



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

November 10, 2014

George Lahanas, City Manager
City of East Lansing
410 Abbot Road, Room 207
East Lansing, Michigan 48823

Dear Mr. Lahanas:

The Department of State (Department) received a formal complaint filed by Donald Power against you and the City of East Lansing (City), alleging that you and the City violated the Michigan Campaign Finance Act (MCFA or Act), 1976 PA 388, MCL 169.201 *et seq.* The investigation and resolution of this complaint is governed by section 15 of the Act and the corresponding administrative rules, R 169.51 *et seq.* Copies of the complaint and supporting documentation are enclosed with this letter.

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, computer hardware or software, property, stationary, postage, vehicles, equipment, supplies, or other public resources to make a contribution or expenditure [.]” MCL 169.257(1). A knowing violation of section 57 is a misdemeanor offense. MCL 169.257(3).

Mr. Power alleges that you improperly used City of East Lansing public funds by advocating for the passage of ballot question in the September 2014 edition of the Dialog Newsletter.

The purpose of this letter is to inform you of the Department’s examination of these matters and your right to respond to the allegations before the Department proceeds further. It is important to understand that the Department is neither making this complaint nor accepting the allegations as true.

If you wish to file a written response to this complaint, you are required to do so within 15 business days of the date of this letter. Your response may include any written statement or additional documentary evidence you wish to submit. All materials must be sent to the Department of State, Bureau of Elections, Richard H. Austin Building, 1st Floor, 430 West Allegan Street, Lansing, Michigan 48918. If you fail to submit a response, the Department will render a decision based on the evidence furnished by the complainant.

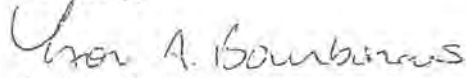
A copy of your reply will be provided to Mr. Power, who will have an opportunity to submit a rebuttal statement to the Department. After reviewing all of the statements and materials provided by the parties, the Department will determine whether “there may be reason to believe that a violation of [the MCFA] has occurred [.]” MCL 169.215(10). Note that the Department’s enforcement powers include the possibility of entering a conciliation agreement, conducting an

George Lahanas, City Manager
City of East Lansing
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administrative hearing, or referring this matter to the Attorney General for enforcement of the criminal penalty provided in section 57(3) of the Act.

If you have any questions concerning this matter, you may contact me at (517) 241-0395.

Sincerely,

A handwritten signature in dark ink, appearing to read "Lori A. Bourbonais". The signature is fluid and cursive, with the first name "Lori" being more prominent.

Lori A. Bourbonais
Bureau of Elections
Michigan Department of State

c: Donald Power

ATTACHMENT TO COMPLAINT

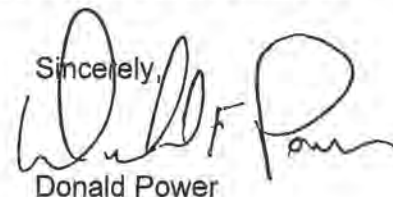
My name is Donald Power and I am a citizen advocate and member of the Executive Board for Neighborhoods 1st—an East Lansing community group that was formed with the express purpose of ferreting out corruption in local government. One of the issues that we have devoted an extensive amount of time on is the ballot proposal for the "Sale of City-Owned Property." It is our continuing belief that the ballot proposal is a dereliction of the public trust transferring public resources to private hands and diminishing our community.

I am bringing this complaint because I became aware that the current City Manager of East Lansing, George Lahanas, published a column in the September 2014 edition of the Dialog Newsletter—a publicly funded newsletter sent to residents of East Lansing and produced by the City of East Lansing—that advocated that voters vote "yes" on the ballot proposal referenced above. That column is included as part of this Attachment as **Exhibit 1**. To my knowledge, the Dialog Newsletter is a public newsletter paid for with taxpayer dollars. That publication is published by the City of East Lansing Communications Department. (**Exhibit 2**) In the 2015 budget, one of the activities assigned to Communication and Cable Services is to "Produce the City's publications, including the Dialog" (**Exhibit 3**) That division is paid for from the General Fund, which includes tax revenue. (**Exhibit 4**) Mr. Lahanas' advocacy on behalf of a ballot proposal that residents of East Lansing have advocated against appears to be a misuse of tax dollars to advance the City Manager's political agenda and is a violation of section 57 of the Michigan Campaign Finance Act (MCFA).

Also part of this Attachment as **Exhibit 4** is a letter of clarification from the Secretary of State's office addressing the misuse of public funds to advocate in support of a ballot proposal. According to that letter, section 57 of the MCFA directly prohibits a public body from making contributions and expenditures in support of a ballot proposal. The Secretary of State letter states:

[S]ending a mass e-mail or mailing that expressly advocates support for a ballot question or candidate or urges constituents to vote for or against a candidate or ballot question would result in the use of public resources to make an expenditure. The use of public resources in this manner falls squarely within the section 57 prohibition against using anything of ascertainable monetary value in assistance of, or opposition to, the nomination or election of a candidate, or the qualification, passage or defeat of a ballot question.

In other words, the publication of a column in a publicly funded newsletter violated campaign finance law by advocating on behalf of the ballot question and appropriate action should be taken to remedy this violation.

Sincerely,

Donald Power

2014 NOV -3 PM 1:02
BUREAU OF ELECTIONS
MICHIGAN SECRET OF STATE

**Michigan Department of State
Campaign Finance Complaint Form**

Reset Form

This complaint form may be used to file a complaint alleging that someone violated the Michigan Campaign Finance Act (the MCFA, 1976 PA 388, as amended; MCL 169.201 *et seq.*).

Please print or type all information.

I allege that the MCFA was violated as follows:

Section 1. Complainant		
Your Name Donald Power	Daytime Telephone Number (989) 860-5668	
Mailing Address 1200 Blanchette Dr.		
City East Lansing	State MI	Zip 48823-1875

Section 2. Alleged Violator		
Name George Lahanas, the City Manager of East Lansing, and the City of East Lansing		
Mailing Address 410 Abbot Road, Rm 207		
City East Lansing	State MI	Zip 48823

Section 3. Alleged Violations (Use additional sheet if more space is needed.)
--

Section(s) of the MCFA violated: **Section 57**

Explain how those sections were violated:

See attached

Evidence that supports those allegations (attach copies of pertinent documents and other information):

See attached

Section 4. Certification (Required)

I certify that to the best of my knowledge, information, and belief, formed after a reasonable inquiry under the circumstances, each factual contention of this complaint is supported by evidence.

X

Signature of Complainant

Date

Section 5. Certification without Evidence (Supplemental to Section 4)

Section 15(6) of the MCFA (MCL 169.215) requires that the signed certification found in section 4 of this form be included in every complaint. However, if, after a reasonable inquiry under the circumstances, you are unable to certify that certain factual contentions are supported by evidence, you may also make the following certification:

I certify that to the best of my knowledge, information, or belief, there are grounds to conclude that the following specifically identified factual contentions are likely to be supported by evidence after a reasonable opportunity for further inquiry. Those specific contentions are:

See attached

X

Signature of Complainant

Date

Section 15(8) of the MCFA provides that a person who files a complaint with a false certification is responsible for a civil violation of the MCFA. The person may be required to pay a civil fine of up to \$1,000.00 and some or all of the expenses incurred by the Michigan Department of State and the alleged violator as a direct result of the filing of the complaint.

Mail or deliver the completed complaint form and evidence to the following address:

Michigan Department of State
Bureau of Elections
Richard H. Austin Building – 1st Floor
430 West Allegan Street
Lansing, Michigan 48918

COMPLAINT PROCESS

If you believe someone has violated the Michigan Campaign Finance Act (the MCFA), you may file a written complaint with the Department of State (the Department). The complaint must include all of the following:

- Your name, address and telephone number.
- The alleged violator's name and address.
- A description in reasonable detail of the alleged violation, including the section or sections of the MCFA you believe were violated, an explanation of how you believe the MCFA was violated, and any other pertinent information.
- Evidence which supports your allegations.
- A certification that:

To the best of your knowledge, information, and belief, formed after a reasonable inquiry under the circumstances, each factual contention of the complaint is supported by evidence.
- However, in addition, if after a reasonable inquiry under the circumstances, you are unable to certify that certain specifically identified factual contentions of the complaint are supported by evidence, you may also certify that:

To the best of your knowledge, information, or belief, there are grounds to conclude that those specifically identified factual contentions are likely to be supported by evidence after a reasonable opportunity for further inquiry.
- Your signature immediately after the certification or certifications.

If you wish to have your complaint considered, it must include all of the above information. The Department may dismiss your complaint if any item is not included, or if the complaint is determined to be frivolous, illegible, or indefinite. If the complaint is dismissed, both you and the alleged violator will be notified.

A form for filing a complaint may be obtained from the Bureau of Elections, P.O. Box 20126, Lansing, MI 48901-0726, or on the Department's web site at <http://www.michigan.gov/sos/>.

The completed form should be sent to the following address:

Michigan Department of State
Bureau of Elections
Richard H. Austin Building – 1st Floor
430 West Allegan Street
Lansing, MI 48918
Telephone: (517) 373-2540

If your complaint meets the above requirements, the Department will notify the alleged violator that a complaint has been filed. The notification will include a copy of your complaint. The alleged violator will have an opportunity to file a response. You will have an opportunity to file a rebuttal to any response. You and the alleged violator will receive periodic reports about the actions taken by the Department concerning your complaint.

If the Department finds no reason to believe that your allegations are true, your complaint will be dismissed.

If the Department finds that there may be reason to believe your allegations are true, the Department must attempt to correct the violation or prevent further violations by informal methods such as a conference, conciliation, or persuasion, and may enter into a conciliation agreement with the alleged violator.

If the Department is unable to correct the violation or prevent further violations informally, an administrative hearing may be held to determine whether a civil violation of the MCFA has occurred, or the matter may be referred to the Attorney General for the enforcement of criminal penalties. An administrative hearing could result in the assessment of a civil penalty. Such a hearing would be conducted in accordance with the Michigan Administrative Procedures Act. An order issued as a result of such a hearing may be appealed to the appropriate circuit court.

WARNING: Section 15(8) of the MCFA (MCL 169.215) provides that a person who files a complaint with a false certification is responsible for a civil violation of the MCFA. Under section 15(14) of the MCFA (MCL 169.215), the Secretary of State may require a person who files a complaint with a false certification to:

- Pay the Department some or all of the expenses incurred by the Department as a direct result of the filing of the complaint.
- Pay the alleged violator some or all of the expenses, including, but not limited to, reasonable attorney fees, incurred by that person as a direct result of the filing of the complaint.
- Pay a civil fine of up to \$1,000.00.

