



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

September 3, 2020

Evelyn Quiroga
5715 West Parks Road
Saint Johns, Michigan 48879

Dear Ms. Quiroga:

This interpretive statement concerns your written request for a declaratory ruling or interpretive statement, submitted to the Michigan Department of State (Department) on June 10, 2020 regarding the applicability of the Michigan Campaign Finance Act (MCFA or Act), 1976 PA 388, MCL 169.201 *et seq.*¹

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).

By letter dated June 10, 2020, you have requested answers to the following five questions:

1. Based on the MCFA, can an individual maintain and/or control a PAC including political, independent and/or independent expenditure committee (SuperPAC)?
2. Can an individual including a candidate or officeholder maintain and/or control multiple PACs including political, independent and/or independent expenditure committee (SuperPAC)?
3. Can a candidate or officeholder under any circumstances transfer or expend funds from their Michigan registered candidate committee to a PAC including a political, independent and/or SuperPAC committee whether under their control or not under their control?
4. Can a candidate or officeholder transfer or expend funds to a political, independent or SuperPAC committee under their control to make expenditures on the candidate or

¹ The Department notes that you were the Director of the Data Disclosure Division for the Bureau of Elections until your retirement effective January 1, 2020.

committee's behalf?

5. If any of the activity discussed above is allowed, how are the contribution limits of the MCFA affected and what are the reporting requirements of the giving and receiving committees.

In support of your request for a declaratory ruling, you state that you are the treasurer for a candidate committee and a political committee and are “asking for clarification as to the legality of an individual or group maintaining control over single or multiple independent and/or political committees.”²

As these questions presented do not contain specific facts or argument, the Department must only reiterate the standard as it exists under the MCFA. MCL 169.215(2) (“A declaratory ruling or interpretive statement issued under this section shall not state a general rule of law, other than that which is stated in this act.”) Further, 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.

In accordance with publication and public comment period requirements, the Department posted its preliminary response on its website on August 13, 2020 and solicited public comments. You submitted public comments to the Department. For the reasons stated below, the Department does not change its ultimate conclusions, but provides further clarity.

I. Whether the MCFA bars an individual from maintaining or controlling an independent committee, and if so, whether an individual can maintain more than one?

Your first question asks if “an individual [can] maintain and/or control a PAC including political, independent and/or independent expenditure committee (SuperPAC).” The Department interprets this question to ask whether the MCFA bars an individual from maintaining and/or controlling an independent committee. Similarly, your second question asks whether an incumbent officeholder can maintain multiple leadership PACs. Given the interplay between the two questions, the Department will merge them and address them as one.

The heart of your question surrounds what authority and requirements the MCFA places on individuals. Specifically, what effect does the phrase “an individual, other than a candidate, does not constitute a committee,” found in Section 3(4) of the Act, have on individuals, and does it altogether bar individuals acting alone from having a committee other than a candidate committee? And how is that to be understood in light of the requirement, also in Section 3(4),

² The Department also questions whether you are an interested person as that term is defined by R. 169.6 (“An interested person is a person whose course of action would be affected by the declaratory ruling.”) Given that you are not a member of the legislature, nor have you attempted to become one, the Department questions your status as an interested party.

that a committee must be formed by a person (which, by definition, could be an individual) if contributions received or expenditures made total \$500 or more in a calendar year?

As is customary, the Department will turn to the plain language of the statute.

In interpreting a statute, the goal is to “ascertain and give effect to the intent of the Legislature.” *People v Gardner*, 482 Mich 41, 50 (2008), quoting *People v Pasha*, 466 Mich 378, 382. “To do so, we begin with the language of the statute, ascertaining the intent that may reasonably be inferred from its language. When the language of a statute is unambiguous, the Legislature's intent is clear and judicial construction is neither necessary nor permitted.” *Odom v Wayne County*, 482 Mich 459, 467 (2008), quoting *Lash v Traverse City*, 479 Mich 180, 187 (2007).

