



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

July 27, 2017

Wes Nakagiri  
3093 North Tipsico Lake Road  
Hartland, Michigan 48353

Dear Mr. Nakagiri:

The Department of State (Department) has concluded its review of the complaint filed by you against the Hartland Consolidated Schools (HCS) concerning an alleged violation 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 HCS unlawfully used public resources and “facilities to provide voters only information which support[ed]” a millage proposal.

In Michigan it is unlawful for a public body or an individual acting on its behalf to use or authorize the use of “funds, personnel, office space, computer hardware or software, property, stationery, postage, vehicles, equipment, supplies, or other public resources to make a contribution or expenditure [.]” MCL 169.257(1). A knowing violation of section 57 is a misdemeanor offense. MCL 169.257(4).

You filed your complaint on April 10, 2017. HCS filed its answer on May 4, 2017, and you filed rebuttal statements on May 18, 2017 and May 20, 2017.

With your complaint you provided links to HCS webpages which you alleged showed “only electioneering material supportive of the May 2 Sinking Fund [.]” an excerpt from the Hartland Senior Center newsletter which discussed the May 2 Sinking Fund election, an email from HCS which discussed the Sinking Fund election, an email from you to HCS requesting that HCS post links to <https://www.gadsdencenter.org/index.php> and that HCS email a copy of your letter to “all citizens who were previously sent any information providing reasons to support the tax increase [.]” and an email from Chuck Hughes denying your requests.

In its answer to your complaint, HCS asserted that the information provided in its materials was factual, and HCS provided to the Department “verifiable information supporting the District-provided facts regarding the May 2, 2017 [HCS] sinking fund ballot issue.” HCS also asserted that “none of the factual information on the District’s website solicit[ed] support” of the ballot proposal and that “the website neither expressly nor impliedly solicit[ed] a ‘yes’ or ‘no’ vote on the ballot proposal.” HCS provided a January 2015 survey conducted by Hartland Township, the February 8, 2017 pupil count data, a report containing information regarding HCS’s physical facilities compiled by the Baron Malow Company, a page from MI School Data regarding HCS’s

graduation rate, results of a 2016 parent survey, HCS Spring 2015 and 2016 MSTEP data, and HCS 2016 Spring SAT data.

The Department has explained that it is required to “apply the express advocacy test to communications financed by public bodies.” Interpretive Statement to David Murley (Oct. 31, 2005). Under that standard, the Department reviews election-related materials to determine whether they constitute expenditures and thus become subject to regulation under the Act. In other words, the express advocacy test excludes a communication from the Act’s reach unless it specifically urges voters to “vote yes,” “vote no,” “elect,” “defeat,” “support,” or “oppose” a ballot question, using these or equivalent words and phrases. The Department may only consider the text of the communication itself and not the broader context in which it was made in determining whether it is subject to MCFA regulation. Interpretive Statement to Robert LaBrant, April 20, 2004.

The Department has carefully reviewed the webpages, videos, and documents that are the subject of your complaint. There are no directives in any of the material produced and distributed by HCS urging voters to “vote for,” “vote against,” “defeat,” “support,” or “oppose” the ballot question. Nor are there any equivalent words or phrases.

Additionally, section 57 of the Act provides some narrow exceptions. One exception includes “the production or dissemination of factual information concerning issues relevant to the function of the public body.” MCL 169.257(1)(b). The documentation provided by HCS in its answer supports a determination that the information contained in the materials is factual in nature and concerns issues relevant to HCS.

The Department notes that you alleged that HCS violated 57 of the Act because it “denied [the] use of [its] facilities to [an] opposing point of view.” Another narrow exception to section 57 is “The use of a public facility owned or leased by, or on behalf of, a public body if any candidate or committee has an equal opportunity to use the public facility.” MCL 169.257(1)(d). The Department must *first* determine if the public body made an expenditure under the Act by using a public facility to expressly advocate for or against an election. And then *if it did make an expenditure* a violation of section 57 may not occur if the public body provided an equal opportunity to other candidates or committees to use that facility. Here, because there is no express advocacy in the materials produced and distributed by HCS, the denial by HCS to distribute an opposing view did not give rise to a violation of the Act.

The Department further notes that you alleged in your supplemental rebuttal statement that HCS violated section 57 because readers of the HCS Facebook page commented “Vote yes [.]” “The students need a yes vote [.]” and “A yes vote is the only way to go. Vote yes [.]” However, a commenter replying to a Facebook post does not give rise to an expenditure by HCS. Additionally, no evidence has been provided that HCS deleted any comments urging readers to “vote no” or denied access to the Facebook page by people with an opposing view. You also alleged in your supplemental rebuttal statement that certain tweets made by HCS violated section 57. The Department has carefully reviewed these tweets and there are no directives in the tweets urging voters to “vote for,” “vote against,” “defeat,” “support,” or “oppose” the ballot question. Nor are there any equivalent words or phrases.

Because the evidence provided supports a determination that the information produced and distributed by HCS regarding the May 2, 2017 millage election did not contain express advocacy and was factual in nature and concerned issues relevant to HCS, the materials do not constitute an expenditure that falls under the MCFA.

Consequently, the evidence you have submitted does not tend to establish a reason to believe that the HCS violated 57 of the MCFA, and your complaint is dismissed.

Sincerely,



Lori A. Bourbonais  
Bureau of Elections  
Michigan Secretary of State

c: Charles Hughes