

This complaint regards Deb Mikula of the Michigan Arts and Culture Council (MACC). The following pages provide details regarding inappropriate conflicts of interest as well as unlawful contracting/public funds spending at MACC, by Mikula.

The Michigan Arts and Culture Council (MACC, formerly MCACA) is a Michigan based government agency that serves as the arts grantmaking authority in Michigan under MCL 399.711 §11, MCL 15.262 § 2(a) and MCL 2.132 §1. The members are appointed by the governor of Michigan and do not serve in the Judicial or Legislative Branches of Michigan's government.¹ Deb Mikula was appointed to the MACC in 2018 by the governor and currently serves on the MACC. The State Ethics Act states: ““public officer” means a person appointed by the governor or another executive department official. For the purpose of section 2b, public officer shall include an elected or appointed official of this state or a political subdivision of this state.” The Board of Ethics has jurisdiction over Mikula in her capacity as a MACC appointee.

Mikula has repeatedly breached Michigan ethics laws related to public funds and contracting. Mikula regularly moves to vote, votes on, and contractually agrees to accept grants for her employer and a lobbying group that supports her employer, without recusing herself or providing the proper disclosures. The specific self-interested grants that Mikula votes for and accepts are part of a small set of invitation-only grants from MACC. These grants, called Services to the Field, are the only MACC grants, out of hundreds distributed annually, that are invitation-only and do not have a 1:1 funding match requirement.² These invitations were only ever extended to Mikula's affiliated organizations after Mikula's appointment to the MACC. Specifically, I allege that, based on her conduct, Mikula regularly violates Ethics Act, MCL 15.342 §§ 3, 4, 6, and 7:

(3) A public officer or employee shall use personnel resources, property, and funds under the officer or employee's official care and control judiciously and solely in accordance with prescribed constitutional, statutory, and regulatory procedures and not for personal gain or benefit.

(4) A public officer or employee shall not solicit or accept a gift or loan of money, goods, services, or other thing of value for the benefit of a person or organization, other than the state, which tends to influence the manner in which the public officer or employee or another public officer or employee performs official duties.

(6) Except as provided in section 2a, a public officer or employee shall not engage in or accept employment or render services for a private or public interest when that employment or service is incompatible or in conflict with the discharge of the officer or employee's official duties or when that employment may tend to impair his or her independence of judgment or action in the performance of official duties.

(7) Except as provided in section 2a, a public officer or employee shall not participate in the negotiation or execution of contracts, making of loans, granting of subsidies, fixing of rates, issuance of permits or certificates, or other regulation or supervision relating to a business entity in which the public officer or employee has a financial or personal interest.

¹ <http://legislature.mi.gov/doc.aspx?mcl-2-132>

² https://www.michiganbusiness.org/49556a/globalassets/documents/macc/policies-and-procedures_2023.pdf page

Illustrative Timeline

Deb Mikula is appointed to MACC in 2018.³ Mikula became director of MLA June 2019.⁴

From MACC meeting minutes:

April 2019 MACC Handbook indicates that the MACC delegated grantmaking authority to MACC Director Alison Watson.⁵ Watson has exercised this authority ever since then, though there is no record of the discussion or decision in any meeting minutes.

June 2019 Watson states her choices, at the MACC meeting, for the invitation-only Services to the Field grant. The MACC members rubberstamp their approval of the choices with no discussion. Watson also mentions the creation of Cultural Advocacy Network of Michigan (CANM) because Creative Many would be closing due to unsustainability.⁶ Watson noted that the Michigan Historic Preservation Network (MHPN) moved into the MACC building. Proximity to Watson equals grant funding because the next year MHPN got \$10K of discretionary funds and now is annually invited to apply for the invitation-only Services to the Field grant -with no match requirement. Watson also announces an upcoming Michigan Museum Association (MMA) conference.

April 2020 Deb Mikula motions to approve, no 1:1 match required, \$70,000 CANM funding under the Services to the Field grant. Mikula was the CANM president at the time.⁷ Watson states that CARES funding decisions and discussion will require a special public meeting in May 2020. The MLA is awarded an operational support grant worth \$20,000. The grant has a 1:1 match support requirement and was granted through a competitive process. MLA also receives CARES funds through private meeting, despite public meeting requirements.

