



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

August 7, 2015

Loyd Romick  
33437 Michele Court  
Livonia, Michigan 48150

Dear Mr. Romick:

The Department of State (Department) has completed its investigation of the complaint filed by you against the Michigan Education Association (MEA) and the Livonia Education Association (LEA) which alleged the MEA and LEA violated section 54 of the Michigan Campaign Finance Act (MCFA or Act), 1976 PA 388, MCL 169.254. This letter concerns the disposition of your complaint.

You filed your complaint on February 26, 2014. The MEA and LEA filed a joint answer on March 17, 2015, and you filed a rebuttal statement on April 6, 2015.

The complaint alleged that the MEA and LEA made an improper contribution to certain Livonia Public Schools (LPS) board members by sending an email to LPS employees endorsing the candidates and directing district employees to pick up campaign materials for the candidates at MEA offices.

In support of your complaint, you provided a copy of the MI Capital Confidential story in which the superintendent of LPS is quoted as saying an email “was sent by a staff member of the local EA (education association) who inadvertently sent it to the wrong email list [;]” a copy of an email sent from an mea.org email address, which lists the “Screening and Recommendation Committee[’s]” recommended candidates for the LPS school board and states, “[t]he MEA office has signs and literature if you want to stop by for them [;]” and a link to a video of a portion of an LPS school board meeting.

The MCFA prohibits a corporation or labor organization 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 \$10,000.00. MCL 169.254(4).

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

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

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

not coordinate the expenditure of its funds with a candidate. However, section 54 still prohibits a corporation or labor organization from contributing to a candidate committee.

First, your complaint alleged that the LEA and MEA made a prohibited contribution to candidates running for the LPS school board when it sent an email endorsing those candidates to LPS employees through the LPS email system.

An endorsement of a candidate by a corporation or labor organization, by itself, does not give rise to an impermissible contribution. However, if a corporation or labor union expends funds to communicate or publicize its endorsement of a candidate, then there may be reason to believe that a violation of section 54 of the Act occurred.

The words “contribution” and “expenditure” are generally defined, in pertinent part, to include anything of ascertainable monetary value that is used to influence or assist a candidate’s nomination or election. MCL 169.204(1), 169.206(1). As the MEA and LEA correctly point out in their joint answer to the complaint, an “expenditure,” as defined by the Act, does not include “[a]n expenditure for communication by a person<sup>3</sup> with the person's paid members or shareholders and those individuals who can be solicited for contributions to a separate segregated fund under section 55.” MCL 169.206(2)(a).

The communication at issue here is an email from the MEA/LEA to its paid members. As such, it is excluded from the definition of “expenditure” contained in the Act. This takes the communication outside of the ambit of the Act. Even if, as you contend, the MEA or LEA should have paid for access to the LPS employee email list<sup>4</sup>, using that list to send an email to its paid membership, regardless of the email’s content, does not constitute an expenditure as that term is defined by the MCFA.

Because no expenditure was made, the sending of this email did not give rise to a contribution from the MEA or LEA to a candidate. Therefore, this portion of your complaint is dismissed.

However, the Department notes that by using LPS employees’ email addresses to communicate campaign-related information for candidates for elective public office, the MEA and LEA run the risk of causing LPS or its employees to violate section 57 of the Act.<sup>5</sup> MCL 169.257. If one of the recipients of a campaign-related email were to forward that email on, it may give rise to a prohibited contribution or expenditure. It is for this reason that the Department strongly cautions the MEA and LEA to refrain from using the LPS email system to communicate with its members regarding campaign matters.

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<sup>3</sup> “Person” includes a corporation or labor organization. MCL 169.211(2).

<sup>4</sup> As noted in its determination letter dated August 7, 2015 to you regarding your complaint against LPS, it appears to the Department that the MEA and LEA have access to this list due to the collective bargaining agreement between LPS and the LEA and, thus, no expenditure was made.

<sup>5</sup> MCL 169.257 prohibits a public body or someone acting on its behalf from using or authorizing the use of public funds to make a contribution or expenditure.

Second, it was alleged that an improper expenditure was made because the MEA invited its members to pick up campaign material for the candidates at the MEA office.

In responding to the complaint, the MEA and LEA admit that 20 candidate yard signs and 50 candidate palm cards were stored in "a few square feet in a hallway" in a 7,700 square foot office. The MEA and LEA assert that the storage of such a small quantity of material has no ascertainable monetary value.

In order to find that a contribution has been made in contravention of section 54, the Department must determine that the MEA and LEA expended resources for prohibited campaign activity. The expenditure of corporate or labor organization funds must have an "ascertainable monetary value" in order to meet this threshold.

After reviewing the evidence submitted by all parties, the Department concludes that no evidence has been offered in this particular circumstance that would allow the Department to calculate the value of the storage of this campaign material in a 7,700 square foot office, nor has any evidence been offered to ascertain the amount of time the material was stored there. The Department believes the evidence provided does not support a reason to believe that the MEA or LEA made a contribution to the candidates with regard to this campaign material.

Therefore, this portion of your complaint is also dismissed.

Sincerely,



Lori A. Bourbonais  
Bureau of Elections  
Michigan Department of State

c: Mark Brewer