

MICHIGAN DEPARTMENT OF STATE  
BUREAU OF ELECTIONS

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MI DEPT OF STATE

SHERYL AYERS,

Complainant,

v.

VIRGIL BERNERO,

Respondent.

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**RESPONSE TO CAMPAIGN FINANCE ACT COMPLAINT**

Pursuant to Section 15(5) of the Michigan Campaign Finance Act (MCFA), MCL 169.215(5), Respondent, by his undersigned attorney, answer the Complaint as follows:

**FACTUAL BACKGROUND**

Respondent, Virgil "Virg" Bernero is the incumbent Mayor of the City of Lansing. He was first elected to that office on November 8, 2005, then reelected on November 3, 2009 and November 5, 2013. Mayor Bernero's candidate committee name is Bernero for Lansing and it has had, at all times pertinent to this matter, a designated treasurer.

On October 3, 2013, the Complainant, Sheryl Ayers, filed a Campaign Finance Act complaint with the Department of State consisting of two, nearly identical, allegations:

"On 6/14/2013, the Virg Bernero for Lansing committee paid \$2,600 to campaign employee Elizabeth Hart. This expenditure was high compared to previous expenditures to the same party. On 6/17/2013, Hart made \$1,000 contributions [sic] to People for Kathy Dunbar. This action falls under Section 169.244 of the Michigan Campaign Finance Act regarding prohibited contributions."

"On 6/14/2013, the Virg Bernero for Lansing committee paid \$3,200 to campaign employee Chris Breznau. This expenditures [sic] was high compared to previous expenditures to the same party. On 6/17/2013, Breznau made \$1,000 contributions [sic] to People for Kathy Dunbar. This action fall [sic] under Section 169.244 of the Michigan Campaign Finance Act regarding prohibited contributions."

Complainant Ayers is not now, nor has she ever been, a taxpayer in the City of Lansing. Moreover, she is neither a resident nor a registered voter in the City. Her home address is listed on her complaint as Eaton Rapids, Michigan, a community situated nearly 20 miles south of Lansing.

The recipient of the campaign contributions referred to by Ayers is Kathie Dunbar, an incumbent member of the Lansing City Council who was reelected on November 5, 2013.

Attached to Ayers complaint are the 2013 pre-primary Campaign Finance Act Reports filed by the Virg Bernero for Lansing Candidate Committee and the People for Kathie Dunbar Candidate Committee. In her Complaint, Ayers claims that these reports reveal a violation of Section 44 of the Michigan Campaign Finance Act, MCL 169.244, because Chris Breznau, the Bernero Committee's Campaign Manager and Elizabeth Hart, the Campaign's Chief Fundraiser, made contributions to the Dunbar Candidate Committee and further claims that both of these campaign employees allegedly received compensation in June of 2013 that was "high compared to previous expenditures to the same party."

#### **DISCUSSION**

Pursuant to R169.52(2) of the rules promulgated by the Secretary of State to implement the Campaign Finance Act, a person who believes a violation of the Act has occurred may file a written complaint which describes in reasonable detail the alleged violation, and identifies all available evidentiary material. In this instance, Ayers complaint simply cites to Section 44 of the Act, MCL 169.244, as having been violated. Section 44, however, contains five sub-paragraphs, four of which consist of separate regulatory requirements and the fifth sets forth penalties for knowingly violating of the Act. Ayers complaint does not identify any specific sub-paragraph as having been violated. Rather, she simply claims a violation of the whole Section, thus, leaving

Respondent and the Department of State to speculate regarding which sub-paragraphs, if any, are the subject of her complaint in violation of Rule 52(2), R169.52(2). For this reason alone, the complaint must be dismissed.

Additionally, Rule 52(2) requires that the Complainant describe in reasonable detail the alleged violation and identify all available evidentiary material. In this instance, the only evidence submitted by Complainant in support of her vague and inadequate assertion of a Section 44 violation consists of the pre-primary reports filed by the Bernero and Dunbar candidate committees. Those committee reports simply show that the Bernero committee's campaign manager and chief fundraiser made \$1,000 contributions to the Dunbar committee. According to Complainant the two reports also show that during the month that the contributions were made, the compensation paid to both campaign workers was high compared to "previous expenditures" (compensation) to these campaign workers.

Complainant's conclusory assertions and flimsy evidence are not only insufficient to show any violation of the Act, they are not even true. During the month of June 2013, the month in which Ayers claims Mr. Breznau was overcompensated, he received payments totalling \$3,200. During the "previous" month he received over \$3,900. Prior to that, in April of 2013, Mr. Breznau began his employment with the campaign and worked for only a part of that month, for which he received, of course, a lower rate of compensation.

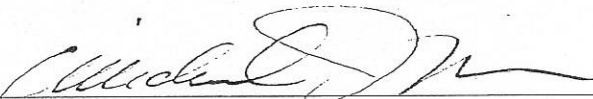
In July of 2013, when the Bernero committee's pre-primary report was filed, Elizabeth Hart had completed only one full month of employment with the campaign. Thus, there are no "previous" payments made to her to compare with the compensation she received in June of 2013. The report reveals, nevertheless, that her predecessor, Michelle Benson, received \$2,400 during the previous month and made no contribution to the Dunbar Campaign.

It is also worth noting that between February and June of 2013, the report reveals that fundraising activity for the Bernero committee slowed down to a point at which revenue necessary to compensate campaign staff was erratic and not always sufficient. Both Breznau and Hart agreed to join the campaign during that period of time, without entering into written contracts and sometimes waited as long as 21 days to receive some form of compensation. As a result, often when they received compensation for their efforts, it was in an amount reduced by whatever funds were available and increased based on the same criteria. Elizabeth Hart proved to be a very effective fundraiser when she joined the campaign in June and, during that month, reaped the benefits of her success. Finally, it should not be surprising that two politically active campaigners would also contribute to other political candidates and their contributions to the Dunbar campaign is not particularly noteworthy in the world of politics.

Given the Complainant's failure to identify a specific provision of the Michigan Campaign Finance Act that has allegedly been violated by Mayor Bernero or his candidate committee and the complete lack of candor and specificity with respect to the factual allegations, it is respectfully submitted that the Ayers should be dismissed.

Respectfully submitted,

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

By: 

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