If you have any questions about the complaint process, please write or call the Legal and Regulatory Services Administration.

EXHIBIT 1

MANAGER'S MESSAGE

Striving to Move Forward with the Park District



As East Lansing's registered voters go to the polls on November 4, 2014, it is my hope that they will consider voting "yes" on the ballot proposal for the "Sale of City-

Owned Property" located in the Park District Planning Area. It is important to understand that a "yes" vote will not require City Council to sell the land to a developer. It will simply give Council the ability to consider sale of the land after a project proposal is found to fit the community's needs and a development agreement has been approved.

As many are aware, redevelopment of the west end of our downtown has been extremely challenging over the years. We have been looking at that area for more than a decade, facing many hurdles along the way - not least of which was the economic recession.

By giving Council authorization to sell the publicly owned land within the Park District, voters will be helping the City take an extremely important step in making a redevelopment project in that area a reality. And while the redevelopment project may not include the privately owned land in that area, we strongly believe that redevelopment of the publicly owned land will spur redevelopment of the private properties as well. Readers can take a look at the article on page 1-2 of this newsletter to learn more about the ballot proposal.

George Lahanas
East Lansing City Manager



Engraved bricks for the playground entry plaza can still be purchased, with two upcoming installation days.

PLAYGROUND

the team from Sinclair Recreation this past June. The build garnered huge support from the local community, with more than 200 volunteers involved.

The playground project was funded in part by a \$300,000 Michigan Natural Resources Trust Fund grant, as well as several generous sponsorships and contributions from the community.

Community members can still help in reaching the project's fundraising goal through donations and/or the purchase of a personalized, engraved brick. The bricks will be installed in the entry plaza of the playground, with installation days planned for fall 2014 and spring 2015. Learn more at www.cityofeastlansing.com/playgroundinthepark.

PARK DISTRICT

Currently, the City is in the pre-development agreement phase with DTN Management Co. for a portion of the Park District Planning Area. DTN's proposed project includes the land listed on the Nov. 4 ballot proposal. If, after a thorough review process, DTN's project moves forward to the development agreement phase, City Council may then consider sale of the land.

The review process includes review of the DTN site plan and special use permits by City staff, City Council, the East Lansing Planning Commission and multiple other City boards and commissions. The City would also conduct due diligence in accordance with the pre-development agreement in order to determine if the proposed project is both desirable and feasible. Finally, if the project is found

to be viable and in the best interest of the community, City Council may then negotiate a formal development agreement and terms of the land sale.

The Park District Planning Area has been looked at for more than a decade as a site for a major redevelopment project. The City's current guiding document for the area is the Park District Request for Qualifications/Proposals (RFQ/P), which was issued in fall 2012. The RFQ/P was drafted after public meetings in September 2012 to solicit community input. More than 100 community members attended the meetings to share their ideas and vision for the Park District Planning Area. The City's goal is to see a positive redevelopment of the Park District Planning Area that is consistent with the community's vision.

EXHIBIT 2

[MY EAST LANSING](#)[HOME](#)[RESIDENTS](#)[STUDENT-RESIDENTS](#)[BUSINESSES](#)[VISITORS](#)[NEWCOMERS](#)[Site Map | Contact Us](#)

Departments

Communications

[News Releases](#)[Government Television, WELG \(Ch. 22\)](#)[City Publications](#)[Sign Up for City E-Newsletters](#)[2012 Annual Report & 2013 Community Calendar](#)[Staff Directory](#)[Emergency Preparedness](#)[Media Gallery](#)

Communications

Department Contact

410 Abbot Road

keener@cityofeastlansing.com

Phone: (517) 319-6886

Fax: (517) 337-1731

[Home](#) • [Departments](#) • [Communications](#)

The Communication Department promotes the City of East Lansing with timely and accurate information and plans countless community events and activities for residents and visitors. The department is responsible for media relations, media events, internal communication services, City publications, including the Dialog, Dialog E-Newsletter and Annual Report, Web services and community events.

HIGHLIGHTS

East Lansing e-news is just a click away. Sign up to receive East Lansing's Dialog e-newsletter and other e-publications. Just visit www.cityofeastlansing.com/news today!

2013 Annual Report & 2014 Community Calendar - Check out East Lansing's annual progress report for 2013.

Community Events - Click to see a number of community events and festivals held in East Lansing each year.

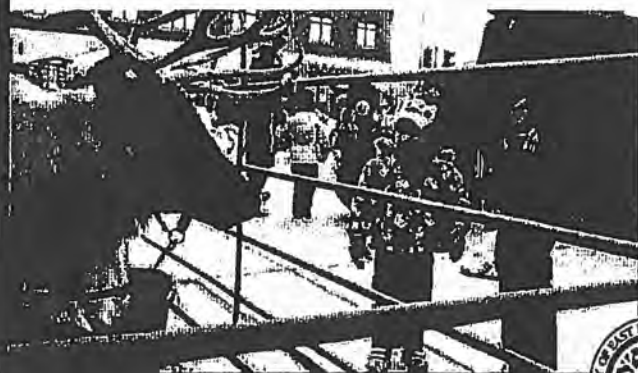
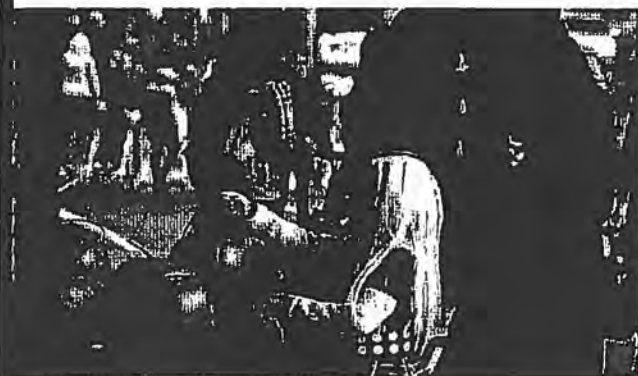
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2012 City of East Lansing | 410 Abbot Road, East Lansing, MI, 48823 | (517) 337-1731
[Contact Us](#) | [Sitemap](#) | [Web Policy](#) | [Sign up for City E-Newsletters](#)



EXHIBIT 3

City of East Lansing
FY 2015
BUDGET &
PROGRAM OF
SERVICES

MAYOR NATHAN TRIPLETT
MAYOR PRO TEM DIANE GODDEERIS
COUNCILMEMBER RUTH BEIER
COUNCILMEMBER KATHLEEN CORKIN BOYLE
COUNCILMEMBER SUSAN W. WOODS
CITY MANAGER GEORGE LAHANAS
DIRECTOR OF FINANCE MARY L. HASKELL



CITY OF EAST LANSING

GENERAL FUND

Estimated Revenues

<u>Revenues & Financing Sources:</u>	<u>FY2012-13</u> <u>Actual</u>	<u>FY2013-14</u> <u>Amended Budget</u>	<u>FY2014-15</u> <u>Budget Request</u>
Property Taxes			
Property Tax - Operating Millage	\$ 15,006,214	\$ 14,896,770	\$ 14,989,980
Property Tax Administration Fee	609,152	609,100	630,500
Penalties and Interest	168,538	150,500	152,500
Payment in Lieu of Taxes	52,556	52,555	56,900
Total Property Taxes	15,836,460	15,708,925	15,829,880
Intergovernmental Revenue			
State Revenue Sharing	4,943,300	4,986,920	5,258,835
PA289 Fire Protection	2,013,829	1,005,130	1,120,000
Federal/State Police Grants	284,623	260,100	15,075
Federal/State Fire Grants	116,660	90,000	-
Other Grants	1,000	-	16,300
Total Intergovernmental Revenue	7,359,412	6,342,150	6,410,210
Charges for Services			
City Attorney Cost Recovery	36,591	35,630	35,630
Court Costs and Fines	1,037,526	900,500	1,000,000
Administrative Service Charges to Other Funds:			
Major Street	102,660	104,510	106,285
Solid Waste Management	58,010	59,050	100,060
Automobile Parking System	99,080	100,860	102,575
Sewage Disposal System	290,910	296,145	301,180
Water Supply System	133,365	135,765	138,075
Garage & Public Works Services	67,470	68,685	69,855
Finance Services - ELMWSA	30,000	30,000	30,000
Assessor Shared Services - Meridian Township	61,251	61,265	63,480
Dispatch - MSU and Meridian Township	19,000	19,000	19,000
OUIL Cost Recovery	77,108	80,000	50,000
Impound Lot Charges	30,098	40,000	30,000
Police - Other	156,641	149,000	154,005
Fire Chief Shared Services - City of Lansing	94,086	97,000	50,000
Ambulance Services	1,267,782	1,150,000	1,350,000
Fire Rescue Contract - MSU	326,000	326,000	326,000
Fire - Other	120,176	109,500	112,795
DDA Downtown Maintenance	111,300	93,400	108,935
Sidewalks	(8,814)	54,600	75,000
Inspection Shared Services - Meridian Township	202,181	163,000	246,525
Other	141,925	94,700	96,450
Total Charges for Services	4,454,344	4,168,610	4,565,850

Schedule continued on next page

CITY OF EAST LANSING

SUMMARY

Estimated Revenues (Continued)

<u>Revenues & Financing Sources:</u>	<u>FY2012-13</u> <u>Actual</u>	<u>FY2013-14</u> <u>Amended Budget</u>	<u>FY2014-15</u> <u>Budget Request</u>
Fines and Forfeitures			
Parking Fines	1,436,739	1,500,000	1,500,000
Allocation of Parking Fines to Parking System	(277,495)	(303,820)	(270,980)
District Court Ordinance Fines and Costs	1,913,417	2,065,000	2,002,500
District Court Alcohol Screening Fees	32,824	37,000	32,000
Total Fines and Forfeitures	3,105,485	3,298,180	3,263,520
Licenses and Permits			
Housing Licenses and Inspections	729,282	710,000	730,000
Building Permits and Inspections	531,643	460,000	555,765
Sign Licenses	29,895	25,000	-
Business and Restaurant Licenses	128,897	100,400	164,630
Other Licenses and Permits	9,251	11,450	28,100
Total Licenses and Permits	1,428,969	1,306,850	1,478,495
Rental Income	55,142	52,465	48,270
Community Support	6,000	-	-
Cable Franchise Fees	394,847	385,000	385,000
Other Miscellaneous Revenue	160,766	107,000	109,000
Interest Income	79,425	70,000	72,000
Other Financing Sources			
Transfer from CIP Fund	-	-	56,390
Transfer from Parks CIP Fund	-	-	500,000
Contribution from DDA	30,000	30,000	30,000
Reappropriated Fund Balance	-	1,497,101	-
Total Other Financing Sources	30,000	1,527,101	586,390
Total Revenues & Financing Sources	\$ 32,910,850	\$ 32,966,281	\$ 32,748,615

