



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

October 2, 2014

Mark Laws
P.O. Box 361
Cedar Springs, Michigan 49319

Dear Mr. Laws:

The Department of State (Department) has concluded its review of the complaint you filed against the Cedar Springs City Council, City Manager, and City Attorney (City Officials) 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 the City Officials violated section 57 of the MCFA by "looking into the recall to see if it was a violation of the open meetings act." In support of your complaint you provided copies of emails discussing the City Council's authorization to conduct an investigation into whether the Council violated the Open Meetings Act.

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). Expenditure is a term of art which includes "a payment, donation, loan, or promise of payment of money or anything of ascertainable monetary value for goods, materials, services, or facilities in assistance of, or in opposition to the nomination or election of a candidate [.]" MCL 169.206(1). A candidate includes "an officeholder who is the subject of a recall vote." MCL 169.203(1)(d). A knowing violation of section 57 is a misdemeanor offense. MCL 169.257(3).

You filed your complaint on April 4, 2014. Answers were received on April 28, 2014, May 8, 2014, and May 27, 2014. You filed a rebuttal statement on June 17, 2014.

You asserted that the City Council's authorization of an investigation into whether the City Council violated the Open Meetings Act, and any money spent by the City in connection with the investigation, was an effort by the City Officers to show that "the recall was baseless" and to encourage voters to vote against the recall.

Michael Hodge filed an answer to the complaint on behalf of 5 City Councilmembers and the City Manager. As evidence, Mr. Hodge provided the Cedar Springs City Council Meeting Minutes for its March 13, 2014 and April 3, 2014 meetings.

In his answer, Mr. Hodge asserted that after the recall language was approved on February 21, 2014 which alleged, "in part, that the closed session of the Council held on July 11, 2013 was in

violation of the Michigan Open Meetings Act [,]" a City Councilmember "asked the other City Councilmembers to "consider a request to have the City Manager and City Attorney cause an investigation to be conducted to determine if the Council violated the Open Meetings Act . . . because of the allegation in the recall petition and comments made at previous meetings of the Council."

Mr. Hodge further asserted that "[t]he Minutes of the City Council meetings reveal that the Cedar Springs City Council and their City Manager were concerned with the public allegation that they had broken a state law which imposed potential criminal penalties [.]"

The meeting minutes support Mr. Hodge's contention that the City Council was concerned with the legality of its actions and concerned that a violation of the Open Meetings Act may be a criminal offense with monetary penalties. The City Council also wanted to be in compliance with the law and to let the public know if it had been in compliance or not. Violations of the Open Meetings Act may result in significant legal consequences apart from a recall effort. For example, a decision made by a public body at a meeting held in violation the Open Meetings Act may result in a civil suit to invalidate the body's action, a civil action to compel compliance with the Open Meetings Act, or a criminal prosecution. MCL 15.270-273.

While in your rebuttal statement you assert that by authorizing an investigation into the alleged Open Meetings Act violation the City Officers used "public resources and public office . . . to discourage and discredit the recall effort" and "words were not verbalized as such but their actions were loud and clear[,]" the City Officers had real and credible concerns that they had possibly committed a criminal violation of the Open Meetings Act and possibly faced financial penalties. They also had real and credible concerns that the public should know if they complied with the Open Meetings Act or not.

Because the City Officers had legitimate legal concerns regarding the alleged Open Meetings Act violation, the Department finds that the evidence does not tend to show that the City Officers made an expenditure in regard to the recall election, and your complaint is dismissed.

Sincerely,



Lori A. Bourbonais
Bureau of Elections
Michigan Department of State

c: Daniel Clark
Michael J. Hodge
Robert D. Truesdale