



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

August 2, 2013

Mary Kay Scullion  
325 Bartlett Street  
Lansing, Michigan 48915

Dear Ms. Scullion:

The Department of State (Department) has concluded its investigation of the complaint filed by you against Randy Maiville and the Ingham County Republican Party (ICRP), which alleged a violation of the Michigan Campaign Finance Act (MCFA or Act), 1976 PA 388, MCL 169.201 *et seq.* This letter concerns the disposition of your complaint, which was filed on February 6, 2013. Mr. Shinkle filed an answer to the complaint on behalf of the ICRP on March 1, 2013, and Mr. Maiville filed an answer on March 6, 2013. You filed a rebuttal statement on March 18, 2013. The Department requested additional information from Mr. Shinkle and Mr. Maiville by letter dated June 14, 2013. Mr. Shinkle filed that additional information with the Department on June 25, 2013.

The MCFA and corresponding administrative rules require the Department to ascertain whether there may be "reason to believe that a violation of this act has occurred." MCL 169.215(10), R 169.55(3). Upon a finding that there may be "reason to believe that a violation of this act has occurred[.]" the Department is required by law to "endeavor to correct the violation or prevent a further violation by using informal methods." MCL 169.215(10).

The MCFA requires a candidate or the treasurer of a committee to file complete and accurate finance statements and reports. A person who knowingly files an incomplete or inaccurate statement may be subject to a civil fine of up to \$1,000.00. MCL 169.233(10). Additionally, a candidate, treasurer, or record-keeper who "knowingly omits or underreports individual contributions or individual expenditures . . . is subject to a civil fine of not more than \$1,000.00 or the amount of the contributions and expenditures omitted or underreported, whichever is greater." MCL 169.233(11).

The MCFA also sets limits on contributions that may be made by political party committees to local candidates. A political party committee, other than a state central committee, may contribute up to \$5,000.00 to a candidate for local office with a district population up to 85,000. MCL 169.252(3). A candidate committee shall not accept a contribution in excess of the limitations. MCL 169.252(7). A knowing violation of section 52 of the Act is a misdemeanor offense. MCL 169.252(9).

You alleged that the ICRP made, and Mr. Maiville accepted, in-kind contributions in excess of the \$5,000.00 limit, and that Mr. Maiville filed an inaccurate amended campaign statement.

In answer to your complaint, Mr. Shinkle stated that the ICRP had mistakenly reported independent expenditures made for a mailer supporting Mr. Maiville's candidacy as in-kind expenditures on its original pre-election general campaign statement on October 26, 2012, so it subsequently filed an amended pre-election general campaign statement on October 31, 2012 "correcting this mistake and properly listing the expenditure[s] as 'independent' expenditures." Mr. Maiville responded that his original and amended pre-election general campaign statements contained the information provided to him by the ICRP, and that it is his understanding that the mailing expenses should properly be classified as independent expenditures by the ICRP and the amended report was correct.

First, the Department finds that the evidence does not tend to support a conclusion that Mr. Maiville knowingly filed an incomplete or inaccurate report. The disclosures made on Mr. Maiville's original and amended pre-election general campaign statements match the information given to him by the ICRP. Mr. Maiville appropriately relied on this information when filing his statements. Therefore, this portion of your complaint is dismissed.

A political party committee must report all expenditures, including in-kind expenditures and independent expenditures. MCL 169.229(1)(c). A political party committee must identify each expenditure as an independent expenditure or as a contribution to a candidate committee. MCL 169.229(2). A candidate must report any contribution, including an in-kind contribution, received from a political party committee. MCL 169.226(1)(b). The contributions received from a political party committee in an election cycle cannot exceed \$5,000.00. MCL 169.252(3), (7).

An independent expenditure is "an expenditure by a person if the expenditure is not made at the direction of, or under the control of, another person and if the expenditure is not a contribution to a committee." MCL 169.209(2). Additionally, printed matter related to a candidate that "is an independent expenditure that is not authorized in writing by the candidate committee of that candidate" shall contain the following disclaimer: "Not authorized by any candidate committee." MCL 169.247(1).

After review of Mr. Maiville's and the ICRP's original and amended pre-election general campaign statements, it appears that the ICRP spent \$6,452.00 on the flyer supporting Mr. Maiville and made additional in-kind contributions in the amount of \$1,700.01 to Mr. Maiville's committee.

The Department carefully reviewed the mailer in question and originally concluded that although Mr. Shinkle asserted that the mailer was an independent expenditure, the evidence provided tended to support a determination that the cost of this mailer was an in-kind contribution. The hallmarks of an independent expenditure did not appear within the 4 corners of the mailer. The statement "Not authorized by any candidate committee [,]" which is required on all independent expenditures, did not appear on the mailer. An entire page of the mailer was written in the first-person. For example, the mailer stated "My opponent supported the incompetent Ingham County Road Commission Board" and "I support an efficient road commission . . ." The use of the words "my" and "I" indicated that Mr. Maiville was speaking through this mailer and that he provided the editorial content on this page. An expenditure is only independent when it is "not made at the direction of, or under the control of, another person."

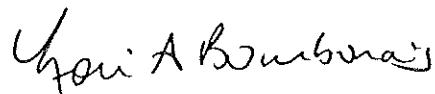
However, Mr. Shinkle had indicated in his original answer to the complaint that the production of the mailer was, indeed, an independent expenditure. Subsequently, the Department asked Mr. Shinkle to provide the source of the editorial content of the mailer, along with any documentation to support his claim that this was an independent expenditure.

Mr. Shinkle's response to this request for additional information included a notarized affidavit from Mr. Shinkle stating that "[t]he mailer in question was not done in collaboration with Mr. Maiville or his campaign" and that "[t]he information and statements on the mailer were researched and written by [Mr. Shinkle]."

Additionally, the affidavit states that Mr. Shinkle gathered information from Lansing State Journal articles, minutes from ICRP meetings, Ingham County Commission meetings, and two palm cards that Mr. Maiville had produced and distributed himself. Finally, the affidavit states that Mr. Shinkle "had total control of the design, content, printing and mailing of the mailer." Copies of the front and back of the referenced palm cards were also included.

After reviewing this additional information, the Department has determined that the evidence supports a conclusion that this mailer was an independent expenditure and the costs associated with this mailer are not subject to the contribution limits set forth in the Act. The evidence also supports the conclusion that ICRP made in-kind contributions in the amount of \$1700.01 to Mr. Maiville's committee, well under the contribution limit. Therefore, your complaint is dismissed.

Sincerely,



Lori A. Bourbonais  
Bureau of Elections  
Michigan Department of State

c: Randy Maiville  
Norman Shinkle

