STATE OF MICHIGAN
JOCELYN BENSON, SECRETARY OF STATE
DEPARTMENT OF STATE
LANSING

September 22, 2021

Robert S. LaBrant
12411 Pine Ridge Drive
Perry, MI 48872

Dear Mr. LaBrant:

The Michigan Department of State (Department) acknowledges receipt of your letter dated June 28, 2021, which requests the issuance of a declaratory ruling or interpretative statement regarding the Department's interpretation of the Michigan Campaign Finance Act, MCL 169.201, *et seq.*

Your request seeks answers to the following six questions:

(1) Whether a political party committee, as defined in MCL 169.211(6) may maintain an administrative fund, which may accept funding and make disbursements that fall outside the regulatory scope of the MCFA, i.e., issue ads that do not expressly advocate the nomination and election of a candidate? *See MCL 169.206 (2)(j).*

(2) Whether such a political party committee administrative fund is a "person" for the purposes of MCL 169.211(2) and may make contributions to a ballot question committee as defined in MCL 169.202(3)?

(3) Whether a political party committee administrative fund which receives or expends $500.00 or more in a calendar year, for the "qualification, passage, or defeat of a ballot question," is required to register itself as a ballot question committee as required by MCL 169.224 and file disclosure statements as required by MCL 169.234?

(4) Whether a state central political party committee administrative fund may make disbursements to a county or district political party committee administrative fund paying or reimbursing them for ballot question petition circulation?

(5) Whether a state central, county or district political party committee administrative fund who each receives or expends $500.00 or more in a calendar year to fund its ballot question petition circulation activities is required to register itself as a ballot question committee and file periodic disclosure statements?

(6) If political party administrative funds provide the funding for petition signature collection, under what circumstances, if any, will a political party administrative fund be allowed to avoid registering as a ballot question committee and disclosing its contributors and expenditures?

You argue that answers to these questions are necessary given a recent announcement by the Michigan Republican Party indicating that "the party plans to launch an initiative petition drive to amend state election laws."[1] You further state that the ruling is necessary to "spell out the rules governing the funding of such petition drives by political party administrative funds."

The MCFA and Administrative Procedures Act (APA), 1969 PA 306, MCL 24.201 *et seq.*, require the Department to post the request for a declaratory ruling on its website to solicit public comments. The Department received public comments on your request. The first was submitted by the League of Women Voters of Michigan who supported the request for a declaratory ruling or interpretive statement saying, "the public has a right to know who is contributing money to influence public policy and voters." Public comments were also submitted by the Brennan Center for Justice in support of the request as it would "preserv[e] transparency regarding the sources of funding for ballot question committees in Michigan elections."

The Department issued its preliminary response on August 31, 2021 and posted it for public comment in accordance with the MCFA and APA's requirements. Public comments were received from the Michigan Campaign Finance Network (MCFN) and Progress Michigan. Both commenters supported the preliminary response. MCFN wrote that the Department's interpretative statement would "make important progress toward realizing the aims of transparency and disclosure set out in the [MCFA]." Progress Michigan's comment expressed general support for the preliminary response as written and contained as an attachment a report on possible prior uses of administrative fund disbursements used to support ballot committees.

The APA and the MCFA require 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). Because your statement of facts is not sufficient, the Department declines to issue a declaratory ruling and issues this interpretive statement in response to your request.

While you have presented six questions to the Department, they can appropriately be summarized into one threshold question: Can administrative account funds be utilized to make a contribution or expenditure to a ballot question committee? It is only if the answer to this question is yes, administrative account funds can be used to make a contribution or expenditure, that your other questions need be answered.

Administrative accounts are separate bank accounts used for depositing funds received from restricted sources, such as corporate or labor union treasury funds. Payments from administrative accounts are strictly limited to "paying administrative expenses that are totally unrelated to the party's political activity. These funds … may not be used for candidate support or opposition." See Political Party Manual, Bureau of Elections (accessed August 26, 2021), see also *Interpretive Statement Issued to David Lambert*, September 21, 1983.