July 2020 Watson states the CARES funds had been distributed already. The special public meeting she spoke of at the previous meeting, did not happen. There are no minutes of any discussion or decisions regarding the over \$500,000 in CARES funding.

January 2021 Mikula presents to MACC as president of CANM, recipient of invitation-only grant with no match requirement. Mikula is still a MACC appointee.

April 2021 Watson presents to MACC her choices for invitation-only, no match required Services of the Field grant, to which Mikula has an interest via MLA (\$40,000) and CANM (\$70,000). There is no discussion and Mikula participates in the vote to approve. Watson also states the ARP funding information will be shared. Mikula presents as president of CANM, recipient of invitation-only grant with no match requirement. Mikula is still a MACC appointee.

³ <https://thelivingstonpost.com/former-howell-parks-rec-director-appointed-to-state-arts-council/>

⁴ https://mla.memberclicks.net/index.php?option=com_content&view=article&id=675%3Apresident-s-update---june-13--2019---news---michigan-library-association&catid=27%3Anews-mla&Itemid=292

⁵ <https://www.michiganbusiness.org/4a854d/globalassets/documents/macc/council-handbook-2019.pdf> page 14

⁶ <https://www.freep.com/story/news/local/michigan/2019/05/31/creative-many-michigan-close-its-doors-after-funding-issues/1300691001/>

⁷ <https://www.michiganpresenters.org/2021-virtual-conference> and attached 990 for CANM

Watson asks MACC to review grants, including additional funding to CANM as well as other grantees between meetings.

July 2021 Mikula presents as president of CANM, recipient of invitation-only grant with no match requirement. Mikula is still an MACC appointee.

January 2022 Mikula now presents for MLA.

April 2022 Watson presents her choices for Services to the Field, which include CANM and MLA. Mikula votes to approve. Mikula still does not offer a recusal or proper disclosures.

July 2022 Watson approves 5 grants sometime between April and July meetings outside of public meeting. CANM reports that its lobbying efforts are working. The increased income trickles down to chosen invitation-only, no match required grantees.

Disclosure and Recusal

The facts of this complaint do not suggest any exception from recusal/disclosure requirements because Mikula is not a paid employee of MACC, but rather an uncompensated government appointee. Prior to voting to approve self-interested invitation only, no match grant, Mikula has not ever recused herself or provided a timely written disclosure of her interest in CANM and MLA to exempt her from liability under the Act No. 317 of the Public Acts of 1968 or section 2 of MCL 15.342.

The issues of recusal and disclosure were previously analyzed by the Board of Ethics for the Certificate of Need (CON) Commission, which is similarly situated to MACC. CON is made up of governor appointed members and was created by statute, in the CON case, MCL 333.22211 Act 368 of 1978. The opinion recognizes that it would be unfeasible to expect zero conflicts on a commission with experts from the field. However, the Board of Ethics conclusion for CON was that it is unethical for the appointed members to vote on issues that directly impact their employer. The Michigan State Attorney General has offered similar opinions in OAG No. 6005 (1981) and OAG No. 5864 (1981).

From the Board of Ethics Opinion from 1978:

It is the opinion of the Board, therefore, that under the Ethics Act a personal interest of a CON Commission member includes the interest of the members' employer, even though the member may not receive monetary or pecuniary remuneration as a result of the adopted standard. The CON Commission members will not be in violation of the Ethics Act if the members abstain from deliberating and voting upon standards in which the members' personal interest is involved. The members may deliberate and vote on standards of general applicability; that is, they may deliberate and vote on those standards that do not exclusively benefit

Notwithstanding MCL 15.341 et seq., the MACC policies explicitly state that MACC members will recuse themselves from voting on decisions that members have an interest in.

From the MACC handbook:

Council members shall annually disclose their personal affiliations (e.g., employment, membership, financial relationship, etc.) with any group, organization or institution currently receiving Council grant support or potentially eligible to seek and receive such support. Council members shall not participate in the specific review and/or discussion of applications and funding requests that may result in the granting of funds to organizations with which they may be directly affiliated. Council members shall recuse themselves from all voting concerning any organization with which they are affiliated.