CITY OF EAST LANSING

DEPARTMENT APPROPRIATION

FUND FUNCTION DIVISION STAFF RESPONSIBLE	General General Government – Other Communication and Cable Services Ami Van Antwerp/George Lahanas
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	<u>FY2012-13</u>	<u>FY2013-14</u>	<u>FY2014-15</u>
	<u>Actual</u>	<u>Amended Budget</u>	<u>Budget Request</u>
<u>Expenditures:</u>			
Personnel Services	\$ 204,912	\$ 221,315	\$ 218,045
Operating Costs	189,013	190,840	190,450
Capital Outlay	-	-	-
Total Expenditures	\$ 393,925	\$ 412,155	\$ 408,495
<u>Personnel Summary:</u>			
Full-Time Positions	3.00	3.00	3.00
Part-Time/Contingent Positions	1.00	1.00	1.00
Total Positions	4.00	4.00	4.00
Full-Time Equivalents (FTEs)	3.91	3.75	3.75

ACTIVITIES

- Produce the City's publications, including the Dialog and Annual Report and E-newsletters
- Write and distribute news releases for all City departments
- Manage content for the City's website and intranet
- Manage social media
- Provide graphic design services to City departments
- Take photos for City marketing materials/publication and historical purposes
- Plan news conferences and media events for various City departments
- Oversee delivery services on Channel 22 and community bulletin board information
- Provide printing support to various neighborhood associations
- Work on community initiatives including One Book, One Community and Celebrations Committee

EXPLANATORY INFORMATION

Personnel service costs are decreasing by 1.5% in the FY2015 budget request when compared to the current year's budget. The decrease is attributable to the number of hours charged out to the Community Events division in the Parks and Recreation fund and as mentioned earlier, in different sections of this budget narrative, the decrease from the MER's actuaries in the defined benefit pension annual contribution.

There is a very small decrease in the FY2015 budget request for operating costs. The City is enjoying several years of considerable savings from the contract renewal with our video production vendor. Printing costs and computer equipment rental from the City's internal service fund are coming in lower in the FY2015 budget as well when compared to the current fiscal year's budget.

EXHIBIT 4



STATE OF MICHIGAN
TERRI LYNN LAND, SECRETARY OF STATE
DEPARTMENT OF STATE
LANSING

October 31, 2005

Mr. David E. Murley
Michigan House of Representatives
House Majority Counsel
6th Floor South, Anderson House Office Building
P.O. Box 30014
Lansing, Michigan 48909-7514

Dear Mr. Murley:

This is in response to your request for an interpretive statement under the Michigan Campaign Finance Act (MCFA), 1976 P.A. 388, as amended. Specifically, you have asked a series of questions regarding the application of section 57 of the statute. Your questions and the Department of State's responses are set out below.

1. *Does the MCFA require a public body that makes expenditures of more than \$500 in a calendar year to file as a committee and submit regular campaign finance reports?*

Section 57 prohibits a public body from making contributions and expenditures as those terms are defined in the MCFA, with certain narrowly defined exceptions. This prohibition is in addition to the Attorney General's longstanding position that a public body has no constitutional or statutory authority to spend public funds to support or oppose a candidate or ballot question. Similarly, in a 1982 letter opinion issued to then Representative Bob Emerson, the Attorney General indicated that a public body (in this case, a downtown development authority) does not have the authority or power to form a campaign committee.

A public body that violates the MCFA by making expenditures may be prosecuted for violating the law. Additionally, a public body that misuses public funds could be investigated by the Attorney General pursuant to MCL 14.141 *et seq* or by the Department of Treasury pursuant to MCL 21.46 and 21.47. However, the public body is not required to file as a committee.

It should be noted that corporations are also prohibited from making contributions and expenditures. A corporation that makes illegal contributions is not required to legitimize that activity by filing as a committee and submitting reports of its illegal activity.

2. *Are election-related communications, financed by public bodies, subject to the express advocacy test?*

Section 6 of the MCFA defines "expenditure" to include anything of ascertainable monetary value "in assistance of, or in opposition to, the nomination or election of a candidate, or the qualification, passage or defeat of a ballot question." With respect to communications, section 6(2)(b) excludes from the definition of expenditures those communications that do not support or oppose a candidate or ballot question "by name or clear inference."

In 2004, the department was asked whether "ads that discuss issues without expressly advocating the election or defeat of the candidate who is featured in that 'issue ad'" were expenditures subject to the MCFA. The question arose after the United States Supreme Court ruled in *McConnell v FEC*, 539 U.S. 981 (2003) that "electioneering communications" as defined in the Bi-Partisan Campaign Reform Act of 2002 could be regulated despite the fact that those communications did not expressly advocate the election or defeat of a candidate. In response to that request, the department stated in an April 20, 2004 interpretive statement issued to Robert S. LaBrant that it "will continue to apply the express advocacy standard in determining which communications are regulated by the MCFA."

As stated in LaBrant:

McConnell indicates that the 'express advocacy' standard is not a constitutional requirement. Presumably, the Michigan legislature could enact FECA's "electioneering communication" standards. Yet, *McConnell* unambiguously requires the express advocacy test for any statutory definition that employs vague, broad language. The vagueness and over-breadth discussed in *Buckley* and clarified in *McConnell* still lurk in the MCFA's definitions of contribution and expenditure. For that reason, we are compelled to apply the express advocacy test to all communications.

The express advocacy test is a clear, objective standard that gives meaning to the ambiguous phrase "by clear inference." (Clear to whom or how many? Concluded from internal or external facts?) While we recognize that express advocacy is rooted in constitutional analysis and that public bodies may not be afforded First Amendment rights, the department declines to apply two separate standards to communications that are excluded from the MCFA's reach by identical language. Therefore, for purposes of the MCFA the department will apply the express advocacy test to communications financed by public bodies.

3. *Does the Department still interpret Section 57 to allow public bodies to adopt resolutions supporting or opposing ballot questions? If so, could a public body pass a resolution supporting or opposing a candidate?*

As previously noted, section 57 prohibits a public body from making contributions or expenditures, with certain narrowly defined exceptions. "Contribution" and "expenditure" are defined in sections 4 and 6 of the MCFA to include payments, loans, dues, assessments or other

items of ascertainable monetary value. In an interpretive statement issued to Steven Daunt on August 17, 2000, the department concluded that a city council did not make an expenditure as defined in sections 4 and 6 when its members voted on a resolution to support or oppose a ballot question. However, the department emphasized that the use of public resources to distribute or publicize that resolution beyond the regular provision of factual information regarding actions taken by the city council would result in a violation of section 57. The department will continue to abide by this interpretation.

The Daunt interpretive statement acknowledged that this rationale would apply equally to a resolution that supports or opposes a candidate. However, the MCFA is not the end of this analysis. A public body still must be empowered by law to adopt a resolution of this nature. (The constitutional grant of authority to cities and villages, for example, is limited to adopting resolutions "relating to municipal concerns, property and government." Const 1963, Art 7, sec 22.) The opinions issued by the Attorney General to date indicate that public funds may not be used to support or oppose a candidate [OAG, 1979-1980, No 5597, p 482 (November 28, 1979)] but have not specifically addressed whether public bodies have authority to pass resolutions supporting or opposing candidates. Therefore, you may wish to consult with the Attorney General for a definitive position on this issue.

4. *MCFA Section 57(1)(a) exempts "The expression of views by an elected or appointed public official who has policy-making responsibilities" from Section 57's prohibition. How will the Department interpret this subsection? Does it allow a public official to use public resources such as telephones or e-mail to communicate with a constituent or the media regarding his or her position on a ballot question? Does it allow a public official to send mass e-mail or mailings to constituents explaining why the official is supporting a particular ballot question or candidate? Does it allow a public official to use public resources to send mail to constituents urging them to elect or defeat a candidate, or to qualify, pass, or defeat a ballot question?*

Consistent with the First Amendment, section 57(1)(a) makes it clear that public officials are entitled to express their views on policy issues. Indeed, public officials have an obligation to take positions on controversial political questions so that constituents are fully informed and better able to assess their qualifications for office. [See OAG, 1969-1970, No 4647, p 87 (September 29, 1969)]. The occasional, incidental use of public resources to communicate with a constituent or the media on a ballot question falls within this exemption, as there are no resources devoted to an effort to assist or oppose the qualification, passage or defeat of that question.

However, sending a mass e-mail or mailing that expressly advocates support for a ballot question or candidate or urges constituents to vote for or against a candidate or ballot question would result in the use of public resources to make an expenditure. The use of public resources in this manner falls squarely within the section 57 prohibition against using anything of ascertainable monetary value in assistance of, or opposition to, the nomination or election of a candidate, or the qualification, passage or defeat of a ballot question

5. *MCFA Section 57(1)(b) exempts "The production or dissemination of factual information concerning issues relevant to the function of the public body" from Section 57's prohibitions. How does the Department interpret this subsection? May a public body produce and disseminate any information, as long as it is factual? For example, could a public body disseminate a newsletter that says "Senator Smith endorses Senator Jones" if that is a factually accurate statement? Is the public body required to present balanced information, as long as it is arguably grounded in fact? May a public body use public resources to provide links to websites, organizations, commentary or editorials that support or oppose a ballot questions or candidate?*

Section 57(1)(b) provides that the prohibition against using public resources to make campaign contributions and expenditures does not apply to spending that occurs to produce and disseminate factual information concerning issues relevant to the function of the public body. Although the MCFA does not address what issues are relevant to the function of a public body, we fail to see how "Senator Smith endorses Senator Jones" meets this test. As such, this fact would not fall within the section 57(1)(b) exemption.

