STATE OF MICHIGAN

COURT OF APPEALS

MICHIGAN EDUCATION ASSOCIATION,

Petitioner-Appellee,

v

SECRETARY OF STATE,

Respondent-Appellant,

and

MICHIGAN CHAMBER OF COMMERCE, MICHIGAN STATE AFL-CIO, CHANGE TO WIN, MACKINAC CENTER FOR PUBLIC POLICY, SENATE MAJORITY LEADER, SENATE MAJORITY FLOOR LEADER, and SENATE CAMPAIGN AND OVERSIGHT COMMITTEE CHAIR,

Amici Curiae.

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No. 280792
Ingham Circuit Court
LC No. 06-001537-AA

Advance Sheets Version

Before: Wilder, P.J., and O'Connell and Whitbeck, JJ.

Whitbeck, J. (*dissenting*).

I respectfully dissent. The majority posits the issue before us as whether under the Michigan Campaign Finance Act (MCFA) "advance reimbursement for the costs of a payroll deduction system prevents what is otherwise an illegal *expenditure* from ever becoming an 'expenditure.'"[1] The majority concludes it does not. I disagree. Under the particular, and peculiar, definitions contained in the self-contained looking-glass[2] world of the MCFA, the costs of such payroll deduction systems are not "expenditures" at all. Thus, the trial court reached the right result, although for wrong reason. I would affirm the trial court on the basis that the allocated costs of administration by the Gull Lake Public Schools, for example, for collecting and delivering payroll deductions for "contributions" by members of the Michigan Education

[1] Emphasis added.

[2] "'When I use a word,' Humpty Dumpty said in a rather scornful tone, 'it means just what I choose it to mean—neither more nor less.'" Lewis Carroll, *Through the Looking Glass* (1872).

Association (MEA) affiliate to the MEA-PAC do not constitute an "expenditure" *as the MCFA defines that word*.

In my view, however, that should not end the inquiry; it should only begin it. As a separate and distinct matter, I would ask the parties to brief the questions (1) whether, using the situation at the Gull Lake Public Schools as an example, the allocated costs of collecting and delivering payroll deductions by members of the MEA affiliate to the MEA-PAC are a *contribution* to the MEA-PAC by the Gull Lake Public Schools as the MCFA defines contributions and, if so, whether such costs are a prohibited contribution under § 57 of the MCFA; and (2) whether public bodies such as school boards, like the Gull Lake Public Schools, have the *authority* to collect and deliver payroll deductions for contributions by members of a union to that union's PAC. I would then decide these issues in a timely and comprehensive opinion.

I. Introduction

This case involves the application of certain provisions of the MCFA.[3] The MCFA is a comprehensive, wide-ranging statute and has been the subject of a number of interpretations, declarations, and opinions by the Secretary of State, the Attorney General, and various state and federal courts. It contains a multitude of prohibitions, authorizations, delineations, limitations, and other provisions applicable only to a self-contained looking-glass world, that of campaign finance. To extend the metaphor, behind the looking glass lies a bewildering and Byzantine hall of mirrors. It is therefore of considerable importance to understand the general "architecture" of the MCFA as it relates to the issues in this case, to identify the provisions of the MCFA that are relevant here, and then to apply these provisions to the facts as the parties have presented them to this Court.

II. The Architecture of the MCFA

A. Section 54 Prohibition on Corporate Contributions and Expenditures

As a starting point, I emphasize that § 54 of the MCFA,[4] with certain important exceptions, broadly prohibits corporations, joint stock companies, domestic dependent sovereigns,[5] and labor organizations, as well as those acting for such entities, from making "a contribution or expenditure or provid[ing] volunteer personal services that are excluded from the definition of a contribution pursuant to [MCL 169.204(3)(a)]."

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[3] MCL 169.201 *et seq.*

[4] MCL 169.254.

[5] Defined as Indian tribes that have been acknowledged, recognized, restored, or reaffirmed as an Indian tribe by the Secretary of the Interior under the Indian Reorganization Act or have otherwise been acknowledged by the United States government as an Indian tribe. See MCL 169.205(1).

First, as a housekeeping matter, I observe that this matter does not involve "volunteer personal services." Rather, this Court is concerned here with "contributions" and "expenditures" as the MCFA defines those words.

