



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

April 2, 2014

Jason A. Watts
P.O. Box 216
Allegan, Michigan 49010-0216

Dear Mr. Watts:

The Michigan Department of State (Department) acknowledges receipt of your letter dated January 6, 2014, requesting the issuance of a declaratory ruling or interpretive statement regarding the Department's interpretation of the Michigan Campaign Finance Act (MCFA or Act), 1976 PA 388, MCL 169.201 *et seq.* A copy of your request was published on the Department's website beginning January 13, 2014. No public comments were received by the Department in relation to your request.

The MCFA and Administrative Procedures Act (APA), 1969 PA 306, MCL 24.201 *et seq.*, direct the Department to issue a declaratory ruling if an interested person makes a written request that contains a reasonably complete statement of facts and presents a question of law. MCL 24.263, 169.215(2). "An interested person is a person whose course of action would be affected by the declaratory ruling." R 169.6(1). The APA compels the Department and the requester to act in accordance with the terms of a declaratory ruling, unless the ruling is modified or invalidated by a court. MCL 24.263. If the Department declines to issue a declaratory ruling, it must instead publish an interpretive statement which "provid[es] an informational response to the question presented [.]" MCL 169.215(2).

According to your letter, a former Allegan County Commissioner who briefly campaigned for the office of State Representative, 80th District, was appointed by the Allegan County Probate Court as conservator and guardian of a vulnerable adult. You assert that in this capacity, the former Commissioner "raid[ed] an incapacitated individual's trust to finance [his] campaign" for State Representative by issuing several checks drawn on the vulnerable adult's trust account to a campaign consultant in excess of \$10,000.00. Your request for a declaratory ruling questions the treatment of conservatorships under the MCFA and asks whether the Allegan County Republican Executive Committee, of which you are Secretary, is required by law to refund any contributions that may have been made by the former Commissioner if the source of such contributions is determined to be the conservatorship.

Although you explain that you are the Secretary of the Allegan County Republican Executive Committee, your letter does not indicate that your request for a declaratory ruling is made on behalf of that organization. Further, campaign statements filed with the Secretary of State by the Allegan County Republican Executive Committee indicate that the former Commissioner made a single contribution of \$20.00 between July and November 2013, the period that he is alleged to

have misappropriated conservatorship funds.¹ Thus, it is not apparent that you are an interested person “whose course of action would be affected by the declaratory ruling.” R 169.6(1). In view of these circumstances, the Department issues this interpretive statement in response to your request.

Many of the Act’s provisions apply to a “person,” which is defined to include, “a business, individual ... or group of persons acting jointly.” MCL 169.211(2). The word “business” includes, among other things, a trust.² MCL 169.202(6). The MCFA authorizes a person to make a contribution to a candidate seeking the office of State Representative, subject to the ordinary restrictions on the source³ of such contributions. Unless a higher limit applies,⁴ the maximum amount that a person may contribute to a candidate for the Michigan House of Representatives is \$1,000.00 per election cycle. MCL 169.252(1)(c). A “contribution” is generally defined as a payment or donation of money or any other thing having ascertainable monetary value, including a loan. MCL 169.204(1). Collectively, these provisions of the Act authorize a trust to make a contribution, including a loan, up to \$1,000.00 to a candidate for the state House of Representatives.

Your request, however, asks whether it is lawful for a conservatorship to make contributions under the MCFA. Under the Estates and Protected Individuals Code (EPIC), 1998 PA 386, MCL 700.1101 et seq., the terms “trust” and “conservatorship” are not synonymous; indeed, by definition, a “[t]rust does *not* include a ... conservatorship[.]” MCL 700.1107(n) (emphasis added). A conservator is a court-appointed manager of a protected individual’s estate, and a guardian may be appointed by a court or nominated by a family member for an individual who is legally incapacitated by mental or physical illness or disability and does not possess “sufficient understanding or capacity to make or communicate informed decisions.” MCL 700.1103(h), 1104(j), 1105(a). With respect to conservators and guardians, EPIC establishes a comprehensive regulatory scheme that requires that estate assets be managed for the benefit of the beneficiary and prohibits conservators and guardians from engaging in self-dealing. EPIC, art V, parts 3-4. With this understanding, the Department offers the following in response to your questions.

1. *“Given the circumstances and concerns outlined above, my main question is how would conservatorships be treated under the MCFA?”*

Although the MCFA authorizes a trust to make contributions to candidates, a trust specifically excludes a conservatorship. MCL 700.1107(n). Further, under EPIC, the enumerated powers

¹ See Allegan County Republican Executive Committee Annual Campaign Statement filed January 30, 2014, available at www.michigan.gov/elections. This contribution was received on July 24, 2013

² A trust is “[t]he right, enforceable solely in equity, to the beneficial enjoyment of property to which another person holds the legal title; a property interest held by one person (the trustee) at the request of another (the settlor) for the benefit of a third party (the beneficiary)[.]” Black’s Law Dictionary, 8th Ed., 1999.

³ As a general rule, contributions from the following sources are prohibited: anonymous contributions, contributions from one candidate committee to another candidate committee, and direct contributions made from the general treasury funds of corporations or labor organizations. MCL 169.241(2), 244(2), 254(1).

⁴ Contribution limits are increased with respect to contributions made by independent committees, political party committees, and house or senate political party caucus committees. See MCL 169.252(1)-(4). Contributions from members of the candidate’s immediate family are not subject to limitation. MCL 169.252(5).

and duties of guardians and conservators do not include making contributions. See, e.g., MCL 700.5314, 5423. Thus, the Department concludes that a conservatorship is prohibited from making a contribution under the MCFA.

2. *“Would I or [the Allegan County Republican Executive Committee] be compelled by the MCFA to refund monies given by [the former Commissioner] if they were determined to come from the conservatorship?”*

If the Allegan County Republican Executive Committee knows that it has received a contribution from a conservatorship, it should refund the contribution. A committee is not authorized to retain a contribution from a prohibited source.

The foregoing constitutes an interpretive statement with respect to your request.

Respectfully,



Michael J. Senyko
Chief of Staff