



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

November 8, 2018

William Baker
PO Box 3298
Kalamazoo, MI 49003

Dear Mr. Baker:

The Michigan Department of State (Department) acknowledges receipt of your letter dated August 31, 2018 and received September 6, 2018, which requests the issuance of a declaratory ruling or interpretative statement regarding the Department's interpretation of the Michigan Campaign Finance Act (MCFA or Act), 1976 PA 388, MCL 169.201, *et seq.* Your request asks whether a digital currency exchange is a valid secondary depository under MCL 169.221(4). A copy of your request was published on the Department's website beginning September 7, 2018 inviting public comments regarding your request, but none were received.

In your request, you state "[w]hile it should be self-evident that digital currencies are a valid way to receive political contributions, the main issues yet to be resolved are how to record their value and how to use them once they have been received." The Department respectfully disagrees that it is "self-evident" that digital currency is a valid way to receive political contributions as the law does not authorize such a vehicle, and the Department has never determined that digital currencies are a valid way to receive political contributions. Therefore, while not directly asked, implicit in your question is whether committees may accept contributions made via Bitcoin and other forms of cryptocurrency.

The MCFA and Administrative Procedures Act (APA), 1969 PA 306, MCL 24.201 *et seq.*, required the Department to issue a declaratory ruling if 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 must instead offer an interpretive statement "providing an informational response to the question presented [.]" MCL 169.215(2). As the factual statement provided in your letter is insufficient to support the issuance of a declaratory ruling, the Department issues this interpretive statement in response to your request.

From the outset, the Department must first determine whether under the MCFA, a committee may accept contributions made via Bitcoin and/or other forms of cryptocurrency. First, a brief background on Bitcoin is necessary.

Bitcoin is a privately issued currency created in 2009 that is purely digital, represented by a string of numbers and letters.¹ Bitcoins are a form of cryptocurrency that are used as a medium of exchange but do not have legal tender status in any country.² It is an anonymous peer-to-peer digital currency which operates without any governmental oversight and without the involvement of financial institutions.³

Bitcoins are maintained in digital currency exchanges or “wallets” where individuals store cryptocurrency and may be able to exchange it for valid legal tender, such as U.S. dollars. Users can electronically transfer Bitcoins from their wallets to other users, merchants accepting Bitcoin, or through an exchange that converts the Bitcoins to valid legal tender.

Bitcoin is a fiduciary currency (compared to a commodity-based currency) which has “no intrinsic value, and derive[s its] value in exchange either from government fiat or from the belief that they [it] may be accepted by someone else.”⁴ Bitcoin’s value is extremely volatile, and has no value other than in an exchange between consenting parties. Its value fluctuates daily.

Upon review, the Department determines that contributions may not be made via Bitcoin. The foundation for the Campaign Finance Act is transparency and clear standards on the value of contributions and limitations thereof. Under the MCFA, contribution is defined as “a payment, gift, subscription, assessment, expenditure, contract, payment for services, dues, advance, forbearance, loan, or donation of money or anything of *ascertainable monetary value*, or a transfer of anything of ascertainable monetary value to a person, made for the purpose of influencing the nomination or election of a candidate, for the qualification, passage, or defeat of a ballot question, or for the qualification of a new political party.” MCL 169.204(1) (emphasis added)⁵.

¹ U.S. Gov’t Accountability Office, GAO-13-516, Virtual Economies and Currencies 5 (2013), available at <http://www.gao.gov/assets/660/654620.pdf> (“GAO Report”).

² <https://www.irs.gov/pub/irs-drop/n-14-21.pdf>

³ Id.

⁴ Federal Reserve Bank of Chicago Letter, No. 317, December 2013; available at <https://www.chicagofed.org/publications/chicago-fed-letter/2013/december-317>

⁵ The Department notes that the MCFA definition of contribution is different from the definition under the Federal Election Campaign Act of 1971, which defines “Contribution” to include “any

The Merriam-Webster Dictionary defines “ascertain” as “to find out or learn with certainty; to make certain, exact, or precise.”⁶ In the context of a contribution under the MCFA, an ascertainable monetary value is one that is exact, precise, and certain or can be determined with certainty. Where it cannot be determined the *exact* or *precise* dollar amount for a contribution made with Bitcoin at the time it is given, there can be no ascertainable monetary value.

The example most analogous to Bitcoin are securities since the value of both fluctuates regularly, are dependent on the value as perceived by the parties at the time of exchange, and neither can be used in and of themselves to purchase goods or services. As to securities, in 1979, the Department upheld a prior ruling and determined that committees could not purchase certificates of deposit and hold them, as committee funds must be deposited in an account in a financial institution. *Interpretive Statement to the Honorable Michael O’Brien*, May 30, 1979. Similarly, in 1993, the Department determined that a committee must only hold its assets in a financial institution and is barred from using other investment vehicles for the purpose of depositing contributions and making expenditures. *Interpretive Statement to Joseph Olson*, August 4, 1993.

Today, candidates and committees are barred from using investment vehicles other than bank accounts at financial institutions for the purpose of depositing contributions and making expenditures. MCL 169.221. Similar to the reference to stock in O’Brien, Cryptocurrency is not a mere transfer of controlled funds deposited or withdrawn through a financial institution, but rather is traded anonymously through an electronic platform. As with stocks and commodities, Bitcoin’s worth fluctuates daily, there is no way to ascertain the precise monetary value of one Bitcoin on any particular day. Further the Act requires that committees deposit funds in an account in a financial institution, which is not an option for cryptocurrency.

Finally, allowing committees to accept contributions made via a cryptocurrency whose value fluctuates daily would create a quagmire for reports required under section 33 of the Act. Namely, it is unknown what value the committee should report – the value of the cryptocurrency on the day it is purchased by the donor, or the value of the cryptocurrency on the day of the contribution, or its value on the date the contribution is reported on a campaign statement. New regulations would need to be passed to direct committees regarding the valuation of cryptocurrency in order to comply with contribution limitations set forth in the Act. The Act as currently written simply does not contemplate this type of regulatory scheme, and absent such direction from the Legislature, the Department cannot find that committees may accept contributions made via Bitcoin.

gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for federal office.” 2 U.S.C. § 431(8)(A)(i)

⁶ Available at <https://www.merriam-webster.com/dictionary/ascertain>

However, this is not the only reason the Department makes this finding. The Department also notes that much of the process of exchanging Bitcoin is anonymous, and the MCFA expressly bars anonymous contributions. MCL 169.241(2) (“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.”)

Given this, Bitcoin and other forms of cryptocurrency cannot be considered a valid contribution as defined by section 204. Therefore, the Department concludes that Bitcoin and other forms of cryptocurrency may not be accepted by a candidate committee as a contribution.

With respect to your second question, the Department declines to address whether a digital currency exchange is a valid secondary depository to accept contributions because, as a threshold matter, cryptocurrency is not a valid means to accept contributions. Given that the Department concludes that committees may not use cryptocurrency to accept contributions, it is unnecessary to determine if the means to exchange cryptocurrency are valid secondary depositories under section 21. Additionally, the Department has held that a committee is required to hold assets only in a bank, savings and loan association or credit union and cannot hold its assets in another investment vehicle. *See Interpretive Statement to Joseph Olson*, August 4, 1993. The Department declines to hold differently.

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

Sincerely,