Second, as a point of interest, the MEA asserts that it is "a voluntary *incorporated* labor organization."[6] Both as a corporation and a labor organization, therefore, the MEA cannot make a "contribution" or an "expenditure" as the MCFA defines those words. But a corporation that is not a labor organization, such as General Motors for example, also cannot make a "contribution" or an "expenditure" as the MCFA defines those words. Thus, in the MCFA's self-contained looking-glass world of campaign finance, § 54 now treats corporations, joint stock companies, domestic dependent sovereigns, and labor organizations exactly alike with respect to its broad prohibition against "contributions" and "expenditures."

Thirdly, however, there are several exceptions to § 54's broad prohibitions. These exceptions are contained in the first sentence of § 54(1):

> Except with respect to the exceptions and conditions in subsections (2)[7] and (3)[8] *and section 55*,[9] and to loans made in the ordinary course of business, a corporation, joint stock company, domestic dependent sovereign, or labor organization shall not make a contribution or expenditure . . . .[10]

Neither the exceptions and conditions in § 54(2)[11] nor the exceptions and conditions in § 54(3)[12] are directly relevant here. Nor are loans in the ordinary course of business. But the exception related to § 55[13] *is* directly relevant. I will cover § 55 below; it is sufficient here only to note that under § 54, the exceptions and conditions in § 55 constitute an *exception* to the broad prohibition against "contributions" and "expenditures," as the MCFA defines those terms, by the named private entities (that is, corporations, joint stock companies, domestic dependent sovereigns, and labor organizations).

Finally, I observe that § 54 covers only the named private entities. There is an absolutely deafening silence in § 54 with respect to public bodies, such as school districts. Generally

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[6] Emphasis added.

[7] MCL 169.254(2).

[8] MCL 169.254(3).

[9] MCL 169.255.

[10] MCL 169.254(1) (emphasis added).

[11] MCL 169.254(2).

[12] MCL 169.254(3).

[13] MCL 169.255.

speaking, this is understandable. This Court does not expect public bodies to participate in the political process and certainly not by the way of making "expenditures" and "contributions."[14]

B. "Contributions" and "Expenditures"

To find one's way through the MCFA's hall of mirrors, one must understand and use its definitions, particularly the definitions of "contributions"[15] and "expenditures."[16] I have summarized these definitions below:

"Contributions"	"Expenditures"
"'Contribution' means a payment, gift, subscription, assessment, expenditure, contract, payment for services, dues, advance, forbearance, loan, or donation of money or anything of ascertainable monetary value, or a transfer of anything of ascertainable monetary value to a person, made for the purpose of influencing the nomination or election of a candidate, or for the qualification, passage, or defeat of a ballot question."[17] But a "contribution" does not include "volunteer personal services," "[f]ood and beverages, . . . which are donated by an individual," or "[a]n offer or tender of a contribution if expressly and unconditionally rejected, returned, or refunded in whole or in part within 30 business days after receipt."[18]	"'Expenditure' means 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, or the qualification, passage, or defeat of a ballot question."[19] But an expenditure does not, among other things, include "[a]n expenditure for the establishment, administration, or solicitation of contributions to a separate segregated fund or independent committee."[20]

[14] See, e.g., OAG, 1993-1994, No 6763, p 45 (August 4, 1993) ("School districts may not permit their offices and phone equipment to be used in a restrictive manner for advocacy of one side of a ballot issue . . . . School districts may not endorse a particular candidate or ballot proposal."); OAG, 1965-1966, No 4291, p 1 (January 4, 1965) (school district not allowed to spend funds to advocate a favorable vote on a tax and bond ballot proposal).

[15] MCL 169.204.

[16] MCL 169.206.

[17] MCL 169.204(1).

[18] MCL 169.204(3).

[19] MCL 169.206(1).

[20] MCL 169.206(2)(c) (emphasis added).

I make four observations based on these definitions. First, I observe that the definitions are all encompassing within the self-contained looking-glass world of campaign finance. To some extent the definitions are also parallel, and perhaps even somewhat overlapping. In the case of a "contribution," the definition covers any type of payment[21] to influence the "nomination or election of a candidate, or for the qualification, passage, or defeat of a ballot question." In the case of an "expenditure," the definition covers not only payments but also donations, loans, and promises of the 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, or the qualification, passage, or defeat of a ballot question."

