



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

January 24, 2014

Tom Barrow
2650 Gratiot Avenue
Detroit, Michigan 48207

Dear Mr. Barrow:

The Department of State (Department) has concluded its investigation of the complaint you filed against the Turnaround Detroit Political Action Committee (Turnaround Detroit), which alleged that Turnaround Detroit violated 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 filed your complaint on September 3, 2013. Turnaround Detroit filed its answer on October 22, 2013. While you did not file a rebuttal statement, the Department did receive the supplemental information that you filed on October 16, 2013.

In your original complaint, you alleged that Turnaround Detroit was a political action committee, and not an independent Super PAC, which took corporate contributions in contravention of the MCFA. In your supplemental material you alleged that Turnaround Detroit "coordinated" with then-candidate for Mayor of Detroit, Mike Duggan.

The MCFA prohibits a corporation from making a contribution to a committee other than a ballot question committee. MCL 169.254. Michigan Administrative Rule 169.35 prohibits the treasurer of a committee, other than a ballot question committee, from accepting a contribution written on a check from a corporate account. A person who violates this provision may be subject to a civil fine of up to \$1,000.00 per violation plus triple the amount of each improper contribution. MCL 169.215(11), (15).

While the only exception to the prohibition on corporate contributions contained in the MCFA is for ballot question committees, a United States District Court for the Western District of Michigan held in an as-applied challenge to Michigan's prohibition on corporate contributions that if a political action committee does not coordinate the expenditure of its funds with a candidate, then the United States Supreme Court decision in *Citizens United*¹ forbids Michigan from denying a corporation from contributing to that committee. *Mich Chamber of Commerce v Land*, 725 F Supp 2d 665 (2010). In view of these cases, corporations may now make contributions for the purpose of financing independent expenditures in candidate elections.

¹ *Citizens United v FEC*, 558 US 310 (2010).

As evidence you provided the Amended Statement of Organization filed by Turnaround Detroit with Wayne County on July 8, 2013, which changed the name of the committee from Our Neighborhoods, Our Future to Turnaround Detroit. You also provided the original Statement of Organization filed by Our Neighborhoods, Our Future on March 11, 2013 with Wayne County.

Your supplemental material includes broad statements that contend that Turnaround Detroit “coordinated” with now-Mayor Duggan regarding primary election-day challengers appointed by Citizens for Fair Elections.

You base this allegation on the fact that Citizens for Fair Elections shares the same address as Turnaround Detroit, and that Mr. Jason Gourley is the president of Citizens for Fair Elections and record keeper for Turnaround Detroit. You further allege other criminal activity by Citizens for Fair Elections which has no foundation in the MCFA. You also concede that Mayor Duggan did not have any challengers representing his campaign. You finally assert that it is “inconceivable that Turnaround Detroit did not coordinate its activities with the Duggan campaign,” yet you failed to provide evidence in your supplemental filing that would support a finding that Turnaround Detroit coordinated any expenditure of funds with Mayor Duggan.

However, the Department must still address your allegation that Turnaround Detroit was a political committee, not an independent Super PAC, and therefore prohibited from receiving corporate contributions.

Although the court in *Chamber v Land* held the First Amendment’s guarantee of freedom of speech applies to corporate contributions to independent expenditure political action committees that do not coordinate with a candidate, the MCFA has not been amended to address this development, and the prohibition of corporate contributions to committees (other than ballot question committees) is still contained in the Act. Nor has the legislature provided any statutory mechanism for independent expenditure Super PACs to register and report in the State of Michigan. Section 24 of the Act requires a committee to file a Statement of Organization within 10 days of its formation and that Statement must identify that committee as a “candidate committee, political party committee, political committee, or ballot question committee if it is identifiable as such a committee.” MCL 169.224(1), (2). There is no option in the MCFA to identify as a Super PAC or Independent Expenditure PAC.

Instead, the Department provided written guidance in 2010, which directs Super PACs to file on a separate Statement of Organization form, which was created so that filing officials, committees, and the public could readily identify those committees which may legally receive contributions from corporations and make independent expenditures in candidate elections. This Independent Expenditure Political Committee Statement of Organization is not a form that is *required* by the MCFA. The clerical error of failing to use this particular form does not, *per se*, violate the MCFA’s prohibition against receiving corporate contributions, as long as the committee operated solely as a Super PAC and did not make direct or in-kind contributions to any candidate, political, or independent committee.

