

Campaign Finance Talk

The Voice of the Michigan Campaign Finance Network

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Anatomy of ‘Enforcement’

by Rich Robinson

Openness and accountability are the foundation of a healthy political process. We will not let that foundation be eroded by disregard for our election and campaign finance laws. Our system depends on all participants playing by the rules. I hope the department’s action sends an unmistakable message that no candidate is above the law. Compliance is not optional.

– Secretary of State Terri Lynn Land,
Department of State news release, March 3, 2005

Secretary of State Terri Lynn Land made those comments in announcing that she was referring complaints against two Democratic state representatives for alleged falsification of campaign finance compliance statements to Attorney General Mike Cox for investigation and possible prosecution.

If those strong words appeal to your sense of law and order and give you comfort, consider the facts of another case involving an apparent violation of the Michigan Campaign Finance Act.

An illegal contribution

On April 12, 2004, Baxter Machine & Tool, Inc., a Jackson-based corporation, issued a check for \$25,000 payable to “Greater Detroit Leadership Grp”. The Greater Detroit Leadership PAC deposited the check.

It is illegal for a corporation to make a contribution to a Michigan political action committee – a felony if it is done knowingly.

In its April 2004 campaign finance statement to the Bureau of Elections, Greater Detroit Leadership (GDL) PAC falsely claimed that the \$25,000 check it had received was from an individual, Rick Baxter. A handwritten notation on the check said, “Rick Baxter –

owns machining company”. In fact, Baxter was the chief financial officer of the business, not its owner. He also was a Jackson County commissioner and a candidate for the Michigan House of Representatives.

In a July 2004 primary campaign radio debate, one of Rick Baxter’s primary election opponents, Jackson County Republican Party chairman Jon Williams, asked Baxter why he had given \$25,000 to the Greater Detroit Leadership PAC [emphasis added]. Baxter explained that his family’s business was involved in the automotive industry and GDL PAC would be able to help with automotive industry contacts. Besides, Baxter said, he had not given the \$25,000 to the PAC - his family’s business had.

An alert reporter from the *Jackson Citizen Patriot*, Bradley Flory, sensed that something was irregular about this arrangement and asked Baxter to prove that the family business had issued the check. Baxter responded by giving Flory a copy of the check. Flory sent a copy of the check to me and asked whether this was a legal transaction. I replied that it assuredly was not legal and I filed a complaint with the Bureau of Elections citing the illegal corporate contribution to a PAC, and the false attribution of the contribution to Rick Baxter.

The man in the middle

Once I filed my complaint, a campaign consultant to Rick Baxter's House campaign contacted me and asked about my complaint. I explained to the consultant, Brian Pierce, that my complaint was against Baxter Machine & Tool and GDL PAC, not Rick Baxter as an individual.

Pierce had come to the Baxter campaign with some valuable background experience. He had been west Michigan field director for Mike Cox's successful 2002 attorney general campaign, and Pierce served as Cox's special assistant after Cox was sworn in as attorney general. Pierce left the Department of the Attorney General in August 2003. Coincidentally, Pierce's former boss made a primary election endorsement of Rick Baxter and recorded robo-calls touting Baxter that were directed into the district.

Following the complaint Brian Pierce contacted MIRS News, a Lansing-based news service that covers state government, which had carried a story about the complaint. Pierce told MIRS that the Baxter Machine & Tool contribution was intended for a nonprofit arm of the Greater Detroit Leadership organization that was going to do advocacy in support of President George W. Bush.

Subsequently, Dr. Stephen Shaya, the founder of GDL PAC, spoke with MIRS and said that he had no idea what Pierce was talking about. GDL PAC was not doing advocacy for George W. Bush, he said. Shaya told the *Jackson Citizen Patriot* that he had established a 501 (c) (4) organization called Greater Detroit Leadership Fund, but it was not active. Shaya also told the *Cit-Pat* that Pierce knew that the Baxter contribution was going into the GDL PAC, because the PAC had paid Pierce \$4,000 in consulting fees, including a commission for bringing in Baxter's check.

Pierce retorted that Shaya was a liar. Shaya said that there had been no misrepresentation about how the money was to be used.

Rick Baxter responded by firing Brian Pierce as his campaign consultant, telling the *Cit-Pat* that Pierce had not disclosed that he had been paid by GDL PAC and that Pierce had misled him.

