



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

August 4, 2016

Audrey Nevins Weiss
9684 Ivanrest Avenue SW
Byron Center, Michigan 49315

Dear Ms. Nevins Weiss:

The Department of State (Department) received a formal complaint filed by Brian Smits against you, alleging that you violated the Michigan Campaign Finance Act (MCFA or Act), 1976 PA 388, MCL 169.201 *et seq.* The investigation and resolution of this complaint is governed by section 15 of the Act and the corresponding administrative rules, R 169.51 *et seq.* A copy of the complaint and supporting documentation is enclosed with this letter.

In Michigan it is unlawful for a public body or an individual acting on its behalf to use or authorize the use of "funds, personnel, office space, computer hardware or software, property, stationery, postage, vehicles, equipment, supplies, or other public resources to make a contribution or expenditure [.]" MCL 169.257(1). A knowing violation of section 57 is a misdemeanor offense. MCL 169.257(4).

Mr. Smits alleges that you unlawfully used public resources by assembling and posing with township personnel and township-owned resources to take pictures for use in your campaign material.

In support of his complaint, Mr. Smits provided a flyer which includes several pictures of firefighters and firetrucks.

The purpose of this letter is to inform you of the Department's examination of these matters and your right to respond to the allegations before the Department proceeds further. It is important to understand that the Department is neither making this complaint nor accepting the allegations as true.

If you wish to file a written response to this complaint, you are required to do so within 15 business days of the date of this letter. In particular, please describe how or where you obtained each picture that includes firefighters or firetrucks. Your response may include any written statement or additional documentary evidence you wish to submit. All materials must be sent to the Department of State, Bureau of Elections, Richard H. Austin Building, 1st Floor, 430 West Allegan Street, Lansing, Michigan 48918. If you fail to submit a response, the Department will render a decision based on the evidence furnished by the complainant.

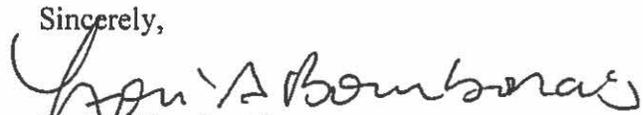
A copy of your answer will be provided to Mr. Smits, who will have an opportunity to submit a rebuttal statement to the Department. After reviewing all of the statements and materials

Audrey Nevins Weiss
August 4, 2016
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provided by the parties, the Department will determine whether “there may be reason to believe that a violation of [the MCFA] has occurred [.]” MCL 169.215(10). Note that the Department’s enforcement powers include the possibility of entering a conciliation agreement, conducting an administrative hearing, or referring this matter to the Attorney General for enforcement of the criminal penalties provided in section 57(4) of the Act.

If you have any questions concerning this matter, you may contact me at (517) 241-0395.

Sincerely,



Lori A. Bourbonais
Bureau of Elections
Michigan Department of State

c: Brian Smits

Campaign Finance Complaint Form Michigan Department of State

2016 JUL 20 PM 3:32

This complaint form may be used to file a complaint alleging that someone violated the Michigan Campaign Finance Act (the MCFA, 1976 PA 388, as amended; MCL 169.201 *et seq.*). All information on the form must be provided along with an original signature and evidence. **Please print or type all information.**

I allege that the MCFA was violated as follows:

Section 1. Complainant		
Your Name Brian Smits	Daytime Telephone Number 616-406-3037	
Mailing Address 6756 Pleasant Hill Dr. SW		
City Byron Center	State MI.	Zip 49315

Section 2. Alleged Violator		
Name Audrey Nevins Weiss		
Mailing Address 9684 Ivanrest Ave. SW		
City Byron Center	State MI.	Zip 49315

Section 3. Alleged Violations (Use additional sheet if more space is needed.)

Section(s) of the MCFA violated:
169.257 (1) and 169.257 (3)

Explain how those sections were violated:

The Audrey Nevins Weiss ^{for supervisor} Committee Paid for and distributed to registered Byron Township voters several mass mailings displaying and posing with Township resources (Firefighting equipment) and Personnel (paid full-time firefighters) stating that those resources were an endorsement of the candidate.

