



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

November 25, 2024

The Honorable Senator Stephanie Chang
The Honorable Senator Mallory McMorrow
The Honorable Senator Kristen McDonald Rivet
The Honorable Representative Kelly Breen
The Honorable Representative Rachel Hood
The Honorable Representative Carrie Rheingans
The Honorable Representative Mai Xiong
The Honorable Representative Penelope Tsernoglou

Dear Senators Chang, McMorrow, and McDonald Rivet, and Representatives Breen, Hood, Rheingans, Xiong, and Tsernoglou:

The Department of State (Department) acknowledges receipt of your letter dated October 3, 2024, in which you sought a declaratory ruling or interpretive statement under the Michigan Campaign Finance Act (Act or MCFA). In your request, you asked whether caregiving expenses incurred as a result of campaign activities and officeholding are a permissible expenditure of campaign funds.

In accordance with publication and public comment period requirements, the Department posted your request on its website and informed email subscribers of the deadline to file written comments. MCL 169.215(2). The Department received five public comments during the initial public comment period, which concluded October 18, 2024. The public comments came from the Vote Mama Foundation (VMF), Red Wine & Blue, New American Leaders Action Fund, Carrie A. Rheingans, and Tonya Myers Phillips, and all expressed support for the proposition that caregiving expenses incurred as a result of campaign and officeholding activities are a permissible expenditure of campaign funds.

The Department issued its preliminary response on November 14, 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. One public comment, from VMF, was received within 5 business days after the preliminary response was made available to the public. MCL 169.215(2). In that comment, VMF reiterated their support of the initial request and indicated strong support of the Department's preliminary response. Because the public comment did not necessitate additional analysis, the Department's preliminary response is provided as its final interpretive statement regarding your question.

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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). If the Department declines to issue a declaratory ruling, it may instead offer an interpretive statement “providing an informational response to the question presented[.]” MCL 169.215(2). As your request is insufficient to support the issuance of a declaratory ruling, the Department issues this interpretive statement in response to your request.

In your request, you ask whether you are permitted under the MCFA to use campaign funds for caregiving expenses incurred as a direct result of campaign activities and officeholding. In support of your position that this is allowable, you indicate that federal guidelines allow candidates for federal office to use campaign funds for caregiving costs if the costs arise directly from the campaign activities. You point to the Federal Election Commission’s (FEC) advisory opinion regarding this issue, as related to federal candidates, to bolster your position. [Advisory Opinion 2018-06](#), issued May 10, 2018.

Federal precedent on the issue you have raised has remained consistent. The FEC first addressed this issue in 1996, when a candidate attending an overnight campaign event with his wife inquired about the use of campaign funds to secure care for their infant son. [Advisory Opinion 1995-42](#), issued January 11, 1996. The FEC determined that the childcare expenses were a direct result of the candidate’s campaign activities, making it a qualified expenditure under the Federal Election Campaign Act of 1971 (FECA). *Id.* The FEC’s next decision on the issue was the advisory opinion you pointed to, which found that a stay-at-home mother who served as the primary caregiver for her children and who chose to run for congressional office, requiring her to seek previously unnecessary alternative childcare, was able to use campaign funds for more than “occasional” childcare expenses so long as the expenses would not have existed but for her campaign activities. [Advisory Opinion 2018-06](#), issued May 10, 2018.

In 2019, the FEC considered the case of a candidate who had young children already enrolled in day care, who quit her full-time job in order to run for office, and whose need for childcare did not change as a result of this transition. The FEC concluded that she was able to use campaign funds for the childcare expenses because “the expenses . . . , to the extent they are a direct result of campaign activity, would not exist irrespective of her campaign.” Because the candidate proposed to reimburse the campaign for childcare costs incurred at times she was not campaigning, the FEC determined that she appropriately ensured that campaign funds would only be used for activities that directly resulted from campaigning. [Advisory Opinion 2019-13](#), issued July 25, 2019. Most recently, the FEC further affirmed its allowance of campaign funds being used for overnight childcare expenses when a candidate was conducting campaign activities and their spouse was likewise unavailable for reasons unrelated to the candidate’s campaign. [Advisory Opinion 2022-07](#), issued July 25, 2022.

The singular instance when the FEC ruled that campaign funds could not be used for childcare expenses was when the proposed childcare expenses were bundled into a larger group of household expenses for which the candidate was seeking to pay himself a salary. [Advisory Opinion 1999-1](#), issued February 25, 1999. In this case, the FEC concluded the childcare expenses were not a permissible expenditure because the candidate did not distinguish between

standard household expenses and childcare expenses (instead combining them into a lump expense) in his request for an opinion, and as such, the entire request was denied. *Id*

While not binding, the Department may rely on these advisory opinions of the FEC as persuasive evidence to guide its interpretation of similar provisions of the MCFA. [*Interpretive Statement to David Lambert*](#), issued October 31, 1984. The federal guidance provides that “childcare expenses . . . , to the extent such expenses are incurred as a direct result of campaign activity, [and] would not exist irrespective of your election campaign . . . may be permissibly paid with campaign funds.” [*Advisory Opinion 2018-06*](#), issued May 10, 2018.