MACC is a member, primary funder, and beneficiary of CANM as shown in attached minutes and grants budget information. Mikula was president of the CANM board until last year as seen in attachments here. Mikula is also the Director of the Michigan Library Association (MLA).

The CANM was founded in 2020.⁸ According to CANM's 990 included in these pages, CANM made \$71,925 in revenue, with \$70,000 of that being from an invitation-only, no match required grant from MACC. Interestingly, the same groups that share the status of being subrecipients of the invitation-only Services to the Field grant are founding members of CANM.⁹ MACC has awarded CANM \$320,000 in publicly funded grants since its creation three years ago. This money is used to benefit Watson's office, MACC, and its council members who are also heavily represented in the list below. The MACC has the authority to enter into contracts, but not to create and fund a lobbying group, for the benefit of its cronies and as a member, with taxpayer funds.¹⁰

MACC Contract and Discriminatory Hiring Practices

Because MACC uses public funds, it is required by law to distribute them without discriminating on the basis of protected class statuses.¹¹ The state of Michigan and MACC often

⁸ <https://www.canmichigan.org/Board>

⁹ "MLA was one of eight organizations to lead the formation of the Cultural Advocacy Network of Michigan, a consortium of statewide cultural organizations including the Michigan Library Association, Historical Society of Michigan, Michigan Museums Association, Michigan Presenters Network, Michigan Festivals and Events Association, Michigan Youth Arts, Michigan Historic Preservation Network, and Michigan Humanities. The Cultural Advocacy Network of Michigan strives to bring a collective voice to advocacy for cultural organizations in Michigan" Deb Mikula, member of MACC and Director of MLA, invitation-only Services to the Field subrecipient. <https://mla.memberclicks.net/assets/docs/MLA%202019-20%20Annual%20Report.pdf>

¹⁰ [https://www.legislature.mi.gov/\(S\(wp5rp2hkni4mq4b0ndm5nxe1\)\)/mileg.aspx?page=getObject&objectName=mcl-2-132](https://www.legislature.mi.gov/(S(wp5rp2hkni4mq4b0ndm5nxe1))/mileg.aspx?page=getObject&objectName=mcl-2-132)

¹¹ <https://www.justice.gov/crt/fcs/T6manual5>

publicly promises inclusion and a commitment to diversity.¹² MACC contracts requires grantees to sign an “Assurances” form on all grants. As stated above, MACC disperses some public funds without a match requirement (as every other grant has), using an invitation-only process to annually grant over a half million public dollars to “Services to the Field” recipients.¹³ Since these partnerships came into being, MACC has received National Endowment for the Arts (NEA) State Partnership grant funds and state funds. The documents labelled “2023 MACC Funding Targets” and “FY 2023 Services to the Field,” demonstrate that some of the longstanding partners have legitimate and specific goals and tasks, while others have a generic plan, despite MACC’s stated process. MACC’s Services to the Field recipient organizations have zero black staff (despite being in areas that are only 50% white) and the MACC staff and those of Michigan Historical Society, Michigan Humanities Council, Michigan Assessment Consortium, MLA, Partners in Performance, CANM, and Michigan Festivals and Events are all 100% Caucasian. This invitation-only, no match required, process is purported to address diversity and access, as shown in MACC’s handbook excerpt below.

From MACC’s handbook, page 31.

PROCESS: Participation in this program is by invitation only. MACC will send an “Invitation to Apply” email to an organization identified as one capable of providing a specific service. The letter will explain why the Council is interested in establishing the partnership and ask that the organization reply confirming their interest or indicate their choice to decline the invitation.

The Council utilizes these service partnerships and collaborations, with other state and non-governmental agencies, to leverage the Council’s human, financial, intellectual and material resources. Through the services to the field, the Council increases its ability to deliver quality services to people and communities throughout the state. Services to the Field activities also assist the Council in addressing the broader issues of arts and cultural access, diversity, excellence, and resources development.

