



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

May 8, 2014

The Honorable James Hightower
Tony Saunders II
200 Wall Street
Benton Harbor, Michigan 49022

Dear Mayor Hightower and Mr. Saunders:

The Department of State (Department) has completed its investigation of the campaign finance complaint filed against you by Edward Pinkney, 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 Rev. Pinkney's complaint, which was filed on December 11, 2013. Mayor Hightower filed an answer on January 15, 2014, and Rev. Pinkney filed a rebuttal statement on February 12, 2014.

The registration and reporting requirements of the MCFA apply to any "committee," which is defined as "a person^[1] who receives contributions or makes expenditures for the purpose of influencing or attempting to influence the action of voters for or against . . . the qualification, passage, or defeat of a ballot question, if contributions received total \$500.00 or more in a calendar year or expenditures made total \$500.00 or more in a calendar year." MCL 169.203(4).

Under the Act, a committee is required to file a statement of organization within 10 days of its formation. MCL 169.224(1). The failure to timely file a statement of organization may result in the assessment of late filing fees or, in extreme circumstances, the filing of misdemeanor charges. *Id.* The failure to file a single campaign statement may trigger late filing fees. MCL 169.234(5). In certain circumstances, the failure to file a campaign statement may constitute a misdemeanor offense. MCL 169.234(6).

Rev. Pinkney alleged that you acted together to raise money; purchase signs, door knockers, flyers, and radio time; and rent campaign space. As evidence, Rev. Pinkney submitted copies of a picture of a sign which states "VOTE YES to Move Benton Harbor Forward TUESDAY MAY 7, 2013 SPECIAL MILLAGE ELECTION [.]". Rev. Pinkney further alleged that you received a contribution in the amount of \$4,000.00 from Jeff Noel, but no evidence was provided to substantiate this allegation.

¹ The word "person" is defined as "a business, individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, labor organization, company, corporation, association, committee, or any other organization or group of persons acting jointly." MCL 169.211(1).

In response, Mr. Hightower stated that “it is always [his] intent to be in compliance” with MCFA and that after issues regarding the committee were brought to his attention, he “immediately went to the Berrien County Clerk’s² office” and “properly registered the Ballot Question Committee, accurately filed all pre and post-election contribution and expenditures, paid registration cost[s] and all late fees.”

The Department confirmed with the Berrien County Clerk that Mr. Hightower filed a Statement of Organization, filed pre- and post-election campaign statements, and paid the associated late-filing fees on December 11, 2013 – which was prior to Mr. Hightower receiving notice from the Department of the complaint.

In his rebuttal statement, Rev. Pinkney also alleged that Mr. Hightower “failed to maintain neutrality in the election” in violation of section 57 of the Act. The Act prohibits a public official from expending public money or using public resources to further the qualification, passage, or defeat of a ballot question. MCL 169.257(1). However, there are several narrow exceptions to section 57, one of which is for “[a]n elected or appointed public official . . . who, when not acting for a public body but is on her or her own personal time, is expressing his or her own personal views, is expending his or her own personal funds, or is providing his or her own personal volunteer services.” MCL 169.257(1)(f). Absent any evidence that would support a reason to believe that Mr. Hightower used public funds to further the passage or defeat of the ballot question, this portion of Rev. Pinkney’s complaint is dismissed.

Additionally, no evidence has been provided to support a reason to believe that Mr. Saunders was required to form a ballot question committee. Therefore, the complaint against Mr. Saunders is dismissed.

The Department finds that the evidence supports a conclusion that Mr. Hightower was required to file a Statement of Organization and Pre- and Post-Election campaign statements for the Move Benton Harbor Forward committee. All three statements were filed on December 11, 2013. The Berrien County Clerk appropriately assessed late filing fees in the amount of \$1,300.00 (\$300 for late-filed Statement of Organization and \$500.00 each for late-filed pre- and post-election campaign statements). The Berrien County Clerk has confirmed that the Committee has paid in full the \$1,300.00 in late-filing fees.

Based on the foregoing, the Department finds that there may be reason to believe that the Move Benton Harbor Forward committee (Committee) violated the MCFA by failing to timely file its Statement of Organization and pre- and post-election statements. Having made this determination, the Department is required by law to attempt to resolve this matter informally. *Id.*

First, the Department acknowledges that the Committee has now filed its Statement of Organization and Pre- and Post-Election statements with the Berrien County Clerk. The

² A ballot question committee supporting or opposing a ballot question to be voted upon in a single county files its statement of organization and campaign statements with that county clerk. MCL 169.236(2).

Department further acknowledges that the Berrien County Clerk has assessed the Committee the statutory late filing fees, and that the Committee has paid the fees in full. While the Committee's Pre- and Post-Election campaign statements appear to contain imperfect disclosures, all expenditures for which the Department has evidence appear to be disclosed. Any further concerns or questions regarding these statements need to be addressed with the Berrien County Clerk.

However, the Department also notes that according to the Committee's late-filed reports, the April 19, 2013 \$1,094.98 expenditure for yard signs was required to be disclosed prior to the May 7, 2013 election. The failure to disclose this expenditure prior to the election deprived the public of any meaningful pre-election disclosure of who paid for the signs.

The Department offers to resolve Rev. Pinkney's complaint against you through execution of the enclosed conciliation agreement, which requires that you pay a \$200.00 civil fine to the State of Michigan for failing to disclose prior to the election. **If you are inclined to execute the conciliation agreement, please return the original signed document and payment of the \$200.00 civil fine to this office on or before June 9, 2014.** Payment of the civil fine must be made by check or money order payable to the State of Michigan; please include the notation, "Conciliation Agreement, Attn: Bureau of Elections" on your check or money order.

Please be advised that if the Department is unable to resolve this complaint informally, it is required by MCL 169.215(10)-(11) to refer the matter to the Attorney General with a request that he prosecute the Committee, Mr. Hightower, or both for the misdemeanor offenses of failing to file a Statement of Organization for more than 30 days and failure campaign statements for more than 7 days, or commence an administrative hearing to enforce the civil penalties provided by law. "If after a hearing the secretary of state determines that a violation of this act has occurred, the secretary of state may issue an order requiring the person to pay a civil fine equal to triple the amount of the improper contribution or expenditure plus not more than \$1,000.00 for each violation." MCL 169.215(11).

Sincerely,



Lori A. Bourbonais
Bureau of Elections
Michigan Department of State