



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

March 1, 2016

Eric Doster  
2145 Commons Parkway  
Okemos, Michigan 48864

Dear Mr. Doster:

The Michigan Department of State (Department) has concluded its review of the complaint filed by your client, Protecting Michigan Taxpayers (PMT), against Protect Michigan Jobs (PMJ), Michigan Prevails (MP), and the following labor organizations: Michigan Building and Construction Trades Council, Operating Engineers Local No. 324, Boilermakers Local 169, and IBEW Local 58 (collectively, labor organizations). The complaint alleged that PMT, PMJ, and the labor organizations violated the Michigan Campaign Finance Act, 1976 PA 388, MCL 169.201 et seq. (MCFA), by failing to comply with the disclosure requirements of the MCFA. This letter concerns the disposition of your complaint.

The complaint filed by PMT on August 27, 2015 consisted of four allegations, addressed separately below. PMT's rebuttal statement of November 20, 2015 supplemented the statement of facts and evidence provided in its complaint. PMJ, MP, and the labor organizations filed combined responses to the complaint and rebuttal statement dated October 16, 2015 and January 21, 2016.

1. PMJ's Alleged Failure to File the Petition Proposal Campaign Statement. PMJ filed its Statement of Organization on June 29, 2015, the very day that the reporting period closed for the campaign statement required by MCL 169.234(2). That provision requires,

A ballot question committee supporting or opposing a statewide ballot question shall file a campaign statement, of which the closing date shall be the twenty-eighth day after the filing of the petition form, not later than 35 days after the petition form is filed under section 483a of the Michigan election law, 1954 PA 116, MCL 168.483a.

PMT alleges that PMJ was required to file a campaign statement covering the period between its date of formation and the closing date, or the period of June 29, 2015 to June 29, 2015, by virtue of PMJ's response to Item 12 of the Statement of Organization Form for Ballot Question Committees indicating that it "oppose[d]" a "proposed initiative to eliminate prevailing wage laws in Michigan." However, the reporting requirement of MCL 169.234(2) is not triggered unless a ballot question committee receives a contribution or makes an expenditure for the purpose of supporting or opposing a statewide ballot question.

PMJ's statement of organization also explained in response to Item 11 that it had not established an official depository as of June 29, 2015 (stating that an official depository was yet "to be determined."). By law, "[t]he establishment of an account in a financial institution [as the committee's official depository] is not required until the committee receives a contribution or makes an expenditure." MCL 169.221(7). The fact that an official depository had not been established by the closing date of the petition proposal campaign statement is one indication that PMJ had no contributions or expenditures that would have necessitated the filing of the campaign statement. This is corroborated by the sworn affidavit of PMJ's treasurer, whose statement indicates that as of June 29, 2016, PMJ had not received a contribution or made an expenditure in opposition to PMT's proposed ballot initiative. Accordingly, PMJ did not owe the petition proposal campaign statement that was due on July 6, 2015.

2. PMJ's Alleged Filing of an Incomplete or Inaccurate July Quarterly Campaign Statement. PMJ belatedly filed its July quarterly campaign statement on July 31, 2015 (and paid the late filing fees it incurred as a result), which indicated that it received no contributions and made no expenditures during the period of June 29, 2016 through July 20, 2016. In support of PMT's allegation that this report was incomplete or inaccurate, the complaint and rebuttal statement pointed to the following activities: (1) one article published within the reporting period (June 30, 2015) and another published 4 days after the reporting period closed (July 24, 2015), quoting PMJ's spokesman; (2) a radio interview with PMJ's treasurer which aired after the reporting period closed (August 11, 2015); (3) the filing of the statement of organization, which according to the complaint, "should have" resulted in "at least some expenditures" being made "by the mere filing[;]" and (4) the spokesman for PMJ disseminated a press release during the reporting period (July 8, 2015), fact-checking the complainant's press release.

In response PMJ provided the sworn affidavit of its treasurer, stating that no contributions (including in-kind contributions) were received and no expenditures were made prior to the closing date of the July quarterly report; no invoices were received from the spokesman during the reporting period; and the filing of the statement of organization was done on the treasurer's personal time. PMJ also furnished the sworn affidavit of its spokesman, stating that while he was retained by PMJ sometime during July, 2015, he did not invoice PMJ for services rendered prior to the close of the reporting period.

