



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

August 16, 2013

Paul H. Scott
Paul H. Scott for State Representative
P.O. Box 193
Grand Blanc, Michigan 48480

Dear Mr. Scott:

The Department of State (Department) is authorized to initiate an investigation of an apparent violation of the Michigan Campaign Finance Act (MCFA or Act), 1976 PA 388, MCL 169.201 *et seq.*, discovered during the review of a statement or report filed with the Department. MCL 169.215(13). Certain campaign statements filed on behalf of the Paul H. Scott for State Representative committee (Committee) suggest that the committee may have violated the Act.

The MCFA governs the designation of contributions for a particular election cycle and repayment of debt incurred in prior election cycles as follows:

Consistent with the provisions of this section, a contribution designated in writing for a particular election cycle is considered made for that election cycle. A contribution made after the close of a particular election cycle and designated in writing for that election cycle shall be made only to the extent that the contribution does not exceed the candidate committee's net outstanding debts and obligations from the election cycle so designated. If a contribution is not designated in writing for a particular election cycle, the contribution is considered made for the election cycle that corresponds to the date of the written instrument.

MCL 169.252(6). A person who knowingly violates this provision is guilty of a misdemeanor offense. MCL 169.252(9).

During the election cycle that ended on November 8, 2011 relating to your recall the Committee was authorized to solicit and accept contributions in excess of the ordinary contribution limits, provided that such contributions were designated in writing for the recall election.¹ It is alleged that contributions received during the recall election cycle were instead used to pay debts incurred by the Committee in previous election cycles:

¹ See Candidate Committee Manual, "Appendix M, Recall Elections," available at <http://www.mertsplus.com/mertsuserguide/index.php?n=MANUALS.AppendixM>.

DATE OF LOAN	LOAN AMOUNT	PAYMENT DATE	PAYMENT AMOUNT
07/25/2007	\$100.00	08/16/2011	\$100.00
06/28/2006	10,000.00	08/16/2011	10,000.00
06/12/2008	20,000.00	08/16/2011	17,000.00
01/31/2009	2,500.00	08/16/2011	2,500.00
09/13/2010	10,000.00	08/16/2011	10,000.00
10/16/2010	5,000.00	08/16/2011	5,000.00
TOTAL			\$44,600.00

The purpose of this letter is to inform you of the Department's examination of this matter and your right to submit a written response to the Department. Your response is due on or before September 6, 2013 and may include any 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. Your response should address the following issues:

1. Repayment of debt incurred in a previous election cycle is prohibited unless "the contribution does not exceed the candidate committee's net outstanding debts and obligations from the election cycle *so designated*." MCL 169.252(6). You acknowledged the following in your letter of May 10, 2012 to Ms. Evelyn Quiroga: "regarding the issue of whether the Committee designated any contributions in writing to repay debt, the Committee did not."
2. In addition, a contributor's contribution that is designated in writing for a previous election cycle must not exceed the contribution limit for the prior cycle. MCL 169.252(1)(c). For example, an individual who contributed \$500.00 during the 2009-2010 election cycle is barred from making a contribution during any future election cycle that is designated back to the 2009-2010 election cycle. You denied that the Committee received contributions in excess of applicable limits for previous election cycles, and as authority for your position, you cited: "There is no doubt that the Committee can pay debt incurred in one year with funds raised in subsequent years. See Department of State letter to the Honorable Richard Allen, October 10, 1978." Please note, however, that the letter to former Sen. Allen was issued before the current MCL 169.252(6) was enacted in 1989, and has been superseded to the extent that it conflicts with the statute.²

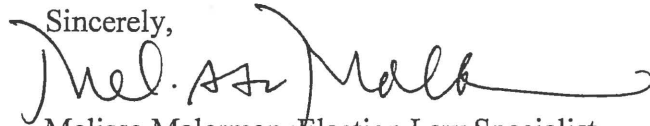
After reviewing the information you submit to this office, the Department will determine whether "there may be reason to believe" that the Committee violated the MCFA. MCL 169.215(13). The Act grants the Department various enforcement powers, including informal resolution or execution of a conciliation agreement. If the Department and committee fail to reach an informal settlement, it may refer the matter to the Attorney General for enforcement of the criminal penalty provided under section 52(9) of the Act. MCL 169.215(13).

