



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

May 30, 2023

Matthew Schonert
22050 Boulder Ave
Eastpointe, MI 48021

Dear Mr. Schonert:

The Michigan Department of State (Department) acknowledges receipt of your email dated March 11, 2023, which requests the issuance of an interpretative statement under the Michigan Campaign Finance Act (Act or MCFA), 1976 PA 388, MCL 169.201 *et seq.*

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 May 8, 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 statement 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). In your request for an interpretive statement, you seem to acknowledge that you do not qualify as an "interested person" for the purposes of requesting a declaratory ruling, and your non-specific hypothetical question supports that conclusion. Therefore, the Department provides this interpretive statement as "an informational response to the question presented [.]” MCL 169.215(2).

Your request presents the following question:

If an elected official were eligible for reelection in the current year and owed a balance on their property tax bill or water bill for their principal residence and an individual who is not a member of the official's family or household made a payment toward that balance, would the payment meet the Act's definition of a contribution?

The Act defines "contribution" as "a payment, gift, subscription, assessment, expenditure, contract, payment for services, 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[.]” MCL 169.204(1) The hypothetical payment does not fall within any of the categories explicitly excluded from the definition of contribution. MCL 169.204(3)

In determining whether the hypothetical payment meets the definition of contribution, the Department separates the definition into its subparts.

First, is it a payment or transfer or anything of monetary value to a person? The hypothetical payment clearly meets this part of the requirement, as partial or full payment of a bill has ascertainable monetary value.

Second, is it made for the purpose of influencing the nomination or election of a candidate? Without more information, it is difficult to see how payment of property taxes or a water bill could influence the nomination or election of a candidate.

In theory, residency in a jurisdiction may be required to be a candidate. In that case, payments toward a property tax bill or water bill may aid the person in retaining a specific residence that was the basis of the candidate’s residency. However, the candidate is presumably under no requirement to reside at that specific location and could instead move to a different residence in the same jurisdiction and retain residency. Additionally, such construction assumes that (1) residency is required and (2) the candidate could not maintain residency without the hypothetical payment. The Department is unwilling to enter into such a tortured hypothetical. Furthermore, in Michigan, tax foreclosure is a multi-year process with multiple intervention points. If a candidate were unable to keep their home as a result of foreclosed delinquent property tax bills and residence in the jurisdiction was required for office, a candidate would have ample time to secure alternative housing.

As a practical matter, the Department must note that classifying the hypothetical payment as a contribution and requiring reporting of it may be untenable. Many jurisdictions allow payment using as little as the address of the home in question with no verification of a payee’s relationship to a homeowner or to the name of the authorized user. As a result, in many jurisdictions, a candidate may not be notified that a payment has been made toward the candidate’s property taxes or water bill or even who made such a payment. It is possible that a political opponent would cause someone to contribute \$5 to an outstanding bill, unbeknownst to the candidate, only to criticize the candidate for failing to report the contribution. Similarly, a candidate may have the funds available to pay the balance of such a bill, but a third party may then pay the outstanding balance first in an effort to influence a candidate’s campaign platform or actions without the knowledge or authorization of the candidate.

The Department recognizes voters may have an interest in knowing whether a candidate has delinquent property taxes or water bills;¹ however, such public interest is distinguishable from what is considered a contribution under MCFA. Therefore, in response to your question of whether a payment by a non-household on an unpaid property tax or water bill on behalf a

¹ The activity at issue here raises other questions involving other laws, such as the Lobbyist Registration Act, 1978 PA 472, MCL 4.411 *et seq.* However, that is outside the scope of the declaratory ruling process presented here under the Michigan Campaign Finance Act.

candidate meets the definition of a contribution under MCFA, the Department finds that such a payment by itself would not be considered a contribution barring additional facts or specific links between a payment and a candidate's campaign.

The foregoing constitutes an interpretive statement with respect to the questions presented in your March 11, 2023, email.

Sincerely,

s/ Michael J. Brady

Michael J. Brady
Chief Legal Director