Evidence that supports those allegations (attach copies of pertinent documents and other information):

Attached.

MICHIGAN CAMPAIGN FINANCE ACT (EXCERPT)

Act 388 of 1976

169.257 Contributions, expenditures, or volunteer personal services; prohibitions; civil action; use of public funds or resources for communication referencing local ballot questions; violation as misdemeanor; penalty.

Sec. 57. (1) A public body or a person acting for a public body shall not use or authorize the use of funds, personnel, office space, computer hardware or software, property, stationery, postage, vehicles, equipment, supplies, or other public resources to make a contribution or expenditure or provide volunteer personal services that are excluded from the definition of contribution under section 4(3)(a). The prohibition under this subsection includes, but is not limited to, using or authorizing the use of public resources to establish or administer a payroll deduction plan to directly or indirectly collect or deliver a contribution to, or make an expenditure for, a committee. Advance payment or reimbursement to a public body does not cure a use of public resources otherwise prohibited by this subsection. This subsection does not apply to any of the following:

(a) The expression of views by an elected or appointed public official who has policy making responsibilities.

(b) Subject to subsection (3), the production or dissemination of factual information concerning issues relevant to the function of the public body.

(c) The production or dissemination of debates, interviews, commentary, or information by a broadcasting station, newspaper, magazine, or other periodical or publication in the regular course of broadcasting or publication.

(d) The use of a public facility owned or leased by, or on behalf of, a public body if any candidate or committee has an equal opportunity to use the public facility.

(e) The use of a public facility owned or leased by, or on behalf of, a public body if that facility is primarily used as a family dwelling and is not used to conduct a fund-raising event.

(f) An elected or appointed public official or an employee of a public body who, when not acting for a public body but is on his or her own personal time, is expressing his or her own personal views, is expending his or her own personal funds, or is providing his or her own personal volunteer services.

(2) If the secretary of state has dismissed a complaint filed under section 15(5) alleging that a public body or person acting for a public body used or authorized the use of public resources to establish or administer a payroll deduction plan to collect or deliver a contribution to, or make an expenditure for, a committee in violation of this section, or if the secretary of state enters into a conciliation agreement under section 15(10) that does not prevent a public body or a person acting for a public body to use or authorize the use of public resources to establish or administer a payroll deduction plan to collect or deliver a contribution to, or make an expenditure for, a committee in violation of this section, the following apply:

(a) The complainant or any other person who resides, or has a place of business, in the jurisdiction where the use or authorization of the use of public resources occurred may bring a civil action against the public body or person acting for the public body to seek declaratory, injunctive, mandamus, or other equitable relief and to recover losses that a public body suffers from the violation of this section.

(b) If the complainant or any other person who resides, or has a place of business, in the jurisdiction where the use or authorization of the use of public resources occurred prevails in an action initiated under this subsection, a court shall award the complainant or any other person necessary expenses, costs, and reasonable attorney fees.

(c) Any amount awarded or equitable relief granted by a court under this subsection may be awarded or granted against the public body or an individual acting for the public body, or both, that violates this section, as determined by the court.

(d) A complainant or any other person who resides, or has a place of business, in the jurisdiction where the use or authorization of the use of public resources occurred may bring a civil action under this subsection in any county in which venue is proper. Process issued by a court in which an action is filed under this subsection may be served anywhere in this state.

(3) Except for an election official in the performance of his or her duties under the Michigan election law, 1954 PA 116, MCL 168.1 to 168.992, a public body, or a person acting for a public body, shall not, during the period 60 days before an election in which a local ballot question appears on a ballot, use public funds or resources for a communication by means of radio, television, mass mailing, or prerecorded telephone message if that communication references a local ballot question and is targeted to the relevant electorate where the local ballot question appears on the ballot.

(4) A person who knowingly violates this section is guilty of a misdemeanor punishable, if the person is an

individual, by a fine of not more than \$1,000.00 or imprisonment for not more than 1 year, or both, or if the person is not an individual, by 1 of the following, whichever is greater:

(a) A fine of not more than \$20,000.00.

(b) A fine equal to the amount of the improper contribution or expenditure.

