



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

January 31, 2013

James E. Bucy
8460 Arbela Road
Millington, Michigan 48746

Tom O'Hearn
1033 Barkley Road
Millington, Michigan 48746

Dear Messrs. Bucy and O'Hearn:

The Department of State (Department) has concluded its review of the complaint you filed against Joe White, Mary Warren, and William Jacobi, concerning alleged violations 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 Mr. White, Ms. Warren, and Mr. Jacobi "used township personnel, office space, property, vehicles and other public resources during Township Business Hours to campaign for and against Township Residents seeking public office."

In Michigan, it is unlawful for a public body or individual acting on its behalf to use or authorize the use of "funds, personnel, office space . . . property . . . vehicles, equipment, supplies, or other public resources to make a contribution or expenditure [.]" MCL 169.257(1). 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).

A knowing violation of section 57 is a misdemeanor offense. MCL 169.257(3).

You filed the complaint on August 28, 2012. Attorney Michael Edmunds filed a response on behalf of his clients, Mr. White, Ms. Warren, and Mr. Jacobi, on October 10, 2012; and you filed a rebuttal statement on October 26, 2012.

Township tractor. Your complaint alleged that you observed Mr. Jacobi remove a campaign sign and place it in a township tractor and then continue to mow township roadsides. Mr. Jacobi admits that he "recalls retrieving a damaged sign one day while he was mowing, and placing it inside the Township tractor." You then further alleged in your rebuttal statement that Mr. Jacobi would remove his opponent's signs and replace them with his own. No evidence was provided regarding this incident with the complaint or your rebuttal statement.

Section 57 of the MCFA prohibits a person acting on behalf of a public body from using or authorizing the use of funds to make a contribution or expenditure. Mr. Jacobi asserts that he

removed a damage sign and placed it in the tractor. No evidence was provided to refute this assertion. Placing a damaged sign in the township tractor does not give rise to an expenditure of township funds to further the election or defeat of a candidate. Therefore, this portion of your complaint is dismissed.

Phone calls made from township phones. You alleged that Ms. Warren, along with Ms. Hunt, made phone calls from the township hall to township residents in support of some candidates and criticizing or condemning others. You further alleged that Ms. Warren and Hunt used township time and resources to contact residents in regard to an anonymous letter that was distributed to township residents. This anonymous letter allegedly discussed a police report that was a matter of public record. The Department notes that although she was a candidate for Arbela Township Treasurer in the November 2012 election, Ms. Hunt was not named as an alleged violator in your complaint.

Ms. Hunt denied making phone calls about candidates during work. Ms. Warren admitted to receiving phone calls at home regarding Mr. Bucy, but denied making any phone calls while in the township hall. Both Ms. Hunt and Ms. Warren admit that they were questioned during work hours regarding the anonymous letter. However, they both state that they did not initiate any conversation.

In your complaint you allege that it was reported to you that Ms. Warren used the township time and resources to further the campaign of some candidates and in opposition to other candidates. You did not allege that you witnessed or heard any of these conversations. Ms. Warren denies these allegations. In the absence of any evidence to the contrary, the Department does not find that there is a reason to believe that Ms. Warren used township time and resources to make phone calls from the township hall to campaign for or against any candidates. This portion of your complaint is dismissed.

Discussion with Ms. Hultz during the work day. You alleged that Ms. Warren had a discussion during work hours in the township hall with Doris Hultz regarding one of Mr. Bucy's campaign signs that Ms. Hultz had in her yard.

Ms. Warren admitted that she had one discussion regarding the sign with Doris Hultz in the township hall. Ms. Warren admitted that she asked Ms. Hultz about the sign, and that she asked Ms. Hultz to take the sign down when Ms. Hultz indicated that it did not necessarily mean she supported Mr. Bucy even though she had the sign. Ms. Warren stated that she "did not attempt to persuade Ms. Hultz to vote against Bucy."

Mr. Edmunds contends that this conversation did not cause an expenditure of township funds to further the election or defeat of a candidate. Ms. Warren asserts that it was "a short, incidental personal conversation in the course of her workday." No evidence was provided to refute Ms. Warren's assertion. The Department does not find that there is a reason to believe that Ms. Warren caused any township funds to be expended in the assistance of, or in opposition to, a candidate, and this portion of your complaint is dismissed.

Campaigning on election day. You alleged in your complaint that, on election day, Mr. Jacobi and Mr. White parked their vehicles, placed campaign signs, and handed out campaign material

on township property. You provided as evidence a copy of a police report, which confirms Mr. Jacobi and Mr. White were outside of the 100-foot radius from the entrance of a polling place and the officer determined that "the law did not prevent someone from campaigning on public grounds as long as they were more than 100ft from the entrance [.]"

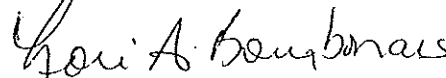
Mr. Jacobi and Mr. White admit to being on township property on election day with campaign materials. However, they both state that while they were on public property they did not use the hall itself or any of the township's resources. They state that because they did not use "funds, personnel, office space, computer hardware or software, property, stationery, postage vehicles, equipment, supplies, or other public resources [,]" there was no violation of section 57 of the MCFA.

Additionally, section 57 of the Act has a few narrow exceptions. One exception states that section 57(1) does not apply to "[t]he 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." MCL 169.257(1)(d).

The Department fails to see how township funds were used or expended by Mr. White and Mr. Jacobi by their actions. Additionally, even if the Department did find that township funds were expended, there is no evidence that other candidates were not given equal opportunity to campaign outside of the 100-foot radius. You state in your rebuttal that not all candidates were informed that they would be allowed to campaign in this area of the township property. However, not being aware of an opportunity is not the same as being denied that opportunity.

The Department finds that the evidence does not support a reason to believe that Mr. White and Mr. Jacobi violated section 57 of Act by campaigning on township property on election day, and this portion of your complaint is dismissed.

Sincerely,



Lori A. Bourbonais
Bureau of Elections
Michigan Department of State

c: Michael Edmunds