² See 1989 PA 95, MCL 169.252(7). Although originally enacted as subsection (7), subsequent amendments resulted in the renumbering of this provision to the current subsection (6).

Paul H. Scott
August 16, 2013
Page 3

If you have any questions or require additional information, please contact me at your earliest convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "Mel. Malb", with a long horizontal flourish extending to the right.

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



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

May 29, 2014

Gary Gordon
Dykema Gossett PLLC
Capitol View
201 Townsend Street, Suite 900
Lansing, Michigan 48933

Dear Mr. Gordon:

The Department of State (Department) has completed its investigation of an apparent violation of the Michigan Campaign Finance Act (MCFA or Act), 1976 PA 388, MCL 169.201 *et seq.*, which was discovered during the review of statements and reports filed on behalf of the Paul H. Scott for State Representative committee (Committee) with the Department.

After a review of the Committee's statements for the election cycle that ended on November 8, 2011 relating to Mr. Scott's recall, it appeared to the Department that contributions received during the recall election cycle were used to pay debts incurred by the Committee in previous election cycles.

Repayment of debt incurred in a previous election cycle is prohibited unless "the contribution does not exceed the candidate committee's net outstanding debts and obligations from the election cycle *so designated*." MCL 169.252(6). Additionally, a contributor's contribution that is designated in writing for a previous election cycle must not exceed the contribution limit for the prior cycle. MCL 169.252(1)(c).

On April 12, 2012 the Department sent a Notice of Error or Omission to the Committee indicating that from a review of the Committee's 2011 Pre-General campaign statement it appeared that contributions received during the reporting period were used to pay debt from a previous election cycle. The Committee was asked to clarify whether the contributions used to repay the debt incurred during the 2008 and 2010 election cycles were designated in writing to repay that debt and whether the contribution limits for the 2008 and 2010 election cycles were exceeded by any contributor whose contribution was used to repay the debt.

In response to the Notice of Error or Omission, Mr. Scott responded that, based on an October 10, 1978 Interpretive Statement issued to the Honorable Richard Allen, he believed that the debt incurred in one year could be repaid with funds raised in another year and that section 52(6) did not require the Committee to get a written designation to use the contributions raised during the 2011 election cycle to repay previous debt.

The Department did not agree with these assertions, and by letter dated August 16, 2013, the Department advised the Committee of its intention to investigate certain contributions that

appeared to have been used to pay previous debt without a written designation and may have exceeded contribution limits.

The Department determined that the Committee used \$44,600.00 in undesignated 2011 election cycle contributions to pay debt incurred between June 28, 2006 and October 16, 2010, resulting in the Department finding that the evidence supported a reason to believe a violation of the section 52(6) of the Act had occurred. MCL 169.252(6). A knowing violation of this section is a misdemeanor, punishable by a fine of not more than \$1,000.00, imprisonment for up to 90 days, or both. MCL 169.252(9). Additionally, a civil fine of \$1,000.00 may be assessed for each violation of the Act, unless otherwise specified. MCL 169.215(15). The Department has determined that 6 separate loans were paid with undesignated contributions.

In an effort to resolve this matter informally and to cure the violation, you provided the Department with written designations from 89 separate contributors indicating each contributor's intention to allow his or her contribution to pay the past debt (all obtained after the Department's commencement of its investigation). Our review confirmed that these 89 contributors gave contributions equaling \$50,050.00 towards the past debt and none exceeded the contribution limits specified in section 52(1)(c) for the 2011 election cycle or previous election cycles for which debt was paid.

Having found that it has a reason to believe that a violation of the Act did occur based on the belated designation of contributions, but considering that the Committee has attempted to cure the violation, the Department offers to resolve this matter informally through the execution of the enclosed conciliation agreement, which requires that the Committee pay a \$7,000.00 civil fine to the State of Michigan for using 2011 election cycle contributions to pay debts incurred in previous election cycles without those contributions being designated in writing (at the time the contribution was received) for that use. **If your client is inclined to execute the conciliation agreement, please return the original signed document and payment of the \$7,000.00 civil fine (\$1,000.00 for each debt that was paid with undesignated contributions, plus \$1,000.00 for violating section 52(6) as authorized by section 15(15)) to this office on or before June 20, 2014.** Payment must be made by check or money order payable to the State of Michigan; please include the notation "Conciliation Agreement, Attn: Bureau of Elections" on the check or money order.