Second, I observe that the definition of a "contribution" is subject to several exceptions, none of which is relevant here.[22]

Third, I observe that the definition of an "expenditure" is also subject to a number of exceptions, one of which is directly relevant here. Under that exception, an "expenditure" for the "establishment, administration, or solicitation of contributions to a separate segregated fund or independent committee" is *not* an "expenditure" for the purposes of the MCFA.[23]

Fourth, I observe that there is no indication in the definitions of "expenditure" and "contribution" that either definition is limited to the named private entities in § 55.

C. Section 55 and Authorized Activities for Private Entities

Section 55 of the MCFA[24] *authorizes* the named private entities (that is, corporations, either for profit or nonprofit, joint stock companies, domestic dependent sovereigns, and labor organizations) to make "expenditures" for the establishment and administration and solicitation of "contributions" for separate segregated funds to be used for political purposes. Again, then, § 55 is an important *exception* to § 54's broad prohibition against such named private entities making either "contributions" or "expenditures" as defined in the MCFA. With respect to separate segregated funds, therefore, the named private entities can make "expenditures" for the establishment, administration, and solicitation of "contributions" to such separate segregated funds. But § 55, in turn, expressly *limits* such separate segregated funds to making

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[21] Including "the full purchase price of tickets or payment of an attendance fee for events such as dinners, luncheons, rallies, testimonials, and other fund-raising events; an individual's own money or property other than the individual's homestead used on behalf of that individual's candidacy; the granting of discounts or rebates not available to the general public; or the granting of discounts or rebates by broadcast media and newspapers not extended on an equal basis to all candidates for the same office; and the endorsing or guaranteeing of a loan for the amount the endorser or guarantor is liable." MCL 169.204(2).

[22] See MCL 169.255(3).

[23] MCL 169.206(2)(c).

[24] MCL 169.255.

"contributions" to and "expenditures" on behalf of another set of named entities: "candidate committees, ballot question committees, political party committees, political committees, and independent committees."[25]

I observe that the term "political action committee" (PAC) is not defined in the MCFA. It comes from federal election law[26] and, according to the Secretary, is a term of art that has gained common acceptance and usage to describe independent committees or political committees, apparently including separate segregated funds, established under the MCFA to support or oppose candidates. According to the MEA, the MEA-PAC is a separate segregated fund and has regularly filed with the Secretary of State the campaign finance reports required by the MCFA.[27]

Section 55 also *delineates* those who can be solicited for "contributions" to a separate segregated fund to the following persons or their spouses:

For Profit/ Joint Stock Company	Nonprofit	Labor Organization
Stockholders of the corporation or company; officers and directors of the corporation or company; and employees of the corporation or company who have "policy making managerial, professional, supervisory, or administrative nonclerical responsibilities."[28]	Members of the corporation who are individuals; stockholders of members of the corporation; officers or directors of members of the corporation; employees of the members of the corporation who have "policy making, managerial, "professional, supervisory, or administrative nonclerical responsibilities"; and employees of the corporation who have "policy making, managerial, professional, supervisory, or administrative nonclerical responsibilities" [29]	Members of the labor organization who are individuals; officers or directors of the labor organization; and employees of the labor organization who have "policy making, managerial, professional, supervisory, or administrative nonclerical responsibilities."[30]

[25] MCL 160.255(1).

[26] See, generally, 2 USC 431(4).

[27] See MCL 169.224.

[28] MCL 169.255(2).

[29] MCL 169.255(3).

[30] MCL 169.255(4). See also MCL 169.255(5) relating to domestic dependent sovereigns.

Section 55 also has one further *authorizing* provision. This provision states:

> A corporation organized on a for profit or nonprofit basis, a joint stock company, a domestic dependent sovereign, or a labor organization *may solicit or obtain contributions for a separate segregated fund* established under this section from an individual described in subsection (2), (3), (4), or (5) *on an automatic basis, including but not limited to a payroll deduction plan, only if the individual who is contributing to the fund affirmatively consents to the contribution at least once in every calendar year*.[31]

Thus, in the § 55 private arena, automatic payroll deduction plans for obtaining "contributions" to a separate segregated fund are permissible only if the delineated individuals in § 55(2) (for corporations and joint stock companies),[32] § 55(3) (for nonprofit corporations),[33] and § 55(4) (for labor organizations)[34] who make "contributions" affirmatively consent to the payroll deduction of such "contributions" at least once in every calendar year.

