



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

March 31, 2020

Evelyn Quiroga
5715 West Parks Road
St. Johns, Michigan 48879

Dear Ms. Quiroga:

This interpretive statement concerns your written request for a declaratory ruling or interpretive statement, you submitted to the Michigan Department of State (Department) regarding the applicability of the Michigan Campaign Finance Act (MCFA or Act), 1976 PA 388, MCL 169.201 *et seq.*¹ The Department issued its preliminary response on March 10, 2020. Pursuant to the Act's requirements, the Department invited public comments on its preliminary response. To date, none have been received.

The MCFA and Administrative Procedures Act (APA), 1969 PA 306, MCL 24.201 *et seq.*, required 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 January 6, 2020, you have requested answers to the following four questions:

1. Can a Michigan registered committee use its funds to contribute to a federally registered candidate or committee as an expenditure under section 6 of the MCFA?
2. Can a Michigan registered candidate committee use its funds to contribute to a federally registered candidate or committee as an incidental expense under section 9 of the MCFA?
3. Can a Michigan registered candidate committee transfer its funds to a federally registered candidate or committee under section 45 of the MCFA?
4. Can a Michigan registered candidate committee transfer its funds to a Michigan registered committee including a "leadership" committee or PAC for the funds to be transferred to a federal candidate or committee under the MCFA? If the answer to

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.

this question is yes, what are the parameters that must be followed for an acceptable transfer.

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 applicability of the law. 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.

I. Whether a Michigan committee may make a disbursement to a federal candidate or federal committee as an expenditure or incidental expense under section 6 or section 9.

Your first question asks if a Michigan registered committee may use its funds to make disbursement as an expenditure to a federal candidate or federal committee. While there is no argument provided for or against the answer to this question, you state that the Department’s documentation indicates that committees may make expenditures to a federal candidate committee under certain circumstances. Similarly, your second question asks whether an incumbent office holder can make an incidental office expense to a federal candidate or federal committee. Because of the overlapping issues in these questions, the Department answers them together.

To answer these questions, the Department must first look to the definition of expenditure. Section 6 of the Act defines an expenditure as a “payment, donation, loan, or promise of payment of money or anything of ascertainable monetary value” that furthers the nomination, election, or qualification of a candidate, ballot question, or political party. MCL 169.206(1).

In creating and defining expenditures under section 6, the Legislature has provided a guiding framework for limiting how and to whom committees may disburse their money. Registered committees are subject to a number of limitations when making expenditures. At the same time, the Legislature has specified exemptions for certain types of disbursements that might otherwise count as an “expenditure.” These exemptions exclude disbursements from the definition of an expenditure altogether. One such exclusion is a disbursement, except for the purpose of section 57, to or for a federal candidate or a federal committee. MCL 169.206(2)(i). Non-candidate committees can generally make disbursements that do not qualify as expenditures without limitation.

Conversely, in the case of *candidate* committees, the Legislature allows disbursements *only if* they qualify as expenditures, which in turn are subject to limitations. However, the Legislature

has also created specific exemptions that allow candidate committees the ability to make disbursements, as expenditures, in a way that may otherwise not be allowed under section 6. One of these exemptions is the ability of incumbent office holders to use candidate committee funds to pay for ordinary and necessary expenses created for the purpose of carrying out the business of an elective office – called incidental office expenses.

While still an expenditure, an incidental office expense is “an *expenditure* that is an ordinary and necessary expense, paid or incurred in carrying out the business of an elective office.” MCL 169.209(1) (emphasis added). The MCFA does not allow a candidate committee to make disbursements for incidental office expenses unless the candidate actually holds elective office. MCL 169.221a(1). All incidental office expenses are expenditures, but not all expenditures are incidental office expenses.

