



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

February 13, 2014

Todd R. Perkins
Perkins Law Group PLLC
Ford Building
615 Griswold, Suite 400
Detroit, MI 48826

Dear Mr. Perkins:

The Department of State (Department) has concluded its investigation of the complaint Detroit Forward filed against Detroit Mayor Mike Duggan and the Turnaround Detroit Political Action Committee (Turnaround Detroit), concerning alleged violations 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.

Detroit Forward alleged in its complaint that Turnaround Detroit filed as a Political Action Committee, not an Independent Expenditure Super PAC, and accepted corporate contributions in contravention of the Act. Further, Detroit Forward alleged that Turnaround Detroit has coordinated expenditures with Mayor Duggan or his candidate committee. Detroit Forward alleged that this coordination renders the expenditures made by the Turnaround PAC in-kind contributions to Mayor Duggan and his committee, violating the prohibition on corporate contributions by the Turnaround PAC and causing the Turnaround PAC to exceed, and Mayor Duggan to accept contributions in excess of, the contribution limits defined in section 52 of the MCFA.

Detroit Forward filed its complaint on September 10, 2013. Turnaround Detroit and Mayor Duggan each filed a separate answer on October 29, 2013, and Detroit forward filed a rebuttal statement with the Department on November 12, 2013.

The MCFA sets limits on contributions that may be made by a political committee to local candidates. Under the contribution limits in effect at the time of the Detroit's mayoral election a political committee could have contributed up to \$3,400.00 to a candidate for local office with a district population over 250,000. MCL 169.252(1)(a). A candidate committee shall not accept a contribution in excess of the limitations. MCL 169.252(7). A knowing violation of section 52 of the Act is a misdemeanor offense. MCL 169.252(9).

The Act also prohibits a corporation from making a contribution to a committee other than a ballot question committee. MCL 169.254. Michigan Administrative Rule 169.35 prohibits the treasurer of a committee, other than a ballot question committee, from accepting a contribution written on a check from a corporate account. A person who violates this provision may be

subject to a civil fine of up to \$1,000.00 per violation plus triple the amount of each improper contribution. MCL 169.215(11), (15).

While the only exception to the prohibition on corporate contributions contained in the MCFA is for ballot question committees, a United States District Court for the Western District of Michigan held in an as-applied challenge to Michigan's prohibition on corporate contributions that if a political action committee does not coordinate the expenditure of its funds with a candidate, then the United States Supreme Court decision in *Citizens United*¹ forbids Michigan from denying a corporation from contributing to that committee. *Mich Chamber of Commerce v Land*, 725 F Supp 2d 665 (2010). In view of these cases, corporations may now make contributions for the purpose of financing independent expenditures in candidate elections.

Turnaround Detroit's Statement of Organization

Although the court in *Chamber v Land* held the First Amendment's guarantee of freedom of speech applies to corporate contributions to independent expenditure political action committees that do not coordinate with a candidate, the MCFA has not been amended to address this development, and the prohibition of corporate contributions to committees (other than ballot question committees) is still contained in the Act. Nor has the legislature provided any statutory mechanism for independent expenditure Super PACs to register and report in the State of Michigan. Section 24 of the Act requires a committee to file a Statement of Organization within 10 days of its formation and that Statement must identify that committee as a "candidate committee, political party committee, political committee, or ballot question committee if it is identifiable as such a committee." MCL 169.224(1), (2). There is no option in the MCFA to identify as a Super PAC or Independent Expenditure PAC.

Instead, the Department provided written guidance in 2010, which directs Super PACs to file on a separate Statement of Organization form, which was created so that filing officials, committees, and the public could readily identify those committees which may legally receive contributions from corporations and make independent expenditures in candidate elections. This Independent Expenditure Political Committee Statement of Organization is not a form that is *required* by the MCFA. The clerical error of failing to use this particular form does not, *per se*, violate the MCFA's prohibition against receiving corporate contributions, as long as the committee operated solely as a Super PAC and did not make direct or in-kind contributions to any candidate, political, or independent committee.

Consequently, the Department must also look to the actual activity of a committee to determine if it is operating as a Super PAC and therefore authorized to receive corporate contributions. According to the court decision referenced above, a committee which only makes independent expenditures for candidate elections must be permitted to accept corporate contributions. In an effort to comply with the court ruling and to facilitate the identification of those committees operating under these special restrictions, the Department has recognized "Independent Expenditure Political Committees" (more commonly known as Super PACs).

¹ *Citizens United v FEC*, 558 US 310 (2010).

The Act defines an independent expenditure as “an expenditure by a person² if the expenditure is not made at the direction of, or under the control of, another person and if the expenditure is not a contribution to a committee.” MCL 169.209(2).

Turnaround Detroit originally used the “Original or Amended Statement of Organization For Independent and Political Committees (PAC’s).” When it became aware of that there was an alternate, more accurate form (“Original or Amended Independent Expenditure Political Committee Statement of Organization Form Corporations, Unions or Domestic Dependent Sovereigns”), it attempted to correct its mistake by filing an amended form with the Wayne County Clerk, along with an affidavit attesting that it had been functioning as an independent expenditure committee. This course of action is exactly what our Department recommends to similarly situated committees.