But the § 55 private arena encompasses *only* the named private entities under that section: for-profit and nonprofit corporations, joint stock companies, domestic dependent sovereigns, and labor organizations. Thus, § 55 deals only with private entities. It is silent with respect to public bodies, such as school districts. However, § 57 of the MCFA[35] deals directly with such public bodies.

D. Section 57 and Prohibited Activities for Public Bodies

In contrast to § 55, § 57 of the MCFA is a *prohibitive* provision; it does not authorize a public body to do anything. Rather, § 57 provides, with certain exceptions not relevant here,[36] that a public body, or an individual 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 . . . ."[37]

Second, § 57 uses the term "public body." This is also a defined term under the MCFA. It includes state agencies,[38] the Legislature or an agency of the legislative branch of state

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[31] MCL 169.255(6).

[32] MCL 169.255(2).

[33] MCL 169.255(3).

[34] MCL 169.255(4).

[35] MCL 169.257.

[36] See MCL 169.257(1)(a)-(f).

[37] MCL 169.257(1).

[38] MCL 169.211(6)(a).

government,[39] and "[a] county, city, township, village, intercounty, intercity, or regional governing body; a council, *school district*, special district, or municipal corporation; or a board, department, commission, or council or any agency of a board, department, commission, or council."[40]

The term "public body" also includes "[a]ny other body that is created by state or local authority or is primarily funded by or through state or local authority, which body exercises governmental or proprietary authority or performs a governmental or propriety function."[41]

Third, there is *no* counterpart in § 57 to the provision in § 55 that authorizes the named private entities (that is, for-profit or nonprofit corporations, joint stock companies, and labor organizations) to make "expenditures" for the establishment and administration and solicitation of "contributions" to separate segregated funds. Thus, a public body, such as a state agency or a school district, is *not* authorized under § 57 to make "expenditures" to establish, administer, or solicit "contributions" for a management PAC. Labor organizations may arguably utilize their authority under § 55 to establish and administer union PACs (such as the MEA-PAC). But in situations where the members of the labor organization are employees of a public body, there can be, and are, no side-by-side management PACs because there is no authorization in the MCFA or elsewhere for a public body to establish or administer a management PAC. It would be incongruous, and indeed illegal, for a public body, such as a school district, to use public resources to establish, administer, and solicit "contributions" for its own management PAC to be used for political purposes. Indeed, the Michigan State AFL-CIO and Change to Win state that it is "well-established" that public bodes may not establish, administer, or solicit contributions to their own separate segregated funds.

Fourth, and as an extension of the above, there is no counterpart in § 57 to the authorization in § 55[42] for automatic payroll deduction plans to obtain "contributions" to a separate segregated fund when the delineated individuals who make such "contributions" affirmatively consent to the payroll deduction of such "contributions" at least once in every calendar year.

E. Conclusions

I conclude that § 54 of the MCFA prohibits the named private entities (that is, corporations, joint stock companies, domestic dependent sovereigns, and labor organizations) from making "expenditures" and "contributions" as the MCFA defines these terms. But there are important qualifications to this conclusion. First, there are several exceptions to § 54's overall prohibitions, including § 55's authorized "expenditures" for the establishment, administration, and solicitation of "contributions" to separate segregated funds. Second, § 54's

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[39] MCL 169.211(6)(b).

[40] MCL 169.211(6)(c) (emphasis added).

[41] MCL 169.211(d).

[42] MCL 169.255(6).

prohibitions extend only to a specific set of named *private* entities. That set does not include public bodies, such as school districts.

I also conclude that the MCFA contains a number of definitions that are applicable in the self-contained looking-glass world of campaign finance, including the definitions of the word "contribution" and the word "expenditure." Most importantly, the MCFA states that the definition of "expenditure" does *not* include the "establishment, administration, or solicitation of contributions" to a separate segregated fund. Therefore, to the extent that there are costs involved in the establishment, administration, or solicitation of "contributions" to a separate segregated fund, those costs are *not* "expenditures" as the MCFA defines that word. This is true whether the entity involved is private or public.