In order to qualify as an incidental office expense, the expenditure must be one of the following:

- (a) A disbursement necessary to assist, serve, or communicate with a constituent.
- (b) A disbursement for equipment, furnishings, or supplies for the office of the public official.
- (c) A disbursement for a district office if the district office is not used for campaign-related activity.
- (d) A disbursement for the public official or his or her staff, or both, to attend a conference, meeting, reception, or other similar event.
- (e) A disbursement to maintain a publicly owned residence or a temporary residence at the seat of government.
- (f) An unreimbursed disbursement for travel, lodging, meals, or other expenses incurred by the public official, a member of the public official’s immediate family, or a member of the public official’s staff in carrying out the business of the elective office.
- (g) A donation to a tax-exempt charitable organization, including, but not limited to, the purchase of tickets to charitable or civic events, as long as the candidate is not an officer or director of or does not receive compensation, either directly or indirectly, from that organization.
- (h) A disbursement to a ballot question committee.
- (i) A purchase of tickets for use by that public official and members of his or her immediate family and staff to a fund-raising event sponsored by a candidate committee, independent committee, political party committee, or a political committee that does not exceed \$100.00 per committee in any calendar year.
- (j) A disbursement for an educational course or seminar that maintains or improves skills employed by the public official in carrying out the business of the elective office.
- (k) A purchase of advertisements in testimonials, program books, souvenir books, or other publications if the advertisement does not support or oppose the nomination or election of a candidate.

- (l) A disbursement for consultation, research, polling, and photographic services not related to a campaign.
- (m) A fee paid to a fraternal, veteran, or other service organization.
- (n) A payment of a tax liability incurred as a result of authorized transactions by the candidate committee of the public official.
- (o) A fee for accounting, professional, or administrative services for the candidate committee of the public official.
- (p) A debt or obligation incurred by the candidate committee of a public official for a disbursement authorized by subdivisions (a) to (o), if the debt or obligation was reported in the candidate committee report filed for the year in which the debt or obligation arose.

MCL 169.209(1).

In your request, your general questions ask whether committees organized under the MCFA may make disbursements to federal candidates or federal committees. The Department must interpret the definitions of these terms.

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).

Here, the statute is unambiguous that disbursements to federal candidates or federal committees are not expenditures as that term is defined under the Act. Section 6 specifically exempts from the definition of expenditure disbursements made “to or for a federal candidate or a federal committee.” MCL 169.206. Similarly, section 4 also excludes from the definition of “contribution” a disbursement “to a federal candidate or a federal committee” except for section 57 purposes. MCL 169.204(2). Therefore, to answer your first question, the plain language of the definition of “expenditure” must control.

Incumbent office holders have the ability to make a disbursement for ordinary and necessary expenses that do qualify as expenditures but are subject to an additional exemption. Stated differently, while defined as an expenditure, the Legislature specifically allowed incumbent office holders to make disbursements for any of the above expenses from their candidate committees that non-incumbents otherwise may not be allowed to make. Therefore, to answer your second question, the definition of an incidental expense must control. *See In re Haley*, 476 Mich 180, 198 (2006) (“it is a settled rule of statutory construction that where a statute contains a specific statutory provision and a related, but more general, provision, the specific one controls.”).

Therefore, the Department concludes that as to *non-candidate committees*, the intent of the Legislature was to exempt disbursements to federal candidates or federal committees from the MCFA's reporting obligations.² For these committees, these disbursements are permitted because they are *not* expenditures.

Conversely, a candidate committee, for an incumbent office holder only, may make a disbursement from their candidate committee to a federal candidate or committee, but only if it qualifies as an incidental office expense; i.e. as one of the 16 allowed disbursements outlined in section 9 of the Act and is reported to the Department.

II. Whether a Michigan candidate committee can transfer funds pursuant to section 45 to a federal candidate or federal committee.

Your third question asks whether a committee may transfer unexpended funds to a federal candidate or federal committee during the dissolution process outlined under section 45. In a Declaratory Ruling, the Department previously concluded that section 45 does not preclude the transfer of funds raised by a congressional campaign committee to a gubernatorial candidate committee, provided the offices are simultaneously held. *Declaratory Ruling to Howard Wolpe*, issued October 22, 1992. Therefore, the Department interprets your request as only inquiring into whether section 45 would preclude the transfer of funds from a state candidate committee to a federal candidate or federal committee.

