



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

February 8, 2024

Theresa J. Fougne
Via email tfougne@yahoo.com

Dear Ms. Fougne:

The Department of State (Department) acknowledges receipt of your letter dated November 17, 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 November 17, 2023, 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 one public comment, from Laurie Lisi on November 24, 2023.

The Department issued its preliminary response on January 19, 2024, and posted it for public comment in accordance with requirements in the MCFA and Administrative Procedures Act (APA), 1969 PA 306, MCL 24.201 *et seq.* 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 interpretive statement regarding your question.

The MCFA and APA 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). The omission of a reasonably complete statement of facts from your correspondence precludes the Department from granting your request for a declaratory ruling; however, the Department instead offers the following interpretive statement "providing an informational response to the question presented" in response to your request. MCL 169.215(2).

In your request, you ask whether you can disburse a portion of funds from your candidate committee to a nonprofit created under section 527 of the Internal Revenue Code. You indicate that you are on the board of the nonprofit, that you receive no compensation for your duties, and that your term on the board will end in 2024.

You point to the Department's [Appendix W: Dissolution of a Committee](#) document, which describes permissible disbursements of committee funds allowed by section 45 of the Act. MCL 169.245. That section states in part,

Upon termination of a candidate committee, unexpected funds in the candidate committee that are not eligible for transfer to another candidate committee of the person . . . shall be disbursed as follows: . . . (b) *Given to a tax exempt charitable organization, as long as the candidate does not become an officer or director of or receive compensation, either directly or indirectly, from that organization.* (emphasis added)

That excerpt raises two statutory construction questions regarding section 45, which the Department will address in turn.

1. *Are you an officer or director for the purposes of section 45 of the MCFA?*

In your request, you state that you are “on the board” for a nonprofit organization. The Nonprofit Corporation Act defines “director” in relevant part as “an individual who is a member of the board of a corporation.” MCL 450.2106(4). Based on this definition and the provisions in chapter 5 of that Act which describe the requirements of a board of directors, the Department concludes that you fall under the category of “officer or director” for the purposes of section 45 of the MCFA.

2. *If you should be considered an officer or director, does the fact that you are already on the nonprofit board and will not “become” an officer or director impact the determination?*

Section 45 allows the disbursement of committee funds to a tax exempt charitable organization “as long as the candidate does not become an officer or director of or receive compensation, either directly or indirectly, from that organization.” MCL 169.245(2)(b). You have indicated that you do not fall into the second category of the exception—that you do not receive any compensation from the organization. You also argue that you do not fall into the first exception, given that you are already on the board.

The second exception sheds light on the intent behind the first—that a candidate may not disburse funds to a nonprofit organization in exchange for something of value, whether that object of value be compensation or a position as officer or director with the nonprofit organization.

Indeed, in its 2010 *Richner*¹ interpretive statement, the Department indicated as much.

The limitation which prohibits a candidate committee from donating unexpended funds to a charitable organization that appoints the candidate as an officer or director, or compensates him or her directly or indirectly, was added by 1996 PA 590. This amendment was designed in part to prevent a candidate from using candidate committee funds to personally enrich himself or herself, ‘directly or indirectly,’ when terminating the candidate committee.

In her public comment received from on November 24, 2023, Laurie Lisi argues that because you serve on an all-volunteer board and do not receive compensation of any kind, your situation “falls squarely within the provisions of Appendix W.” Accordingly, she believes that your committee funds should be able to be disbursed to a 527 nonprofit organization.

¹ [*Interpretive Statement to Andrew Richner*](#), issued January 13, 2010.

The Department agrees with her and with you that in the instance you describe, a person may disburse unexpended funds from a candidate committee to a tax exempt charitable organization, provided the person neither receives compensation nor becomes an officer and director of that organization. While your membership on the board does qualify you as an officer or director for purposes of section 45 of the MCFA, you have indicated that you will not “become” an officer or director following a disbursement of funds, in an actual or apparent exchange of consideration. Rather, you state that you are currently an officer or director and that you will cease to be so when your term ends in 2024. Because you have indicated that your term ends in 2024 and because it was not included in your request, the Department does not address the question of whether the disbursement would be prohibited if you were to remain on the board for a longer period of time with the potential to exert direction or control over the funds.

Because you have not provided the name of the tax exempt charitable organization, the Department cannot confirm its tax exempt status or state unequivocally that you may disburse funds in the way you propose, but provides this informational response to the question you presented.

Sincerely,

s/Christina Hildreth Anderson

Christina Hildreth Anderson
Chief of Staff