



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

April 1, 2016

Lonnie Scott
215 South Washington Square #100
Lansing, Michigan 48933

Dear Mr. Scott:

The Department of State (Department) acknowledges receipt your correspondence regarding Governor Rick Snyder, alleging that he failed to establish a legal defense fund in violation of the Legal Defense Fund Act (LDFA), 2008 PA 208, MCL 15.521 *et seq.*

Under the LDFA, an elected official is prohibited from soliciting or accepting contributions made “for the purpose of defending the elected official in a criminal, civil, or administrative action that arises directly out of the conduct of the elected official’s governmental duties unless the contribution is included in a legal defense fund that complies with the requirements of this act.” MCL 15.533(1). A legal defense fund is required to disclose certain “information about each *person* from whom a contribution is received” when filing quarterly transaction reports. MCL 15.527(1)(b) (emphasis added). The LDFA defines “person” to include “a business, individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, labor organization, company, corporation, association, committee, or any other organization or group of persons acting jointly.” MCL 15.523(f).

You wrote that Governor Snyder allegedly was required to establish a legal defense fund to pay legal fees incurred in relation to “two (2) contracts to provide legal defense for him personally, not the State of Michigan, in connection with the Flint water crisis.” Before proceeding, the Department first must determine whether the State of Michigan constitutes a “person” for purposes of the LDFA.

The Attorney General has explained that under the rules of statutory construction, “person” does not include the state or a local unit of government unless the law at issue specifically includes them:

It is a fundamental rule of statutory construction that neither the state, its agencies nor political subdivisions are within the purview of a statute unless an intention to include them is clear. The rule, as contained in 82 CJS, Statutes Sec. 317, p 554, states:

‘The government, whether federal or state, and its agencies are not ordinarily to be considered as within the purview of a statute, however general and comprehensive the language of the act may be, unless intention to include them is

clearly manifest, as where they are expressly named therein, or included by necessary implication.’

See Atty Gen Op No 5500 (July 23, 1979).¹ An example of a statute where the term “person” has been defined to specifically include the state and local units of government is the Lobbyist Disclosure Act, 1978 PA 472, which provides:

‘Person’ means a business, individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, labor organization, company, corporation, association, committee, or any other organization or group of persons acting jointly, *including a state agency or a political subdivision of the state.*

MCL 4.416(1) (emphasis added). The words “including a state agency or a political subdivision of the state” plainly are omitted from the statutory definition of “person” under the LDFA.

Therefore, payments made by the State or local units of government for an elected official’s legal defense for actions arising out of the conduct of the official’s governmental duties do not constitute contributions within the meaning of the statute. Governor Snyder is not required to form a legal defense fund for payments made by the State of Michigan for his legal defense.

Finally, it is important to note that unlike the Lobbyist Disclosure Act and the Michigan Campaign Finance Act, the LDFA does not establish an administrative complaint process. Cf. MCL 4.424, 169.215.

Sincerely,

A handwritten signature in blue ink, appearing to read "Mel. Asa Malerman", with a long horizontal flourish extending to the right.

Melissa Malerman, Election Law Specialist
Michigan Bureau of Elections

¹ Available at <http://www.ag.state.mi.us/opinion/datafiles/1970s/op05500.htm>. In addition, in a case originating from Michigan, the U.S. Supreme Court has held that the statutory term “person” does not include state government for purposes of litigation under 42 USC §1983. *Will v Michigan Dep’t of State Police*, 491 US 52 (1987).