I further conclude that § 55 does four things. It *authorizes* the named private entities to undertake certain activities, including the making "of expenditures" for the establishment, administration, and solicitation of "contributions" to separate segregated funds. Thus, § 55 creates—and § 54 recognizes—an exception to the broad prohibition against those named private entities making either a "contribution" or an "expenditure."

But § 55 also *limits* such separate segregated funds to certain activities: the making of "contributions" to and "expenditures" on behalf of candidate committees, ballot question committees, political party committees, political committees, and independent committees. Section 55 also *delineates* those individuals who can be solicited for "contributions" to separate segregated funds.

Finally, § 55 contains a further provision specifically *authorizing* the named private entities to solicit or obtain "contributions" for a separate segregated fund on an automatic basis, including but not limited to payroll deduction plans, only if the individual who is solicited affirmatively consents to the "contributions" at least once each calendar year. As with the § 54 prohibitions, the § 55 authorizations, limitations, and delineations extend only to a set of named *private* entities. That set does not include public bodies, such as school districts.

I also conclude that § 57 flatly prohibits a public body from using its resources to make a "contribution" or an "expenditure" *as the MCFA defines those words*. And there is no counterpart in § 57 to the authorizations, limitations, and delineations in § 55 that pertain to private entities. Specifically, there is no authorization in § 57 for a public body to administer a payroll deduction plan for "contributions" to a separate segregated fund.

III. "Expenditures" by Public Bodies

The trial court's decision starts with the proposition that the administration of payroll deductions to a union PAC constitutes an "expenditure" under the MCFA. I disagree with this threshold conclusion. It is well to be clear here about the factual circumstances. The "administration" to which the trial court referred is the allocated costs of, for example, the Gull Lake Public Schools when that entity uses its resources, of whatever type or kind, to collect and

deliver the payroll deductions of "contributions" of, for example, members of the Kalamazoo County Education Association/Gull Lake Education Association to the MEA-PAC. The Gull Lake Public Schools system is a "school district" and is therefore a "public body" under the MCFA.[43] As I noted earlier, the MEA-PAC is a separate segregated fund under the MCFA.[44] The threshold question, then, is whether the allocated costs of administration by the Gull Lake Public Schools for collecting and delivering payroll deductions for "contributions" by members of the MEA affiliate to the MEA-PAC constitute an "expenditure" *as the MCFA defines that word*.

In my opinion, such costs do not constitute such an "expenditure." I base this conclusion on the plain and simple language of the MCFA. As I noted before, the definition of "expenditure" does not include expenditures for the "establishment, administration, or solicitation of contributions to a separate segregated fund . . . ."[45] The costs of administration, including the allocated costs of administration by the Gull Lake Public Schools of collecting and delivering payroll deductions for "contributions" by members of the MEA affiliate to the MEA-PAC, are therefore *not* expenditures *as the MCFA defines that word*. While these allocated costs of administration are most certainly costs, they are most certainly not "expenditures" in the self-contained looking-glass world of the MCFA. Simply, in that world, such allocated costs of administration do not constitute "expenditures" *as the MCFA defines that word*. To the extent that the majority accepts the trial court's threshold conclusion that these allocated costs of administration are "expenditures" *as the MCFA defines that word*, the majority errs.

In a footnote, of all places, the Secretary proffers, without authority, the argument that the exclusion of such costs from the definition of "expenditure" relates only to § 55 private entities and not to § 57 public bodies, stating: "This exclusion pre-existed the enactment of § 57 and relates to § 55's provision of separate segregated funds for corporations, labor organizations, joint stock companies and domestic dependent sovereigns."

This argument is plainly wrong. The MCFA definition of "expenditure" could not be clearer. It specifically excludes an "expenditure" for the "administration" of a separate segregated fund. "[W]hen a statute specifically defines a given term, that definition *alone* controls."[46] Indeed, as the Secretary notes, when the Legislature has defined a term in a statute, that definition must be applied and is binding on the courts.[47] There is no language in the definition of "expenditure" that even remotely suggests that the exclusion in that definition for the costs of administration of a separate segregated fund is limited in the manner that the Secretary claims. "[N]othing may be read into the statute that is not within the manifest intent of

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[43] See MCL 169.211(6).

