



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

October 31, 2012

Mark Brewer
606 Townsend
Lansing, Michigan 48933

Dear Mr. Brewer:

The Department of State (Department) has concluded its review of the complaint you filed against Speaker of the House of Representatives Jase Bolger, Representative Roy Schmidt, Suzanne Miller Allen, Phil Browne, Ari Adler, and Joseph Baumann (collectively, Respondents) alleging that they violated the Michigan Campaign Finance Act (MCFA), 1976 PA 388, MCL 169.201 *et seq.* This letter concerns the disposition of your complaint.

You alleged that the Respondents violated section 57(1) of the MCFA, MCL 169.257(1), which prohibits a public body or an individual acting on its behalf from using or authorizing the use of public resources to make a contribution or expenditure. The words "contribution" and "expenditure" are terms of art that are generally defined to include payments or transfers "made for the purpose of influencing" or made "in assistance of, or in opposition to," a candidate's nomination or election. MCL 169.204(1), 169.206(1). Under MCL 169.257(3), a knowing violation is punishable as a misdemeanor. MCL 169.257(3).

Your complaint is based on your assertion that the Respondents "used state resources, including state offices, phones, text messaging and emails, during work hours to plan and execute [Representative] Schmidt's withdrawal as a Democratic candidate, refiling as a Republican candidate, and the recruitment and filing of a fake Democratic candidate, all in House District 76." The only item of evidence provided in support of your complaint was a press release issued by Kent County Prosecuting Attorney William Forsyth dated July 17, 2012. The press release detailed the results of Mr. Forsyth's extensive investigation, which primarily concerned potential violations of the Michigan Election Law, 1954 PA 116, MCL 168.1 *et seq.*, and pertinent to your allegations, included statements indicating that Speaker Bolger and Rep. Schmidt exchanged text messages and phone calls on May 14 – 15, 2012 leading up to the partisan candidate filing deadline. The press release also describes the events that transpired as the filing deadline drew near with Mr. Browne's filing of Matthew Mojzak's affidavit of identity, Rep. Schmidt's withdrawal letter, and Rep. Schmidt's second affidavit of identity.

The Respondents filed separate written responses denying that they used public resources in violation of MCL 169.257. The Respondents provided a letter from the Director of the House Business Office indicating that the House of Representatives has not made cell phone reimbursement payments to or on behalf of any of them. The Respondents also denied that they used working hours or authorized others to use working hours in violation of the MCFA.

The Department provided you a copy of each response filed by the Respondents and advised you of your right to file a rebuttal statement by letter dated August 13, 2012, but you did not provide any additional written statement or evidence to this office.

After the deadline to file your rebuttal statement elapsed, the Department requested additional information from Mr. Browne and Mr. Baumann regarding their use of leave time. In response to this inquiry, Mr. Browne provided copies of records demonstrating that he used 8 hours of leave time on May 15, 2012 (the filing deadline). Mr. Baumann explained that he was the attorney referred to in Speaker Bolger's text message sent on May 15, 2012, wherein the Speaker informed Rep. Schmidt: "From our atty: there is no requirement for a phone # or email on an affidavit of identity. So, leave those two blank on Matthew's form." Mr. Baumann indicated the legal advice described in the text message was provided outside of the regular business hours of the House of Representatives, and therefore, he was not required to use leave time.

The prohibition against the use of public resources does not apply to, "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.*" MCL 169.257(1)(f) (emphasis added). In view of this statutory exception, your complaint against Mr. Browne and Mr. Baumann must be dismissed.

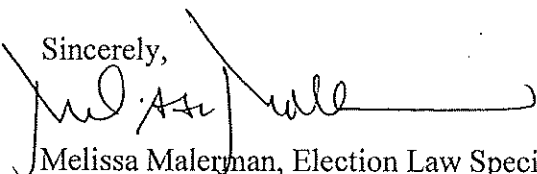
Your allegations against Ms. Miller Allen and Mr. Adler also merit dismissal because you have not provided any evidence tending to establish that they acted in violation of the MCFA. Mr. Forsyth's press release does not allege any wrongdoing on their part.

Finally, your remaining allegations against Speaker Bolger and Rep. Schmidt are dismissed, as both of them: 1) provided documentation from the House Business Office demonstrating that the House has not made cell phone reimbursement payments to or on behalf of them, and 2) denied that they used or authorized others to use working hours in violation of the MCFA. The evidence you provided does not establish that Speaker Bolger and Rep. Schmidt misused state resources in the manner you alleged.

In conclusion, the Department finds that the evidence submitted with your complaint is not sufficient to find that there may be reason to believe that any of the Respondents violated the MCFA. Your complaint is dismissed in its entirety. The Department will take no further enforcement action with respect to your complaint and will close its file in this matter.

Please note that the Department continues to separately investigate Mr. Forsyth's allegations that Rep. Schmidt committed other violations of MCFA.

Sincerely,



Melissa Malerman, Election Law Specialist
Bureau of Elections
Michigan Department of State

c: Hon. Jase Bolger, Speaker of the House
Hon. Roy Schmidt, Michigan House of Representatives
Suzanne Miller Allen
Phil Browne
Ari Adler
Joseph Baumann