The MCFA defines “expenditure” as, “a payment, donation, loan, or promise of payment of money or anything of ascertainable monetary value for goods, materials, services, or facilities in assistance of, or in opposition to, the nomination or election of a candidate, the qualification, passage, or defeat of a ballot question, or the qualification of a new political party.” MCL 169.206(1). The definition includes a list of transactions that do and do not fall within those parameters. MCL 169.206(1)-(2). “Expenditures by a candidate committee must be made for the purpose of influencing an election, not for the personal benefit of an individual.” [*Interpretive Statement to Christopher Rose*](#), Issued November 2, 1978. A candidate committee may only disburse funds if the disbursement qualifies as an expenditure. [*Interpretive Statement to Kevin Hertel*](#), issued April 15, 2021.

Incumbent officeholders, who may also act as candidates, are also allowed to use candidate committee funds to pay for ordinary and necessary expenses created for the purpose of carrying out the business of an elective office—called incidental office expenses. While still an expenditure, an incidental office expense is “an expenditure that is an ordinary and necessary expense, paid or incurred in carrying out the business of an elective office.” MCL 169.209(1). All incidental office expenses are expenditures, but not all expenditures are incidental office expenses. The MCFA does not allow a candidate committee to make disbursements for incidental office expenses unless the candidate actually holds elective office. MCL 169.221a(1). With these definitions in mind, the Department must consider whether the payment of caregiving expenses incurred as a direct result of campaign activities and officeholding qualifies as a permissible expenditure.

The primary question that must be answered to determine whether a payment is a permissible expenditure under the MCFA in the context of both campaigning and officeholding is whether the expense is personal in nature. Personal expenses are excluded from the MCFA definition of an expenditure. To determine whether an expense is personal or properly made for the purpose of influencing an election or carrying out the business of elective office, the Department applies a “but-for” test: “[i]f the disbursement would have occurred irrespective of the individual’s status as a candidate or an office holder, the expenditure is a prohibited personal expense.” [*Interpretive Statement to Kevin Hertel*](#), issued April 15, 2021. This “but-for” test is comparable to the metric used by the FEC when issuing advisory opinions regarding uses of campaign funds not specifically listed under the FECA, 52 U.S.C. §§ 30101-45, and FEC regulations.

As applied to the question of caregiving under the MCFA, a candidate or officeholder would not be allowed to use campaign funds to cover caregiving expenses they would have incurred regardless of their status as a candidate or officeholder but would be allowed to use campaign funds to pay for caregiving expenses which were directly related to campaign or officeholder activities. For example, if a candidate was a stay-at-home parent managing all caregiving responsibilities before deciding to run for office and now, as a candidate, needs to pay for caregiving two days a week to allow for campaigning, this expense would be considered permissible. However, if a candidate working part-time had already been paying for two days of caregiving weekly, then resigned to focus on campaigning but continued to require two days a week of caregiving, this expense would be impermissible since the expense would have been incurred even if the candidate were not running for office. Additionally, a childcare expense is only permissible *to the extent* it is incurred as a direct result of the candidate or office holder's status. If the candidate had been paying for two days of caregiving each week to allow for work but now needed four days of caregiving to accommodate both work and campaign obligations, only the additional two days would be a permissible expense, not the entire four. Similarly, an officeholder who requires a caregiver because they must be away from home to travel between their district and the Capitol may expend funds to pay for that care because their duties as an elective official are the reason the care is needed.

With this, the burden is on the committee at the time of filing a campaign statement to demonstrate that the expenditure would not have been made but for the candidate's status as a candidate or officeholder. This can be accomplished by entering a specific purpose into the description field (e.g. "Childcare for weekly campaign strategy meeting").

This interpretive statement focuses primarily on caregiving expenses as they apply to childcare, given that you and those submitting public comment in support of your position cite the FEC's 28-year history of allowing childcare expenses as a permissible expenditure. However, your request also asks about their use for a person with a disability or medical condition for which a candidate has "direct caregiving responsibilities." The FEC recently considered that question in determining whether Congresswoman Nanette Barragán, as the primary caregiver of her mother, could use campaign funds to pay for certain eldercare expenses. [Advisory Opinion 2024-09](#), issued October 10, 2024.

As with childcare expenses, eldercare expenses must be directly related to the candidate or officeholder's status in order to be permissible. However, it is simpler to determine whether a candidate or officeholder is responsible for a child in their care. While a person may have *direct* caregiving responsibilities for an elderly parent or a sibling with a disability or medical condition, they may share those responsibilities with several or many other people. Therefore, for caregiving expenses other than childcare, the Department would generally apply the standard described above—that only expenses directly related to the candidate or officeholder's status are permissible—but may require a showing that the person using campaign funds for that purpose is the *primary* caregiver for the individual requiring caregiving. A candidate or officeholder is a primary caregiver when the individual would not receive necessary care in their absence. A status of primary caregiver may be demonstrated if the person holds power of attorney, serves as medical proxy, or another similar showing.

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Therefore, in response to your question regarding whether caregiving expenses incurred as a result of campaign activities and officeholding are a permissible expenditure of campaign funds, the Department finds these expenses are a permissible expenditure if they are directly related to campaign or officeholding activities and to the extent they are incurred for that purpose. Additionally, evidence that the candidate or officeholder is the primary caregiver may be required by the Department in order to confirm that it is a permissible use of campaign funds, depending on the relationship to the individual requiring caregiving.

The foregoing constitutes an interpretive statement with respect to the question presented in your October 3, 2024, letter.

Sincerely,



Jocelyn Benson
Secretary of State