



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

December 18, 2013

The Honorable James Hightower
Tony Saunders II
200 Wall Street
Benton Harbor, Michigan 49022

Dear Mayor Hightower and Mr. Saunders:

The Department of State (Department) received a formal complaint filed against you by Rev. Edward Pinkney, alleging that you 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.

By statutory definition, a committee is formed when "a person receives contributions or makes expenditures for the purpose of influences or attempting to influence the action of voters for or against . . . the qualification, passage, or defeat of a ballot question . . . if contributions received total \$500.00 or more in a calendar year or expenditures made total \$500.00 or more in a calendar year." MCL 169.203(4). The MCFA requires a committee to file a statement of organization within 10 days after a committee is formed. MCL 169.224(1). Late fees may be incurred if the statement of organization is filed late. *Id.* Failure to file a statement of organization for more than 30 days is a misdemeanor. *Id.*

Rev. Pinkney alleges that you have received contributions and made expenditures exceeding the \$500.00 threshold and have not formed a committee or filed a statement of organization.

The Act further requires committees to file periodic campaign finance statements and reports. The failure to file a single campaign statement may trigger late filing fees. MCL 169.234(5), 169.235(3). In certain circumstances, multiple failures to file may constitute a misdemeanor offense. MCL 169.234(6), 169.235(5).

Rev. Pinkney alleges that you have failed to file the required campaign statements.

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. You may each submit your own answer or you may file one answer signed by both of you. 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 Rev. Pinkney, 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 administrative hearing, or referring this matter to the Attorney General for enforcement of the criminal penalties provided in sections 24(1), 34(6), and 35(5) of the Act.

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

Sincerely,



Lori A. Bourbonais
Bureau of Elections
Michigan Department of State

c: Rev. Edward Pinkney

**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	Daytime Telephone Number	
REV Edward Pinkney		269-925-0001
Mailing Address		
1940 Union Ave		
City	State	Zip
Benton Harbor	MI	49022

Section 2. Alleged Violator		
Name		
JAMES Hightower, Tony Saunders Jr.		
Mailing Address		
200 Wall St		
City	State	Zip
Benton Harbor	MI	49022

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

Section(s) of the MCFA violated:

Section 3 The Alleged Violations: Section(s) of MCFA 169.221
169.224, 169.225, 169.226, 169.233, 169.234

Explain how those sections were violated:

169.221 NO Treasurer, NO BANK ACCOUNT AND WERE WRITING CHECKS,
169.225, 169.226 (NO FINANCIAL STATEMENT, NO STATEMENT OF ORGANIZATION),
169.225, 169.233, 169.234 Failure to File a Campaign Committee, AN
Collected Donations over \$500.00, Spent over \$500.

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

To The Unregistered Committee, Campaign funds were donated in the amount
of \$4600 From Whirlpool Vice-President of Public Affairs for the
MAY 7, 2013 ballot Proposal in Benton Harbor, MI. The funds were not reported

The Following Campaign Material WAS Purchased without Representi
Who Paid for Campaign literature More than three hundred Signs Door
Knocker, Flyers, Radio time AND the Campaign Headquarters 120 Water
\$750. The Headquarters WAS Occupied April 8 - May 8, 2013.

Jeff Noel Vice President of Whirlpool Corporation was
One person That wrote A Check to influence the Outcome of
The MAY 7, 2013 Election. This Money WAS NOT Reported.

BUREAU OF ELECTIONS
MI DEPT OF STATE

2013 DEC 13 PM 4:49

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 REV Edward Penkney Dec 11, 2013
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:

DID NOT REGISTER A COMMITTEE
DID NOT FILE CAMPAIGN STATEMENT
DID NOT FILE FINANCIAL STATEMENT
DID NOT IDENTIFY WHO PAID FOR MATERIAL, CAMPAIGN HEADQUARTERS
RADIO TIME AT 105.3 RADIO.

X REV Edward Penkney Dec 11, 2013
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



VOTE YES

to Move Benton Harbor Forward

TUESDAY MAY 7, 2013

SPECIAL MILLAGE ELECTION



CHARTER AUTHORIZED

MILLAGE RESTORATION PROPOSAL



GENERAL OPERATING
MILLAGE PROPOSAL



VOTE YES

to Move Benton Harbor Forward

TUESDAY MAY 7, 2013

SPECIAL MILLAGE ELECTION



CHARTER AUTHORIZED

MILLAGE RESTORATION PROPOSAL



GENERAL OPERATING

MILLAGE PROPOSAL



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

February 3, 2014

Edward Pinkney
1940 Union Avenue
Benton Harbor, Michigan 49022

Dear Rev. Pinkney:

