



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

September 17, 2015

Paul Kane  
608 Sunny Beach Drive  
White Lake, Michigan 48386

Dear Mr. Kane:

The Department of State (Department) has concluded its investigation of the complaint you filed against Liz Fessler Smith, 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.

You alleged that Ms. Fessler Smith's candidate committee received corporate in-kind contributions and filed incomplete or inaccurate reports.

You filed your complaint on April 13, 2015. Ms. Fessler Smith filed an answer on May 27, 2015, and you filed a rebuttal statement with the Department on June 23, 2015. Ms. Fessler Smith provided additional information at the Department's request on September 14, 2015.

The MCFA requires filed campaign finance statements and reports to be complete and accurate. MCL 169.233. A candidate who knowingly files an incomplete or inaccurate statement or report may be subject to a civil fine of up to \$1,000.00. MCL 169.233(10). A candidate who knowingly omits or underreports a contribution or expenditure may be subject to a civil fine of up to \$1,000.00, or the amount of the undisclosed contribution or expenditure, whichever is greater. MCL 169.233(11).

Additionally, the Act prohibits a corporation from making a contribution to a committee other than a ballot question committee. MCL 169.254. A knowing violation of this section is a felony, punishable by a fine of not more than \$5,000 or imprisonment. MCL 169.254(4). 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).

Consistent with *Citizens United v FEC*<sup>1</sup> and *Mich Chamber v Land*,<sup>2</sup> the Department recognizes that a corporation may make independent expenditures or contribute to a political action

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<sup>1</sup> 558 US 310 (2010).

<sup>2</sup> 725 F Supp 2d 665 (2010)

committee, called an “independent expenditure committee,” that does not coordinate the expenditure of its funds with a candidate. However, section 54 still prohibits a corporation from contributing to a candidate committee.

You first allege AMcomm Telecommunications, Inc. (AMcomm) made an in-kind contribution to Ms. Fessler Smith’s committee by paying employees to work on Ms. Fessler Smith’s campaign at a Primary Election Day polling place. You alleged that you spoke to two people who had Liz Smith signs, and that one stated that his boss told him where he had to be and the other stated that she did not know anything about politics, but that she worked for the family and was given no choice about working at the polling place. You did not provide the names of these two employees, nor did you provide any evidence that these two workers were being paid by AMcomm for the time they were at the polling location.

In her answer, Ms. Fessler Smith asserted that “[a]ll of [her] poll workers on Primary Election Day were volunteers, none of them were paid.” In support of her assertion, Ms. Fessler Smith provided a sworn affidavit from Ceree Burkart, who stated that she “is not an employee of a corporation [,]” she “was volunteering after work hours [,]” “[n]o one paid [her] to be at the polls [,]” and “no one insisted that [she] be at the polls.” Ms. Fessler Smith also provided a sworn affidavit from Matthew Schultz, the president and owner of AMcomm. Mr. Schultz stated that he “did not ever pay, compensate or tell any of [his] employees to support or volunteer for Liz Fessler Smith” and “[i]f any of them did, it was on their own personal time, not on company time and they received zero compensation.”

In light of the sworn affidavits of Ms. Burkart and Mr. Schultz denying the payment of any corporate funds to any individual working for Ms. Fessler Smith’s campaign, and in the absence of any evidence that any corporate payment was made to individuals working for Ms. Fessler Smith’s campaign on Primary Election Day, this portion of your complaint is dismissed.

You further alleged that Ms. Fessler Smith accepted unlawful in-kind contributions from AMcomm with respect to one of Ms. Fessler Smith’s campaign signs, which was hung from an AMcomm boom truck on AMcomm property. As evidence, you provided pictures of an AMcomm boom truck with the arm raised and a sign hanging from the arm which stated, “LIZ FESSLER SMITH FOR STATE REPRESENTATIVE [.]”

There is no dispute that this campaign sign was hung from an AMcomm truck on AMcomm property.

While section 54 of the Act prohibits a corporation from making an in-kind contribution to a candidate committee, the court cases cited above allow a corporation to make an independent expenditure. An independent expenditure is “an expenditure by a person 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).

In her signed statement included with her answer, Ms. Fessler Smith asserted that her candidate committee did not “knowingly coordinate with a corporation in any way [,]” have any knowledge of an independent expenditure made by AMcomm, or “knowingly direct, instruct, coordinate or receive any corporate in-kind contributions.” Mr. Schultz asserted in his sworn affidavit that Ms. Fessler Smith’s campaign had “no knowledge of where he would choose to

display campaign signs [,]" nor did it ask him, direct him, instruct him, or coordinate with him or AMcomm to hang the sign.

In your rebuttal statement, you alleged that the treasurer of Ms. Fessler Smith's candidate committee was Ms. Fessler Smith's husband and also a "high level supervisor for many years" for AMcomm. You assert that the dual position of treasurer of the committee and high-level employee of AMcomm make it impossible for Ms. Fessler Smith's husband "to not know what was going on," and highly unlikely that the sign was hung "without Mike's intimate involvement [.]"

In response to a request by the Department, Ms. Fessler Smith provided a sworn affidavit from Mike Smith. In his sworn affidavit, Mr. Smith admitted that he is the treasurer of Ms. Fessler Smith's candidate committee, a manager at AMcomm, and Ms. Fessler Smith's husband. However, he further stated that he "had no discussions with Matthew Schultz regarding signs or campaign activity [,]" and that he "did not coordinate, direct, instruct, or request the placement of any signs that Matthew Schultz placed on his property."


No evidence has been provided to the Department that refutes the statements made by Ms. Fessler Smith in her written statement, or Mr. Schultz or Mr. Smith in their sworn affidavits, other than your suppositions that the close working relationship between Mr. Schultz and Mr. Smith must give rise to coordinated activity.

Ms. Fessler Smith, Mr. Schultz, and Mr. Smith all asserted that Mr. Schultz's decision to hang the campaign sign and its location was made independent of the committee or anyone working for the committee, and was not done at the direction of or under the control of any other person.

Based on the sworn affidavits provided by Ms. Fessler Smith, and in the absence of evidence contrary to those statements, the Department believes the evidence tends to support a conclusion that the hanging of the campaign sign from the AMcomm boom truck on AMcomm property was an independent expenditure, not an in-kind contribution to Ms. Fessler Smith's candidate committee. Therefore, this portion of your complaint is also dismissed.

Finally, you alleged that Ms. Fessler Smith filed incomplete or inaccurate campaign statements by failing to report in-kind contributions from AMcomm. Because the Department finds that AMcomm made an independent expenditure and not an in-kind contribution, this portion of your complaint is also dismissed.

Sincerely,



Lori A. Bourbonais  
Bureau of Elections  
Michigan Department of State

c: Liz Fessler Smith