Independent committee is defined under the Act as “a committee, other than a political party committee” that files a statement of organization, supports or opposes at least 3 candidates and receives contributions from at least 25 persons. MCL 169.208(3). Committee is defined as a person that receives contributions or makes expenditures for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate, the qualification, passage, or defeat of a ballot question, or the qualification of a new political party. MCL 169.203(4). Person is defined as a business, individual, proprietorship, limited liability company, 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(2). The Act does not define individual. “[U]ndefined statutory terms are to be given their plain and ordinary meaning, unless the undefined word or phrase is a term of art.” *People v. Thompson*, 477 Mich. 146, 151 (2007). “[A] lay dictionary [may be consulted] when defining common words or phrases that lack a unique legal meaning. *Id.* at 151-152 (citing *Robinson v. Detroit*, 462 Mich 439, 456 (2000)). The Oxford English Dictionary defines individual as “[a] single human being as distinct from a group; a single member of a class.” Oxford English Dictionary, available at: <https://www.lexico.com/definition/individual>.

When confronting potentially conflicting statutory language, we are obligated to read the law in such a way as to reconcile it wherever possible—not prioritizing one phrase over another. See *Scott v Budd Co*, 380 Mich 29, 37 (1968). (Courts must give effect to every word and should read statutes in harmony where the words are susceptible to being made effective.) Taken altogether, the only reasonable way to read Section 3(4) and to reconcile its various components is to understand that the phrase “an individual, other than a candidate, does not constitute a committee,” qualifies the *requirement* that a committee must be formed by a person if contributions received or expenditures made total \$500 or more in a calendar year. That is, if the person is an individual acting alone and expending more than \$500 per year of their own money, then they do not have to form a committee, but may. However, if an individual solicits or receives contributions for the purpose of making an expenditure then they must form a committee.

This obligation to read the law in such a way as to reconcile potentially conflicting language is precisely what the Department has done in its prior Interpretive Statements, including the one you reference in your request: the interpretive statement issued to Joseph Cella. *Interpretive Statement issued to Joseph Cella*, issued Dec. 2, 1999. You argue that “the Department set out its position that would support a negative response to this question.” While the Department agrees that *Cella* is relevant, the Department disagrees with your interpretation of *Cella*’s conclusion. In *Cella*, the Department was asked whether it was permissible for an individual to be the sole board member and primary contributor to an independent committee or PAC and benefit from the higher contribution limits:

“Because Ann Arbor PAC has only one member on its Board of Directors, and if [he] has made substantial contributions to the Ann Arbor PAC, does MCL 169.270 mean that any contributions to state candidates by Ann Arbor PAC would be attributable to the board member and subject to the contribution limits contained in MCL 169.252(1)?”

Nowhere in *Cella* did the Department conclude, let alone even suggest, that a single individual was not authorized to maintain or control the PAC. On the contrary, in its response, the Department took no issue with the apparent reality there of a one-person board of directors, concluding instead that a one-person board of directors would be considered to be controlled by, or operating at the direction of, the board member, particularly where the sole board member has also contributed a large sum of money to the PAC. Rather than concluding that the single board member was *barred* from maintaining or operating (or registering) a committee by himself, the Department concluded that the single board member could not create an independent committee in an effort to obtain the increased contribution limit.³

Cella’s underpinnings are consistent with the Department’s longstanding interpretation of the Act that you cannot do indirectly that which you are barred from doing directly. See MCL 169.244 (banning earmarking of contributions); *Interpretive Statement to Joseph W. Gelb*, issued August 21, 1979 (finding that because contributions may not be made with the agreement or arrangement that the person receiving the contribution will then transfer the contribution, earmarking contributions to an SSF is prohibited); *Declaratory Ruling to Timothy Sponsler*, Issued November 2, 1993 (concluding that section 44 prohibits individuals from making a contribution to a PAC with the arrangement that the PAC will deposit the contribution into its own account and use the money to contribute to another candidate). Stated differently, *Cella* stands for the proposition that one person may control a committee other than a candidate committee, but that one person will not benefit from the increased contribution limitations set out, because that one person may not form, register, and maintain a committee solely for the purpose of skirting applicable contribution limitations.

³ This answers your fifth question in part (“If any of the activity discussed above is allowed, how are the contribution limits of the MCFA affected and what are the reporting requirements of the giving and receiving committees.”)

Importantly, *Cella* is consistent with the Department's interpretation of the definition of committee: that an individual acting alone is not *required* to form a committee, but *may*. Individuals acting alone are not required to form and register a committee because they are already subjected to regulations under section 51 of the Act. Specifically, section 51 requires a person, other than a committee, to file an independent expenditure report of the independent expenditure totaling more than \$100.01. MCL 169.251.

