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

August 28, 2020

Andrew Nickelhoff
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Dear Mr. Nickelhoff:

This interpretive statement concerns your written request for a declaratory ruling or interpretative statement, dated June 4, 2020, submitted on behalf of the Michigan State AFL-CIO regarding the Michigan Department of State's (Department) interpretation of the Michigan Campaign Finance Act (MCFA or Act), 1976 PA 388, MCL 169.201, *et seq*.

The MCFA and Administrative Procedures Act (APA), 1969 PA 306, MCL 24.201 *et seq.*, requires 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 two questions: (1) whether a federal or non-Michigan committee is prohibited under Section 54(3) from collecting contributions in Michigan through a PAC check-off; and (2) whether the federal or non-Michigan committee may subsequently transfer the funds collected through the PAC check-off to the Michigan labor organization's separate segregated fund (SSF).

In support of your request, you state that Michigan State AFL-CIO member organizations are parties to collective bargaining agreements that include a PAC check-off clause that permits employers to deduct voluntary employee contributions from paychecks to be sent directly to a political committee sponsored by the labor organization. These political committees may be federal committees registered and regulated under the Federal Election Campaign Act (FECA) U.S.C. § 30101 *et seq.*, or a committee registered under the laws of another state. You additionally state that Michigan labor organizations that are signatory to a PAC check-off agreement may operate a Michigan SSF pursuant to MCL 169.255(1). As the questions you have presented do not contain a reasonably complete statement of facts, the Department declines to issue a declaratory ruling and issues this interpretive statement in response to your request.

In accordance with publication and public comment period requirements, the Department posted your request on its website and informed e-mail subscribers of the deadline to file written comments. MCL 169.215(2). The Department received public comments from Bob LaBrant and the International Brotherhood of Teamsters (IBT). Mr. LaBrant stated that while the MCFA does not prohibit a federal or non-Michigan to contribute to an affiliated organization's Michigan SSF, such a contribution would be subject to MCFA. As a result, MCL 169.203(4) would apply, which requires any person who contributes or expends $500 or more to register as a Michigan committee. Comparatively, IBT stated that MCFA allows a federal or non-Michigan committee to contribute to an affiliated organization's Michigan SSF so long as the MCFA's reporting and certification requirements are met.

Both commenters were in agreement that the answer to the Michigan State AFL-CIO's first question is fairly straightforward, as the plain language of the MCFA does not prohibit employers from providing a PAC check-off for employee contributions to a labor organization's federal or non-Michigan committee. The commenters' disagreement stemmed largely from the discussion of which sections of the MCFA would be implicated when a labor organization's federal or non-Michigan committee transfers funds collected through a PAC check-off to the labor organization's Michigan SSF.

The Department issued its preliminary response on August 7, 2020 and posted it for public comment in accordance with the MCFA and APA's requirements. Public comments were received from Eric Doster. Mr. Doster argued, in part, that the Department's preliminary response was contrary to Attorney General opinions issued in 1978.[1]

Section 54 was enacted by 2015 PA 269. Prior to the enactment of 2015 PA 269, it was relatively common for a corporation and labor union to agree to terms in their collective bargaining agreements that required the corporation to deduct from workers' wages any voluntary contributions to the union's SSF, and the union would reimburse the corporation for the costs incurred by administering this payroll deduction. This arrangement is commonly referred to as a PAC check-off. As a result of the 2015 amendments to section 54, corporations remain free to administer payroll deduction plans to facilitate contributions from corporate employees to their corporate PAC, while unions are barred from doing the same.

In a prior interpretive statement issued interpreting section 54(3), the Department stated that section 54(3) must be construed as containing two distinct yet related provisions, first to bar corporations from making payroll deduction plans available for any SSF other than a connected organization, and second, to state that reimbursement or advance payment by the beneficiary SSF does not cure the violation. *Interpretive Statement to Andrew Nickelhoff*, Issued November 13, 2019. The Department further concluded "that the MCFA as amended by 2015 PA 269, bars corporations whose employees belong to labor unions from using the corporate payroll deduction

[1] As detailed below, both opinions are distinguishable. Neither provided any analysis or explanation for its conclusion. Additionally, the MCFA has been amended since that time and Michigan Supreme Court jurisprudence on statutory construction has also shifted in the forty-two years since they were issued.

system to collect union members' voluntary contributions, transfer the contributions to the union's SSF, and from obtaining reimbursement or advanced payment from the labor union directly." *Id*.

The question presented in the 2019 Nickelhoff Interpretive Statement is similar to the questions presented in the instant request, but differs in that the instant request asks whether the MCFA bars a PAC check-off and reimbursement to a *federal or non-Michigan* committee. To answer this question, the Department turns to the plain language of the Act.