Consequently, the Department must also look to the actual activity of a committee to determine if it is operating as a Super PAC and therefore authorized to receive corporate contributions. According to the court decision referenced above, a committee which only makes independent expenditures for candidate elections must be permitted to accept corporate contributions. In an

effort to comply with the court ruling and to facilitate the identification of those committees operating under these special restrictions, the Department has recognized "Independent Expenditure Political Committees" (more commonly known as Super PACs).

The Act defines an independent expenditure as "an expenditure by a person² 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).

After careful review of all of the evidence submitted by both parties, the Department has determined that there is no evidence to support a determination that any expenditure made by Turnaround Detroit was made at the direction of, or under the control of, another person. Additionally, a review of Turnaround Detroit's campaign statements show no contribution made by Turnaround Detroit to any committee.

The Department has determined, through a review of the evidence that the following occurred:

1. Turnaround Detroit filed an amended Statement of Organization with the Wayne County Clerk on July 8, 2013 changing its name from Our Neighborhoods, Our Future to Turnaround Detroit. This amended Statement of Organization was on the form entitled "Original or Amended Statement of Organization Form For Independent and Political Committees (PAC's)."
2. After discussions with staff at the Department of State, Turnaround Detroit attempted to file an Amended Statement of Organization with the Wayne County Clerk on July 24, 2013 using the form entitled "Original or Amended Independent Expenditure Political Committee Statement of Organization Form Corporations, Unions or Domestic Dependent Sovereigns (Independent Expenditure PACs)," along with an affidavit from Samuel Thomas attesting that Turnaround Detroit was established as an independent expenditure political committee and had continuously functioned as an independent expenditure committee.
3. On July 24, 2013 the Wayne County Clerk rejected and returned the documents filed by Turnaround Detroit.
4. By letter dated August 1, 2013 the Wayne County Clerk issued a notice to Turnaround Detroit, which, in pertinent part, advised Turnaround Detroit that a corporation is prohibited from contributing to Turnaround Detroit and directed Turnaround Detroit to return all corporate contributions that it received.
5. By an undated letter, but sometime prior to August 29, 2013, Turnaround Detroit responded to the notice sent by the Wayne County Clerk asserting Turnaround Detroit's right to accept corporate contributions as an independent expenditure PAC under *Citizens United* and *Chamber v Land*. Turnaround Detroit again asserted that it had not made any contributions to a candidate, political party committee, or any committee. The letter

² Under the Act, person includes a committee. MCL 169.211(2).

requested that the Wayne County Clerk withdraw its error and omissions notice pertaining to the corporate contributions.

6. On August 29, 2013, Wayne County attempted to forward the matter to the Michigan Secretary of State and Michigan Attorney General via the enclosed letter from Janet Anderson-Davis.

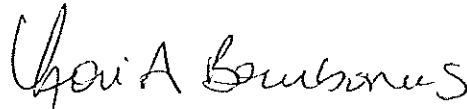
It has been the Department's position and past practice to allow a committee that files with the Secretary of State and inadvertently files using the Independent and Political Committee Statement of Organization Form, yet functions as an independent expenditure committee or Super PAC, to file an amended Statement of Organization using the Independent Expenditure Committee form, along with an affidavit attesting that it has functioned only as an independent expenditure committee, without penalizing the committee for the error in its original Statement of Organization filing.

The Department notes that it has revised its forms in an attempt avoid this type of error in the future and to provide more accurate information to the public. Now there is one Statement of Organization for use by independent, political, and independent expenditure committees.

Here, it appears that Turnaround Detroit tried to rectify its clerical error by filing an amended Statement of Organization, which is exactly what our Department recommends to similarly situated committees. Turnaround Detroit originally used the Statement of Organization form that it erroneously believed was appropriate. When it became aware of the alternate, more accurate form, it attempted to correct its mistake by filing an amended form with the Wayne County Clerk, along with an affidavit attesting that it had been functioning as an independent expenditure committee.

Because the evidence demonstrates that Turnaround Detroit functioned all along as an independent expenditure committee despite its error which it attempted to correct, the Department finds that Turnaround Detroit was and is permitted to accept corporate contributions. Therefore, your complaint is dismissed.

Sincerely,



Lori A. Bourbonais
Bureau of Elections
Michigan Secretary of State

c: Samuel Thomas