shall be made by written instrument containing the names of the payor and the payee." MCL 169.241(1). Each committee's treasurer is legally obligated to "record the name and address of a person from whom a contribution is received." MCL 169.22. Moreover,

A person shall not accept or expend an anonymous contribution. An anonymous contribution received by a person shall not be deposited but shall be given to a tax exempt charitable organization. The charitable organization receiving the contribution shall provide the person with a receipt. The receipt shall be retained by an appropriate committee pursuant to section 22.

MCL 169.241(2). A person's knowing failure to transmit a contribution by written instrument or the knowing acceptance or expenditure of an anonymous contribution constitute misdemeanor offenses. MCL 169.241(4).

Taken together, the provisions cited above prohibiting anonymous contributions further several significant regulatory interests. If anonymous contributions were permitted, it would be extraordinarily difficult to detect and punish contributions that were made in violation of the Act's source and amount restrictions. For example, an anonymous contributor could more easily conceal contributions to candidates in excess of statutory limits or use corporate or union treasury funds with impunity and without fear of detection or prosecution. MCL 169.252, 254. Public disclosure of a committee's contributors also enables voters to make informed decisions regarding the identities or interests of a particular candidate's contributors, the level of support for the candidate among contributors in the community or outside of the electoral district, and so on.

Thus, in answer to your first question, "[may I] make and/or expend an anonymous campaign contribution," the Department answers in the negative. The MCFA plainly bars all persons from making or expending contributions in anonymity. MCL 169.241. With respect to your request that the Department to refrain from referring you to the Attorney General for prosecution based on the facts stated in your letter, please be advised that MCFA enforcement matters are governed by MCL 169.215, which establishes an administrative complaint process and requires the Secretary of State to attempt to resolve violations informally prior to any further enforcement action, be it criminal or administrative in nature.

The foregoing constitutes a declaratory ruling with respect to the questions presented in your October 17, 2016 letter.

Sincerely,



Ruth Johnson
Secretary of State