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[1] It is not clear whether the Republican Party intends to finance the initiative petition drive using its administrative account or its political party account. For purposes of this Interpretive Statement, the Department assumes based solely upon your request, that the Party will use funds from its administrative account.

As you indicate in your request, administrative funds operated by political party committees are not covered by the Act or the Department's regulations because "they have functions which are outside the ambit of the Act." *Interpretive Statement Issued to David Lambert*, September 21, 1983. Because there is no statutory basis for these accounts, the Department turns to prior declaratory rulings and interpretive statements to answer this question.

In *Lambert*, the Department was asked whether corporate funds could be placed into an administrative account and then be used to make a contribution to a candidate. There, the Department concluded that a political party committee may receive corporate funds and place the funds into the administrative account, but the funds must be spent in a way "as to not be a contribution or expenditure under the Act." *Interpretive Statement Issued to David Lambert*, September 21, 1983. The words "contribution" and "expenditure" are terms of art that are generally defined to include a payment or transfer of anything of ascertainable monetary value made for the purpose of influencing or made in assistance of the qualification, passage, or defeat of a candidate or ballot question. MCL 169.204(1), 169.206(1).

Since their inception, it remains true that administrative account funds are outside of the regulatory scope of the MCFA because they are not used for contributions or expenditures as those terms are defined by the Act. Since the funds are not used for contributions or expenditures, the controller of the administrative account is not obligated to register with the Department or file campaign finance reports disclosing the account's contributors. They are not obligated to file reports because the funds are designed and intended to be utilized to cover expenses unrelated to the party's political activity, such as being utilized for office supplies. Administrative account funds are not designed to be used for contributions or expenditures because the administrative account is not subjected to the same source and amount restrictions that other committees under the Act are bound by. See MCL 169.252 (establishing contribution limits based upon committee type); 169.254 (prohibiting contributions from corporations and labor unions).

Using an administrative account to make a contribution or expenditure to a candidate or ballot question committee would constitute an improper contribution or expenditure in contravention of the Act's requirements. The MCFA exists to "preserve the 'purity of elections' and to 'guard against abuses of the elective franchise.'" *Michigan Educ. Ass'n v Sec'y of State,* 489 Mich. 194, 202 (2011). "The Campaign Finance Act is a disclosure statute. It contains extensive provisions intended to provide for the reporting and public disclosure of contributions." *People v Weiss*, 191 Mich App 553, 562 (1991). "'The intent of the Campaign Finance Act is to promote the public disclosure of the contributions and expenditures of political campaigns.'" *Id.*, quoting *The Candidate Committee Manual*, Michigan Secretary of State (1984). It was based upon these pro-disclosure principles that the Department concluded in *Lambert* that administrative account funds may not be utilized to make contributions or expenditures to candidate committees, nor can they be comingled with regulated funds. *Interpretive Statement Issued to David Lambert*, September 21, 1983.

It is on these same principles that the Department bases this conclusion: Administrative account funds may not be used to make contributions or expenditures to ballot question committees in contravention of the Act's requirements. Allowing administrative account funds to make

contributions or expenditures using money from restricted sources in an account not subject to MCFA regulations would contravene the very purpose for which the Act was created.

Administrative account funds may continue to be used for disbursements unrelated to the party's political activity, but if any disbursements are used for the purpose of influencing or are made in assistance of the qualification, passage, or defeat of a candidate or ballot question, the disbursement and the account become subject to the Act's requirements and can no longer be classified as an administrative account. See MCL 169.204; 169.206. Those requirements may include formation and registration as a committee, see MCL 169.203(4), the filing of independent expenditure reports, see MCL 169.251, the filing of campaign finance statements disclosing donors, see MCL 169.233, or restrictions on sources and amounts of the contribution, see MCL 169.251; 169.254.[2]

The foregoing represents an interpretive statement concerning the applicability of the Campaign Finance Act.

Sincerely,

Melissa J. Smiley, PhD
Chief of Staff

[2] Without specific factual support surrounding the details of the contribution or expenditure, the Department cannot provide specific guidelines on which sections of the Act may apply.