



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

February 21, 2017

Brett J. McRae  
Campaign Finance Services  
403 West Fourth Street  
Charlotte, Michigan 48813

Dear Mr. McRae:

The Michigan Department of State (Department) acknowledges receipt of your letter dated December 6, 2016, requesting the issuance of a declaratory ruling or interpretive statement regarding the Department's interpretation of the Michigan Campaign Finance Act (MCFA or Act), 1976 PA 388, MCL 169.201 *et seq.*, as it applies to your client's intention to make an expenditure for an incidental expense. A copy of your request was published on the Department's website beginning December 9, 2016 inviting public comments regarding your request, but none were received.

The MCFA and Administrative Procedures Act (APA), 1969 PA 306, MCL 24.201 *et seq.*, 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). 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.

According to your letter, you represent an incumbent Member of the Board of Trustees of Michigan State University (MSU or University) who intends to transfer a portion of the excess funds remaining in her candidate committee directly to MSU. You ask whether this proposed course of action represents "a permissible officeholder incidental expense under MCL 169.209(1)(g)?"

In essence, the Act limits a candidate committee to making three different types of disbursements of its funds:

1. Section 6 (MCL 169.206) defines "expenditures" as being made in assistance of the nomination or election of the candidate who controls the candidate committee.
2. Section 21a (MCL 169.221a) authorizes a candidate committee to make expenditures for "incidental expenses." Section 9 (MCL 169.209) defines an incidental expense as "an

expenditure that is an ordinary and necessary expense, paid or incurred in carrying out the business of an elective office[.]" and includes a non-exclusive list of 16 specific categories of acceptable incidental expenses.

3. Section 45 (MCL 169.245) lists the exclusive means by which a candidate committee may dispose of residual campaign funds at the time of dissolution.

Your request primarily concerns the second type of disbursement, a payment or transfer that constitutes an incidental expense within the meaning of the Act. Under section 21a of the MCFA, MCL 169.221a, incumbent officeholders are authorized to use candidate committee funds to make expenditures for incidental expenses:

A candidate committee of a candidate who is elected or appointed to an elective office may make an expenditure for an incidental expense for the elective office to which that candidate was elected or appointed. Except as otherwise specifically provided in this act, an expenditure for an incidental expense by a candidate committee under this section is an expenditure under this act.

In order to qualify as a permissible expenditure, the candidate committee's spending must satisfy the statutory definition of an incidental expense. Among other purposes, the term "incidental expense" is defined to include an expenditure made in the form of "[a] donation to a tax-exempt charitable organization, including the purchase of tickets to charitable or civic events." MCL 169.209(1)(g).

Under section 501(c)(3) of the Internal Revenue Code, 26 USC 501(c)(3), an entity that is "organized and operated exclusively for ... educational purposes," qualifies as exempt from paying taxes on its income. According to the Internal Revenue Service:

To be tax-exempt under section 501(c)(3) of the Internal Revenue Code, an organization must be organized and operated exclusively for exempt purposes set forth in section 501(c)(3), and none of its earnings may inure to any private shareholder or individual. In addition, it may not be an action organization, i.e., it may not attempt to influence legislation as a substantial part of its activities and it may not participate in any campaign activity for or against political candidates. Organizations described in section 501(c)(3) are commonly referred to as charitable organizations.<sup>1</sup>

Although not specified in your letter, research confirms that MSU is a tax exempt charitable organization under 26 USC 501(c)(3).<sup>2</sup> Accordingly, the University qualifies as a tax exempt charitable organization for purposes of MCL 169.209(1)(g) and as an incumbent Member of the Board of Trustees, your client is authorized by the Act to make a donation to MSU.

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<sup>1</sup> See *Exemption Requirements - 501(c)(3) Organizations*, Internal Revenue Service, January 26, 2017 available at <https://www.irs.gov/charities-non-profits/charitable-organizations/exemption-requirements-section-501-c-3-organizations> (viewed February 17, 2017).

<sup>2</sup> See *Certificate of Sales and Use Tax Exempt Status*, Michigan State University, January 17, 2017, available at <http://www.ctr.msu.edu/download/forms/ex50e.pdf> (viewed February 15, 2017). Additionally, MSU's tax exempt status was verified through the Internal Revenue Service's "Exempt Organizations Select Check" online database, available at <https://apps.irs.gov/app/eos/> (viewed February 16, 2017).

It is understood that because the Act requires a candidate to maintain a candidate committee until he or she “is constitutionally or legally barred from seeking reelection or fails to file for reelection to that office by the applicable filing deadline,” your client is not currently in the process of dissolving her candidate committee. MCL 169.203(1)(e), 221. This is significant because a different law governs the disposition of any remaining candidate committee funds at termination. Under section 45(2)(b), MCL 169.245(2)(b), residual candidate committee funds may be transferred at dissolution to “a tax exempt charitable organization, as long as the candidate does not become an officer or director of or receive compensation, either directly or indirectly, from that organization.” MCL 169.245(2)(b). Once the process of winding down commences, disbursements from your client’s candidate committee will be subject to this restriction.

The foregoing constitutes an interpretive statement with respect to the questions presented in your December 6, 2016 request.

Sincerely,

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