However, there are non-nefarious reasons in which an individual acting alone may elect to form and register a committee. For example, individual A purchases \$2,000 in radio advertisements, \$2,000 in yard signs, and \$2,000 in pamphlets each for Candidate A, Candidate B, and Candidate C. All expenditures are made during the same reporting period. Section 51 would require individual A to submit an independent expenditure report per expenditure per candidate, totaling 9 reports due to the appropriate filing office. Comparatively, individual A could form and register an independent committee and submit only 1 report during the reporting period.

Not only are there reasons why a candidate may opt to form a committee other than a candidate committee, there are situations in which the individual is *required* to do so. As stated above, section 3 defines committee as a person receiving contributions over \$500 for the purposes of express advocacy. MCL 169.203(4). Stated differently, once an individual receives contributions totaling \$500 or more in a calendar year, that individual must now form, register and maintain the committee.

Neither *Cella* nor the Act provides who is allowed, or even required, to maintain or control a committee. Generally, the Act primarily addresses the *formation* of committees—not their maintenance or control. And to the degree that the Act discusses a committee's maintenance or control, as for example in Sections 22-24, it does not address the composition of the committee or whether more than one individual need participate.

All in all, the Department is unable to locate a single statutory provision, declaratory ruling, interpretive statement, or administrative rule that has concluded that an individual is outright banned from forming, maintaining or controlling a committee other than a candidate committee. Absent a specific statutory provision or rules promulgated under the Administrative Procedures Act, the Department will not conclude differently through the declaratory ruling process. *See Interpretive Statement to Bruce Courtade*, Issued December 9, 2013.

II. Whether a candidate or officeholder can transfer or expend funds from their Michigan registered candidate committee to a PAC.

Your third question asks whether a candidate or officeholder may transfer money from their candidate committee to a PAC. Similarly, your fourth question asks whether the candidate or officeholder can transfer money to a PAC so the PAC may make expenditures on the candidate committee's behalf.

This question appears duplicative and is answered by the prior interpretive statement issued to you. *Interpretive Statement to Evelyn Quiroga*, issued March 31, 2020.

In the previous interpretive statement issued to you on March 31, 2020, you asked the Department whether a candidate or office holder can transfer funds from a Michigan candidate committee to a PAC for the purpose of being transferred to a federal candidate or federal committee. There, the Department concluded a candidate committee may not make a contribution to a PAC for the *sole* purpose of transferring that contribution to another committee. This disbursement would include the candidate committee. However, whether this disbursement is a violation of section 44 depends upon the context of the disbursement and will be determined on a case by case basis by analyzing the following factors:

- (1) The amount of time between the disbursement from the candidate committee and the disbursement from the PAC;
- (2) Whether the PAC could make the disbursement absent the contribution from the candidate committee;
- (3) The accounting method used by the committees;
- (4) Whether the candidate committee and the PAC shared a common treasurer; and
- (5) Whether there was a comingling of funds.

The Department further stated that not all disbursements from a candidate committee to a PAC constitute earmarking, as there exist reasons a candidate committee may make an expenditure from committee funds to a PAC that are not violative of the MCFA, and that candidates remain free to make expenditures to PACs so long as the expenditure furthers their nomination or election. MCL 169.206(1). Similarly, PACs remain free to make contributions and expenditures (direct or in-kind) to candidates subject to the contribution limitations. MCL 169.259.

Despite this, you have again asked whether candidate committee funds may be transferred to a PAC altogether, and whether the disbursement can be earmarked for another candidate committee. There has been no change in facts or law that would warrant the Department from reaching a different conclusion from the standard it outlined in March, and the Department declines to do so now.

Finally, you have asked that Department to opine on how the contribution limits are affected and the reporting obligations of the committees if the Department answered any of the questions in the affirmative. The Department declines to opine on the varieties of this question as it is entirely hypothetical and does not provide even a scintilla of factual support for the Department to begin to provide an answer. Because your request lacks specificity, the Department declines to issue the request. R. 169.6.

Evelyn Quiroga
September 3, 2020
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The foregoing represents an interpretive statement with respect the applicability of the Act to your proposed course of action as described in your June 10, 2020 letter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Melissa J. Smiley, PhD". The signature is fluid and cursive, with the first name being the most prominent.

Melissa J. Smiley, PhD
Chief of Staff