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January 6, 2013

The Honorable Ruth Johnson
Michigan Secretary of State
Executive Office
Richard H. Austin Building
430 W. Allegan Street
Lansing, MI 48918

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RUTH JOHNSON
SECRETARY OF STATE

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Re: Declaratory Ruling Request Concerning Practical and Ethical Implications for Michigan Candidates Using Conservatorship/Guardianship Funds of an Incapacitated Individual to Finance Their Own Campaigns and the Means by Which Such Financing is Reported

Dear Secretary Johnson:

As provided in Section 15(1)(e) and (2) of the Michigan Campaign Finance Act, P.A. 388 of 1976 ("the MCFA") as amended, MCL 169.201, et. Seq. and in Rule 169.6 of the Michigan Administrative Code, I write to request a declaratory ruling as to the applicability of the MCFA in light of a recent event in my county. I note that Section 15(2) indicates that if the Department of State does not issue a declaratory ruling, it must provide an informational response to the questions presented within the same time limitations applicable to a declaratory ruling. For reasons stated below, I believe that a ruling is urgently required.

Statement of Facts

1. I am a private individual who has filed campaign finance reports for campaigns for the past eighteen years. At the present time, I am not contracted by any rival campaign, but I was compensated for an initial consultation with Mr. Burns, and I have done freelance work for a rival campaign. I am also Secretary of the Allegan County Republican Executive Committee ("ACREC"). The Committee has received funds from Mr. Burns this year.
2. Given the circumstances of this case, I am concerned that this presents an unforeseen loophole for the MCFA. If a declarative ruling isn't made, candidates may exploit this oversight with impunity.
3. On August 20, 2012 Terry Burns, a soon to be termed-out (via redistricting) county commissioner, petitioned the Allegan County Probate Court to have Mr. Joseph Migas found incompetent by reason of mental illness or deficiency (dementia) and requested the Court appoint him conservator and guardian (the "Conservatorship Action") over Mr. Migas and his estate. Mr. Migas had no familial ties, apart from a long term girlfriend, Ms. Janet

Fahey. On September 11, 2012 Migas' trust was amended to add Mr. Burns as co-trustee (with Ms. Fahey) and on September 12, 2012 the Court granted the petitions, making Mr. Burns conservator, and later the Migas trust's sole successor. On July 23, 2013, Mr. Migas' principal asset was sold (16 acre parcel of land) for \$196,000.00.

4. The proceeds of the sale of Mr. Migas' real property totaling \$167,572.12 were deposited into a trust savings account on July 23, 2013 by Mr. Burns. A few weeks after the deposit, Ms. Fahey alerted the bank of improper removal of funds by Mr. Burns from Mr. Migas' account. In a three month period, Mr. Burns withdrew roughly \$80,000.00 from Mr. Migas' trust account. Since this is Mr. Migas' only asset, the impropriety of these actions cannot be ignored. In November of 2013, Mr. Burns was removed as guardian and conservator.
5. On June 22, 2013, Mr. Burns announced his intentions to run for State Representative in the 80th District while jumping out of an airplane. Starting on July 29, 2013, Mr. Burns wrote a series of checks to campaign consultant, Matt Muxlow totaling \$10,750.00 (6 total disbursements, most in \$2,000 increments). Mr. Burns has also stated that he engaged in a contract with Mr. Migas that allowed Burns to borrow up to \$30,000.00 from the trust. It appears that Mr. Burns had already loaned himself roughly \$27,000.00 of the trust's monies. A final accounting has yet to be presented, thus it is difficult to determine what monies went directly to Burns and what monies went to the campaign.
6. On or about November 7, 2013 Mr. Burns was removed as Mr. Migas' conservator and guardian. On November 26, 2013, Burns announced that he was discontinuing his campaign. About that time, Burns transferred treasurer duties of his campaign to himself.
7. The MCFA defines "Contribution" as "a payment, gift, subscription, assessment, expenditure, contract, payment for services, dues, advance, forbearance, loan, or donation of money or anything of ascertainable monetary value, or a transfer of anything of ascertainable monetary value to a person, made for the purpose of influencing the nomination or election of a candidate, for the qualification, passage, or defeat of a ballot question, or for the qualification of a new political party." These are monies, goods and services donated or loaned to the committee. Contributions of monies donated to the committee are called "direct" contributions. Candidates may make unlimited contributions to their own committees and may make such contributions loans to the committee.
8. The MCFA restricts the amount of loans and contributions from outside individuals, but makes exceptions for "*immediate family*". A candidate and his or her immediate family members are exempt from the contribution limits. The Act's definition of "*immediate family*"

is a child residing in the candidate's household, the candidate's spouse, or an individual claimed by the candidate or the candidate's spouse as a dependent for federal income tax purposes.