Revised/Approved
Alison Watson, Director
September 2022

MACC grants contract Assurances form requires that the grantee organization “take steps to correct any under representation” and “achieve a reasonably representative work force at all levels of employment.”¹⁴ MACC has publicly stated that it will not enforce the anti-discrimination Assurances. This diversion of funds to organizations that do not address their discriminatory hiring practices benefits Mikula at the expense of Black Indigenous persons of color and Asian Pacific Islander (BIPOC/API) taxpayers, who contribute to these funds. There is obviously limited data on some disenfranchised groups, including the disabled and LGBTQIA+

¹² <https://www.michigan.gov/mdcr/commission/documents/resolutions-statements>
<https://www.michiganbusiness.org/industries/macc/about-macc/>

¹³ <https://www.michiganbusiness.org/4a854d/globalassets/documents/macc/council-handbook-2019.pdf> page 7. And attached MACC spending report.

¹⁴ http://eastlansing.granicus.com/MetaViewer.php?view_id=2&clip_id=535&meta_id=33850

status, but age, gender, and race data is easy to access. MACC and Watson’s choice of grantees, given their unlimited access to state demographic data through governing agency the Michigan Economic Development Corporation (MEDC), makes the violations even more egregious.¹⁵



A “reasonably representative sample” is used in statistical analysis and is a subset of a population that reflects the characteristics of the entire population. MLA is in Lansing. The MACC may use the 4/5ths test, the chi-square, Fischer’s exact test, or other statistical methods to determine whether a potential grantee has a reasonably representative workforce.¹⁶ MACC has every statistical and demographic tool at its disposal under its parent, the Michigan Economic Development Corporation. According to the US Census, Lansing is 47% of color (or 52% white alone), Michigan is 20% of color.¹⁷ This means that no matter the equation MACC uses for “reasonably representative workforce,” organizations of three staff or more that maintain all-

¹⁵ <https://www.michiganbusiness.org>

¹⁶ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5426219/#:~:text=While%20the%20chi%2Dsquared%20test,applying%20approximation%20method%20is%20inadequate>

¹⁷ <https://www.census.gov/quickfacts/MI>

white staff, *year after year*, in cities with nearly 50% BIPOC/API populations, are not meeting that standard and are not complying with the Assurances from the MACC contracts. *It should be stated that it would be clearly unreasonable to expect representation in staff of 2 or 1 people.* Though race is a sub-issue within these pages, it should also be stated that race quotas and minimums are not the issue. Contract compliance is the actual issue, with race being one of the compliance factors.

Pictured below is MLA Staff Photo from 2022. MLA address is 3410 Belle Chase Way in Lansing¹⁸



MLA Staff Photo from 2020 pictured below.



Mikula is aware of the Assurances contract conflict and is on the all-white executive committee MACC delegated discussions to - under the pretext that MACC intends to address MACC's perpetual invitations and approvals for contractually noncompliant grantees. Based on a FOIA response for related documents, the Executive Committee discussed the Assurances issue once in April. Over the last year and a half, the Executive Committee never presented any findings or updates during committee reports according to MACC meeting minutes. Instead, they came up with a nice sentence about inclusion to not "feed into" me because I brought up a serious discrimination issue. See below.

¹⁸ <https://www.milibraries.org/staff-board>

From: Gretchen Gonzales Davidson <ggdavidson444@gmail.com>
Sent: Tuesday, April 12, 2022 10:02 AM
To: Alison Watson (MEDC)
Subject: Re: FW: April Agenda

We could do 12:30 tomorrow. Just wanted to catch up on a couple of things before the calls this week and before I prep Gretchen's meeting notes for Manistee:

- Agenda
- White Paper
- Committees for Strategic Planning
- Logo announcement
- any other updates you have :)

Keep me posted!
Leigha

On Tue, Apr 12, 2022 at 9:19 AM Alison Watson (MEDC) <watsona11@michigan.org> wrote:

Today I'm a bit tight, only have 30 minute slots scattered. I'm pretty much open tomorrow from noon – 2:30.

Thursday morning we have our Executive Committee meeting.

What does your schedule look like?

From: Gretchen Gonzales Davidson <ggdavidson444@gmail.com>
Sent: Wednesday, April 20, 2022 1:50 PM
To: Alison Watson (MEDC)
Subject: Re: Follow up

100% agree and love the Germaine note.
I'm drafting her report and will have some questions in the next day or two :)
Thank you for all your help <3
Leigha

On Wed, Apr 20, 2022 at 12:59 PM Alison Watson (MEDC) <watsona11@michigan.org> wrote:

I think in Gretchen's Chair report we can talk about some of the demographic facts, as a pull out or built out of information relating to our annual reports. Or maybe we don't need to give any defensive response...why put language out there that someone can "record" and hold against us. If that makes sense. Focus her report on what needs to be shared and let the other stuff go.