While "issues relevant to the function of a public body" is not defined in the MCFA, this concept is consistent with the Attorney General's position that a public body must be authorized or empowered to use public resources in a particular manner. A cogent explanation of this position is found in OAG, No 6531, 1987-1988 (August 8, 1988). The question posed there was whether a school district "could expend public funds to objectively inform the public concerning upcoming ballot proposals." After noting that school districts and community colleges' powers are limited to those granted by the legislature or state constitution, the Attorney General stated:

OAG, 1987-1988, No 6423, *supra*, concluded that school districts and other public boards and commissions are not authorized to expend public funds to influence the electorate in support of or in opposition to a particular ballot proposal. OAG, 1965-1966, No 4291, p 1 (January 4, 1965); *Phillips v Maurer*, 67 NY2d 672; 490 NE2d 542; 499 NYS2d 675 (1986); *Elsenau v Chicago*, 334 Ill 78; 165 NE 129 (1929); *Mines v Del Valle*, 201 Cal 273; 257 P 530 (1927).

This prohibition evolves from the concern that such an expenditure of public "funds might be contrary to the desire and even subject to the disapproval of a large portion of" taxpayers and, further, "that it was never contemplated under the Constitution and statutes of this State that our boards ... should function as propaganda bureaus." *Mosier v. Wayne County Bd of Auditors*, 295 Mich 27, 31; 294 NW 85 (1940); OAG, 1965-1966, No 4421, p 36 (March 15, 1965); OAG, 1965-1966, No 4291, *supra*.

A public body, however, "may expend public funds to objectively inform the people on issues related to the function of the public body." OAG, 1987-1988, No 6423, *supra*; OAG, 1965-1966, No 4421, *supra*; OAG, 1979-1980, No 5597, p 482 (November 28, 1979).

It has been held that a board of education of a school district has implied power to make reasonable expenditures to provide a fair presentation of facts relating to a school bond election so as to aid school electors in reaching an informed judgment on proposed issues to be voted at the school election. *Citizens to Protect Public Funds v Bd of Education of Parsippany-Troy Hills Twp*, 13 NJ 172, 179; 98 A2d 673, 677 (1953). The expenditure of public funds for such purposes will be held invalid if the presentation of facts, including good and bad features, is not fairly presented. *Hankin v Bd of Education of Hamilton Twp*, 47 NJ Super 70; 135 A2d 329, 334 (1957).

It is my opinion, in answer to your first question, that school districts or community college districts may expend public funds to inform their electors in a fair and objective manner of the facts surrounding an upcoming ballot proposal or proposals to be voted upon by the school district or the community college district electors.

Thus, regardless of whether the use of resources constitutes an expenditure, a public body must have separate authority to use the public resource in that manner. If this authority exists, then factual information that is relevant to the public body - as defined by its grant of authority - may be produced and disseminated using public resources, as long as the information is limited to facts and does not include express advocacy.

With respect to links, in a June 15, 2001 interpretive statement issued to Kathleen Corkin Boyle, the department indicated that a link to a candidate's web site was an expenditure. This interpretation relied upon a Federal Election Commission's enforcement action against a corporation owned by a candidate that included a link from the corporation's web site to a web site that raised money for the candidate/owner. The term "expenditure" is defined in section 6 of the MCFA as the transfer of anything of ascertainable monetary value in assistance of a candidate or ballot question, including transfers made for the purpose of influencing the nomination or election of a candidate or the qualification or defeat of a ballot question. Clearly, a link to a single candidate's fundraising site could only be for the purpose of assisting the candidate's fundraising effort and is therefore not permitted under the MCFA.

A public body is also precluded from using public resources to create and maintain links to web sites, organizations, commentary or editorials that expressly support or oppose candidates or ballot questions if the public body does so for the purpose of influencing the outcome of an election. The department will apply an objective standard to assist in making this determination. If a public body creates and maintains one or more links that are used in a restrictive manner for the advocacy of one side of a ballot question, or if the links are to sites that are exclusively for, or exclusively against, a candidate, a slate of candidates or a ballot question, the department will presume that the public body is providing those links for the purpose of supporting or opposing that candidate or ballot question.

6. *MCFA Section 57(1)(c) exempts "The production or dissemination of debates, interviews, commentary, or information by a broadcasting station, newspaper, magazine, or other periodical or publication in the regular course of broadcasting or publication" from Section 57's prohibitions. How does the Department interpret this subsection? Could a publicly-funded publication—say, a school newsletter—carry a commentary that calls for the election or defeat of a candidate? May a publicly-funded newsletter contain any "interview, commentary, or information," as long as the newsletter was published "in the regular course of publication? May a publicly-funded newsletter contain a commentary that calls for the election or defeat of a candidate if that newsletter is not produced in the regular course of publication? Finally, how does the Department interpret "regular course of broadcasting or publication"?*

The department interprets the "regular course of broadcasting or publication" as the normal, routine publication schedule of the broadcast or publication. Any broadcast or publication, including a newsletter, that is not produced in the regular course of publication falls outside the section 57(1)(c) exemption. However, the plain language of section 57(1)(c) allows interviews, commentary and information to be included in a newsletter that is published in accordance with the normal, routine publication for that newsletter.

To the extent that your questions concern the hypothetical use of a publicly funded publication that includes interviews, commentary and information that supports or opposes a candidate, we again suggest that you consult with the Attorney General concerning a public body's authority or power to use public resources in this manner.

Interpretive Statement

This response is informational only and constitutes an interpretive statement with respect to your inquiries.

Sincerely,



Brian DeBano
Chief of Staff / Chief Operating Officer



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

December 5, 2014

Donald Power
1200 Blanchette Drive
East Lansing, Michigan 48823

Dear Mr. Power:

The Department of State received a response to the complaint you filed against George Lahanas and the City of East Lansing, which concerns an alleged violation of the Michigan Campaign Finance Act (MCFA), 1976 P.A. 388, MCL 169.201 *et seq.* A copy of the response is provided as an enclosure with this letter.

If you elect to file a rebuttal statement, you are required to send it within 10 business days of the date of this letter to the Bureau of Elections, Richard H. Austin Building, 1st Floor, 430 West Allegan Street, Lansing, Michigan 48918.

Sincerely,

A handwritten signature in cursive script that reads "Lori A. Bourbonais".

Lori A. Bourbonais
Bureau of Elections
Michigan Department of State

c: George Lahanas



CITY OF EAST LANSING

The Home of Michigan State University

BUREAU OF ELECTIONS
2014 DEC -2 P 2:35
DEPT OF STATE

November 24, 2014

Ms. Lori A. Bourbonais
Michigan Department of State
Bureau of Elections
First Floor, Richard H. Austin Building
430 W. Allegan Street
Lansing, MI 48918

Re: **Complaint by Don Power Against George Lahanas and the City of East Lansing**

Dear Ms. Bourbonais:

Please accept this as my, and the City of East Lansing's, response to the complaint filed by Mr. Power alleging a violation of the Michigan Campaign Finance Act which I received by correspondence dated November 10, 2014. Thank you for this opportunity to respond.

At the outset, I would note that prior to expressing my views in the *Dialog*, I requested an opinion from our City Attorney as to the legality of doing so. I was informed that because of my position with the City as City Manager, I was an "appointed public official with policymaking responsibilities" and was therefore allowed to express my views on this matter. Further, with respect to my views being contained in the *Dialog* newsletter, I was informed that since it was the dissemination of commentary in a publication in the regular course of publication that it fell into the exceptions to the restrictions of the Campaign Finance Act. I am willing to waive the privileged nature of my, and my office's, communications with our City Attorney, Tom Yeadon, in that regard if you have further questions for him. I have enclosed, however, a copy of his September 16, 2014, memo to the East Lansing City Council which was requested by Council in response to these very same allegations. The memorandum thoroughly explains the understanding I had of the legality of the action prior to having my commentary disseminated in the *Dialog* newsletter.

I have enclosed a number of other newsletters unrelated to this topic for your review. As you can see from these examples, in each of the *Dialogs* that are published, there is a column set aside for the "Manager's Message." It is always a single column on the left-hand side of page 2 of the *Dialog* and is clearly noted as my personal message, with my signature printed at the conclusion. In that regard, it is made clear to the reader that it is not the "City's view" on any particular matter, but rather my personal view and, in this case, my personal view on the ballot question. No additional expenditures were made, or are made, to express my personal views in

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East Lansing, MI 48823

(517) 337-1731
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www.cityofeastlansing.com

this publication. The same amount of City funds were expended whether or not my view on this topic was included in the newsletter. As such, no city tax dollars were used to advocate for the ballot proposal. To the extent it could be argued that there was some small incremental use of the computer system to place my views on this topic in the publication, it is my understanding that those incidental uses fall within the stated exceptions to the Act.

With regard to some of the specifics of Mr. Power's factual allegations, they are accurate. The *Dialog* is a public newsletter paid for with taxpayer dollars. It is regularly published three times annually by the City of East Lansing Communications Department, and is paid for from the City's General Fund which includes tax revenues.

I strongly disagree, however, that the expression of my opinion on the ballot proposal in this manner is a "misuse of tax dollars to advance [my] political agenda" in violation of the Campaign Finance Act. Rather, for the reasons previously stated, no tax dollars were used and it is my understanding that my conduct falls within the exceptions set forth in the Act as a result of the Legislature's understanding that elected and appointed public officials with policymaking responsibilities need to be able to express their opinions on matters they believe are in the best interests of the City. I have no "political agenda." I was simply expressing my views in accordance with my duties and responsibilities as the City Manager as allowed by the Campaign Finance Act.

With regard to Mr. Power's assertion that the October 31, 2005, letter of clarification prohibits my conduct in this matter, I believe Mr. Power has taken the quoted portion out of the clarification letter out of context. To my understanding, the quoted portion of that letter refers to a mass mailing that is not part of a regular publication such as the *Dialog*. To the contrary, it is my understanding that the expression of my opinion in this publication would, at most, constitute an incidental use of public resources (no more so than drafting a resolution, for example) and was lawful, consistent with not only the October 31, 2005, interpretive statement to David Murley, but also the more recent October 3, 2014, interpretive statement to Lee Bourgoin .

Given the above, I respectfully request that Mr. Power's complaint be dismissed.

Sincerely,

CITY OF EAST LANSING

A handwritten signature in black ink, appearing to read "Lahanas", with a stylized flourish extending to the right.

George Lahanas
City Manager

bks
Enclosures (7)

MEMORANDUM

TO: East Lansing City Council

FROM: Thomas M. Yeadon, City Attorney *TM Y*

RE: Allegation of Campaign Finance Act violation

DATE: September 16, 2014

It has recently been alleged that there was a violation of "campaign law" as a result of the City Manager making his opinion known about the upcoming ballot question concerning the sale of City property in the September issue of the *Dialog*. That is not true and I was asked to address that allegation in a memo to Council.