History: Add. 1995, Act 264, Eff. Mar. 28, 1996;—Am. 1996, Act 590, Eff. Mar. 31, 1997;—Am. 2001, Act 250, Eff. Mar. 22, 2002;—Am. 2012, Act 31, Imd. Eff. Feb. 28, 2012;—Am. 2015, Act 269, Imd. Eff. Jan. 6, 2016.

Compiler's note: Section 2 of Act 264 of 1995 provides:

"If any portion of this amendatory act or the application of this amendatory act to any person or circumstance is found to be invalid by a court, the invalidity does not affect the remaining portions or applications of this amendatory act that can be given effect without the invalid portion or application, if those remaining portions are not determined by the court to be inoperable. To this end, this amendatory act is declared to be severable."

Enacting section 1 of Act 31 of 2012 provides:

"Enacting section 1. It is the policy of this state that a public body shall maintain strict neutrality in each election and that a public body or a person acting on behalf of a public body shall not attempt to influence the outcome of an election held in the state. If there is a perceived ambiguity in the interpretation of section 57, that section shall be construed to best effectuate the policy of strict neutrality by a public body in an election."

**Audrey's Committed to
Public Safety!**

Audrey works closely with the Byron and Cutlerville Fire Departments, as well as, the Kent County Sheriff's Department. She has dramatically improved public safety for our residents.

With over 1,500 emergency calls per year in Cutlerville and 900 in Byron, she added full-time emergency personnel in both departments and dedicated Kent County Sheriff's Deputies.

Audrey consolidated leadership in the fire departments by hiring the first Byron Township Public Safety Director who also serves as Fire Chief for both Byron and Cutlerville.

Full-time emergency personnel were added at both stations resulting in faster response times and better outcomes. Now we also have Sheriff's Deputies and a Community Policing Officer to serve Byron Township.

We have truly outstanding fire departments with full-time emergency personnel in addition to our on-call first responders. *Our Township is a safer because of our public safety team.*

Audrey is the leader of our team!

Firefighters Know Audrey Cares!
4931588152 F007



Paid for By
Audrey Nevins Weiss for Supervisor
9684 Ivanrest Ave
Byron Center, MI 49315



THE SMITS FAMILY
6756 PLEASANT HILL DR SW
BYRON CENTER, MI 49315



**Firefighters
Support
Audrey
Nevins Weiss**



**Byron
Township
Supervisor**

Dedicated To Public Safety for all Byron Residents!

As the first Public Safety Director for Byron Township I also serve as the Fire Chief for both Byron and Cutlerville Fire Departments. Audrey saw the need for strong leadership in public safety and improvements that could be made in combining two departments under one Chief. Today, the residents of Byron Township are served by better trained, better staffed and better equipped emergency personnel. We have faster response times, better outcomes and a dramatically improved fire rating for Byron Township.

That's why Byron Township's Firefighters support Audrey for Supervisor!

**Todd Szakacs,
Public Safety Director
Byron and Cutlerville Fire Chief**

Thanks to Audrey and her support of our Fire Departments, residents of Byron Township qualify for a reduction in their fire insurance rates. Working with our Firefighters, Byron Township has improved its fire rating enough for residents to receive a decrease in their insurance by 10-15%.

As Firefighters we are very proud of the improvements we have made and leadership and cooperation Audrey has provided!

**Mike Driesenga, Captain
Byron Township Fire Department**



Audrey has worked closely with both the Byron and Cutlerville Fire Departments. She has helped us grow the departments, expand our training and purchase the equipment necessary to do our jobs better.

Byron residents are safer today because of the improvements she has made. We need a Township Supervisor that keeps our residents and our firefighters safe.

This is a very important election for the future of public safety in Byron Township. Audrey deserves to be re-elected!

**Mark Grooters, Captain
Cutlerville Fire Department**



**Your Firefighters Ask
You to Please Vote
Audrey Nevins Weiss
Supervisor!**

Because Audrey Cares!

Audrey has always been very concerned and dedicated to public safety. She has done everything possible to protect the citizens of our community. As a Firefighter I totally support Audrey for Township Supervisor!