The transfer of unexpended funds is governed by section 45 of the Act and provides:

[A] person may transfer any unexpended funds from 1 candidate committee to another candidate committee of that person if the contribution limits prescribed in section 52 or 69 for the candidate committee receiving the funds are equal to or greater than the contribution limits for the candidate committee transferring the funds and if the candidate committees are simultaneously held by the same person. MCL 169.245(1).

For unexpended funds to be eligible to be transferred from one candidate committee to another candidate committee, the transfer may only occur upon dissolution, otherwise a candidate committee may be subject to section 44 which prohibits candidate-to-candidate expenditures. *See Interpretive Statement to Lloyd Pitsch*, Issued October 28, 1981.

² While these are exempt from reporting under the MCFA, these disbursements may have reporting requirements under federal law and the Federal Election Commission's reporting requirements.

In terms of transfers from a candidate committee to a federal candidate, the Department concludes that the MCFA bars this transfer of funds under section 45. *See Interpretive Statement to Wayne Deering*, Issued August 6, 1980. This conclusion is supported by the plain language of the MCFA, which must control. *Odom*, 482 Mich at 467. Under the Act, candidate is defined, in part, as a person who holds an elective office. MCL 169.203(1)(e). Similarly, a candidate committee is the committee for the person holding or running for elective office designated in the statement of organization. MCL 169.203(2). “Elective office” means a “public office filled by an election [but] *does not* include a federal office except for the purposes of section 57.” MCL 169.205(4) (emphasis added). In other words, under the plain language of the MCFA as it relates to your request, a “candidate” is a person who holds or runs for a *state office* and maintains a committee for a *state office*.

The second part of this question asks whether unexpended funds may be transferred to a federal, non-candidate committee. Unexpended funds not eligible to be transferred to another candidate committee shall be disbursed to one of the following: (a) political party committee; (b) tax-exempt charitable organizations; (c) returned to the contributors; (d) state house political party caucus committee; (e) state senate political party caucus committee; (f) independent committee; (g) ballot question committee. MCL 169.245(2). The only potentially applicable committees eligible for a section 45 transfer would be a political party committee (a), an independent committee (f), and a ballot question committee (g). The remaining categories are not relevant because the plain language of section 45 exempts it from federal transfer.

To answer this part of your question, the Department must again turn to the definitions to ascertain the Legislature’s intentions. Political party committee is defined in part as “a *state* central, district, or county committee of a political party. MCL 169.211(7) (emphasis added). The plain language of the definition provides that political party committees are state committees rather than federal committees.

Next, an independent committee is defined as a “committee, other than a political party committee, that before contributing to a candidate committee of a *candidate for elective office* under section 52(2) or 69(2) files a statement of organization as an independent committee. . . .” MCL 169.208(3). As discussed above, elective office is defined as a state office and specifically exempts federal offices. MCL 169.205(4). Therefore, independent committees formed under the MCFA may only support state offices.

The same is true for ballot question committees which are committees formed to act in support of or opposition to the qualification, passage, or defeat of a ballot question that does not make contributions or expenditures for the nomination or election of a candidate. MCL 169.202(3). Because there are no ballot questions at the federal level, this can only be interpreted as a committee formed to support state and local level ballot questions.

Therefore, the Department concludes that a person may not transfer unexpended funds from a state candidate committee to a federal candidate or federal committee under the dissolution process outlined in section 45.

III. Whether a Michigan candidate committee can transfer funds pursuant to section 45 to a leadership PAC for the purpose of being transferred to a federal candidate or federal committee.

Your final question asks whether a candidate committee may transfer funds to a leadership PAC for the purpose of being transferred to a federal candidate or federal committee. As discussed above, transfers are governed by section 45 during the dissolution process. Because this question otherwise appears duplicative of your third question, the Department interprets this as inquiring into whether a candidate committee may make a contribution to a leadership PAC³ to make contributions to a federal candidate or federal committee.

