



# §57 OF THE CAMPAIGN FINANCE ACT

Perspectives on Enforcement

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# Legislative History of the MCFA

- The MI Campaign Finance Act (MCFA) was enacted in 1976. At that time, virtually all aspects of campaign financing and advertising were subject to disclosure.
- By the mid-1990s, the use of **issue advocacy** communications became more prevalent.
- Over the past several years the U.S. Supreme Court has upheld federal laws that regulate issue ads, but there is no parallel provision in Michigan law.
- Instead, Michigan enacted **Public Act 252 of 2013**, which specifically limited disclosure to **express advocacy**. In effect, this roped off a growing area of campaign advertising from public disclosure.



# MCL 169.257 (Excerpt)

(1) A public body or a person acting for a public body shall not 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 or provide volunteer personal services that are excluded from the definition of contribution under section 4(3)(a) ... Advance payment or reimbursement to a public body does not cure a use of public resources otherwise prohibited by this subsection.



# MCL 169.257 (Excerpt cont.)

This subsection does not apply to any of the following:

(a) The expression of views by an elected or appointed public official who has policy making responsibilities.

(b) ~~Subject to subsection (3),~~ the production or dissemination of factual information concerning issues relevant to the function of the public body.

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(f) An elected or appointed public official or an employee of a public body who, when not acting for a public body but is on his or her own personal time, is expressing his or her own personal views, is expending his or her own personal funds, or is providing his or her own personal volunteer services.

*\*Struck out language enjoined by Taylor v Johnson.*



# “Contributions” and “Expenditures”

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- §57 prohibits the use of public resources to make a “contribution” or “expenditure” – terms that are tethered to the concept of express advocacy.
- Words of express advocacy include terms “such as ‘vote for,’ ‘elect,’ ‘support,’ ‘cast your ballot for,’ ‘Smith for governor,’ ‘vote against,’ ‘defeat,’ or ‘reject.’”



# Legislative History of PA 269

- The emphasis on limiting the scope of the MCFA to express advocacy continued until the enactment of **Public Act 269 of 2015\***, which was intended to bar the use of public resources for **issue advocacy** purposes regarding **local ballot proposals** during a 60-day blackout period.
- It appears that many legislators were influenced by the perception that violations by local units of government are rampant.
- However, we have not observed a significant number of violations involving express advocacy communications on local ballot issues.

*\*Enforcement of PA 269 enjoined by Taylor v Johnson.*



# §57 Enforcement Generally

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- Enforcement proceedings are triggered by the filing of an administrative complaint with the Secretary of State.
- After fact-finding, if we find there is reason to believe that a violation has occurred, we are required to attempt to resolve the matter informally.
- Informal resolution can range from a warning letter to a conciliation agreement and assessment of civil fines.



# Remedies for §57 Violations

- A knowing violation of §57 is a misdemeanor. Fines range up to \$1,000 for an individual or the greater of the following for a public body:
  - ▣ A fine of not more than \$20,000.00.
  - ▣ A fine equal to the amount of the improper contribution or expenditure.
- Penalties may also be assessed on a per-violation basis, up to \$1,000 apiece.
- Our regulatory interest is in making the taxpayers whole through repayment of the improper expenditure, and when circumstances warrant, an additional civil penalty as a deterrent.





# 2012 Complaint

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We assessed a civil fine equal to the amount of a school district's illegal expenditure (\$24,000) for a mass mailing that read,

“[School District] is asking voters to support the continuation of [School District's] long-term capital infrastructure improvement plan by authorizing a bond proposal on November 6, 2012.”



# §57 Enforcement Today

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- Communications that call on voters to take a specific action:
  - ▣ “As required by law, voters must approve a renewal of the [millage] every 10 years.”
  - ▣ “Renewal will keep [School District] programs in place. The [School District] will ask voters to renew the [millage] on the November ballot.”
  - ▣ “Library Millage Proposal – Vote August 6! For an additional 58 cents per week (based on average home value), YOU can save our library for years to come!”



# §57 Enforcement Today cont.

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- Taking into account the totality of the communication:
  - ▣ “Maintain pride in our community ... Maintain staffing levels in the City’s award-winning public safety team.”
  - ▣ “The renewal will ensure the continuation of [School District’s] excellent educational program.”
  - ▣ “These students are the future of our community. Let’s make sure they have the right educational tools.”