**Bryan Looman, Lieutenant
Byron Township Fire Department**

Audrey cares about our residents and those of us that work in public safety. The top priority for a firefighter is protection of our residents and the people we serve. That is Audrey's top priority as well. Audrey is committed to public safety and that's why your Firefighters support her re-election for Supervisor!

**Scott Harkes, Lieutenant
Byron Township Fire Department**



Vote for Audrey on August 2nd!



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

August 23, 2016

Brian Smits
6756 Pleasant Hill Drive SW
Byron Center, Michigan 49315

Dear Mr. Smits:

The Department of State received a response to the complaint you filed against Audrey Nevins Weiss, which concerns an alleged violation of the Michigan Campaign Finance Act (MCFA), 1976 P.A. 388, MCL 169.201 *et seq.* A copy of the response is provided as an enclosure with this letter.

If you elect to file a rebuttal statement, you are required to send it within 10 business days of the date of this letter to the Bureau of Elections, Richard H. Austin Building, 1st Floor, 430 West Allegan Street, Lansing, Michigan 48918.

Sincerely,

A handwritten signature in cursive script that reads "Lori A. Bourbonais".

Lori A. Bourbonais
Bureau of Elections
Michigan Department of State

c: Audrey Nevins Weiss

August 11th 2016

Department of State,
Bureau of Elections,
Richard H. Austin Building
1st Floor 430 West Allegan Street,
Lansing Michigan 48918.

2016 AUG 22 PM 2:31

BLE-101/07/09/11/12/13/14/15/16/17/18/19/20/21/22/23/24/25/26/27/28/29/30/31

Bureau of Elections,

This letter is in response to a complaint filed against me. The pictures used in a brochure came from the off the Cutlerville Fire Departments Website. If you google Cutlerville Fire Dept. you will see those photos.

The photo with myself and two firefighters posed while they were on their lunch break. The trucks were already out in the parking lot being washed. I was not aware this was a violation. I most certainly was not aware that this was not allowed.

Sincerely,



Audrey Nevins Weiss



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

September 12, 2016

Audrey Nevins Weiss
9684 Ivanrest Ave SW
Byron Center, MI 49315

Dear Ms. Nevins Weiss:

This letter concerns the complaint that was recently filed against you by Brian Smits, which relates to a purported violation of the Michigan Campaign Finance Act (MCFA or Act), 1976 PA 388, MCL 169.201 *et seq.* The Department of State has received a rebuttal statement from the complainant, a copy of which is enclosed with this letter.

Section 15(10) of the MCFA, MCL 169.215(10), requires the Department to determine within 45 business days from the receipt of the rebuttal statement whether there is a reason to believe that a violation of the Act has occurred. Mr. Smits' complaint remains under investigation at this time. At the conclusion of the review, all parties will receive written notice of the outcome of the complaint.

Sincerely,

A handwritten signature in black ink that reads "Lori A Bourbonais".

Lori A. Bourbonais
Bureau of Elections
Michigan Department of State

c: Brian Smits

Ms. Lori Bourbonais
Bureau of Elections
Michigan Department of State
Richard H Austin Building
1st Floor
430 W. Allegan St.
Lansing, MI 48918

MICHIGAN
2016 SEP 01 PM 2:43
ELECT

September 1, 2016

Re: Rebuttal to Response of Complaint,
Audrey Nevins Weiss

Dear Ms. Bourbonais:

I am writing in rebuttal to the response that the Department of State received from Audrey Nevins Weiss regarding my complaint of Campaign Finance Violations.

In her response, Ms. Weiss states that the photos used in her campaign mailings were taken with township paid firefighters and township equipment (fire trucks) while the firefighters were on their "lunch break". I would note that as full-time paid firefighters in uniform and on call 24/7, there really isn't a "lunch break" period in which they are not being paid as township resources. Further, Ms. Weiss fails to identify the circumstances leading up to the photo being posed and taken – did she request that the firefighters pose with her and did they do it voluntarily or assume it was part of their duty to her in her official capacity as a township supervisor? Did she disclose to them that it would be used in a campaign mailing? Were they intimidated into posing with her for campaign material out of fear of retribution if they didn't comply?