As discussed above, an expenditure is a “payment, donation, loan, or promise of payment of money or anything of ascertainable monetary value” that furthers the nomination, election, or qualification of a candidate, ballot question, or political party. MCL 169.206(1). Section 44 states that a contribution shall not be made to a person with the agreement or arrangement that the person receiving the contribution will then transfer the contribution to a particular candidate committee. MCL 169.244(1). Similarly, a candidate committee is barred from making a contribution to or an independent expenditure on behalf of another candidate committee. MCL 169.244(2).

The Department previously interpreted this provision as banning “earmarking.” *Interpretive Statement to Joseph W. Gelb*, issued August 21, 1979. In *Gelb*, the Department was asked whether a corporation which establishes a separate segregated fund (SSF) may give contributions that are earmarked (i.e., specifying the candidates to whom the fund must contribute) to specific candidates. In interpreting section 44, the Department concluded 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.

Similarly, the Department opined on earmarking again in 1993 when it was asked to determine whether the collection and delivery of contributions would be considered joint activity under the Act and require Venture Capitol to register as a committee with the Department. *Declaratory Ruling to Timothy Sponsler*, Issued November 2, 1993. In *Sponsler*, the Department recognized that individuals and PACs may contribute directly to candidates subject to the respective contribution limitations outlined under section 59. Individuals may also contribute unlimited

³ The Department notes that the MCFA does not specifically recognize leadership PACs as a specific entity. Rather, they function as a PAC.

funds directly to the PAC. *Sponsler* concluded that whether contributions to a PAC become a violation of section 44 depends on control:

One could argue that an individual who contributes the maximum amount to the candidate may avoid the \$3,400 limitation by giving unlimited funds to a PAC that contributes to the same candidate. However, if the PAC controls the subsequent use of the individual's contribution, the individual cannot be held responsible for a violation of section 52 or section 69. On the other hand, if that subsequent use is controlled by the individual, a violation of section 44(1) may occur.

In other words, *Sponsler* concluded that section 44 prohibited the individual 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. "By so doing, section 44(1) prevents the laundering of contributions and the circumvention of the Act's contribution limits." *Id.* The *Gelb* interpretive statement and *Sponsler* Declaratory Ruling are illustrative in answering your request.

As applied to your question, a candidate may not make an expenditure from committee funds to contribute to a PAC for the sole purpose of then contributing that money to another candidate or committee. Consistent with the MCFA's requirements and the Department's longstanding prohibition on earmarking, the Department reaffirms the findings in *Gelb* and *Sponsler* – that is contributions made to a PAC for the *sole* purpose of being disbursed to another committee constitutes earmarking. The Department has long held that a committee cannot do indirectly that which it is barred from doing directly.

However, 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. For example, an expenditure from a candidate committee's account to a PAC that creates and purchases a mailing expressly advocating for the candidate's election may not in and of itself be violative. 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.

That said, a disbursement does not have to be expressly "earmarked" to qualify as illegally earmarked for purposes of the Act. Whether a candidate committee has earmarked a disbursement is addressed on a case by case basis considering some of 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.

Accordingly, a candidate committee may not make a contribution to a PAC for the *sole* purpose of being disbursed to another committee. However, whether this disbursement is a violation of section 44 determines upon the context of the disbursement and will be determined on a case by case basis.

Conclusion

Ultimately, the Department concludes the following: (1) disbursements to federal candidates or federal committees are exempted from the MCFA's reporting obligations (with the exception of candidate committees and disbursements made subjected to section 57); (2) incumbent office holders may make a disbursement from their candidate committee as an incidental office expense to a federal candidate or federal committee so long as the disbursement qualifies as one of the 16 allowed disbursements outlined in section 9 of the Act and is reported to the Department; (3) a person may not transfer unexpended funds from 1 state elective office committee to a federal candidate or federal committee; and (4) whether a disbursement from a candidate committee to a PAC which is then disbursed to another committee constitutes a violation of section 44 can only be determined on a case by case basis.

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

Sincerely,



Melissa J. Smiley, PhD
Chief of Staff