Indeed, a review of PMJ's October quarterly campaign statement demonstrates that it received its first contribution on August 10, 2015, and made its first two expenditures on September 17, 2015: to its spokesman, in the amount of \$5,000.00, and to the Department for \$100.00 in late filing fees incurred as a result of the untimely filing of the July quarterly campaign statement.

The rebuttal statement lodges accusations related to the "Decline to Sign" activities that it attributes to PMJ, MP and the labor organizations, but the evidence provided does not demonstrate that this activity occurred during the July reporting period. For example, a tweet by Michigan Building Trades indicating, "'Decline to Sign' campaign launched to preserve Michigan's prevailing wage law" was sent July 31, 2015, 11 days after the close of books for the July quarterly campaign statement. Thus, it appears that the "Decline to Sign" activities commenced after the July reporting period ended.

3-4. Labor Organizations' Alleged Failure to Form Ballot Question Committee(s) or File Independent Expenditure Reports, and Alleged Failure to Include Identification Statement. The

complaint claims that if it is true that PMJ received no contributions and made no expenditures during the reporting period covered by the July quarterly campaign statement, then the labor organizations must have done so. However, the obligation to file an independent expenditure report is not triggered unless the amount of the independent expenditure exceeds \$100.00, MCL 169.251, and the obligation to form a committee is not triggered unless a person receives contributions or makes expenditures of at least \$500.00 in a calendar year, MCL 169.203(4). Moreover, the term "expenditure" specifically excludes "an expenditure for communication by a person with the person's paid members or shareholders and those individuals who can be solicited for contributions to a separate segregated fund under section 55." MCL 169.206(2)(a).

Relatedly, under MCL 169.247(1), printed material that references a ballot question "shall bear upon it an identification statement that contains the name and address of the person paying for the matter." However, this requirement is inapplicable where the communication is "between a separate segregated fund established under section 55 and individuals who can be solicited for contributions to that separate segregated fund under section 55." *Id.*

In response to PMT's allegations all of the labor organizations provided sworn affidavits of their Business Managers or President. Three of the affidavits state that the respective labor organizations did not prepare the "Decline to Sign" flyers: Michigan Building and Construction Trades Council, Boilermakers Local 169, and IBEW Local 38.

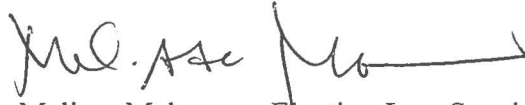
One of the labor organizations, Operating Engineers Local No. 324, published the "Decline to Sign" flyer as part of its seasonal newsletter whose subscriber list is limited to the union's membership. However, with respect to Operating Engineers Local No. 324, the publication of the "Decline to Sign" flyer as part of a magazine distributed exclusively to its membership is not an expenditure and does not implicate the identification requirement of MCL 169.247(1). Additionally, the Business Manager of Operating Engineers Local No. 324 stated that the cost of preparing and publishing the flyer was far less than the monetary thresholds that would trigger reporting as an independent expenditure (\$100.00), MCL 169.251, or as a committee (\$500.00), MCL 169.203(4).

The remaining labor organizations acknowledge that the "Decline to Sign" flyers were published on their respective websites, but it is not apparent that the websites were password protected or that web access to the flyers was otherwise restricted to members. Accordingly, it is proper to treat their publication as expenditures within the meaning of the MCFA. However, the Act's disclosure and registration requirements do not apply to these expenditures unless they exceed \$100.00 in value as independent expenditures, MCL 169.251, or \$500.00 in value so as to trigger committee status under MCL 169.203(4). The affidavits provided by the President and Business Managers of the three remaining labor organizations establish that the cost to post the flyers on their websites was well under \$100.00. And since the "Decline to Sign" flyers were not created by these three labor organizations, they were not required to comply with the identification requirement of MCL 169.247(1).

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For the foregoing reasons, PMT's complaint against all of the respondents is dismissed.

Sincerely,

A handwritten signature in black ink, appearing to read "Mel. Asc" followed by a long horizontal stroke.

Melissa Malerman, Election Law Specialist  
Michigan Bureau of Elections

c: Andrea Hansen