Michigan's Campaign Finance Act specifically exempts from the restriction the expression of views by appointed public officials who have policy making responsibilities, like the City Manager, **and** commentary published in a periodical's regular course of publication, like the monthly *Dialog* issue.

The relevant portion of the Act, MCL 169.257 states:

(1) A public body or a person acting for a public body shall not use or authorize 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 or provide volunteer personal services that are excluded from the definition of contribution under section 4(3)(a). The prohibition under this subsection includes, but is not limited to, using or authorizing the use of public resources to establish or administer a payroll deduction plan to directly or indirectly collect or deliver a contribution to, or make an expenditure for, a committee. Advance payment or reimbursement to a public body does not cure a use of public resources otherwise prohibited by this subsection. **This subsection does not apply to any of the following:**

(a) The expression of views by an elected or appointed public official who has policy making responsibilities.

(b) The production or dissemination of factual information concerning issues relevant to the function of the public body,

(c) The production or dissemination of debates, interviews, commentary, or information by a broadcasting station, newspaper, magazine, or other periodical or publication in the regular course of broadcasting or publication.

* * *

(f) An elected or appointed public official or 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.

This section of the Campaign Finance Act was intended to prohibit the use of taxpayer funds for the purpose of advancing or defeating a specific ballot proposal. In this instance, because this was a regularly published newsletter, no public funds were expended by simply inserting the City Manager's views on this issue into his regular "Manager's Message" column. That is why publications made in the regular course of publication are exempt in the first place. They do not result in any additional expenditures of public resources.

Likewise, the article on the topic was limited to the dissemination of factual information which is also specifically authorized by statute. There simply were no violations of the Campaign Finance Act by this publication either in the letter or spirit of the law.

While the City Council and the City Manager are prohibited from using public resources in an effort to advance or defeat a ballot proposal, expressions of views is specifically exempted from that restriction. Those views can clearly be expressed in regular publications of the City. This is not the same as if Council or the City Manager ordered staff to prepare a flyer to hand out or did a mass email to circulate to support or defeat a proposal. That would be prohibited because it would be expending staff time and resources for a particular political purpose. Policy makers, on the other hand, are expected to express their opinions on important City issues. That is why those are a specified exception to the rule.

As always, if you have further questions or concerns regarding this issue, please feel free to contact me.

cc George Lahanas
Ref 117 1



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

October 3, 2014

Lee Bourgoin
447 Saline River Road
Saline, Michigan 48176

Dear Mr. Bourgoin:

The Department of State (Department) acknowledges receipt of your letter dated July 28, 2014, concerning your request for a declaratory ruling or interpretive statement regarding the application of the Michigan Campaign Finance Act (MCFA), 1976 PA 388, MCL 169.201 *et seq.*, which was received in this office on August 1, 2014. A copy of your request was published on the Department's website for public comment beginning August 4, 2014 but no comments were submitted in response to your letter.

The Administrative Procedures Act (APA), 1969 PA 306, MCL 24.201 *et seq.*, and MCFA authorize the Department to issue a declaratory ruling upon the request of an interested person who submits a reasonably complete statement of facts and a succinct statement of the legal question presented. MCL 24.263, 169.215(2). The MCFA further requires the Department to issue an interpretive statement "providing an informational response to the question presented" if it declines to provide a declaratory ruling. MCL 169.215(2). "A declaratory ruling is binding on the agency and the person requesting it unless it is altered or set aside by any court." MCL 24.263. Although you explain that you are "a concerned member of the Saline City Council," your letter does not indicate that your request for a declaratory ruling is made on behalf of the City of Saline or the Council. Because your request is made in your individual capacity as one of seven members of the Saline City Council and cannot bind that body, the Department issues this interpretive statement as an informational response to the questions posed in your letter.

Your request includes a detailed recitation of the actions of the Saline City Council with respect to Proposal 14-1, a referendum of Public Act 80 of 2014 that appeared on the August 5, 2014 primary ballot. According to your letter, the City Council collectively considered and adopted a resolution expressing the Council's support for Proposal 14-1 at its July 21, 2014 meeting.¹ It is your contention that in doing so, City resources were expended in the drafting of the resolution and the preparation and dissemination of meeting materials. In addition, you allege that the City hosted a forum for area businesses on July 25, 2014 to discuss the topic of "personal property tax reform" as well as the City's efforts in relation to business "recruitment, job training resources, tax abatement, expediting government procedures," and so on.² Your letter also indicates that the Mayor spoke favorably of Proposal 14-1 at a City Council meeting held on June 23, 2014.

¹ See Saline City Council Resolution No. 14-142 at <http://salinecitymi.minutesondemand.com/Document/4a3a7d57-8937-48f0-b057-cf024784f24f/City%20Council%20Agenda%20Packet%20July%2021,%202014.pdf>.

² Letter from the Mayor of the City of Saline dated June 30, 2014, provided as an attachment to your request.

Your request poses a number of questions which may be summarized as follows: Did the City of Saline make a contribution or expenditure of public funds by expressly advocating the passage of Proposal 14-1, in violation of the MCFA?

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). A violation cannot be remedied by paying the cost of the illegal contribution or expenditure in advance or through reimbursement. MCL 169.257(1).

The words “contribution” and “expenditure” are terms of art that are generally defined, in pertinent part, to include anything of ascertainable monetary value that is used to influence or assist the qualification, passage or defeat of a ballot question. MCL 169.204(1), 169.206(1). By law, a communication is not treated as an expenditure unless it “support[s] or oppose[s] a ballot question or candidate by name or clear inference [,]” or unless it contains “express words of advocacy of election or defeat, such as ‘vote for,’ ‘elect,’ ‘support,’ ‘cast your ballot for,’ ‘Smith for governor,’ ‘vote against,’ ‘defeat,’ or ‘reject.’” MCL 169.206(2)(b), (j). Communications that omit words and phrases of express advocacy generally are exempt from MCFA regulation³ and may be produced or disseminated by a public body without running afoul of MCL 169.257.

In addition, it is important to note that MCL 169.257 contains a number of exceptions to this prohibition which render it inapplicable in certain circumstances. For example, the law “does not apply to ... the expression of views by an elected or appointed public official who has policy making responsibilities” or “the production or dissemination of factual information concerning issues relevant to the function of the public body.” MCL 169.257(1)(a)-(b) (emphasis added). Thus, under MCL 169.257(1)(a), an elected official possessing the authority to formulate governmental policy is authorized by law to express his or her views on matters of public import.

Indeed, public officials have an obligation to take positions on controversial political questions so that constituents are fully informed and better able to assess their qualifications for office. The *occasional, incidental* use of public resources to communicate with a constituent or the media on a ballot question falls within this exemption, as there are no resources devoted to an effort to assist or oppose the qualification, passage or defeat of [a ballot] question.

Interpretive Statement to David Murley (Oct. 31, 2005) (emphasis added; internal citation omitted).⁴ The Department went on to explain that the type of occasional, incidental use described above is distinguishable from the mass distribution of an email message or the mass mailing of a brochure, postcard or flyer that in express terms advocates the passage or defeat of a ballot question at public expense, which would constitute a violation of the MCFA. *Id.*

Additionally, MCL 169.257(1)(b) specifically authorizes a public body to create and publish factual information that pertains to its official functions. This exception has been construed to

³ Communications that omit words of express advocacy must nonetheless comply with the identification requirements of the MCFA. See MCL 169.206(2)(j), 169.247.

⁴ Available at http://www.michigan.gov/documents/sos/Murley_2005_428421_7.pdf.

permit a public body such as a school district, which possesses separate legal authority to expend funds in this manner, to produce and disseminate factual information that is relevant to the functioning of the public body "as long as the information is limited to facts and does not include express advocacy." *Interpretive Statement to David Murley* (Oct. 31, 2005).

These two statutory exceptions also address your concern regarding the City Council's debate and adoption of a resolution that expressly advocates a particular position on a ballot proposal. In the *Interpretive Statement to Steven Daunt* (Aug. 17, 2000),⁵ the Department concluded that the legislative body of a local unit of government may consider and vote on a resolution that supports or opposes a ballot question:

It is therefore clear that at council meetings individual council members are free to discuss their opposition to or support of a ballot question that relates to 'municipal concerns, property and government.' Indeed, a city council could devote an entire meeting to a discussion of the ballot question. The council meeting would obviously use city equipment, office space, and other public resources during the course of this discussion. If every council member can use those resources without limitation, it would be absurd to conclude that equipment, office space, and the like have been illegally used by the simple act of raising one's hand. The mere act of voting on a resolution that encompasses matters discussed at a meeting does not constitute a misuse of public resources within the meaning of [MCL 169.257(1)].

The city council may only publicize its action through the ordinary means that it publicizes other council actions, such as the recording the adoption of the resolution in the meeting minutes, publishing copies of the meeting minutes in the customary fashion, and so on. See *Interpretive Statement to Steven Daunt* (Aug. 17, 2000) and *Interpretive Statement to David Murley* (Oct. 31, 2005) ("the use of public resources to distribute or publicize that resolution beyond the regular provision of factual information regarding actions taken by the city council would result in a violation of [MCL 169.257].")

Another exception to the MCFA's general prohibition against using public resources to make a contribution or expenditure is found at MCL 168.257(1)(d), which permits "[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." This provision authorizes a public body to make a building or other property available for use by a candidate or committee, including a committee organized for the purpose of supporting or opposing a ballot question, provided that any candidate or committee is afforded an equal opportunity for such use. Your letter does not indicate that the City of Saline or Saline City Council denied a request from a committee opposing Proposal 14-1 to use a public facility.

In sum, the MCFA's prohibition against using public resources to make a contribution or expenditure includes a number of important exceptions that recognize the societal benefit of inviting public discussion of issues confronting government agencies and public officials, thus enabling voters to make informed decisions based on an official's expression of views or factual information concerning government operations. The City Council's discussion and adoption of a

⁵ http://www.michigan.gov/documents/2000_126235_7.pdf.

Lee Bourgoin
October 3, 2014
Page 4

resolution expressing support for Proposal 14-1, its hosting of a forum to discuss personal property tax reform and other issues including business recruitment and worker training, and the Mayor's favorable comments regarding Proposal 14-1 made during a City Council meeting fall squarely within the exceptions of MCL 169.257(1)(a)-(d).