The Department of State received a response to the complaint you filed against James Hightower and Tony Saunders II, 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,

Lori A. Bourbonais
Bureau of Elections
Michigan Department of State

c: James Hightower
Tony Saunders II

BUREAU OF ELECTIONS
MI DEPT OF STATE

January 5, 2014

Lori A. Bourbonais
Bureau of Elections
Michigan Department of State

2014 JAN 15 AM 11: 21

Re: Response to complaint filed by Edward Pinkney

Dear Ms. Bourbonais:

Having never been involved with a ballot question campaign before, I was unaware of the necessity to register the Ballot Question Committee. I certainly should have done some research before getting involved, because it is always my intent to be in compliance and of course hind sight is 20/20. However, when this was brought to my attention I immediately went to the Berrien County Clerk's office on December 11, 2013. I properly registered the Ballot Question Committee, accurately filed all pre and post-election contributions and expenditures, paid registration cost and all late fees.

Mr. Pinkney's filing of this complaint I am sure is a result of being a sore loser in the November 2013 election, to the point of making false accusations throughout our community and in print for which I am now in the process of seeking legal action against him. He has also recently initiated a recall against me, so this complaint came as no real surprise it just adds to the number of his slanderous attacks. But that is no excuse for me not understanding campaign regulations, for which in this though late, I received a good education on regulations in campaigning for a ballot question, and paid for it in late fees through this process.

For future campaigns if involved timely and proper registration will certainly be followed. The Ballot Question Committee identification number assigned by Berrien County is 140585. Thank you, as my hope this matter is now clear.

Sincerely,


James Hightower



Michigan Department of State
Bureau of Elections

**STATEMENT OF ORGANIZATION RECEIPT
AND
COMMITTEE IDENTIFICATION NUMBER ASSIGNMENT
BERRIEN COUNTY**

MOVE BENTON HARBOR FORWARD
200 WALL ST
BENTON HARBOR, MI 49022

Original Statement of Organization --- Acknowledgement of Receipt

This acknowledges receipt of the **Original Statement of Organization** from the committee named above.

Date Received: **December 11, 2013**

Committee Identification Number Assignment

The identification number appearing below has been assigned to your committee. This number must be used on each page of all subsequent statements, reports, correspondence or other communications filed or submitted by your committee.

USE THIS NUMBER ON ALL DOCUMENTS

140585


Signature

12/11/2013

Date

Filing Official:

☐ Secretary of State
☒ County Clerk

Received
12/30/13

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 REV EDWARD PINKNEY		Daytime Telephone Number 269-925-0001
Mailing Address 1940 UNION AVE		
City BENTON HARBOR	State MI	Zip 49022

Section 2. Alleged Violator		
Name JAMES HIGHTOWER, TONY SAUNDERS JR.		
Mailing Address 200 WALL ST		
City BENTON HARBOR	State MI	Zip 49022

Section 3. Alleged Violations (Use additional sheet if more space is needed.)
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2013 DEC 13 PM 4:49

BUREAU OF ELECTIONS
MI DEPT OF STATE



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

February 14, 2014

The Honorable James Hightower
Tony Saunders II
200 Wall Street
Benton Harbor, Michigan 49022

Dear Mayor Hightower and Mr. Saunders:

This letter concerns the complaint that was recently filed against you by Edward Pinkney, which relates to purported violations 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. Rev. Pinkney'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,

Lori A. Bourbonais
Bureau of Elections
Michigan Department of State

c: Edward Pinkney



BUREAU OF ELECTIONS
MI DEPT OF STATE

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

2014 FEB 12 PM 3:27

February 3, 2014

Edward Pinkney
1940 Union Avenue
Benton Harbor, Michigan 49022

Dear Rev. Pinkney:

The Department of State received a response to the complaint you filed against James Hightower and Tony Saunders II, 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,

Lori A. Bourbonais
Bureau of Elections
Michigan Department of State

c: James Hightower
Tony Saunders II

February 7, 2014

**Lori A. Bourbonais
Bureau of Elections
Michigan Secretary of
Department of State**

Dear Ms. Bourbonais:

Mr. James Hightower failed to comply with the Michigan Campaign Finance Act. Mr. James Hightower failed to report a \$4,000 contribution from Mr. Jeff Noel Vice-President of Whirlpool Corporation. He has failed to include the financial Contribution from Mr. Jeff Noel and maybe others.

Contribution mean a payment, gift, subscription, assessment, expenditure, contract, payment for service, dues, advance, forbearance, loan, or donation of money or anything of ascertainable monetary value, or a transfer of anything of ascertainable monetary value to a person, made for the purpose of influencing the nomination or election of a candidate, for the qualification, passage, or election of a candidate, or for the qualification of a new political party.