[44] See MCL 169.255(1).

[45] MCL 169.206(2)(c).

[46] *Tryc v Michigan Veteran's Facility*, 451 Mich 129, 136: 545 NW2d 642 (1996) (emphasis added).

[47] *Id*.

the Legislature *as derived from the act itself*."[48] There is no hint in the MCFA that the definition of "expenditure" applies to private entities but does not apply to public bodies. There is no hint of ambiguity in the definition of "expenditure" and, as the Michigan Supreme Court has said, "[w]hen the language of a statute is unambiguous, the Legislature's intent is clear and judicial construction is neither necessary nor permitted."[49] "In discerning legislative intent, a court must give effect to every word, phrase, and clause in a statute . . . ."[50] "A statute must be read in its entirety and the meaning given to one section arrived at after due consideration of other sections so as to produce, if possible, an harmonious and consistent enactment as a whole." [51]

Further, I note that the Legislature amended the definition of "expenditure" as recently as 2003[52] without limiting the exclusion in that definition for the costs of administration of a separate segregated fund. And the Legislature is also presumed to be aware of all existing statutes when it enacts another.[53] Here, when the Legislature enacted § 57 relating to public bodies, it specifically selected the word "expenditure," a pre-existing defined term under the MCFA with a pre-existing exclusion. Again, there is simply no support for the proposition that the definition of "expenditure," and the exclusion in that definition for the costs of administration of a separate segregated fund, does not apply to § 57 public bodies. Nor does a public body trigger the application of § 57's prohibitions when it collects and delivers payroll deductions for "contributions" by members of a labor organization to a union PAC because the cost of the administration of such collection and delivery is not an "expenditure" *as the MCFA defines that term*.

Thus, at the threshold, the allocated costs of administration by the Gull Lake Public Schools, for example, of collecting and delivering payroll deductions for "contributions" by members of the MEA affiliate to the MEA-PAC are not an "illegal expenditure" under the MCFA. Rather, as the MCFA defines that word, these allocated costs are not an "expenditure" at all. To the extent that the majority now accepts the Secretary's proposition that such costs are an "illegal expenditure" under the MCFA,[54] I believe the majority to be wrong.

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[48] *Omne Financial, Inc v Shacks, Inc*, 460 Mich 305, 311; 596 NW2d 591 (1999) (emphasis added).

[49] *Lash v Traverse City*, 479 Mich 180, 187; 735 NW2d 628 (2007).

[50] *Shinholster v Annapolis Hosp*, 471 Mich 540, 549; 685 NW2d 275 (2004) (internal quotations and citation omitted).

[51] *State Treasurer v Wilson*, 423 Mich 138, 145; 377 NW2d 703 (1985). See also *People v Hill*, 192 Mich App 102, 114-115; 480 NW2d 913 (1991).

[52] See 2003 PA 69.

[53] *Walen v Dep't of Corrections*, 443 Mich 240, 248; 505 NW2d 519 (1993). See also *Malcom v City of East Detroit*, 437 Mich 132, 138; 468 NW2d 479 (1991), superseded by statute as stated in *Vine v Ingham Co*, 884 F Supp 1153 (WD Mich, 1995).

[54] *Ante* at 6.

Further, to the extent that the majority concludes that the reimbursement of such an "illegal expenditure" fails to negate something that otherwise constitutes an "expenditure,"[55] I believe the majority overreaches in the sense that it comes to a conclusion that it need not make. The legality of the "rental," as the Mackinac Center colorfully puts it, of the apparatus of a public body to collect and deliver contributions to public employee union PACs through the device of an advance reimbursement for the costs of such collection and delivery should not be decided here if this Court recognizes that such costs are not "expenditures" at all.

IV. Additional Issues

A. Overview

Despite the majority's position that they "are not properly before us," I find that this Court should consider certain additional issues. Those issues include (1) the meaning of the exclusion contained in the definition of "expenditure" for the establishment, administration, or solicitation of contributions to a separate segregated fund or independent committee; (2) whether the payroll deduction by a public body constitutes a "contribution" as the MCFA defines that term; and (3) whether public bodies such as school boards, like the Gull Lake Public Schools, have the *authority* to collect and deliver payroll deductions for contributions by members of a union to that union's PAC.