Sincerely,



Manager's Message

It is wonderful to have the opportunity to personally address the community through this first of many Manager's Messages.

After 1.5 years of working and living in the City of East Lansing, it is no longer a step into the new role as East Lansing's city manager. Although I recognize the challenge, the City is constantly facing, the budget being at the forefront, I am also excited about the tremendous opportunity to look toward future goals and growth for our unique community.

There is a book by Peter Block called "The Abundant Community" that is particularly relevant in this time. Block focuses on creating the power of neighborhoods and how the people of a neighborhood can put together a vision of a community's character and vision for the quality of life. In these challenging economic times I am invigorated by the simple and powerful message of building "strong communities." One of my main goals as city manager will be to reinforce community values and citizenship in everything we do through the day-to-day work in our municipal departments. In many ways, we've already seen this type of "community building" in East Lansing as close-knit neighborhoods and through the work of groups like the Community Relations Coalition. We can also look to recent programs like the East Lansing Farmers Market and the community-based planning of the Park project I look forward to working with City Council, residents and staff's experience and belief in East Lansing's strong sense of community.

Warm Regards,

George Lahanas
East Lansing City Manager



Albert Avenue between Charles Street and M.A.C. Avenue will be closed from the end of April to the end of May. A complete construction schedule will be posted at www.cityofeastlansing.com by early April.

"Projects" continued from Page 1

the end of May. Work will then move into the intersection of Albert and M.A.C. avenues and will then progress to the section of Albert Avenue between Grove Street and M.A.C. Avenue. The last phase of construction will be on Grove Street, between Albert Avenue and Linden Street. Design work is currently being completed for this project and a more exact schedule will be available at www.cityofeastlansing.com by early April.

In addition to the infrastructure work, the area impacted will also benefit from the replacement

of streets, curbs and sidewalks, which will improve the downtown streetscape, walkability and bikeability. The final portion of this redevelopment project will be the construction of the redesigned Ann Street Plaza. The clock tower will remain in its current location on the plaza and several other site amenities will be added, including raised landscape areas, a stage, an outdoor fireplace and interactive musical elements. Parking spaces will be removed from the plaza and new spaces will be created along the street. The goal of the plaza redevelopment is to create a more attractive and utilized public space for residents and visitors.

"Lahanas" continued from Page 1

Resources from 2001-2005 and the director of Administrative Services from 2005-2008. Lahanas holds a Master of Public Administration, with a concentration in personnel and labor relations, and a Bachelor of Science in criminal justice from Northern Michigan University.

The City hired a national search firm, Affion Public, to perform the search for East Lansing's next city manager following the departure of East Lansing City Manager Ted Staton last fall. The community profile used to perform the search was prepared by City Council after conducting focus groups with employee leadership and unions, neighborhood leaders, students, university officials and various other stakeholders.

There were 56 applicants from 20 different states, including 24 applicants from Michigan. City Council narrowed nine semi-finalists down to five finalists in early January and announced its selection of Lahanas following a series of finalist interviews in late January.



MANAGER'S MESSAGE

Public Meetings for FY14 Budget Coming Up



Community members are encouraged to attend the upcoming public meetings and public hearing for the City's preliminary Fiscal Year 2014 Budget.

The preliminary FY14 Budget is currently being prepared by staff and an overview of the budget will be presented to the East Lansing City Council and the public in early April. This presentation will be followed by a series of additional public meetings and adoption of the budget on May 21. A schedule of the meetings and more information can be found at www.cityofeastlansing.com/FY14Budget.

Our financial forecasting shows challenges in the next fiscal year, including a minor decline in property values, as well as flat state revenue sharing and increasing legacy costs. As in past years, we plan to address these challenges by increasing efficiencies and implementing departmental cost controls.

On a positive note, while we do anticipate some challenges, we remain fiscally stable today due in large part to the hard work of City staff and City Council; as well as the support of the community through a variety of means, including recent voter approval of the 1-mill levy for the East Lansing Public Library. Community members are encouraged to stay tuned and are free to ask questions as we move into formal budget discussions this April.

George Lahanas
East Lansing City Manager



MDOT road work will take place along Grand River and Michigan avenues from March to October.

CONSTRUCTION

direct traffic.

Interim lane closures will extend into late summer and early fall to allow the contractor to apply water to restoration areas and for tree planting. No work or lane closures will be allowed during major holiday weekends or during

the weekends of major festivals, MSU move-in week and MSU home football weekends.

Visit www.cityofeastlansing.com/construction for more information, including the tentative start and end dates for the project phases.

BROAD MUSEUM

a part of the downtown," said Rush.

During the same week of the Broad's opening, downtown East Lansing also celebrated the opening of the Greater Lansing Convention & Visitor's Bureau's (GLCVB) second visitor center. "We had been looking to expand to East Lansing over the past few years, so when we heard about the Broad Museum opening, it was

a big impetus for us," said GLCVB Vice President of Marketing Communications Tracy Padot.

In its first two months, the new center served 400 people, which is comparable to the GLCVB's Lansing location. Residents and visitors are encouraged to check out the new East Lansing center, located at 549 E. Grand River Ave.

A BUSINESS TAKE ON THE BROAD

According to Michael Spano and Elizabeth Marazita, the owners of downtown East Lansing's Wanderer's Teahouse & Café, Broad Museum's opening weekend was the busiest weekend they have ever had. In celebration of the museum's opening, they created "The Eli & Edythe Broad Museum of Contemporary Art Tea," which sold out initially in a matter of about two weeks. It is now a permanent fixture of the teahouse menu.

"We would love to be able to collaborate with the Broad in the future," said Marazita. "We are so happy that it's a part of this incredible community."

MANAGER'S MESSAGE

Public Input Key to Planning Process for City



Community members are encouraged to let their voices be heard in the coming months, as the City initiates its Comprehensive Plan update and continues

to evaluate the future of the Park District Planning Area. There will be a number of opportunities for formal and informal feedback.

This fall, public meetings and community design charrettes will take place for East Lansing's Comprehensive Plan update. Our Comprehensive Plan is extremely important, in that it serves as a visionary document for future development in East Lansing. As this important update moves forward, residents are encouraged to share their goals and aspirations for East Lansing in terms of community development.

Community members can also familiarize themselves with the ongoing Park District Planning Area work by attending upcoming public meetings and visiting www.cityofeastlansing.com/parkdistrict. The Review Team has held a series of public meetings to review the submitted proposals/developers and the final recommendation to City Council will be finalized this month. Many additional opportunities for public feedback are to come, as there is still plenty of work to be done in advance of negotiating a development agreement.

George Lahanas
East Lansing City Manager



MDOT's project along Michigan and Grand River avenues will continue this summer and fall.

CONSTRUCTION

In addition to MDOT's project, the City began an infrastructure improvement project on Kalamazoo Street this past April, with a tentative completion date of Aug. 23. Kalamazoo Street will be completely closed to traffic from Clippert Street to Harrison Road from

May 6 to Aug. 23. Harrison Road, from Kalamazoo Street to the Red Cedar Bridge, will be reduced to one lane in each direction for approximately one week in August. The pathway and entrance to the River Trail will also be intermittently closed.

NEIGHBORHOODS

destination for community news, neighborhood documents and more. The website and web support are provided by the City free of charge, while participating neighborhoods are responsible for updating content on their specific webpage. Community members can visit www.eastlansingneighborhoods.com/redcedar to see an example of a

participating neighborhood's page on the website. Neighborhoods interested in using the website can contact Communications Coordinator Ami Van Antwerp at (517) 319-6927.

The Neighborhood Partnerships Initiative is a high priority of the East Lansing City Manager's office and will continue to grow in the months to come.

NEIGHBORHOOD WATCH

In addition to the Neighborhood Partnerships Initiative, the East Lansing Police Department (ELPD) has assigned 26 officers to different sectors of the City as part of East Lansing's Neighborhood Watch Program. These ELPD officers partner with residents interested in the safety of their neighborhood.

Residents are encouraged to report suspicious activity to their sector officer/officers. These officers are also available to answer questions and attend meetings. Visit www.cityofeastlansing.com/neighborhoodwatch or contact ELPD Sgt. James Campbell at (517) 319-6897 ext. 6467 for more details.

MANAGER'S MESSAGE

Signs of a Rebounding Economy



Budgeting season is upon us here at the City of East Lansing.

As we look to Fiscal Year 2015, we are facing continuing legacy cost challenges, but we are

also starting to see signs of a rebounding economy. Those signs include a slight increases in state shared revenue and East Lansing housing values.

Although difficulties remain, the City of East Lansing has strengthened its financial position over the past few years through forecasting and strategic budgeting. I'm pleased to report that the City has increased its fund balance, maintained its AAA bond rating from Fitch Ratings and recently made its OPEB payment for the fifth year.

There are many people to thank for the City's sound financial standing. Residents are to be thanked, first and foremost, for their ongoing support; as well as the East Lansing City Council, City employees and City administration for the parts they have played to keep the City fiscally sound.

While there is reason to be optimistic, the City will need to continue to closely manage its expenses and address its pension costs. The right steps have been taken over the past two decades to address the City's pension challenges, but the problems are very long term in nature. We will continue to address these challenges through sustained budgeting efforts in the years to come.

George Lahanas
East Lansing City Manager



A rendering of the "Playground in the Park Re-Imagined" project is pictured above.

PARKS & RECREATION

New Patriarche Park Playground to be Built this Summer

A new playground will be constructed this summer in East Lansing's Patriarche Park. The playground project, entitled "Playground in the Park Re-Imagined," will replace the former wooden play structure at Patriarche Park with a modern, eco-friendly play structure that is fully accessible and supports youth fitness. The project is the result of a collaboration between the East Lansing Rotary Club and the City of East Lansing.

Fundraising for the project is ongoing, with a remaining \$170,000 that needs to be raised to meet the fundraising goal. Community members can donate to the project, while creating a lasting memory, through the purchase of an engraved brick paver. A 4"x8" brick paver can be

purchased for \$100 and an 8"x8" brick paver can be purchased for \$150. The brick pavers will be placed in the new entry plaza at the playground. A brick paver order form and a pledge card for donations of other amounts can be found at www.cityofeastlansing.com/playgroundinthepark.

In addition to supporting the project through donations, community members can also sign up to volunteer at the playground's Community Build, taking place June 18-20. Volunteers will be trained and supervised by the selected playground manufacturer and design firm. Those interested in volunteering can contact Heather Surface at (517) 333-2580 ext. 6569 or hsurface@cityofeastlansing.com.

