



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

May 30, 2023

Brian James Ellison
15006 Woodpine
Monroe, MI 48161

Dear Mr. Ellison:

The Department of State (Department) acknowledges receipt of your letter dated March 6, 2023, 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, on March 9, 2023 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 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 may instead offer an interpretive statement "providing an informational response to the question presented [.]” MCL 169.215(2).

The Department issued its preliminary response on May 8, 2023 and posted it for public comment in accordance with the MCFA and APA requirements. You submitted public comments on May 12, 2023, alleging that the Department had misinterpreted MCL 169.203(1)(e) in its analysis of its *Interpretive Statement to Dick Jacobs*, Issued October 8, 1990, and that the section of the statute in question should be unenforceable because it is “void-for-vagueness.” The Department’s response to that comment follows its analysis of your initial question.

Your request for a declaratory ruling, dated March 6, 2023, indicates that you became the Libertarian Party’s candidate for Lieutenant Governor (“Lt. Governor”) at the Libertarian Party of Michigan’s candidate nomination convention in July 2022. You noted that you received no contributions, made no expenditures, and did not give consent for another person to receive a contribution or make an expenditure to further your nomination or election as Lt. Governor. You indicated that the campaign of Mary Bazuma, the Libertarian candidate for Governor in the 2022 General Election, filed a Statement of Organization and subsequent campaign finance disclosures. You argue that under the MCFA you and Mary Bazuma should be considered a

single candidate for the General Election and that you were not required to form a separate candidate committee, file a Statement of Organization, or file campaign finance reports for the 2022 election.

This statement of facts is sufficient to warrant the issuance of a declaratory ruling regarding whether General Election candidates for office as part of a jointly-elected ticket must each form candidate committees.

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).

The Act states that “an individual shall form a candidate committee under section 21 if the individual becomes a candidate under subsection (1).” MCL 169.203(2). Subsection (1) states, inter alia, that an individual becomes a candidate when that individual “is nominated as a candidate for elective office by a political party caucus or convention.” MCL 169.203(1)(b). In defining a “candidate,” the Act states that “For purposes of sections 61 to 71, ‘candidate’ only means, in a primary election, a candidate for the office of governor and, in a general election, a candidate for the office of governor or lieutenant governor. However, the candidates for the office of governor and lieutenant governor of the same political party in a general election are considered as 1 candidate.” MCL 169.203(1)(e).

However, as noted in the Department’s interpretive statement to Dick Jacobs in 1990, “the reference to sections 61 to 71 clarifies that candidates for governor and lieutenant governor are considered to be a single candidate for purposes of public funding. The last sentence of this subsection extends this principle to other provisions of the Act.” The ruling goes on to explain that “even though candidates for governor and lieutenant governor are required to form separate candidate committees, each committee may make expenditures on behalf of the ticket in a general election without regard to section 44(2) of the Act (MCL 169.244), which otherwise prohibits one candidate committee from contributing to or making expenditures on behalf of another candidate committee.” *Interpretive Statement to Dick Jacobs*, Issued October 8, 1990. As this statement explains, treating each pair of jointly-elected candidates as one candidate was for the purposes of (A) public funding and (B) expenditure reporting. As candidates are elected as part of a single ticket, any public funding provided or expenditures made by either candidate would further the election of both candidates.

MCL 169.203(1)(e) treats jointly-elected candidates as a single candidate in order to avoid duplicative funding and reporting. If candidates were not treated as a single candidate, neither would be able to make expenditures urging the election of the other as it would violate section 44 of the Act. However, this requirement does not exempt the candidate for lieutenant governor from the Act’s requirements entirely. As *Jacobs* notes, “candidates for governor and lieutenant governor are required to form separate candidate committees.”

Further, while candidates for governor and lieutenant governor are treated as one committee, the Act still requires each individual to form and register a candidate committee once meeting the definition of candidate. According to the plain language of the statute, an individual becomes a candidate when they are “nominated as a candidate for elective office by a political party caucus or convention.” MCL 169.203(1)(b). “Elective office” is defined as a “public office filled by an election.” MCL 169.205(4).

The question addressed in *Jacobs* was in reference to write-in candidates on a ticket for Governor and Lt. Governor, but the statement bases its reasoning on MCL 169.221 which states: “The Act requires an individual to file a statement of organization within 10 days of becoming a candidate.” The statement cites this provision and then explicitly notes that “candidates for governor and lieutenant governor are required to form separate candidate committees” before extending this principle to individuals who become candidates after receiving write-in votes. Even though the *Jacobs* statement is focused on write-in candidates, the reasoning it relies upon applies to all individuals who have become candidates under MCL 169.203. The Department further reiterates this position, which dates back nearly 33 years, and which has been applied without variability or ambiguity during that time.