Please be advised that if the Department is unable to resolve this complaint informally, it is required by MCL 169.215(10)-(11) to refer the matter to the Attorney General with a request that he prosecute the Committee, Mr. Scott, or both for the misdemeanor offenses of using 2011 election cycle contributions for previous election cycle debt without a written designation that the contribution was to be used for that purpose, or commence an administrative hearing to enforce the civil penalties provided by law. "If after a hearing the secretary of state determines that a violation of this act has occurred, the secretary of state may issue an order requiring the

person to pay a civil fine equal to triple the amount of the improper contribution or expenditure plus not more than \$1,000.00 for each violation." MCL 169.215(11).

Sincerely,

A handwritten signature in cursive script that reads "Lori A. Bourbonais". The signature is written in dark ink and is positioned above the printed name and title.

Lori A. Bourbonais
Bureau of Elections
Michigan Secretary of State



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

RECEIVED/FILED
MICHIGAN DEPT OF STATE

2015 SEP -9 PM 4:21
ELECTIONS/GREAT SEAL

In the Matter of:

Paul H. Scott
Paul H. Scott for State Representative
P.O. Box 193
Grand Blanc, Michigan 48480

Committee ID # 513492

CONCILIATION AGREEMENT

Pursuant to MCL §169.215(10) of the Michigan Campaign Finance Act (the Act), MCL §169.201 *et seq.*, the Secretary of State and Paul H. Scott (Respondent) hereby enter into a conciliation agreement with respect to certain alleged acts, omissions, methods, or practices prohibited by the Act.

The Secretary of State alleges that there may be reason to believe that Respondent violated MCL §169.252(6) by using some of the contributions received during the 2011 recall election cycle to pay debts incurred in previous election cycles when those contributions were not designated in writing to be used for previous election cycle debt.

Respondent asserts that in allegedly using some of the 2011 contributions to repay debts incurred in previous election cycles he relied on a October 10, 1978 Interpretive Statement currently posted on Secretary of State's web page that provides, in part, "A debt incurred in one year may be repaid with funds raised in another year, including funds raised by a committee for another election." The Secretary of State notes that MCL §169.252(6) was amended subsequent to the date of the Interpretative Statement.

Respondent further notes that MCL §169.252(6) allows for a contribution to be designated for a particular election cycle. Respondent therefore communicated with contributors in a form, approved by the Secretary of State, and obtained the consent of contributors in partial amount to pay the debt incurred in previous election cycles without exceeding the contribution limits for those contributors in the individual election cycles. Respondent believes his reliance upon the Secretary of State's Interpretive Statement was appropriate. The Secretary of State does not agree.

Respondent hereby voluntarily enters into this conciliation agreement on the following terms and conditions and Respondent assures the Secretary of State that Respondent will comply with the Act and the Rules promulgated to implement the Act.

Respondent is fined a civil fine of \$7,000.00 and by executing this Conciliation Agreement, Respondent certifies that he has paid a civil fine in the amount of \$7,000.00 to the State of Michigan. The Secretary of State and Respondent further agree that this agreement is in effect and enforceable for four years from the date it is signed by the Secretary of State or her duly authorized representative.

The Secretary of State and Respondent further agree that this agreement, unless violated, shall constitute a complete bar to any further action by the Secretary of State with respect to the alleged violation that resulted in the execution of this agreement.

The Secretary of State and Respondent further agree that the complaint and investigation that resulted in this agreement are disposed of and will not be the basis for further proceedings, except pursuant to this agreement.

The Secretary of State and Respondent further agree that this agreement will not prevent the Secretary of State from taking action for violations of this agreement.


The Secretary of State and Respondent further agree that the Respondent's performance under this agreement shall be given due consideration in any subsequent proceedings.

The Secretary of State and Respondent further agree that this agreement, when signed, shall become a part of the permanent public records of the Department of State.

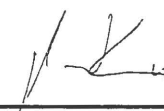
The Secretary of State and Respondent finally agree that the signatories below are authorized to enter into and bind the parties to this agreement, and have done so by signing this agreement on the date below.

**RUTH JOHNSON
SECRETARY OF STATE**

RESPONDENT



**Christopher M. Thomas, Director
Bureau of Elections**



Paul H. Scott

Date: 9-9-15

Date: 9-5-15