Side note...had a great conversation with Germaine about it. He seems to hold no value in the report but does have some great ideas around work we could be doing that could impact the field. IDEA committee and a tweak of the community partners program that perhaps has a bend towards addressing hate crimes...then we can have real conversations around IDEA and not just one segment.

More on that later. I just don't want to feed into Tedda and create anything could be sensationalized if that makes sense.

Alison Watson

Director

From: Alison Watson <watsona11@michigan.org>

Date: Wednesday, April 13, 2022 at 7:59 PM

To: Anne Belanger <amarloweproductions@yahoo.com>, Ara Topouzian <atopouzian@gmail.com>, Debbie Mikula <dmikula@milibraries.org>, Gretchen Gonzales Davidson <ggdavidson444@gmail.com>, Nheena Ittner <nittner24@gmail.com>

Subject: FW: the equity burden at MCACA

In preparation of our Executive Committee meeting tomorrow...attached is an addendum to the white paper that was submitted by Tedda Hughes.

I've also included the email thread in case you would like to read.

Looking forward to "seeing" you all tomorrow.

Alison Watson

Director

Michigan Arts and Culture Council

From: Nheena Ittner
To: Alison Watson (MEDC)
Subject: Re: Statement regarding White Paper
Date: Tuesday, April 26, 2022 9:54:12 AM

Excellent!!!

On Tue, Apr 26, 2022 at 8:55 AM Alison Watson (MEDC) <watsona11@michigan.org> wrote:

Morning all – looking forward to our meeting on Friday. Below is the statement that has been “approved” to read during the public comment section when introducing the White Paper into public comment.
Any questions, let me know. al

The Michigan Arts and Culture Council received an addendum to the paper submitted by Tedda Hughes in December 2021. We acknowledge receipt of this and are including into the public comment section of the meeting. This paper recommends actions to modify the Assurances language within MACC grant agreement to ensure a representative work force at all levels of employment. The Executive Committee has discussed the paper, shared it with the entire Council and is seeking guidance from a variety of sources outside of the Council so that we are able to promote inclusivity within the constraints of the Michigan Constitution.

The Council is committed to continuous improvement surrounding diversity, equity, inclusion and access. As an agency, we believe that we have a responsibility to ensure public access to arts and culture throughout the state. We will continue to evaluate and broaden our reach so that we can be certain that all Michiganders have the opportunity to engage in Council programming and see themselves represented accordingly.

Alison Watson

Director

Michigan Arts and Culture Council

Mobile: 517.275.0579

watsona11@michigan.org

Mikula’s only input regarding the Assurances enforcement, according to MACC’s FOIA response was to have her staff picture removed from Assurances related content. Email from Watson:

The Council as a whole has the document, and has some strong reactions to it. Trying to leave personal feelings aside, below is the statement our Chair would like to read. Side note, our Chair identifies as LatinX and another member of the Executive Committee is Armenian. We’d also like to know if we can remove the photo of the Michigan Library staff from the paper when it becomes part of the meeting minutes, this was a request from their Director and our Council member Debbie Mikula. Any suggestions are welcome.

In 1978 the U.S. Civil Service Commission, the U.S. Department of Labor, the EEOC and the U.S. Department of Justice jointly adopted the Uniform Guidelines on Employee Selection Procedures to establish uniform standards for the use of selection procedures by employers and to address adverse impact, validation and record-keeping requirements. The basic principle of the Uniform Guidelines is that a selection process that has an adverse impact on the employment opportunities of members of a race, color, religion, sex or national origin group and thus disproportionately screens them out is unlawfully discriminatory unless the process or its

component procedures have been validated in accord with the Uniform Guidelines or unless the user otherwise justifies them in accord with federal law. This principle was adopted unanimously by the Supreme Court in *Griggs v. Duke Power Co.*, 401 U.S. 424, 431-2 (1971) and was ratified and endorsed by Congress when it passed the Equal Employment Opportunity Act of 1972, which amended Title VII of the Civil Rights Act. The Uniform Guidelines have adopted a practical means of determining adverse impact in a selection procedure. This rule established by the Uniform Guidelines is known as the "4/5ths" or "80 percent" rule. To determine whether a selection procedure violates the 4/5ths or 80 percent rule, the selection rate (or passing rate, where applicable) for the group with the highest selection rate is compared to the selection rates for the other groups. If any of the comparison groups do not have a passing rate equal to or greater than 80 percent of the passing rate of the highest group, then it is generally held that evidence of adverse impact exists for the particular selection procedure.