More importantly PA 388, MCL 169.201, states that an elected official shall not use their elected position to gain access to or use township resources that would not otherwise be available to any other candidate. Can it be expected that any other candidate running for office in opposition to the incumbent supervisor would be allowed access to uniformed firefighters and staged firefighting equipment to pose for campaign photos? From conversations with many firefighters in both Byron Township and Cutlerville Fire Departments, I have encountered a sense of fear of "crossing the boss", e.g. Ms. Weiss specifically, to the point where firefighters are intimidated to exercise their free speech rights to speak about their experiences with Ms. Weiss and especially to endorse any other candidate running against her.

Finally, in her own response letter, Ms. Weiss admits that this action was a violation of election law, but one she was not "aware of". As a 12-year veteran of the Township clerk position, followed by 12 years as the Township Supervisor, I would expect Ms. Weiss to be fully aware of election law. The ignorance defense is inexcusable.

Since Ms. Weiss was defeated in this election and leaving office anyway, I seek not a punitive judgement such as a monetary fine or worse, but rather seek a written censure of Ms. Weiss describing the violations and the fact that with her experience she should have known better. I feel this is important because many of Ms. Weiss' colleagues will still be serving on the Township Board and could learn from this experience for future elections.

Sincerely,



Brian Smits.



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

February 2, 2017

Brian Smits
6756 Pleasant Hill Drive SW
Byron Center, Michigan 49315

Dear Mr. Smits:

The Department of State (Department) has concluded its review of the complaint you filed against Audrey Nevins Weiss, concerning an alleged 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.

You alleged that Ms. Weiss improperly used public funds by displaying and posing with township firefighters and equipment for use in her campaign material.

You filed your complaint on July 28, 2016. Ms. Weiss filed an answer on August 22, 2016, and you filed a rebuttal statement on September 7, 2016.

As evidence, you provided Ms. Weiss' campaign flyer, which contained 5 pictures of township fire trucks, firefighters, or buildings.

In response to your complaint, Ms. Weiss asserted that 4 of the pictures were obtained from the Cutlerville Fire Department website. No evidence has been provided to the contrary. The Department notes that it independently verified that these pictures are readily available on the Cutlerville Fire Department's Facebook page.

Ms. Weiss further explained that the 5th picture, which contains two firefighters and two fire trucks, was taken while the trucks were in the parking lot being washed and the firefighters were on their lunchbreak. No evidence has been provided to the contrary.

The MCFA prohibits a public body or an individual acting on its behalf from "us[ing] or authoriz[ing] the use of funds, personnel, office space, computer hardware or software, property, stationery, postage, vehicles, equipment, supplies, or other public resources to make a contribution or expenditure." MCL 169.257(1). 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).

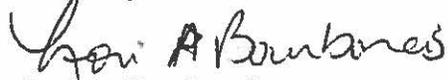
After reviewing the evidence submitted by the parties, the Department concludes that 4 of the pictures used by Ms. Weiss' campaign flyer were readily available to the general public on the Cutlerville Fire Department's Facebook page, and no expenditure of public funds was made or authorized by Ms. Weiss when she copied these pictures for her own use.

Brian Smits
February 2, 2017
Page 2

In order to find a violation regarding the 5th picture, the Department must determine that a public body expended its resources for prohibited campaign activity. The expenditure of public funds must have "ascertainable monetary value" in order to meet this threshold. No evidence has been offered that would show an ascertainable monetary value in connection with a picture being taken of the firefighters with Ms. Weiss or their posing for that picture. The Department notes that in your rebuttal statement you questioned whether other candidates "would be allowed access to uniformed firefighters and staged firefighting equipment." However, there is no evidence to refute Ms. Weiss' assertion that the firetrucks were in the parking lot prior to the picture being taken. Nor has any evidence has been provided that would suggest that any other candidate attempted to photograph fire trucks, firefighters, or buildings and was denied access.

Because the evidence does not support a reason to believe that anything of ascertainable monetary value was used with regard to the photos in Ms. Weiss' campaign literature, your complaint is dismissed. The Department's file in this matter has been closed and no further enforcement action will be taken.

Sincerely,



Lori A. Bourbonais
Bureau of Elections
Michigan Secretary of State

c: Audrey Nevins Weiss