Please refer to the enclosed disposition letter regarding a previous, similar complaint for an explanation of the circumstances surrounding the clerical error that precipitated your complaint. After its investigation of this previous complaint, the Department determined, as it does here, that Turnaround Detroit’s clerical error, which it attempted to correct, did not bar Turnaround Detroit from accepting corporate contributions.

It has been the Department’s past practice to consider a committee’s activity along with its use (or non-use) of an administratively-created form when determining whether a committee was lawfully entitled to receive corporate contributions. This analysis is essential to determine whether Turnaround Detroit lawfully received corporate contributions.

Turnaround Detroit’s Expenditures

An independent expenditure PAC must only make independent expenditures. Under the MCFA, it may not make a contribution to a committee or make any expenditures that are under the direction or control of another person.

After a review of Turnaround Detroit’s campaign finance statements filed with Wayne County, the Department has determined that Turnaround Detroit properly restricted its activity to independent expenditures and did not make any expenditures that would have triggered a direct contribution to a committee.

Detroit Forward alleged that Turnaround Detroit “coordinated” with Mayor Duggan’s candidate committee. However, the only evidence that Detroit Forward provided to the Department are statements that Turnaround Detroit and Mayor Duggan’s candidate committee used two common vendors. You have asserted that The Mellman Group and Practical Political Consulting provided polling and survey services for both the Mayor’s candidate committee and Turnaround Detroit, and that “on information and belief and based upon the firm’s practices, The Mellman Group [assisted] both Duggan and Turnaround Detroit in the development of media strategy, selection of audiences, developing ad content, identifying voters and generally consulting.” (Emphasis omitted.)

² Under the Act, person includes a committee. MCL 169.211(2).

Mayor Duggan's committee and Turnaround Detroit both acknowledge that The Mellman Group and Practical Political Consulting provided services to both committees. However, Detroit Forward has not provided any evidence that any expenditure made by Turnaround Detroit was made under the direction or control or in coordination or with the consent of Mayor Duggan or his candidate committee. Nor has Detroit Forward provided any evidence of a communication paid for by Turnaround Detroit to which the Department could apply the federal three-prong test for coordination. The mere use of common vendors does not automatically give rise to coordination – there must be a communication which meets specific payment, conduct, and content standards.

In its answer, Turnaround Detroit asserts that The Mellman Group was “instructed to segregate personnel who provided services to [Mayor Duggan’s] campaign from persons who provided services to Turnaround Detroit for a 120 day period.” Turnaround Detroit also provided a signed declaration from Mark Mellman which stated that the Mellman Group “did not convey or use material non-public information about the Duggan campaign’s plans, projects, activities, or needs to Turnaround Detroit, and that [The Mellman Group] has not conveyed or used material information used previously by [The Mellman Group] in providing services to the Duggan campaign to Turnaround Detroit.” Detroit Forward has not submitted any evidence that would refute these statements.

Additionally, Turnaround Detroit provided a signed declaration from its Treasurer and Custodian of Records, Jason Gourley, which stated that Turnaround Detroit purchased voter lists from Practical Political Consulting. The declaration further stated that Practical Political Consulting “did not provide any other goods or services for Turnaround Detroit, and [Practical Political Consulting] did no consulting work for Turnaround Detroit.” Mr. Gourley also stated that to his knowledge, the voter lists were “widely available and consist[ed] of primarily or exclusively public information compiled by [Practical Political Consulting].” Finally, Mr. Gourley stated that “Turnaround Detroit directed Practical not to give Turnaround Detroit any information about other Detroit mayoral campaigns” and that Practical Political Consulting “did not provide any non-public, material information about [Mayor Duggan’s] [c]ampaign’s needs, plans, or activities to Turnaround Detroit that was material to the creation, production, or distribution of Turnaround Detroit’s communications.” Again, Detroit Forward has not submitted any evidence that would refute these statements.

In the absence of any evidence that Mayor Duggan or his committee exerted any direction or control over any expenditure made by Turnaround Detroit, or coordinated with Turnaround Detroit, the Department finds that Turnaround Detroit has functioned as an independent expenditure committee or Super PAC even though it made a clerical error in choosing the wrong committee type or form, which it attempted to correct, and that Turnaround Detroit was and is permitted to accept corporate contributions. No evidence has been provided that would support a determination that Turnaround Detroit made anything other than independent expenditures.

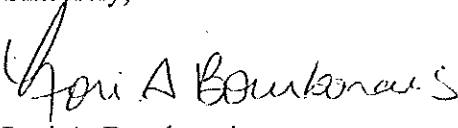
Excessive Contributions

Because Turnaround Detroit is not a candidate committee, it was not subject to the contribution limits provided in section 52 of the Act. Additionally, the Department has found that Turnaround Detroit functioned as an independent expenditure committee and that there is no

evidence to support a determination that any of Turnaround Detroit's expenditures were in-kind contributions to Mayor Duggan's committee.

Conclusion

The Department finds that Turnaround Detroit was an independent expenditure committee and that it was entitled to receive corporate contributions, receive contributions in unlimited amounts, and make independent expenditures in unlimited amounts. The Department also finds that because Turnaround Detroit only made independent expenditures, Mayor Duggan's candidate committee did not receive in-kind contributions from Turnaround Detroit. Therefore, your complaint is dismissed.

Sincerely,

Lori A. Bourbonais
Bureau of Elections
Michigan Department of State

c: Jason Gourley
Melvin "Butch" Hollowell

