



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

February 7, 2023

Kelly Ann Ramsey for Judge 2022
Richard L. Cunningham, Treasurer
9311 E. Outer Drive
Detroit, MI 48213

Dear Mr. Cunningham:

The Department of State (Department) acknowledges receipt of your letter dated November 12, 2022, in which you sought a declaratory ruling or interpretive statement under the Michigan Campaign Finance Act (Act or MCFA).

In accordance with publication and public comment period requirements, the Department posted your request on its website and informed email subscribers of the deadline to file written comments. MCL 169.215(2). The Department did not receive any public comments during the initial public comment period.

The Department issued its preliminary response on January 24, 2023 and posted it for public comment in accordance with the MCFA and APA requirements. The Department also notified email subscribers of the preliminary response and the deadline to file public comments. No public comments were received within 5 business days after the preliminary response was made available to the public. MCL 169.215(2). Given that no public comments were received, the Department's preliminary response is provided as its final declaratory ruling regarding your question.

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 letter indicates that Judge Kelly Ann Ramsey was one of the Wayne County Circuit Court Judges whose term expired at the end of 2022. As a result, Judge Ramsey filed an affidavit of incumbency indicating that she would run for re-election and was subsequently certified for the ballot. You further indicate that after the 2022, primary election, Robert Davis initiated several different legal actions, in different courts, seeking to disqualify Judge Ramsey and several other incumbent judges from the November 8, 2022, General Election ballot. To protect her interests, Judge Ramsey needed the representation of counsel and thus retained attorneys to represent her in the lawsuits. You state that seeing the costs of such professional representation as being necessary and proper to ensure that she would remain on the ballot, and thus incidental to her re-election, Judge Ramsey's committee began fundraising efforts with the intent to use campaign

contributions to pay those attorney fees directly related to the lawsuits seeking her disqualification.¹

This statement of facts is sufficient to warrant the issuance of a declaratory ruling regarding whether campaign contributions received during Judge Ramsey’s campaign may be used to pay attorney fees directly related to representing Judge Ramsey on the legal actions initiated by Robert Davis to disqualify her and remove her from the ballot. As is customary, the Department starts with the plain language of the Act. 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).

In defining expenditures under section 6 of the Act, the Legislature has provided a guiding framework for limiting how and to whom committees may disburse their money. Registered committees are subject to a number of limitations when making expenditures. “Expenditures by a candidate committee must be made for the purpose of influencing an election, not for the personal benefit of an individual.” *Interpretive Statement to Christopher Rose*, Issued November 2, 1978. Candidate committees are allowed disbursements only if those proposed disbursements qualify as expenditures², which in turn are subject to limitations.

The Legislature has authorized officeholders the ability to make incidental expenses which are “an expenditure that is an ordinary and necessary expense, paid or incurred in carrying out the business of an elective office.” MCL 169.209(1). Section 21a of the Act explicitly states, in relevant part:

(2) A candidate committee of a candidate who is elected or appointed to an elective office shall not make an expenditure to defend the elected or appointed official in a civil or criminal action or to pay legal costs *unless the action or legal costs do any of the following:*

(a) Relate to a recall election.

(b) Relate to a recount of votes as provided in the Michigan election law, 1954 PA 116, MCL 168.1 to 168.992.

(c) *Relate to compliance with this act or the Michigan election law, 1954 PA 116, MCL 168.1 to 168.992.*

MCL 169.221a(2)(a)-(c) (emphasis added).³

¹ Your letter also raises implications of the Legal Defense Fund Act and the Michigan Code of Judicial Conduct. This declaratory ruling does not interpret either and is limited only to the question presented: whether the MCFA permits Judge Ramsey to use campaign funds to make an expenditure for legal fees related to her status as a candidate.

² “Expenditure” is defined in relevant part as a payment of anything of ascertainable monetary value in assistance of or opposition to the nomination or election of a candidate. MCL 169.206(1).

³ Subsection 2 was added in 2012 by Public Act 275. In an Opinion interpreting the previous version, Attorney General Mike Cox concluded that under section 21a of the Act, a candidate committee may make an expenditure for an incidental expense to pay for legal fees incurred by the officeholder to defend against criminal charges, but only if the expense is an ordinary and necessary expense of carry out the business of elected office. [OAG, 2009, No. 7240](#).

In your statement of facts presented, you have indicated that Mr. Davis initiated litigation which sought to disqualify Judge Ramsey from the November 2022 General Election ballot, and as a defendant in those matters, Judge Ramsey hired an attorney to represent her. As indicated, Judge Ramsey fundraised and, as her treasurer, you wish to use these funds to make an expenditure to pay for attorney's fees. This expenditure is explicitly provided for under section 21a of the Act as the litigation related to whether Judge Ramsey's affidavit of identity properly complied with the Michigan Election Law and whether Judge Ramsey was therefore eligible to be a candidate on the November 2022 General Election ballot.

Therefore, in response to your question of whether campaign contributions may be used to pay attorney fees directly related to legal actions brought against Judge Ramsey by Robert Davis, the Department concludes that the Act does specifically authorize Judge Ramsey to use her candidate committee funds to pay legal fees associated with Davis lawsuits which are directly challenging her compliance with the Michigan Election Law. Such expenditures must be properly reported on the appropriate reporting schedule as direct expenditures.

The foregoing constitutes a declaratory ruling with respect to the questions presented in your November 12, 2022 letter.

Sincerely,


Jocelyn Benson
Secretary of State