Contribution includes the full purchase price of tickets or payment of an attendance fee for events such as dinners, luncheons, rallies, testimonials, and other than the individual's own on behalf of that individual's candidacy; the granting of discounts or rebates by broadcast media and newspapers not extended on an equal basis to all candidates for the same office; and the endorsing or guaranteeing of a loan for the amount the endorser or guarantor is liable.

It is the policy of this state that a public body shall maintain strict neutrality in each election and that a public body or person acting on behalf of a public body shall not attempt to influence the outcome of an election held in the state, if there is a perceived ambiguity in the interpretation of section 57, that section shall be constructed to best effectuate the policy of strict neutrality by a public body in an election.

Mr. James Hightower has failed to comply with the Michigan Campaign Finance Act; he has failed to report all contributions and he failed to maintain neutrality

In the election. I am requesting a complete investigation.

Please allow me to thank you in advance.

Sincerely

A handwritten signature in cursive script, appearing to read "Edward Pinkney". The signature is written in black ink and is positioned above the printed name.

Edward Pinkney



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

May 8, 2014

The Honorable James Hightower
Tony Saunders II
200 Wall Street
Benton Harbor, Michigan 49022

Dear Mayor Hightower and Mr. Saunders:

The Department of State (Department) has completed its investigation of the campaign finance complaint filed against you by Edward Pinkney, concerning alleged violations of the Michigan Campaign Finance Act (MCFA or Act), 1976 PA 388, MCL 169.201 *et seq.* This letter concerns the disposition of Rev. Pinkney's complaint, which was filed on December 11, 2013. Mayor Hightower filed an answer on January 15, 2014, and Rev. Pinkney filed a rebuttal statement on February 12, 2014.

The registration and reporting requirements of the MCFA apply to any "committee," which is defined as "a person^[1] who receives contributions or makes expenditures for the purpose of influencing or attempting to influence the action of voters for or against . . . the qualification, passage, or defeat of a ballot question, if contributions received total \$500.00 or more in a calendar year or expenditures made total \$500.00 or more in a calendar year." MCL 169.203(4).

Under the Act, a committee is required to file a statement of organization within 10 days of its formation. MCL 169.224(1). The failure to timely file a statement of organization may result in the assessment of late filing fees or, in extreme circumstances, the filing of misdemeanor charges. *Id.* The failure to file a single campaign statement may trigger late filing fees. MCL 169.234(5). In certain circumstances, the failure to file a campaign statement may constitute a misdemeanor offense. MCL 169.234(6).

Rev. Pinkney alleged that you acted together to raise money; purchase signs, door knockers, flyers, and radio time; and rent campaign space. As evidence, Rev. Pinkney submitted copies of a picture of a sign which states "VOTE YES to Move Benton Harbor Forward TUESDAY MAY 7, 2013 SPECIAL MILLAGE ELECTION [.]". Rev. Pinkney further alleged that you received a contribution in the amount of \$4,000.00 from Jeff Noel, but no evidence was provided to substantiate this allegation.

¹ The word "person" is defined as "a business, individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, labor organization, company, corporation, association, committee, or any other organization or group of persons acting jointly." MCL 169.211(1).

In response, Mr. Hightower stated that "it is always [his] intent to be in compliance" with MCFA and that after issues regarding the committee were brought to his attention, he "immediately went to the Berrien County Clerk's² office" and "properly registered the Ballot Question Committee, accurately filed all pre and post-election contribution and expenditures, paid registration cost[s] and all late fees."

The Department confirmed with the Berrien County Clerk that Mr. Hightower filed a Statement of Organization, filed pre- and post-election campaign statements, and paid the associated late-filing fees on December 11, 2013 – which was prior to Mr. Hightower receiving notice from the Department of the complaint.

In his rebuttal statement, Rev. Pinkney also alleged that Mr. Hightower "failed to maintain neutrality in the election" in violation of section 57 of the Act. The Act prohibits a public official from expending public money or using public resources to further the qualification, passage, or defeat of a ballot question. MCL 169.257(1). However, there are several narrow exceptions to section 57, one of which is for "[a]n elected or appointed public official . . . who, when not acting for a public body but is on her 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." MCL 169.257(1)(f). Absent any evidence that would support a reason to believe that Mr. Hightower used public funds to further the passage or defeat of the ballot question, this portion of Rev. Pinkney's complaint is dismissed.