Alison Watson (MEDC) <watsona11@michigan.org>



To: Hughes, Tedda

Wed 4/6/2022 3:38 PM

Cc: gwilliams@thewright.org +3 others

It is not, those are committee based reports. The equity discussion has been taking place at the Executive Committee level and will continue as we move forward with our planning sessions later this year.

Alison Watson

Director

Michigan Arts and Culture Council

...



Hughes, Tedda



To: Alison Watson (MEDC) <watsona11@michigan.org>

Thu 4/7/2022 7:39 PM

Cc: gwilliams@thewright.org +3 others

That makes sense. Who is on the executive committee?

...



Alison Watson (MEDC) <watsona11@michigan.org>



To: Hughes, Tedda

Fri 4/8/2022 8:31 AM

Cc: gwilliams@thewright.org +3 others

Gretchen Gonzales Davidson

Debbie Mikula

Ara Topouzian

Anne Belanger

Nheena Ittner

Alison Watson

Director

Michigan Arts and Culture Council



Mikula knows that MLA has never complied with the Assurances portion of the MACC grants contract, but she continues to accept the invitation to apply for the (invitation-only, no match required) Services to the Field grant. Mikula is the former director of the Arts Council of Greater Lansing, where she trained people on the MACC grants contract.¹⁹ MLA did not receive Services to the Field invitations prior to Mikula’s appointment to the MACC. Now MLA is invited every year, as can be seen in the MACC grants budget pages included in this complaint. As demonstrated by the MACC minutes attached, Mikula also votes to approve MLA’s noncompliant grant invitation. Mikula’s employer is awarded \$40,000 of taxpayer funds annually, despite never having complied with the MACC Assurances requirement of taking necessary steps to correct underrepresentation and achieve a reasonably representative workforce. Michigan’s treatment of BIPOC/API areas like Flint, Benton Harbor, and Detroit multiplies this harm. It is inappropriate for noncompliant organizations to take tax dollars they do not qualify for, at the expense of the most disenfranchised, especially when the conflicts of interest abound.

¹⁹ <https://www.lansingarts.org/post/arts-council-welcomes-new-executive-director>

Michigan Council For Arts and Cultural Affairs Assurances

Assurances

A: The applicant has an established policy of equal opportunity without regard to race, color, religion, national origin, age, sex or disability. The applicant agrees to take steps necessary to correct any under- representation reported on the status report and achieve a reasonably representative work force at all levels of employment. The applicant has an established policy to provide equal opportunity on all programs, activities and services.

The applicant:

1. Agrees in all recruiting materials and advertisements to state that all job applicants will receive equal consideration for employment;
2. Agrees in all promotional materials and advertisements to state that all programs, activities and services will be provided equally; and
3. Agrees to post in conspicuous places, notices setting forth the law on equal opportunity in employment and public accommodations.

B: If the grant is awarded, the applicant warrants and represents to the Michigan Council for Arts and Cultural Affairs, that the support funds will be administered by the applicant.

C: Any funds received under this grant shall not be used to supplant funds formally budgeted for same and that funds received will be used solely for the contracted activities.

D: The applicant has read and will conform to the Guidelines.

E: The filing of this application by the undersigned, officially authorized to represent the applicant organization has been duly approved by the governing board of the applicant organization.

This application is scheduled to be approved by the governing board on January 19, 2021.