B. Exclusions to the Definition of Expenditures

I have covered the first issue above. While one might quibble and contend that the Secretary raised this issue in her brief, albeit in a footnote, it is true that she did not raise it in her statement of the issues presented. Nonetheless, the issue is clearly before this Court. One cannot determine that a reimbursement cannot obviate an illegal expenditure without first concluding that there was an illegal expenditure. And one cannot conclude that there was an illegal expenditure without first concluding that there was an expenditure. Since the MCFA clearly excludes the costs for the establishment, administration, or solicitation of contributions to a separate segregated fund or independent committee from the definition of an expenditure, I believe that this Court must conclude that while the trial court erred in its analysis, it nonetheless reached the right result but for the wrong reasons.[56] On the basis of the plain meaning of the words of the statute, I do not believe that this Court can reverse the trial court on this issue and that the majority's decision to the contrary is clearly wrong.

In a rather colorful footnote, the majority asserts that my dissent turns the MCFA "upside down and inside out."[57] Perhaps the majority has missed my logic here. Putting it simply, and repetitiously, for the cost of collecting and delivering payroll deductions for contributions by members of the MEA affiliate to the MEA-PAC to be an "illegal expenditure" under the MCFA,

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[55] *Ante* at 6.

[56] *Netter v Bowman*, 272 Mich App 289, 308; 725 NW2d 353 (2006).

[57] *Ante* at 7 n 5.

it must first be an expenditure. But under the definition in § 6(2)(c) of the MCFA,[58] an expenditure does not, among other things, include "[a]n expenditure for the establishment, administration, or solicitation of contributions to a separate segregated fund or independent committee." Thus, the cost of collecting and delivering payroll deductions for contributions by members of the MEA affiliate to the MEA-PAC cannot be an illegal expenditure because it is not an expenditure in the first place. The plain words of the statute are the best indicators of legislative intent. The fact that these plain words lead to a result that I, or the majority, may not like or may consider inconsistent with the general architecture of the MCFA is irrelevant. To me, this is relatively straightforward, and I am at a loss to understand how simply following the explicit language of the definitions contained in the MCFA turns it upside down or inside out, either concurrently or sequentially.

C. Contributions

It is also correct that no party raised or briefed the question whether the allocated costs of collecting and delivering payroll deductions by members of the MEA affiliate to the MEA PAC are a contribution to the MEA-PAC by the Gull Lake Public Schools as the MCFA defines contributions and, if so, whether such costs are a prohibited contribution under § 57 of the MCFA. This Court need to be quite precise on this issue. There is no question that a payroll deduction from an *employee's* salary or wages is a "payment . . . made for the purpose of influencing the nomination or election of a candidate, or for the qualification, passage, or defeat of a ballot question."[59] The fact that such a "contribution" is funneled through a separate segregated fund[60] does not change this conclusion. Separate segregated funds are, after all, in the business of making "contributions to, and expenditures on behalf of, candidate committees, ballot question committees, political party committees, political committees, and independent committees."[61]

However, the "contribution" in question here is not the "contribution" of an *employee*. The "contribution" in question, if it is a "contribution" at all, is the allocated costs that a public body *employer*, such as a school district, incurs as a result of collecting and delivering payroll deductions for "contributions" by members of labor organization to a union PAC. One thing, however, is certain: *if* such costs are a "contribution," then § 57 flatly prohibits a public body from making them[62] and there is no exclusion in the definition of "contribution" that would obviate this prohibition.[63]

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[58] MCL 169.206(2)(c).

[59] MCL 169.204(1).

[60] MCL 169.255(1).

[61] *Id*.

[62] See MCL 169.257(1).

[63] See MCL 169.204.