9. 169.221(12) of the MCFA states "Contributions received by a committee shall not be commingled with other funds of an agent of the committee or of any other person."

Discussion

The MCFA makes no mention of conservatorships. It does mention "*dependent minors*" and that their contributions are counted against the contributions made by their parent or guardian. If a loan agreement was made for purposes of the campaign, the MCFA is moot on how such a loan is defined and reported. It is also unclear if Mr. Burns will categorize this money as direct personal income. I could also see an argument where this loan could be within the sphere of a loan from an "immediate family" member, since Mr. Burns was the guardian and conservator of Mr. Migas. If the conservatorship is a separate entity (*it is Mr. Migas' money*), would monies that came from the conservatorship potentially be "*contributions made in the name of another*"?

As a political professional, the six disbursements to Mr. Muxlow are very unsettling. They appear to be for work/materials related to the campaign. How conservatorships are seen by the MCFA could greatly affect how this improper 1/8 distribution of Mr. Migas' estate is reported.

The drafters of the MCFA (and its subsequent amendments) could never have foreseen a candidate raiding an incapacitated individual's trust to finance their campaign. The spirit of the MCFA is to provide transparency and some semblance of integrity in the campaign finance process. If Mr. Burns can raid someone's trust monies, and those monies used for his campaign cannot be reported because these monies cannot be adequately categorized, then the entire state campaign finance system is out of whack.

While Mr. Burns actions are reprehensible, and he will most likely be taken to account for those actions by the Probate Court, the implications of these actions in relation to his campaign committee--the contributions made to the committee and the expenditures made by the committee--may not be adequately reflected in the committee's campaign finance report coming due January 31, 2014. Knowing Mr. Burns, I am certain he will have a difficult time fully completing the various schedules that comprise a report. Add the numerous transfers from personal, campaign and conservatorship accounts, it quickly becomes a tangled web. Due to that tangled web, it is difficult to ascertain if there is a comingling of funds.

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As for my possible connection to these monies, I am certain that I have never received (nor ACREC) any conservatorship monies directly. However, I am uncertain as to what liability that I, or my county party committee is in (on a campaign finance level) if it was determined that those monies originated from the conservatorship.

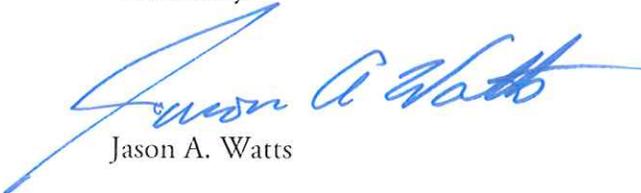
Questions

Given the circumstances and concerns outlined above, my main question is how would conservatorships be treated under the MCFA? Would I or my county party committee be compelled by the MCFA to refund monies given by Mr. Burns if they were determined to come from the conservatorship?

I strongly believe that your answer should be that **NO** conservatorship monies should ever be spent on campaigns of the conservator or any other candidate. These monies are for the benefit of the wards and estates they vowed to maintain and protect. This was not Mr. Burns' money, yet he used this money as if it was his personal slush fund to finance his campaign. All monies that came from the conservatorship should be itemized and recorded on campaign finance reports for public review. Your office should make an example of Mr. Burns in order that no similar abuse such as this will occur again. The 2014 Annual Report (for campaign transactions that occurred during 2013) is due soon, and ergo there is a need for a swift response to this request.

Thank you for your consideration of my request. Please feel free to contact me at (269) 998-3991 or jaw.watts@gmail.com if you have any questions or seek additional information.

Yours truly,



Jason A. Watts