When interpreting a statute, the principal goal "is to give effect to the Legislature's intent, and the most reliable evidence of that intent is the plain language of the statute." *South Dearborn Environmental Improvement Ass'n, Inc. v. Dep't of Environmental Quality*, 502 Mich. 349, 360 (2018). Further, an administrative agency's interpretation of a statute that it is obligated to execute "cannot conflict with the plain meaning of the statute." *In re Revos Complaint Against SBC Mich.*, 482 Mich. 90, 108 (2008).

Section 55 requires SSFs "be organized as a political committee or an independent committee." MCL 169.255(1). Both "political committee" and "independent committee" are terms defined by the Act, and both terms are defined as "a committee."[2] "Committee" is defined as "a person that receives contributions or makes expenditures for the purpose of influencing or attempting to influence the action of the voters for against the nomination or election of a candidate…" MCL 169.203(4).

The Department has previously interpreted whether the MCFA regulates federal elections and committees. *Interpretive Statement to Michael J. Hanley*, issued October 29, 1999. In *Hanley*, the Department concluded that the MCFA does not regulate federal elections and that the MCFA's jurisdictional grant was limited to non-federal elections. There, the Department concluded that contributions and expenditures generally were anything of ascertainable monetary value made for the purpose of influencing the nomination or election of a candidate or the passage or defeat of a ballot question. Under section 3, a candidate is defined as an individual seeking elective office – the definition of which specifically excludes federal offices. *Id*.

While *Hanley* interpreted whether a federal candidate or candidate committee was subject to the MCFA, its conclusions remain applicable to federal or non-Michigan committees other than candidate committees. In other words, under *Hanley,* the MCFA's jurisdictional authority is limited to non-federal elections and activity. As a result, the plain language of the Act does not bar PAC check-off and reimbursement to a federal or non-Michigan committee.[3]

Given this, the Department then turns to your second question which asks whether the federal or non-Michigan committee may then transfer funds collected through a PAC check-off to a

[2] See MCL 169.208(3) and MCL 169.211(3).
[3] While the MCFA does not bar this course of action, the federal or non-Michigan committee would remain subject to federal campaign finance laws or the laws of the state in which the committee is registered.

Michigan SSF. Implicit in this question is whether an SSF may *accept* contributions from someone outside of the solicitable class. If an SSF is barred from accepting contributions from someone outside of the solicitable class, it renders your second question moot. To answer this question, the Department turns again to the plain language of the Act and the 1978 opinions of the Attorney General as the department interprets them today.

Section 55 states that an SSF established by a connected organization must be organized as a committee and may only solicit contributions from specific individuals – known as the "solicitable class." MCL 169.255. The solicitable class includes members (and spouses) of the labor organization who are individuals, officers or directors of the labor organization, and employees of the labor organization who have policy making, managerial, professional, supervisory, or administrative non-clerical responsibilities. MCL 169.255(4). Absent from the list of members of the solicitable class is a federal or non-Michigan committee. According to the plain language of the statute, the Department must conclude that federal or non-Michigan committees cannot be solicited for contributions to a labor organization's SSF. Importantly, however, the Act prohibits the *solicitation* of contributions but is silent as to whether the SSF may *accept* a contribution from someone that was not solicited.

The Legislature's intent must be judged based upon the plain language in the statute. *South Dearborn Environmental Improvement Ass'n, Inc. v. Dep't of Environmental Quality*, 502 Mich. 349, 360 (2018). When interpreting a statute, meaning must be given to the Legislature's choice of one word over another. *Robinson v. Detroit*, 462 Mich. 439, 459, 461. If a word is not defined by the statute in question, "it is appropriate to consult dictionary definitions to determine [its] plain and ordinary meaning…" *People v. Rea*, 500 Mich. 422, 428 (2017). To ascertain the intent of the Legislature in this instance, we must turn to the plain meaning of the words "solicit" and "accept," since neither are defined by the Act.

"Solicit" is defined as "to make petition to" or "to urge (something, such as one's cause) strongly." *Merriam-Webster.com Dictionary*. "Accept," on the other hand, is defined as "to receive willfully." The Legislature's use of words must be given deference to ascertain its intent. By applying the plain and ordinary meaning of "solicit," it can be concluded that the Legislature's intent behind restricting "solicitable classes" was only to restrict what kinds of persons an SSF can *petition or urge* to make contributions.[4] This interpretation of the MCFA

[4] For example, until amended on May 1, 2019, the Michigan Code of Judicial Conduct (CJC) prohibited the candidate committee of a judicial candidate from *soliciting* contributions in excess of $100.00 from members of the State Bar of Michigan, but did not prohibit lawyers from *contributing* more than $100.00 to any judicial candidate's committee. In other words, the CJC recognized the important distinction between soliciting and accepting contributions. Until that date, any fundraising solicitations sent to lawyers and non-lawyers were req include the following statement: "Canon 7 of the Michigan Code of Judicial Conduct prohibits a judicial campaign committee from soliciting more than $100 per lawyer. If you are a lawyer, please regard this as informative and not a solicitation for more than $100." See MI S Ct Order, ADM File No. 2017-15, Amendment of Canon 7 of the Michigan Code of Judicial Conduct (March 13,

would align the state's interpretation with the Federal Elections Commission's interpretations and regulations. While not binding, the Department has previously determined that FEC interpretations are persuasive. *See Declaratory Ruling to Timothy Sponslor*, issued November 2, 1993. Therefore, by the plain language of the statute, an SSF would be able to *accept* contributions, so long as the contribution is not *solicited,* from someone outside of the solicitable class.[5]

