



STATE OF MICHIGAN
JOCELYN BENSON, SECRETARY OF STATE
DEPARTMENT OF STATE
LANSING

September 30, 2020

Marsha Miller
11139 Olive
Warren, MI 48093

Dear Ms. Miller:

This interpretive statement concerns your written request for a declaratory ruling or interpretive statement, submitted to the Michigan Department of State (Department) on July 7, 2020, regarding the applicability of the Michigan Campaign Finance Act (MCFA or Campaign Finance Act), 1976 PA 388, MCL 169.201 et seq., and the Michigan Legal Defense Fund Act (MLDFA or Legal Defense Fund Act), 2008 PA 288, MCL 15.521 et seq.

The MCFA and Administrative Procedures Act (APA), 1969 PA 306, MCL 24.201 et seq., require the Department to issue a declaratory ruling if an interested person submits a written request that presents a question of law and a reasonably complete statement of facts. MCL 24.263, 169.215(2). If the Department declines to issue a declaratory ruling, it must instead offer an interpretive statement “providing an informational response to the question presented [.]” MCL 169.215(2).

Your request poses one question: whether a Political Action Committee (PAC) can lawfully contribute to the Legal Defense Fund (LDF) of an individual who is employed by a state or local government agency, but who does not hold an elected office. The Department interprets this question to ask whether either the MCFA or the MLDFA bar contributions to LDFs established to support persons who do not hold elected office and who are not candidates for elected office. Because your statement of facts is not sufficient, the Department declines to issue a declaratory ruling and issues this interpretive statement in response to your request.

In order to answer your question, the Department first turns to the plain language of the MLDFA. In interpreting a statute, the goal is to “ascertain and give effect to the intent of the Legislature.” *People v Gardner*, 482 Mich 41, 50 (2008), quoting *People v Pasha*, 466 Mich 378, 382. “To do so, we begin with the language of the statute, ascertaining the intent that may reasonably be inferred from its language. When the language of a statute is unambiguous, the Legislature's intent is clear and judicial construction is neither necessary nor permitted.” *Odom v Wayne County*, 482 Mich 459, 467 (2008), quoting *Lash v Traverse City*, 479 Mich 180, 187 (2007).

By its plain language the ML DFA does not apply to LDFs established for the benefit of non-elected state or local officials. The ML DFA only applies to LDFs which accept contributions “for the legal defense of an elected official.” MCL 15.523(e). For the purposes of the ML DFA, an elected official who is someone “who holds an elective office in state or local government” in Michigan, MCL 15.523(a), and “elective office” is “a public office filled by an election.” MCL 15.523(c). While a person appointed to an office that is “ordinarily elective” is covered by the ML DFA, a person who is simply employed by a state or local government or a person who is appointed to an office that is not normally filled by election does not fall within the ML DFA’s ambit. This is borne out by the legislature’s purpose of enacting the ML DFA to regulate contributions “made for purposes of defending an *elected official* in a criminal, civil, or administrative action.” Preamble to ML DFA, 2008 P.A. 288 (emphasis added)¹.

Similarly, while the MCFA explicitly considers both incidental and substantive legal costs for elected officials or an official who was appointed to an elective office, MCL 169.221a(2) and (3), those sections are silent on legal costs for other government employees.

No other provisions of the MCFA contemplate disbursements made to non-elected officials who are not candidates for office. As a general matter, spending by a PAC in the form of donations to the LDF of a non-elective governmental official are not covered by the MCFA. The spending limitations on political committees set out in the MCFA apply only to “contributions,” MCL 169.252, or “expenditures.” MCL 169.251. For the purposes of the MCFA, a contribution is the transfer of anything of ascertainable monetary value “made for the purpose of influencing the nomination or election of a candidate, for the qualification, passage, or defeat of a ballot question, or for the qualification of a new political party.” MCL 169.204(1). Expenditures under the MCFA are likewise limited to spending made “in assistance of, or in opposition to, the nomination or election of a candidate, the qualification, passage, or defeat of a ballot question, or the qualification of a new political party.” MCL 169.206(1).

In creating and defining expenditures under section 6 of the Act, the Legislature has provided the Department with a guiding framework for limiting how, and to whom, committees may disburse their money. Per the MCFA, all regulated committees “may . . . make . . . lawful disbursements” so long as those disbursements are not otherwise “restricted or prohibited by this act or other state or federal law.” MCL 169.203(4). While candidate committees may only make a disbursement if it qualifies as an expenditure, non-candidate committees generally remain free to make disbursements that do not qualify as an expenditure without limitation.

In other words, PACs may spend money in ways that are not contemplated by the MCFA, so long as that spending does not conflict with the MCFA or other provisions of state or federal law. See MCL 169.203(4). Because spending by a PAC to the LDF of a non-elected official does not qualify as either an expenditure or a contribution under the MCFA, that spending is not regulated by the MCFA. While not regulated, it is not expressly prohibited. The monetary disbursement by the PAC would only be prohibited if it violates a provision of state or federal law.

¹ Available at [http://www.legislature.mi.gov/\(S\(ugchzzm2bigxh3pxo3eejrsh\)\)/documents/mcl/pdf/mcl-Act-288-of-2008.pdf](http://www.legislature.mi.gov/(S(ugchzzm2bigxh3pxo3eejrsh))/documents/mcl/pdf/mcl-Act-288-of-2008.pdf)

In sum, the Department concludes that PAC spending on an LDF for the benefit of a person employed by a state or local government in Michigan, but who does not hold elective office, is not spending regulated by the ML DFA or the MCFA but would be barred if the disbursement by the PAC violates a provisions of state or federal law.

Because your request did not contain a sufficient statement of facts, the foregoing represents an interpretive statement concerning the applicability of the Michigan Campaign Finance Act and the Michigan Legal Defense Fund Act.

Sincerely,

Melissa J. Smiley, PhD
Chief of Staff