Big Bang-Quet Community Charity Challenge

Vote for the "Playground in the Park Re-Imagined" project in the Big Bang-quet Community Charity Challenge! Votes are \$5, with proceeds going to the project. The three charities with the most votes will win a \$10,000 or \$5,000 credit toward a fundraising event.

Visit www.uhlversityclubofmsu.org to vote for the project by March 24!

MANAGER'S MESSAGE

ICMA Celebrates 100th Anniversary



The International City/County Management Association will celebrate its 100th Anniversary this year, culminating at its Annual Conference in Charlotte, North

Carolina. This special milestone marks more than 100 years of the council-manager form of government, the progressive-inspired system of government in which the City of East Lansing operates under.

The council-manager form of government combines the strong political leadership of elected officials with the strong managerial experience of an appointed manager. There are many benefits to communities that operate under the council-manager form of government, including but not limited to efficient and equitable service delivery closely supervised by a professional manager. IBM recently published a study of 100 American cities that concludes that cities with city manager forms of government are nearly 10 percent more efficient than cities with strong mayor forms of government.

I am proud to serve as the fifth city manager in East Lansing's history. Serving in this leadership role has been a true honor. It is especially fulfilling as a long-time resident of East Lansing – a community I'm proud to call home. I look forward to future years of working with City Council, City staff and residents to ensure City services are effective, efficient and transparent.

George Lahanas
East Lansing City Manager



Residents can create a lasting memory while supporting the new playground with the purchase of a brick.

PLAYGROUND

the community. The new playground will replace the former wooden structure at Patriarche Park with a modern, eco-friendly playground design that is fully accessible and supports youth fitness.

Fundraising for the project is ongoing, with opportunities for community members to make a donation or purchase an engraved brick paver in support of the

playground. A 4"X8" brick paver can be purchased for \$100 and an 8"X8" brick paver can be purchased for \$150. The personalized bricks will be placed in the playground's welcome plaza.

More information on the project and volunteer/donation opportunities can be found at www.cityofeastlansing.com/playgroundinthepark.

FESTIVAL SEASON

continue with the Summer Solstice Jazz Festival (SSJF), taking place June 20-21 in downtown East Lansing.

Headliners of this year's festival will include Cécile McLorin Salvant and The Airmen of Note. Salvant's "WomanChild" album was nominated for the 2014 Grammy Award for Best Jazz Vocal Album. The Airmen of Note is the premiere jazz ensemble of the United States Air Force. View the SSJF program

guide insert or visit www.eljazzfest.com to view the full 2014 SSJF music lineup. In addition to the live jazz, there will be eat-on-site food, children's activities, jazz cafés and more.

The Great Lakes Folk Festival, hosted by the MSU Museum, will round out the festival season, taking place Aug. 8-10 in downtown East Lansing. The festival celebrates music, dance and culture from across America and around the world.

FESTIVAL WEBSITES

East Lansing Art Festival • www.elartfest.com

Summer Solstice Jazz Festival • www.eljazzfest.com

Great Lakes Folk Festival • greatlakesfolkfest.net



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

December 15, 2014

George Lahanas, City Manager
City of East Lansing
410 Abbot Road, Room 207
East Lansing, Michigan 48823

Dear Mr. Lahanas:

This letter concerns the complaint that was recently filed against you and the City of East Lansing by Donald Power, which relates to a purported violation of the Michigan Campaign Finance Act (MCFA or Act), 1976 PA 388, MCL 169.201 *et seq.* The Department of State has received a rebuttal statement from the complainant, a copy of which is enclosed with this letter.

Section 15(10) of the MCFA, MCL 169.215(10), requires the Department to determine within 60 business days from the receipt of the rebuttal statement whether there is a reason to believe that a violation of the Act has occurred. Mr. Power's complaint remains under investigation at this time. At the conclusion of the review, all parties will receive written notice of the outcome of the complaint.

Sincerely,

A handwritten signature in cursive script that reads "Lori A. Bourbonnais".

Lori A. Bourbonnais
Bureau of Elections
Michigan Department of State

c: Donald Power

Donald F. Power
1200 Blanchette Drive
East Lansing, Michigan 48823

2014 DEC 15 AM 11:48

BUREAU OF ELECTIONS
MI DEPT OF STATE

December 15, 2014

Ms Lori Bourbonais
Michigan Department of State, Bureau of Elections
First Floor, Richard H Austin Building
430 Allegan Street
Lansing, MI 48918

Rebuttal statement for the City of East Lansing – response to complaint filed by Don Power against George Lahanas and the City of East Lansing.

Please accept this rebuttal to the City of East Lansing response.

There are only two questions to be answered in my charge against George Lahanas and the City of East Lansing for violation of the Michigan Campaign Finance Act.

1. Did the East Lansing City Manager advocate support for a "yes" vote on a November 2014 ballot question – the sale of three City-owned parking lots?
2. Did the City Manager use anything of ascertainable monetary value in assistance for the passage or defeat of a ballot issue? Mr. Lahanas, in his response letter of November 24, 2014 page 2, second paragraph, concedes that the Dialog is a public newsletter paid for with taxpayer dollars.

In both cases the answer is definitely yes. Let me explain each issue.

1. The September 2014 City of East Lansing Dialog Newsletter mailed and transmitted electronically to approximately 10,000 households, clearly advocated for a "yes" vote on the ballot proposal before the voters. The Manager's message asked voters to vote "yes" giving the City the authority to sell City-owned property located in the park district planning area. See exhibit I

From a historic standpoint, I am a former member of the East Lansing City Council and the former chair of the East Lansing Public Library millage campaign. In these roles, it was always made very clear that public policy and the campaign finance law only allowed public employees to provide information or give opinion, but not to advocate a position on the issue using public funds where they could benefit or their employer (i.e. the City) would benefit from the ballot issue.

Yet the very same City Manager now wants it both ways. I am reminded that George Lahanas, the City Manager, is an employee of the City and was hired by the City Council of which I was a member after an exhaustive interview and selection process.

What does the Campaign Finance Act allow? It allows Mr. Lahanas to provide information (facts), which he did in his attached Manager's message (see Exhibit I). He refers to pages 1 & 2 of the Dialog issue for further information.

It further allows for the expression of personal opinions – what is an opinion? An opinion is a belief, judgment, viewpoint or thought (Webster's Dictionary). Did Mr. Lahanas' statement "it is my hope that they [voters] will consider voting yes on the ballot proposal for the sale of City-owned property" constitute an opinion? No it does not fit Webster's definition of opinion.

What does the Campaign Finance Act prohibit? It does not allow a public official to use public resources to send mail to constituents urging them to elect or defeat a candidate, or to pass or defeat a ballot question – MCFA section 57(1) (a), thus it prohibits advocacy on the part of the City Manager. What does it mean to advocate?

- To recommend
- To put forward an idea
- To argue in favor of
- Speaks or write in support or defense of a cause publicly.

Clearly Mr. Lahanas' statement "it is my hope that they will consider voting yes on the ballot proposal" qualifies as a statement of advocacy. See Exhibit I

We must put this in the proper context – the City Dialog newsletter – where the Manager's message appeared was mailed to over 10,000 individuals and, through the City website, is available to all 8,000+ who voted in the November election. The advocacy caused a political imbalance between City government and its people.

You must understand the background that makes me question Mr. Lahanas' choice of words, i.e. opinion versus advocacy. My background consists of 50 years in labor contract negotiations, 35 of those years spent as a mediator with the U.S. Federal Mediation & Conciliation Service. Before Mr. Lahanas became City Manager, he was the City of East Lansing's labor negotiator. In addition, Mr. Lahanas was my graduate student in his master's program in labor relations at MSU where we discussed language and its implications.

Let us visit the second question. Were public funds used by the City Manager to advocate a position on the November 2014 ballot regarding the selling of City-owned property?

The article in question, which I believe is a statement of advocacy, appeared in the 2014 City Dialog Newsletter – Manager's message.

This publication is totally funded by City tax dollars and confirmed in Mr. Lahanas' letter to Ms. Bourbonais dated November 24, 2014 page 2 second paragraph. This color glossy newsletter is mailed to over 10,000 people and is online on the City's website. The publication of this newsletter and its mailing is, financed by thousands of taxpayer dollars, and it was mailed and placed online during the election cycle. The City

MCFA rebuttal

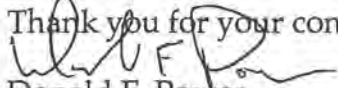
controls the content of the publication. It was therefore tantamount to a piece of campaign literature advocating for a yes vote.

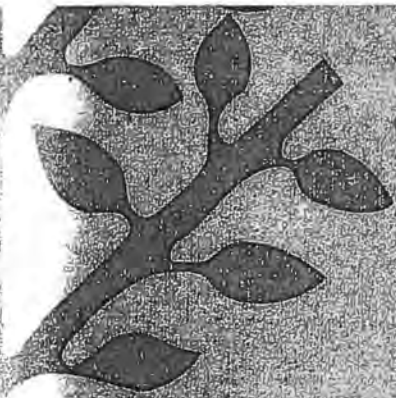
The City's argument that no City funds were used to promote a position because the paper was also planned and budgeted for is outlandish. When the budget was set no content was known for the various editions of the newsletter.

In summary, George Lahanas and the City of East Lansing violated the Michigan Campaign Finance Act (MCFA, 1976 PA 388, MCL 169-02).

By advocating a yes position involving a November 2014 election ballot issue regarding the right to sell three (3) City-owned parking lots, Mr. Lahanas put forth in the City Manager's column, a statement of advocacy in the City of East Lansing's September 2014 Dialog Newsletter. This newsletter is written, published and distributed with total government funds and in addition, was placed on the City website, which is also maintained with public funds.

Thank you for your consideration.


Donald F. Power



dialog

A newsletter for East Lansing residents September 2014

PARKS & RECREATION

Playground in the Park Now Open to Area Families

The Playground in the Park "Re-Imagined" Project was completed this summer, bringing a new, fully accessible playground to Patriarche Park. A dedication ceremony was held on Aug. 4, officially opening the playground to local families.

The playground spans across approximately 1.2 acres of the park and features a modern, eco-friendly design with a variety of colorful play equipment. Other features include a poured-in-place playground surface, a rain garden, a brick entry plaza,

walkways and more.

