



STATE OF MICHIGAN  
RUTH JOHNSON, SECRETARY OF STATE  
DEPARTMENT OF STATE  
LANSING

September 11, 2013

Jeffrey L. Porter  
109 Prospect Street  
Charlevoix, Michigan 49720

Dear Mr. Porter:

The Department of State (Department) has concluded its review of the complaint you filed against John Winn, concerning alleged violations of the Michigan Campaign Finance Act (MCFA or Act), 1976 PA 388, MCL 169.201 *et seq.* This letter concerns the disposition of your complaint.

You alleged that Mr. Winn paid for the printing and mailing of certain election-related post cards and failed to file a Statement of Organization and certain periodic campaign finance statements.

Under the MCFA, a committee is required to file its statement of organization within 10 days of its formation. MCL 169.224(1). The failure to timely file a statement of organization may result in the assessment of late filing fees or, in extreme circumstances, the filing of misdemeanor charges. *Id.*

The Act also requires a committee to file certain campaign statements. MCL 169.233, 235. The failure to file a single campaign statement may trigger late filing fees. MCL 169.233(7), 169.235(3). In certain circumstances, multiple failures to file may constitute a misdemeanor offense. MCL 169.233(8), 169.235(5).

Additionally, you alleged that the committee omitted a complete and accurate identification statement on certain election-related material. The MCFA and corresponding administrative rule require a person who produces printed material that relates to a candidate or election to include the phrase "Paid for by [name and address of the person who paid for the time]." MCL 169.247(1), Mich Admin R 169.36(2). A knowing violation constitutes a misdemeanor offense punishable by a fine of up to \$1,000.00, imprisonment for up to 90 days, or both. MCL 169.247(5).

You filed your complaint on June 4, 2013, and Mr. Winn filed written answers on June 12, 2013 and June 19, 2013. The Department advised you of your right to file a rebuttal statement by letter dated June 19, 2013, but the 10-business day deadline for submitting your rebuttal expired without a response from you.

In response to the notice of your complaint, Mr. Winn acknowledged that he acted alone, and he personally paid the entire \$984.43 cost for the post cards and postage.

The registration and reporting requirements of the MCFA apply to any "committee." A committee is defined as "a person<sup>1</sup> who receives contributions or makes expenditures for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate . . . if contributions received total \$500.00 or more in a calendar year or expenditures made total \$500.00 or more in a calendar year." MCL 169.203(4). "An individual, other than a candidate, does not constitute a committee." *Id.*

After reviewing the evidence submitted by the parties, the Department has concluded that Mr. Winn acted as an individual and did not engage in joint activity within the meaning of MCL 169.203(4). He did not solicit or receive any contributions from other individuals. Further, the evidence supplied by both you and Mr. Winn supports the conclusion that he personally paid for the post cards with his own funds. In short, the Department did not find evidence indicating that Mr. Winn received contributions or made expenditures that are the hallmark of committee activity. Therefore, no committee was formed, and the MCFA registration and reporting requirements do not apply.

Section 47(1) of the MCFA states that "... a billboard, placard, poster, pamphlet, or other printed matter having reference to an election, a candidate, or a ballot question, shall bear upon it the name and address of the person paying for the matter." That same section further states that "An individual other than a candidate is not subject to this subsection if the individual is acting independently and not acting as an agent for a candidate or any committee."

In printing and mailing the post cards, Mr. Winn was acting independently and not as an agent for any candidate or committee. Additionally, the United States Supreme Court has stated that "anonymous pamphleteering is not a pernicious, fraudulent practice, but an honorable tradition of advocacy and of dissent."<sup>2</sup> Because Mr. Winn acted independently as an individual, he is not subject to the identification statement requirement of section 47(1).

Because Mr. Winn acted independently, there were no registration, reporting, or identification violations of the MCFA. Subsequently, your complaint is dismissed. The Department's file in this matter has been closed and no further enforcement action will be taken.

Sincerely,  
  
Lori A. Bourbonais  
Bureau of Elections  
Michigan Department of State

c: John Winn

---

<sup>1</sup> A "person" is defined, in pertinent part, as an "organization or group of persons acting jointly." MCL 169.211(1).

<sup>2</sup> *McIntyre v Ohio Elections Comm'n*, 514 US 334 (1995).