D. Authorization Outside the MCFA

I note that there is no authority within the MCFA for public bodies to collect and deliver payroll deductions for contributions by members of a union to that union's PAC. With respect to municipal officers, this Court has held that, as a general rule, "they have only such powers as are expressly granted by statute or by sovereign authority or those which are necessarily to be implied from those granted."[64] And the Michigan Supreme Court has stated that "[t]he extent of the authority of the people's public agents is measured by the statute from which they derive their authority, not by their own acts and assumption of authority."[65] As such, "[p]ublic officers have and can exercise only such powers as are conferred on them by law."[66]

The same concepts apply to public bodies. Indeed, one of the central ideas underlying our democracy is that the powers of government are few and defined.[67] "A county is a municipal corporation and possesses only those powers which have been conferred upon it by the Constitution and the statutes."[68] Further, "[n]either the Constitution nor legislative enactment gives authority to a county to expend public funds for the purpose of procuring reapportionment."[69] The power to expend county resources for political purposes could not exist because there was no legal authority granting that power.[70] Similarly, a city may not transfer public funds in order to purchase land for parking lots unless the city charter or other law specifically grants that authority.[71] A public body is therefore necessarily limited in power and must have been granted legal authority to act.

I do note, however, that MCL 408.477 states:

> Except for those deductions required or expressly permitted by law or by a collective bargaining agreement, an employer shall not deduct from the wages of an employee, directly or indirectly, any amount including an employee contribution to a separate segregated fund established by a corporation or labor organization under section 55 of the Michigan campaign finance act, Act No. 388 of the Public Acts of 1976, being section 169.255 of the Michigan Compiled

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[64] *Presnell v Wayne Co Bd of Co Rd Comm'rs*, 105 Mich App 362, 368; 306 NW2d 516 (1981), quoting 56 Am Jur 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 276, p 327.

[65] *Sittler v Bd of Control of the Michigan College of Mining & Technology*, 333 Mich 681, 687; 53 NW2d 681 (1952) (internal quotations and citation omitted).

[66] *Id*. (internal quotations and citation omitted).

[67] See James Madison, Federalist, No. 45.

[68] *Mosier v Wayne Co Bd of Auditors*, 295 Mich 27, 29; 294 NW 85 (1940).

[69] *Id*. at 31.

[70] *Id*.

[71] *McVeigh v City of Jackson*, 335 Mich 391, 398; 56 NW2d 231 (1953).

Laws, without the full, free and written consent of the employee, obtained without intimidation or fear of discharge for refusal to permit the deduction.

E. Additional Briefing

The majority does not deal with these issues on the ground that they have not been properly presented before this Court. I disagree.

First, this matter comes to this Court in as an appeal from a trial court decision on a declaratory ruling. Accordingly, there are no factual matters in dispute, and, thus, the questions before this Court are purely legal. Second, this Court's review of the trial court's decision is de novo; thus, this Court is in exactly the same position as the trial court when the matter first came to it. Third, I raised each of these issues at oral argument, although I must admit that the responses at that time were less than comprehensive. Fourth, as a matter of judicial economy, avoiding these issues is, to me, a course of action that will lead to both more complexity and more delay. Finally, while this Court does not generally consider issues not set forth in the statement of questions presented, this is not a hard and fast rule, and it is one that this Court should not observe in this instance. Indeed, although this Court "is *obligated* only to review issues that are properly raised and preserved; the court is *empowered*, however, to go beyond the issues raised and address any issue that, in the court's opinion, justice requires be considered and resolved."[72] "This Court is specifically authorized by MCR 7.216(A)(7) to address issues not expressly raised by the parties when, in this Court's discretion, 'further or different relief' is required."[73]

Thus, rather than avoiding these issues, I would ask the parties to brief them for this Court, so that this Court can decide them in a timely and comprehensive opinion that touches all the bases on these most important questions.

/s/ William C. Whitbeck

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[72] *Paschke v Retool Industries* (*On Rehearing*), 198 Mich App 702, 705; 499 NW2d 453 (1993), rev'd on other grounds 445 Mich 502 (1994) (emphasis in original) (*Paschke I*).

[73] *Id*. Although our Supreme Court concluded that this Court clearly erred in determining, sua sponte, the merits of that appeal, *Paschke v Retool Industries*, 445 Mich 502, 519; 519 NW2d 441 (1994), the Court did not abrogate this Court's authority "to go beyond the issues raised and address any issue that, in the court's opinion, justice requires be considered and resolved." *Paschke I*, *supra* at 705.