Organization Name: CITY OF EAST LANSING

Program Name: Minigrants Arts Project

Project Director: Heather Majano

Name : George Lahanas

Title : City Manager

Establishing Order, Powers, and Duties

The Executive Reorganization Order (E.R.O.) No. 1991-18 and MCL 2.132 creating MACC outlines its powers and duties: (1) There is hereby established, in the Department of Commerce, the Michigan Council for Arts and Cultural Affairs consisting of 15 members to be appointed by the Governor. (2) The Michigan Council for Arts and Cultural Affairs shall perform the following functions: (a) Advise the Governor and the Director of the Department of Commerce on matters relating to arts and cultural affairs. (b) Disburse, fund and make grants to public and private arts and cultural entities. (c) Accept gifts, grants, loans, appropriations or other aid from the federal, state or local government, from a subdivision, agency or instrumentality of the federal, state or local government, or from a person, corporation, partnership, association, firm or other organization and to agree and comply with conditions attached to such gifts, grants, loans, appropriations or other aid. (d) Make and execute contracts and other instruments with any federal, state or local government, with any subdivision, agency or instrumentality of the federal, state or local government, or with any person, corporation, partnership, association, firm or other organization necessary or convenient to the proper exercise of its function... (5) Members of the Michigan Council for Arts and Cultural Affairs shall receive no compensation, but may be reimbursed for the actual and necessary expenses, including mileage, incurred in carrying out their advisory functions. (6) The Michigan Council for Arts and Cultural Affairs may appoint subcommittees and advisory committees. The Director of the Department of Commerce may assign staff, if requested by the Chairperson of the Michigan Council for Arts and Cultural Affairs, to assist the Michigan Council for Arts and Cultural Affairs in performing its functions.

Prohibitions on Public Contracts (Act 317)

MCL 15.321 Public servants, contracts with public entities; definitions.

As used in this act:

(a) "Public servant" includes all persons serving any public entity, except members of the legislature and state officers who are within the provisions of section 10 of article 4 of the state constitution as implemented by legislative act.

(b) "Public entity" means the state including all agencies thereof, any public body corporate within the state, including all agencies thereof, or any non-incorporated public body within the state of whatever nature, including all agencies thereof.

MCL 15.322 Public servant; soliciting, negotiating, renegotiating, approving, or representing a party to a contract with public entity prohibited.

(1) Except as provided in sections 3 and 3a, a public servant shall not be a party, directly or indirectly, to any contract between himself or herself and the public entity of which he or she is an officer or employee.²⁰

(2) Except as provided in section 3, a public servant shall not directly or indirectly solicit any contract between the public entity of which he or she is an officer or employee and any of the following:

(a) Him or herself.

(b) Any firm, meaning a co-partnership or other unincorporated association, of which he or she is a partner, member, or employee.²¹

²⁰ <https://www.ag.state.mi.us/opinion/datafiles/1980s/op06276.htm>

(c) Any private corporation in which he or she is a stockholder owning more than 1% of the total outstanding stock of any class if the stock is not listed on a stock exchange, or stock with a present total market value in excess of \$25,000.00 if the stock is listed on a stock exchange or of which he or she is a director, officer, or employee. (3) In regard to a contract described in subsection (2), a public servant shall not do either of the following: (a) Take any part in the negotiations for such a contract or the renegotiation or amendment of the contract, or in the approval of the contract. (b) Represent either party in the transaction.

MCL 15.323 Applicability of MCL 15.322 to public servants; requirements of contract; making or participating in governmental decision; counting members for purposes of quorum; voting; affidavit; “governmental decision” defined.

(1) Section 2 does not apply to either of the following:

(a) A public servant who is paid for working an average of 25 hours per week or less for a public entity. (b) A public servant who is an employee of a public community college, junior college, or state college or university. (2) A contract as defined in and limited by section 2 involving a public entity and a public servant described in subsection (1) shall meet all of the following requirements: (a) The public servant promptly discloses any pecuniary interest in the contract to the official body that has power to approve the contract, which disclosure shall be made a matter of record in its official proceedings. Unless the public servant making the disclosure will directly benefit from the contract in an amount less than \$250.00 and less than 5% of the public cost of the contract and the public servant files a sworn affidavit to that effect with the official body or the contract is for emergency repairs or services...

MCL 15.263 § 2 states “all decisions of a public body must be made at a meeting open to the public.” MCL 15.269 states “each public body shall keep minutes of each meeting showing date, time, place, members present, members absent, any decisions made at a meeting open to the public and the purpose or purposes for which a closed session is held.” Under MCL 15.268, if a public body wants to hold a closed session, it must identify a statutory exception.