Additionally, no evidence has been provided to support a reason to believe that Mr. Saunders was required to form a ballot question committee. Therefore, the complaint against Mr. Saunders is dismissed.

The Department finds that the evidence supports a conclusion that Mr. Hightower was required to file a Statement of Organization and Pre- and Post-Election campaign statements for the Move Benton Harbor Forward committee. All three statements were filed on December 11, 2013. The Berrien County Clerk appropriately assessed late filing fees in the amount of \$1,300.00 (\$300 for late-filed Statement of Organization and \$500.00 each for late-filed pre- and post-election campaign statements). The Berrien County Clerk has confirmed that the Committee has paid in full the \$1,300.00 in late-filing fees.

Based on the foregoing, the Department finds that there may be reason to believe that the Move Benton Harbor Forward committee (Committee) violated the MCFA by failing to timely file its Statement of Organization and pre- and post-election statements. Having made this determination, the Department is required by law to attempt to resolve this matter informally. *Id.*

First, the Department acknowledges that the Committee has now filed its Statement of Organization and Pre- and Post-Election statements with the Berrien County Clerk. The

² A ballot question committee supporting or opposing a ballot question to be voted upon in a single county files its statement of organization and campaign statements with that county clerk. MCL 169.236(2).

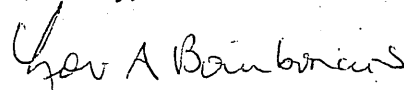
Department further acknowledges that the Berrien County Clerk has assessed the Committee the statutory late filing fees, and that the Committee has paid the fees in full. While the Committee's Pre- and Post-Election campaign statements appear to contain imperfect disclosures, all expenditures for which the Department has evidence appear to be disclosed. Any further concerns or questions regarding these statements need to be addressed with the Berrien County Clerk.

However, the Department also notes that according to the Committee's late-filed reports, the April 19, 2013 \$1,094.98 expenditure for yard signs was required to be disclosed prior to the May 7, 2013 election. The failure to disclose this expenditure prior to the election deprived the public of any meaningful pre-election disclosure of who paid for the signs.

The Department offers to resolve Rev. Pinkney's complaint against you through execution of the enclosed conciliation agreement, which requires that you pay a \$200.00 civil fine to the State of Michigan for failing to disclose prior to the election. **If you are inclined to execute the conciliation agreement, please return the original signed document and payment of the \$200.00 civil fine to this office on or before June 9, 2014.** Payment of the civil fine 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 your 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. Hightower, or both for the misdemeanor offenses of failing to file a Statement of Organization for more than 30 days and failure campaign statements for more than 7 days, 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,



Lori A. Bourbonais
Bureau of Elections
Michigan Department of State



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

In the Matter of:

James Hightower
200 Wall Street
Benton Harbor, Michigan 49022

MDOS 4664631-1 05/21/2014
MISC NY \$200.00

Committee ID - 140585

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 James Hightower and the Move Benton Harbor Forward committee (Respondent) hereby enter into a conciliation agreement with respect to certain acts, omissions, methods, or practices prohibited by the Act.

The Secretary of State alleges that there may be a reason to believe that Respondent violated MCL §169.224(1) by failing to timely file a Statement of Organization.

The Secretary of State further alleges that there may be reason to believe that Respondent violated MCL §169.234 by failing to timely file 2013 Pre- and Post-Election campaign statements.

Therefore, Respondent hereby voluntarily enters into this conciliation agreement and assures the Secretary of State that he will comply with the Act and the Rules promulgated to implement the Act.

By executing this conciliation agreement, Respondent certifies that he has paid in full a \$200.00 civil fine by check or money order payable 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.

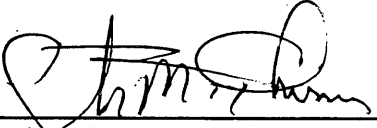
The Secretary of State and Respondent further agree that this agreement will not prevent the Secretary of State from taking action for violations of this agreement.

The Secretary of State and Respondent further agree that 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.

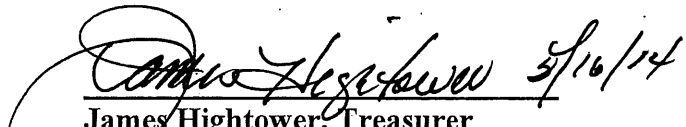
The Secretary of State and Respondent finally agree that the signatories below are authorized to enter into and bind the parties to this agreement, and have done so by signing this agreement on the date below.

**RUTH JOHNSON
SECRETARY OF STATE**



Christopher M. Thomas, Director
Bureau of Elections

RESPONDENTS



James Hightower, Treasurer
Move Benton Harbor Forward

Date: 5/27/2014