However, this position may conflict with the opinions issued by the Attorney General back in 1978. The AG opinions appear to stand for the proposition that *contributions* may only come from persons identified in section 55 of the Act. The opinions were issued approximately one year after section 55 was first enacted. But, much has changed in the 42 years since these opinions were first issued in 1978. Since 1978, the standards of statutory interpretation have significantly changed to focus on a more textual-based approach both at the state and federal level. *See e.g. Selk v. Detroit Plastic Products*, 419 Mich. 1, 9 (1984) (finding that unless statutory language is unclear, the court's task is to give effect to the plain meaning of the language used.)

Additionally, the MCFA itself has undergone numerous amendments since 1978.[6] Notably, "contribution" is now a term of art defined by the Act generally 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 candidate or ballot question. MCL 169.204(1). And the Department has generally held that only monetary transfers made for the purpose of express advocacy are subject to the Act's requirements. See MCL 169.206(2)(j). This standard was last memorialized in an amendment by the Legislature in 2013 – *after* the Attorney General Opinions were issued.

Other provisions of the Act also use the word "accept" in a specific context to mean a specific thing. For example, section 41 states that a person may not "make or accept a single contribution of more than $20.00 in cash or make or accept a single expenditure of more than $50.00 in cash." MCL 169.241(1). Similarly, section 41 also provides that "[a] person shall not accept or expend an anonymous contribution." MCL 169.241(2). As the Supreme Court commands, each word used by the Legislature is given a specific meaning, and "the Legislature must be presumed to have intended the meaning expressed by the language it has chosen." *Owendale-Gagetown School Dist. v. State Bd. of Education*, 413 Mich. 1, 8 (1982).

2019) at https://courts.michigan.gov/Courts/MichiganSupremeCourt/rules/court-rules-admin-matters/Adopted/2017-15_2019-03-13_FormattedOrder_AmendtOfCanon7.pdf.

[5] The public comments argue that the act of the Department informing the AFL-CIO that they may accept non-solicited transfers of money would constitute solicitation. The Department disagrees based upon the plain language definition of solicit outlined above.

[6] For example, section 55 has been amended 7 times since 1978. See 1994, P.A. 117, Eff. Apr. 1, 1995; 1995 P.A. Act 264, Eff. Mar. 28, 1996; 2012, P.A. 277, Imd. Eff. July 3, 2012; 2013 P.A. 252, Imd. Eff. Dec. 27, 2013; 2015 P.A. 269, Imd. Eff. Jan. 6, 2016; 2017 P.A. 119, Imd. Eff. Sept. 20, 2017; 2019 P.A. 93, Imd. Eff. Oct. 10, 2019.

Finally, contributions from an out-of-state committee are subject to the requirements of section 42 as you have indicated in your request. Section 42 requires that contributions made by an out-of-state person when the contributing person received contributions on an "automatic basis, including, but not limited to, a payroll deduction plan" shall not be accepted by any person "unless the contribution is accompanied by a statement…setting forth that all contributions received on an automatic basis are in full compliance with section 55." MCL 169.242(4). The certified statement must list the full name, address, and amount contributed of each person who contributed to the total amount of the contribution. This statement must also include a statement that the contribution was not made from an account containing funds prohibited by MCL 169.254.

Given this, the Department concludes that the MCFA does not prohibit a federal committee or PAC from transferring funds to a Michigan SSF so long as the Michigan SSF does not solicit the contribution from the federal committee or PAC and all the requirements of the Act are complied with.[7] The contribution from the out-of-state committee must be accompanied by the statement required by section 42.

CONCLUSION

In sum, the Department concludes the following: (1) the MCFA does not prohibit an employer from providing employees with a PAC check-off to contribute to federal or non-Michigan committees; and (2) the MCFA does not prohibit federal or non-Michigan committees from transferring funds collected by PAC check-off to Michigan committees, so long as applicable MCFA requirements are complied with.

The foregoing represents an interpretive statement with respect the applicability of the Act to the Michigan State AFL-CIO's proposed course of action as described in your June 4, 2020 letter.

Sincerely,

Melissa J. Smiley, PhD
Chief of Staff

[7] The Department notes that the transfer from the federal committee or PAC to the Michigan SSF may be regulated and/or barred by provisions of federal law or other provisions of the MCFA. However, as indicated above, the Department does not interpret federal laws or regulation because the Department lacks sufficient facts, it cannot determine whether other provisions of the MCFA apply.