



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

July 29, 2014

Jeff Steinport  
538 Bond Avenue NW  
Suite 812  
Grand Rapids, Michigan 49503

Dear Mr. Steinport:

The Department of State (Department) has concluded its review of the complaint you filed against Gregory Sundstrom and the City of Grand Rapids (City) concerning an alleged violation of the Michigan Campaign Finance Act (MCFA or Act), 1976 PA 388, MCL 169.201 *et seq.* This letter concerns the disposition of your complaint.

You alleged that Mr. Sundstrom and the City improperly used public funds by using taxpayer resources to publish and distribute a newsletter that purportedly urged voters to support a ballot question. In support of your complaint you provided a copy of the February 2014 We Are GR newsletter (Newsletter).

It is unlawful for a public body or an individual acting on its behalf to use or authorize the use of equipment, supplies, personnel, funds, or other public resources to make a contribution or expenditure. MCL 169.257(1). The words "contribution" and "expenditure" are terms of art that are generally defined to include a payment or transfer of anything of ascertainable monetary value made for the purpose of influencing or made in assistance of the qualification, passage, or defeat of a ballot question. MCL 169.204(1), 169.206(1). A person who knowingly violates this provision may be charged with a misdemeanor offense. MCL 169.257(3). Specifically excluded from the definition of expenditure is any expenditure on a communication on a subject or issue if the communication does not support or oppose a ballot question by name or clear inference. MCL 169.206(2)(b).

You filed your complaint on March 6, 2014. Catherine Mish filed an answer on behalf of Mr. Sundstrom and the City on April 4, 2014, and you filed a rebuttal statement on April 15, 2014.

In your complaint, you alleged that the following statement by Mr. Sundstrom in the Newsletter constituted express advocacy:

**Remember to Vote on May 6!**

On May 6, voters will have the opportunity to secure our future by dedicating funding to take care of streets, sidewalks, and rights-of-way, which will have a positive impact on every neighborhood and business.

You contend that this statement can have no other reasonable meaning than to urge a *yes* vote on the ballot question on May 6 [,]” that “[t]he message contains an explicit encouragement to vote on the tax issues [,]” and “it expresses a clear and positive opinion in support of the issue to be voted on.” Finally, you state that “[i]n this context, the advocacy is clear: a reader is encouraged to vote for the initiative May 6.”

The Department has explained that it is required to “apply the express advocacy test to communications financed by public bodies.” *Interpretive Statement to David Murley* (Oct. 31, 2005).<sup>1</sup> Under that standard, the Department reviews election-related materials to determine whether they constitute expenditures and thus become subject to regulation under the Act. In other words, the express advocacy test excludes a communication from the Act’s reach unless it specifically urges voters to “vote yes,” “vote no,” “elect,” “defeat,” “support,” or “oppose” a ballot question, using these or equivalent words and phrases. The Department may only consider the text of the communication itself and not the broader context in which it was made in determining whether it is subject to MCFA regulation. *Interpretive Statement to Robert LaBrant*, April 20, 2004.<sup>2</sup> Additionally, the Department has reiterated this position in its December 9, 2013 Interpretive Statement to Bruce Courtade and Janet K. Welch of the State Bar of Michigan.<sup>3</sup> In that Interpretive Statement, the Department indicated that it “has consistently advocated for transparency through disclosure [,]” but acknowledges that a change in the Department’s “policy regarding the issue of disclosing payments for electioneering communications that are the functional equivalent of express advocacy . . . must be addressed by the Legislature or through the administrative rule-making process.”

The Department has carefully reviewed the materials that you included with your complaint. There are no directives in the Newsletter urging voters to “vote for,” “vote against,” “defeat,” “support,” or “oppose” the ballot question. Nor are there any equivalent words or phrases. The Newsletter contains factual information regarding the election, the proposal, and what impact either its passage or defeat will have on the city.

In your rebuttal statement, you urge the Department to apply the “functional equivalent of express advocacy” standard to the Newsletter. As explained above, the Department cannot apply this test without a legislative change to the definition of expenditure contained in the Act.<sup>4</sup>

---

<sup>1</sup> <http://www.mi.gov/documents/2005 - Interpretive Statement 142179 7.pdf>.

<sup>2</sup> <http://www.mi.gov/documents/2004 126239 7.pdf>.

<sup>3</sup> <http://www.michigan.gov/documents/sos/SBM Interpretive Statement 441953 7.pdf>.

<sup>4</sup> The Department further notes that the Legislature did, in fact, amend the definition of expenditure after the Department issued its December 9, 2013 Interpretive Statement to codify the express advocacy test and to exclude any expenditure for a communication that does not “in express terms advocate the election or defeat of a clearly identified candidate so as to restrict the application of this act to communications containing 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’ from the definition of expenditure. MCL 169.206(2)(j).

Because the Newsletter merely informs the readers that the issue has been placed on the ballot and the impact that passage or defeat of the question will have on the city, and there is nothing in the Newsletter that overtly instructs readers to vote for, vote against, support, or oppose the ballot question, it does not contain express advocacy and does not constitute an expenditure that falls under the MCFA.

Consequently, the evidence you have submitted does not tend to establish a reason to believe that the Mr. Sundstrom or the City has violated section 57 of the MCFA, and your complaint is dismissed.

Sincerely,



Lori A. Bourbonais  
Bureau of Elections  
Michigan Department of State

c: Catherine Mish

