

STATE OF MICHIGAN

DANA NESSEL, ATTORNEY GENERAL

MICHIGAN CAMPAIGN FINANCE ACT: Maintaining records of unpaid late filing fees and fines assessed against candidates and committees.

STATUTE OF LIMITATIONS:

There is a statute of limitations that applies to the collection of late filing fees and fines assessed under the Michigan Campaign Finance Act, and that limitation period is six years.

A filing official must still consider unpaid late fees that are beyond the six-year statute of limitations on collection when determining whether a candidate is qualified to be on the ballot pursuant to MCL 168.558(4).

Unpaid fines assessed against a committee that are beyond the six-year statute of limitations on collection should not be removed from that committee's record.

Opinion No. 7323

Date: October 4, 2023

The Honorable Paul Wojno
State Senator
The Capitol
Lansing, MI 48909

You have asked four questions about county clerks' collection of late filing fees and fines that have been assessed under the Michigan Campaign Finance Act (MCFA), MCL 169.201, *et seq.*

Your first two questions will be addressed together. Specifically, you ask first whether there is a statute of limitations applicable to the collection of late filing fees

or fines assessed under the MCFA, and second, if there is a limitation period, how long it is.¹

A review of the MCFA reveals no specific limitation provision that would apply to the collection of late filing fees or fines assessed under the Act.² There are, however, several limitation periods set out in the Revised Judicature Act (RJA), MCL 600.5801, *et seq.* But a review of the RJA similarly reveals no limitation provision that specifically refers to the collection of late filing fees or fines assessed under the MCFA. That said, the RJA does include a “catch-all” limitation period of six years that applies to “[a]ll other personal actions.” MCL 600.5813. Although there is no authority applying that provision to the collection of late filing fees or fines assessed under the MCFA, courts have found that provision to apply to other types of collection actions initiated on behalf of the government. See, e.g., *Great Lakes Gas Transmission Co v State Treasurer*, 140 Mich App 635, 650 (1985) (Department of Treasury’s collection action). In the absence of any directly applicable statutory period in either the MCFA or the RJA, the case law suggests that the “catch-all” provision of the RJA applies. See *Ins Comm’r v Aageson Thibo Agency*, 226 Mich App 336, 345 (1997) (“Other cited case law demonstrates that

¹ For purposes of this opinion, it is presumed that you are referring to civil fines, and not criminal fines assessed by a court as punishment for violating the MCFA. See, e.g., MCL 169.267(3).

² It is worth noting, however, that there is a provision in the MCFA that provides, “[a] late filing fee assessed by a county clerk that remains unpaid for more than 60 days is considered a debt of the county, and the county treasurer shall collect that late fee in the same manner as other county debts are collected.” MCL 169.217(2).

MCL 600.5813 . . . applies to a claim only when there is no directly applicable statute of limitation.”).

It is my opinion, therefore, that there is a statute of limitations that would apply to the collection of late filing fees and fines assessed under the MCFA, and that limitation period is six years.

The third question to be answered is whether the filing official³ should only consider unpaid late fees that are not barred by the statute of limitations for purposes of determining whether a candidate is qualified to be on the ballot pursuant to MCL 168.558(4).⁴

The statutory section to which you refer, MCL 168.558, is part of the Michigan Election Law⁵ and requires candidates for “a federal, county, state, city, township, village, metropolitan district, or school district office in any election” to file an “affidavit of identity.” MCL 168.558(1). The specific subsection you mention, MCL 168.558(4), requires an affidavit of identity to include:

a signed and notarized statement that as of the date of the affidavit, all statements, reports, late filing fees, and fines required of the candidate or any candidate committee organized to support the candidate’s election under the Michigan campaign finance act, 1976 PA 388, MCL

³ The MCFA defines a “filing official” as “the official designated under this act to receive required statements and reports.” MCL 169.207(3). Such an official can be a county clerk, MCL 169.215(19), or the Secretary of State, MCL 169.218. Although your request focuses on county clerks, the analysis in this opinion applies equally to both county clerks and the Secretary of State.

⁴ This question is listed in your letter as the fourth question, but for analytical purposes it will be addressed third.

⁵ MCL 168.1, *et seq.*

169.201 to 169.282, have been filed or paid; and a statement that the candidate acknowledges that making a false statement in the affidavit is perjury, punishable by a fine up to \$1,000.00 or imprisonment for up to 5 years, or both. [MCL 168.558(4).]

In addition, that subsection precludes a candidate who has made a false statement regarding unpaid late filing fees on his or her affidavit of identity from being on the ballot:

An officer shall not certify to the board of election commissioners the name of a candidate who . . . executes an affidavit of identity that contains a false statement with regard to any information or statement required under this section. [*Id.*]

“The primary goal of statutory interpretation is to ascertain the legislative intent that may reasonably be inferred from the statutory language.” *Krohn v Home-Owners Ins Co*, 490 Mich 145, 156 (2011). “Unless statutorily defined, every word or phrase of a statute should be accorded its plain and ordinary meaning, taking into account the context in which the words are used.” *Id.*

Here, looking at the language of MCL 168.558(4), it is clear that the affidavit of identity is required to include a statement that all “late filing fees” assessed under the MCFA against a candidate or that candidate’s committee have been “paid.” But the plain and ordinary meaning of the statutory language used to convey that requirement, standing alone, does not answer your question, as there is no indication whether only those late filing fees that are collectible (i.e., within the six-year statute of limitations) are relevant. However, when that statutory language is examined in the context in which it is used in MCL 168.558(4), the legislative intent and the answer to your question become apparent.