The playground project was the result of a partnership between the Rotary Club of East Lansing and the City of East Lansing. The idea behind the project was to bring a new playground to the park designed by the community, built by the community and with funds raised by the community. In addition to involving the community in the design phase of the project, the community was also invited to come help build the new playground alongside *continued on page 2*



The new playground at Patriarche Park has officially opened for community play.

PLANNING

Exhibit I

Next Steps for Park District

East Lansing City Council has placed a proposal on the November 4, 2014 General Election ballot for the "Sale of City-Owned Property" located within the Park District Planning Area.

An affirmative vote would give East Lansing City Council authorization (but not require them) to sell the following parking lots:

- Lot 4 - located on the northwest corner of Albert Avenue and Abbot Road
- Lot 8 - located east of Valley Court Park, between Evergreen Avenue and Valley Court
- Lot 15 - located across from East Lansing City Hall, between Abbot Road and Evergreen Avenue

Authorizing City Council to sell the land is one step in the redevelopment of the Park District Planning Area and would remove uncertainty as to the City's ability to sell the land if a proposed redevelopment project was approved. It would allow developers to move forward with project planning costs and financing.

If the Nov. 4 ballot proposal is approved, Council would be authorized to sell the land at fair market value based on appraisals by a licensed appraiser. *continued on page 2*

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Newly Improved Plaza Enhances the Downtown 6



MANAGER'S MESSAGE

Striving to Move Forward with the Park District



As East Lansing's registered voters go to the polls on November 4, 2014, it is my hope that they will consider voting "yes" on the ballot proposal for the "Sale of City-

Owned Property" located in the Park District Planning Area. It is important to understand that a "yes" vote will not require City Council to sell the land to a developer. It will simply give Council the ability to consider sale of the land after a project proposal is found to fit the community's needs and a development agreement has been approved.

As many are aware, redevelopment of the west end of our downtown has been extremely challenging over the years. We have been looking at that area for more than a decade, facing many hurdles along the way - not least of which was the economic recession.

By giving Council authorization to sell the publicly owned land within the Park District, voters will be helping the City take an extremely important step in making a redevelopment project in that area a reality. And while the redevelopment project may not include the privately owned land in that area, we strongly believe that redevelopment of the publicly owned land will spur redevelopment of the private properties as well. Readers can take a look at the article on page 1-2 of this newsletter to learn more about the ballot proposal.

George Lahanas
East Lansing City Manager



Engraved bricks for the playground entry plaza can still be purchased, with two upcoming installation days.

PLAYGROUND

the team from Sinclair Recreation this past June. The build garnered huge support from the local community, with more than 200 volunteers involved.

The playground project was funded in part by a \$300,000 Michigan Natural Resources Trust Fund grant, as well as several generous sponsorships and contributions from the community.

Community members can still help in reaching the project's fundraising goal through donations and/or the purchase of a personalized, engraved brick. The bricks will be installed in the entry plaza of the playground, with installation days planned for fall 2014 and spring 2015. Learn more at www.cityofeastlansing.com/playgroundinthepark.

PARK DISTRICT

Currently, the City is in the pre-development agreement phase with DTN Management Co. for a portion of the Park District Planning Area. DTN's proposed project includes the land listed on the Nov. 4 ballot proposal. If, after a thorough review process, DTN's project moves forward to the development agreement phase, City Council may then consider sale of the land.

The review process includes review of the DTN site plan and special use permits by City staff, City Council, the East Lansing Planning Commission and multiple other City boards and commissions. The City would also conduct due diligence in accordance with the pre-development agreement in order to determine if the proposed project is both desirable and feasible. Finally, if the project is found

to be viable and in the best interest of the community, City Council may then negotiate a formal development agreement and terms of the land sale.

The Park District Planning Area has been looked at for more than a decade as a site for a major redevelopment project. The City's current guiding document for the area is the Park District Request for Qualifications/Proposals (RFQ/P), which was issued in fall 2012. The RFQ/P was drafted after public meetings in September 2012 to solicit community input. More than 100 community members attended the meetings to share their ideas and vision for the Park District Planning Area. The City's goal is to see a positive redevelopment of the Park District Planning Area that is consistent with the community's vision.



STATE OF MICHIGAN
TERRI LYNN LAND, SECRETARY OF STATE
DEPARTMENT OF STATE
LANSING

March 2, 2016

George Lahanas, City Manager
City of East Lansing
410 Abbot Road, Room 207
East Lansing, Michigan 48823

Dear Mr. Lahanas:

The Department of State (Department) has completed its investigation of the complaint filed against you and the City of East Lansing (City), which alleged you and the City violated section 57 of the Michigan Campaign Finance Act (MCFA or Act), 1976 PA 388, MCL 169.257, by using or authorizing others to use public resources to make an improper expenditure. The complaint was filed by Donald Power on November 3, 2014. You filed an answer on December 2, 2014, and Mr. Power filed a rebuttal statement on December 15, 2014.

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). The words "contribution" and "expenditure" are generally defined, in pertinent part, to include anything of ascertainable monetary value that is used to influence or assist the qualification, passage or defeat of a ballot question. MCL 169.204(1), 169.206(1). A knowing violation of section 57 is a misdemeanor offense. MCL 169.257(4).

The Act also requires the Department to "endeavor to correct the violation or prevent a further violation by using informal methods [.] if it finds that "there may be reason to believe that a violation ... has occurred [.]". MCL 169.215(10). The objective of an informal resolution is "to correct the violation or prevent a further violation [.]". Id.

Mr. Power alleged that you and the City improperly used public funds when you advocated for the passage of a ballot question in the September 2014 edition of the City's *Dialog Newsletter*. In support of his complaint Mr. Power provided a copy of a page from the September 2014 *Dialog Newsletter*, a printout of the City's Communications Department's webpage, and a copy of certain pages from the City's FY 2015 Budget & Program of Services which reflects that a portion of the Communication and Cable Services Division's budget is used to "[p]roduce the City's publications, including the Dialog [.]".

The Manager's Message column in the September 2014 *Dialog Newsletter* included the statement, "[a]s East Lansing's registered voters go to the polls on November 4, 2014, it is my

hope that they will consider voting 'yes' on the ballot proposal for the 'Sale of City Owned Property' located in the Park District Planning Area."

In your answer to the complaint, you explained that there is a column set aside for your personal views in each *Dialog* that is published. You further explained that "[i]t is always a single column on the left-hand side of page 2 . . . and is clearly noted as my personal message, with my signature printed at the conclusion." You asserted that "it is made clear to the reader that it is not the 'City's view' on any particular matter, but rather my personal view [.]"

You argued that the exceptions for the "expression of views by an elected or appointed public official who has policy making responsibilities [.]" or for the dissemination of commentary in a publication in the regular course of business applied to your commentary in the *Dialog*. MCL 169.257(1)(a), (c). However, due to the unequivocal nature of your message – "it is my hope that they will consider voting 'yes' on the ballot proposal" – the Department concludes that this communication constitutes an expenditure as defined by section 6(1) of the MCFA, MCL 169.206(1). Furthermore, it is the Department's position that none of the exceptions to section 57 cited by you apply in these circumstances.

Although you are an appointed public official who exercises policy-making responsibilities in the course of your employment, you are not entitled to use public resources to solicit a favorable vote regarding a ballot question. Section 57(1)(a) exempts "[t]he expression of views by an elected or appointed public official who has policy making responsibilities [.]" from its prohibition against the making of a contribution or expenditure using public resources. The Department has construed this provision to mean, for example, that a city council may adopt a resolution that supports or opposes a ballot question. *Interpretive Statement to Steven Daunt, August 17, 2000*.¹ Such action requires a vote recorded at a public meeting and entails no additional cost beyond what is ordinarily required to conduct the meeting. And with regard to the *Daunt* statement, the Department cautioned, "the use of public resources to distribute or publicize that resolution beyond the regular provision of factual information regarding actions taken by the city council would result in a violation of section 57." *Interpretive Statement to David Murley, October 31, 2005* (emphasis added).² Under *Murley*, "sending a mass e-mail or mailing that expressly advocates support for a ballot question or candidate or urges constituents to vote for or against a candidate or ballot question would result in the use of public resources to make an expenditure." *Id.* Here, an expenditure of public funds was made to disseminate the newsletter containing your explicit "vote for" message to households in the City. Utilizing public resources in this manner plainly violates the MCFA. MCL 169.257(1).

Moreover, the mass mailing of the *Dialog Newsletter* is not consistent with the statutory exemption for "[t]he production or dissemination of . . . commentary, or information by a . . . periodical or publication in the regular course [.]" set forth in section 57(1)(c). This provision allows the City to feature your commentary in regularly published issues of the *Dialog Newsletter* so long as it does not urge readers to vote yes on a ballot question. The remainder of your article, which states that "redevelopment of the west end of our downtown has been

¹ Available at http://www.michigan.gov/documents/2000_126235_7.pdf.

² Available at http://www.michigan.gov/documents/sos/Murley_2005_428421_7.pdf.

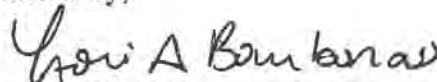
extremely challenging over the years” and by authorizing the City to sell the land, “voters will be helping the City take an extremely important step in making a redevelopment project in that area a reality [.]” represents the sort of commentary that is afforded protection under section 57(1)(c).

The evidence in this matter supports the Department’s determination that there may be reason to believe that you misused public resources to make an expenditure in support of a ballot question. Upon making this determination, the Department is required by law to attempt to resolve the matter informally. MCL 169.215(10).

It is important to note that the disputed commentary consists of a single sentence in an 8-page issue of the *Dialog*. The edition at issue in this matter includes other information pertaining to the City’s official business such as the opening of a new playground, facts regarding the ballot question, an upcoming City survey, general election information, a new snow ordinance, and so on. The Department also is cognizant that prior to expressing your views in the *Dialog*, you sought an opinion from the City’s legal counsel and you were informed that your views in the Manager’s Message would fall under one of the exceptions to section 57 of the Act.

However, the Department issues this notice of alleged violation as a warning to refrain from any further conduct that violates the MCFA. If this notice fails to prevent the your or the City from engaging in any other violations of the law, it will be used in future proceedings as evidence that tends to establish a knowing violation of the Act. A knowing violation constitutes a misdemeanor offense and may merit referral to the Attorney General for enforcement of the criminal penalty established under MCL 169.257(4). MCL 169.215(10).

Sincerely,



Lori A. Bourbonais
Bureau of Elections
Michigan Department of State

c: Donald Power