



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

September 28, 2017

Mr. Robert LaBrant
12411 Pine Ridge Drive
Perry, Michigan 48872

Dear Mr. LaBrant:

The Department of State (Department) acknowledges receipt of your letter dated July 5, 2017, requesting that the Department issue a declaratory ruling or interpretive statement regarding its interpretation of the Michigan Campaign Finance Act (MCFA or Act), 1976 PA 388, MCL 169.201 *et seq.* A copy of your request was published on the Department's website for public comment beginning July 6, 2017 but no written comments were submitted in response to your request.

The Administrative Procedures Act (APA), 1969 PA 306, MCL 24.201 *et seq.*, and MCFA authorize the Department to issue a declaratory ruling upon the request of an interested person who submits a reasonably complete statement of facts and succinct statement of the legal questions presented. MCL 24.263, 169.215(2). "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 bound to act in accordance with a declaratory ruling unless the ruling is modified or invalidated by a court. MCL 24.263. If the Department declines to issue a declaratory ruling, it must instead issue an interpretive statement "providing an informational response to the question presented[.]" MCL 169.215(2).

Your letter does not indicate that your request is made by or on behalf of an entity which might be legally bound by such a declaratory ruling, thus is not apparent that you are an interested person whose conduct would be affected by a declaratory ruling as required by R 169.6(1). Accordingly, the Department issues this interpretive statement as an informational response to your request.

Your request presented questions regarding the Department's interpretation of how the Act's registration and reporting requirements applied to an entity¹ which in a calendar year, makes one or more contributions totaling at least \$500.00 to an independent expenditure-only committee (IEC).² The request also asked whether the Department would apply its interpretation retroactively or prospectively, and how might the MCFA be amended in light of the Department's interpretation.

At the time of your original request through the issuance of the Department's September 7, 2017 preliminary response, the MCFA had not yet been amended by the legislature to reflect the legal landscape altered by *Citizens United v Federal Election Commission*, 558 US 310, 130 S Ct 876, 175 L Ed 2d 753 (2010) and *Michigan Chamber of Commerce v Land*, 725 F Supp 665 (WD MI 2010). These two cases represented a significant departure from the Act's longstanding provisions barring entities from making contributions or independent expenditures in relation to candidate elections. While the Department awaited legislative action to address these inconsistencies, it was bound to administer the Act in a way that gave effect to the pre-

¹ For purposes of this interpretive statement, the term "entity" means a person other than an individual or committee.

² An IEC is authorized to make independent expenditures, contributions to other IECs, contributions to ballot question committees, or other lawful disbursements. MCL 169.224b, 2017 PA 119.

existing provisions of the MCFA while recognizing the constitutional rights of entities to engage in candidate elections in a limited fashion. In the interim, the Department refrained from issuing failure to file and late filing fee notices to entities that made contributions to IECs exclusively from their own treasury funds. As explained in the preliminary response, an interpretive statement was not the appropriate vehicle for retroactively imposing the registration and disclosure requirements on entities. The preliminary response urged the legislature to enact laws reconciling *Citizens United*, *Michigan Chamber*, and the provisions of the MCFA that survived or were rendered obsolete by those decisions.

In the period that elapsed between the issuance of the preliminary response and this final Interpretive Statement, Governor Snyder signed into law Public Acts 119 and 120 of 2017, which amended the MCFA and related criminal provisions to provide formal statutory recognition of IECs and authorize entities to make independent expenditures and contributions to IECs, among other changes. Notable among these revisions, the legislation clarified the statutory provisions identified in your request. Now, under MCL 169.203(4) as amended by 2017 PA 119,

A person, other than a committee registered under this act, making an expenditure to a ballot question committee *or an independent expenditure committee*, shall not, for that reason, be considered a committee *or be required to file a report* for the purposes of this act unless the person solicits or receives contributions for the purpose of making an expenditure to that ballot question committee or independent expenditure committee. (Emphasis added.)

Furthermore, under MCL 169.254(4) as amended by 2017 PA 119,

A corporation, joint stock company, domestic dependent sovereign, or labor organization may make a contribution to a ballot question committee or independent expenditure committee subject to this act...[and] may make an independent expenditure in any amount advocating for the election or defeat of a candidate, or the qualification, passage, or defeat of a ballot question *and does not for this reason become a committee, unless it solicits or receives contributions in excess of \$500.00 for the purpose of making the independent expenditure, but is subject to the independent expenditure reporting requirements of section 51.* (Emphasis added.)

The Department considers these amendatory provisions to be dispositive of your questions concerning the Act's registration and reporting requirements. In sum, an entity that makes a contribution to an IEC is not subject to the Act's registration requirements, so long as it does not solicit or receive contributions for the purpose of making that contribution, as provided in the Act. *Id.* An entity which directly makes an independent expenditure using its own general treasury funds may owe an independent expenditure report depending on the value of the independent expenditure. MCL 169.251, as amended by 2017 PA 119. Entities that made contributions to IECs using their own general treasury funds prior to the enactment of 2017 PA 119, as authorized by *Michigan Chamber* and the Department's 2010 guidance, will not be required to satisfy the registration and reporting requirements of the MCFA, absent evidence that the entity solicited contributions for the purpose of making the expenditure.

The foregoing represents an interpretive statement regarding the applicability of the MCFA.

Sincerely,


Michael J. Senyko
Chief of Staff