MCL 168.558(4) not only requires a statement that all “late filing fees” assessed under the MCFA against a candidate or that candidate’s committee have been “paid,” but it also requires a statement that all “fines” assessed under the MCFA against a candidate or that candidate’s committee have been “paid” and that all “statements” and “reports” that are necessary under the MCFA for a candidate or that candidate’s committee have been “filed.” When these additional requirements are considered, it is apparent that the intent behind MCL 168.558(4) is for a candidate to attest, under risk of criminal prosecution and not being placed on the ballot, that any prior noncompliance with the MCFA in regard to paying late filing fees and fines, or filing statements and reports, has been corrected, and no such fees, fines, statements, or reports remain outstanding.

Considering this intent and the lack of limiting language, whether a late fee is collectible is of no consequence. Even though a candidate’s late filing fees are not collectible after six years, it does not change the fact that prior noncompliance with the MCFA in regard to paying those fees has not been corrected and those late filing fees remain outstanding. In other words, the intent behind MCL 168.558(4) is to ensure that a candidate is in full compliance with the MCFA when it comes to the filing of statements and reports and the payment of late fees and fines. And a candidate who failed to pay all late fees that had been imposed under the MCFA is not in full compliance with the Act. This is true regardless of whether those late filing fees are actually collectible. Simply put, to effectuate the intent behind MCL 168.558(4), even if a late filing fee is not collectible, it remains an outstanding “late

filing fee” for purposes of that statutory provision. And this understanding comports with the provision’s plain language.

It is my opinion, therefore, that a filing official must still consider unpaid late fees that are beyond the six-year statute of limitations on collection when determining whether a candidate is qualified to be on the ballot pursuant to MCL 168.558(4).

The last question to be answered is whether unpaid fines assessed under the MCFA that are beyond the statute of limitations should be removed from a committee’s record.

As an initial matter, your letter references a “committee.” But there are various types of committees that can be formed under the MCFA. See, e.g., MCL 169.224(2)(f) (referring to “a candidate committee, political party committee, independent expenditure committee, political committee, or ballot question committee”). Because you did not identify any particular type of committee, it is presumed that you are referring to *any* committee formed under the MCFA.

In regard to a candidate committee, your question can be answered, in part, by the previous analysis. As mentioned, the affidavit of identity discussed above must contain an attestation that “all ... late filing fees and *fines* required of the candidate *or any candidate committee* organized to support the candidate’s election . . . have been filed or paid.” MCL 168.558(4) (emphasis added). For the same reasons unpaid late fees beyond the statute of limitations should still be considered

for purposes of MCL 168.558(4), unpaid fines assessed under the MCFA that are beyond the statute of limitations should also be considered for purposes of MCL 168.558(4). And it is not only unpaid fines beyond the statute of limitations that have been assessed against a candidate that are to be considered, but such fines against a candidate's committee as well. Therefore, there is a purpose other than collection for which maintaining a record of a candidate committee's unpaid fines is relevant. In light of that non-collection-related purpose, unpaid fines should not be removed from a candidate committee's record simply because the statute of limitations may have passed on collecting the fines.

To be clear, it is worth reiterating that the affidavit of identity and attestation requirements of MCL 168.558(4) discussed above apply only to a candidate committee, not to any other type of committee. Accordingly, the preceding analysis does not apply to a committee other than a candidate committee.

That said, although the analysis is slightly different, the conclusion remains the same for *any* type of committee – unpaid fines should not be removed from a committee's record simply because the statute of limitations may have passed on collecting the fines. For example, one thing that *all* committees have in common is that “[a] committee may not dissolve if it has assets, outstanding debts, or unpaid late filing fees.” Mich Admin Code, R 169.28(3). This dissolution rule does not specifically mention “unpaid fines,” but a review of the plain and ordinary meaning of the language indicates that the rule does pertain to unpaid fines as well. In particular, an “outstanding debt” is an “obligation or liability to pay someone else”

that “is still in existence; not settled or resolved.” *The American Heritage Dictionary*, (Second College Edition) (1985) (defining “outstanding” and “debt”).⁶ And a fine is indeed an obligation to pay someone else. Accordingly, unpaid fines (i.e., fines that have not been settled or resolved) would amount to “outstanding debts” for purposes of Rule 169.28(3). Significantly, the rule does not say “outstanding *collectible* debts” or otherwise exclude uncollectible debts. Rather, the existence of *any* obligation to pay someone that has not been settled or resolved, including unpaid fines, would prevent a committee from dissolving, whether the obligation is collectible or not. As a result, there is a purpose other than collection for which maintaining a record of any committee’s unpaid fines is relevant. In light of a non-collection-related purpose such as this, unpaid fines should not be removed from a committee’s record simply because the statute of limitations may have passed on collecting the fines.⁷

⁶ A dictionary may be consulted to ascertain the plain meaning of a word. *Wardell v Hincka*, 297 Mich App 127, 132 (2012).

⁷ In situations where there are no outstanding late fees or fines, the filing official should consult their attorney and the applicable retention schedules to determine how long records should be kept. See generally, www.michigan.gov/dtmb/services/recordsmanagement/schedules

It is my opinion, therefore, that unpaid fines assessed against a committee that are beyond the six-year statute of limitations on collection should not be removed from that committee's record.

A handwritten signature in blue ink that reads "Dana Nessel". The signature is fluid and cursive, with the first letter of each word being capitalized and prominent.

Dana Nessel
Attorney General