MCL 15.262 § 2(d) states: ““decision” means a determination, action, vote, or disposition upon a motion, proposal, recommendation, resolution, order, ordinance, bill, or measure on which a vote by members of the public body is required and by which a public body effectuates or formulates public policy.” MCL 15.265 § 1 states: “a meeting of a public body shall not be held unless public notice is given as provided in this section by a person designated by the public body.” MCL 15.265 § 2 requires a public body to post within 10 days after the first meeting in each calendar or fiscal year a public notice stating the dates, times, and places of its regular meetings. MACC has not provided notice, meetings, or minutes as required under MCL 15.265 §§ 1 and 2, this is demonstrated on MEDC’s website.²²

²¹ An unincorporated association is defined as an association of two or more persons formed for some religious, educational, charitable, social or other non-commercial purpose.

²² *Id.*

The Michigan Constitution states that “the state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.”

Instead of using the opportunity provided by the Services to the Field grantmaking authority to correct inequity, MACC deeply reinforces inequity. As stated earlier, the Michigan Constitution, in Article I § 26 (2) states: the state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting. By ignoring the fact and granting organizations that violate its own contract Assurances clause, MACC is willfully neglecting its ethical and legal duty to not discriminate or offer preferential treatment. MACC goes further to actively select organizations for its Services to the Field grant that violate the Assurances clause, year after year. I have asked MACC about the Assurances clause issue repeatedly over the last several years. I submitted a paper in late 2021. In response, MACC finally created an all-white Executive Committee, which planned to meet privately, to discuss the equity problem created by their determination to seek out and fund noncompliant organizations. The committee has not made any public plans or statements since their creation in January 2022. By maintaining its discriminatory noncompliance problem for years, MACC has violated Michigan’s Equal Protection clause. Article I § 2. States that no person shall be denied the equal protection of the laws; nor shall any person be denied the enjoyment of his civil or political rights or be discriminated against in the exercise thereof because of religion, race, color or national origin.

In order to receive grants funds, MACC grantees must comply with several requirements, including compliance with federal cost principles, timely reporting, logo use, sending thanks to legislators, matching funds (source and amount), and spending the public funds according to the contract terms.²³ MACC uses reimburse, certification, and other enforcement processes for these contractual obligations. The only clause of MACC’s grants contract that MACC refuses to enforce is the discrimination clause/Assurances.

Summary

Mikula, as a public officer, does not use public funds under her care solely in accordance with prescribed constitutional, statutory, and regulatory procedures (and not for personal benefit). She benefits from the invitation-only no match grant invitation despite her hiring practices preventing compliance with the MACC Assurances. This conduct violates Michigan public contract laws, ethics laws, and principles of decency.

Mikula, as a public officer, regularly accepts a thing of value for the benefit of a person or organization, other than the state, which tends to influence the manner in which the public officer performs official duties. Mikula accepts public grants funds via an invitation-only, zero match process, despite being noncompliant with the assurances clause of the grants contract. Mikula goes further to motion for approval and vote for approval instead of recusing herself and properly documenting her conflicts.

²³ <https://www.michiganbusiness.org/industries/macc/macc-grantee-requirements/>

Without any valid exception, Mikula, as a public officer renders services for a public interest when that employment or service is incompatible or in conflict with the discharge of the officer or employee's official duties or when that employment may tend to impair his or her independence of judgment or action in the performance of official duties. Being president of CANM made Mikula invested in its funding and not impartial to its funding which she repeatedly voted for without proper disclosure or recusal. Mikula's employment at MLA tends to impair her independence as a MACC member.

Without a valid exception, Mikula, as a public officer, participates in the execution of contracts relating to a business entity in which the public officer or employee has a financial or personal interest. Mikula has participated in the execution of the invitation-only, zero match Services to the Field grants contracts for CANM and MLA inappropriately because MLA is her employer, and she was president of the CANM board. She has never recused herself or made proper disclosures in accordance with the state Ethics law.

Mikula and MACC have refused to change course despite notice of these irregularities. This complaint is deeply agonizing to write, but what is worse is public officers unlawfully hindering outcomes for the most disenfranchised for the sake of a totally superfluous personal gain.

Thank you for the time and consideration.

Sincerely,

Tedda Hughes
June 5, 2023