The office of Lieutenant Governor is filled by an election and therefore requires any individual running for the office to form and register a candidate committee. Your letter noted that your running mate, Mary Bazuma, the Libertarian candidate for Governor in the 2022 General Election, filed a Statement of Organization and subsequent campaign finance disclosures. While this may seem to fulfill the MCFA’s goals of transparency, candidate committees play additional roles in the administration of Michigan’s elections. The Statement of Organization provides the Department with important information and records, including contact information, committee formation date, financial institution information, and other data required for the effective administration of the Department’s duties and the candidate’s responsibilities under the MCFA.

Once you became the Libertarian Party’s candidate for Lt. Governor at the Libertarian Party of Michigan’s candidate nomination convention in July of 2022, you were required to perform certain functions under the Michigan Election Law and the MCFA. Once an individual has become a candidate as defined in MCL 169.203, the committee must be formed within ten (10) calendar days. “Formed” is defined as selecting a treasurer, selecting a depository, and making the decisions required to complete the Statement of Organization form. Michigan Candidate Manual, Appendix B. Once formed, the committee has ten (10) additional calendar days to file the Statement of Organization with the relevant filing official, which for statewide offices is Michigan Department of State’s Bureau of Elections.

Your letter noted that you did not receive any contributions, nor make any expenditures as part of your candidacy for Lt. Governor. As part of the Statement of Organization, a Candidate Committee that does not expect to receive or spend more than \$1,000 for an election can obtain a Reporting Waiver by selecting “Yes” on the original Statement of Organization or on an amended Statement of Organization. A committee that maintains a reporting waiver is exempt from filing detailed campaign statements (e.g. pre-election, post-election, annual and quarterly campaign statements) unless it exceeds the \$1,000 threshold. The reporting waiver does not, however, exempt certain responsibilities, including the submission of the Statement of

Organization or 48 Hour/Late Contribution Reports. Additionally, the waiver does not relieve the requirement to maintain detailed records of all financial transactions for 5 years.

After you failed to form a candidate committee and file a Statement of Organization, the Department contacted you with a “Notice of Failure to File Statement of Organization” on September 7, 2022, which stated, inter alia, that the committee was required to file a Statement of Organization under the MCFA. Upon not receiving a response, nor a Statement of Organization that requested a reporting waiver, the Department contacted you about missing campaign statements on September 7, September 27, October 31, and December 13, 2022, as well as February 3, 2023. Directions on how to proceed with campaign statement filing following the election was sent on January 9, 2023. Notices of late fees for the Statement of Organization and campaign statements were sent on February 17 and March 6, 2023. Assessed fees totaled \$4,300 (\$1,000 for each of the 4 late campaign statements and \$300 for the late Statement of Organization).

On March 10, 2023 – six months after the first notice was sent by the Department on September 7, 2022 – the Department received your correspondence appealing the fines and requesting a declaratory ruling.

The requirement to form separate candidate committees has long been followed by Lt. Governor candidates of all parties, whether or not they expect to receive and spend funds. A search of the Department’s records shows, for example, that all Libertarian candidates for Lt. Governor over the past 4 cycles formed separate candidate committees and filed Statements of Organization. Additionally, each of these candidates requested and received a reporting waiver. There are no communications from the Department stating that it was unnecessary for these candidates to form separate candidate committees. Unless specifically exempted from Statement of Organization filing requirements (e.g., precinct delegates and small-district school board candidates. MCL 169.205(4)), all General Election candidates must establish a candidate committee, regardless of whether they are part of jointly-elected tickets. MCL 169.203, 169.221.

With regard to your public comments, submitted May 12, 2023, the Department respectfully disagrees with the allegation that the Department is misinterpreting MCL 169.203(1)(e). The Department has applied the law uniformly based on its interpretation in *Jacobs* for 33 years, and the rationale for doing so was explained at length in both the preliminary response and the *Jacobs* statement itself. As for your “void-for-vagueness” allegation, it is not the place nor role of the Department to rule on the constitutionality or enforceability of Michigan law. There has been no vagueness or variability in how the Department has applied the law since *Jacobs*. Accordingly, the Department maintains that the law requires candidates for governor and lieutenant governor to form separate candidate committees.

You state in your public comments that, “[w]ere the language of the statute clear and unambiguous, I certainly would have filed a Statement of Organization and requested a reporting waiver. It was not my intent then, nor is it my intent now, to circumvent the law or to avoid filing necessary campaign related documents in accordance with the Michigan Campaign Finance Act.” While you may have misunderstood the provisions of Section 3 of the MCFA when you first filed for office, any misunderstanding should have been rectified when you were notified on

Brian James Ellison

Page 5

September 7, 2022, that you failed to file a Statement of Organization, or when you received any of the other notices listed above over the course of six months.

Therefore, in response to your question as to whether you were required to form an independent candidate committee as part of a jointly elected General Election ticket, the Department concludes that you should have formed a candidate committee within 10 days, pursuant to MCL 169.221.

The foregoing constitutes a declaratory ruling with respect to the questions presented in your March 6, 2023, letter.

Sincerely,



Jocelyn Benson
Secretary of State