GDL PAC's expenditures

One of GDL PAC's first significant campaign contributions went to Mike Cox back in December 2002, between Cox's election win and his swearing-in

as attorney general. GDL PAC gave Cox's campaign committee \$15,000 – his biggest reported contribution so far this election cycle.

In February 2004, Cox and Secretary of State Terri Lynn Land were special guests at a GDL PAC fundraising event. In March, GDL PAC gave Land's campaign account \$6,500 – her second-biggest contribution this election cycle from a non-family source. GDL PAC also gave \$2,500 to Laura Cox for Wayne County Commissioner. Laura Cox is Mike Cox's wife.

On April 23, 2004, one week after GDL PAC received \$25,000 from Baxter Machine & Tool, GDL PAC gave \$5,000 to Baxter's House campaign committee. That is the maximum a PAC can give to a Michigan House candidate. GDL PAC also gave \$5,000 to the Michigan Republican Party the same day. One month later GDL PAC gave \$5,000 to Mike Cox's leadership PAC.

Also in May 2004, GDL PAC gave \$13,500 to Detroit Mayor Kwame Kilpatrick's campaign committee.

Response to the complaint

Both Baxter Machine & Tool and GDL PAC responded to my complaint by saying that mistakes had been made. Baxter Machine & Tool acknowledged making a \$25,000 corporate contribution to Greater Detroit Leadership Group, but said the money was intended for a 501 (c) (4) organization. GDL PAC said the \$25,000 was "mistakenly deposited into our Independent Political Action Committee account." GDL PAC's treasurer, a certified public accountant named Robert Bovitz, said in his response letter that checks totaling \$25,000 had been sent to Baxter Machine & Tool to refund the mistake. But the PAC's campaign finance reports showed that only \$12,500 was returned. In my rebuttal to the parties' responses to my complaint, I pointed out that there were several anomalies in the explanation:

- Greater Detroit Leadership PAC never incorporated a 501 (c) (4) nonprofit in the state of Michigan. Neither could I find any record of such an organization with the Internal Revenue Service (although an inactive association was proven to exist).
- The contribution was falsely attributed to an individual, Rick Baxter, who had not signed the check, nor did he own the account from which the

check was drawn. I contended that this had to be a deliberate act that could not have occurred inadvertently - particularly since the treasurer of the committee was a certified public accountant with years of experience as a treasurer for numerous political committees.

- A professional political consultant, Brian Pierce, was working both ends of the deal. Pierce was a paid consultant for the Baxter campaign, and the Greater Detroit Leadership PAC paid him a commission for bringing in the Baxter Machine & Tool check.

The complaint also set off a sequence of money give-backs:

- GDL PAC gave \$12,500 back to Baxter Machine & Tool
- Attorney General Mike Cox returned \$20,000 to GDL PAC that it had contributed to his campaign committee and leadership PAC.
- Laura Cox, returned \$2,500 that GDL PAC had contributed to her Wayne County commissioner campaign committee.
- Rick Baxter returned the \$5,000 GDL PAC gave to his campaign committee.

Consequences

On March 2, 2005, one day before Secretary of State Land issued her tough-talking news release concerning the case of two Detroit state representatives, the Department of State dismissed my complaint against Baxter Machine & Tool. The Regulatory Division's

John Boyd sent Rick Baxter a letter that said, "Because this matter occurred in error, your alleged involvement in the matter has been dismissed and no further action will be taken."

On the same day, Boyd sent a letter to GDL PAC's treasurer Robert Bovitz. In part, the letter says, "This review indicates there may be reason to believe you and the committee violated section 54 of the [Michigan Campaign Finance] Act (MCL 169.254) and rule 35 (1999 AC, R 169.35), in that you accepted a check written on a corporate account as a contribution to the Greater Detroit Leadership PAC. Knowing violation of section 54 may be prosecuted as a felony, punishable, ...if the person is not an individual, by a fine of not more than \$10,000."

However, Boyd's letter went on to cite section 15 of the Act, which provides that: "If the secretary of state determines that there may be reason to believe that a violation of the act has occurred, the secretary of state shall endeavor to correct the violation or prevent a further violation by using informal methods such as a conference, conciliation, or persuasion, and may enter into a conciliation agreement with the person involved."

Boyd offered GDL PAC a conciliation agreement wherein GDL PAC would repay Baxter Machine & Tool, Inc. the remaining \$12,500 that had "mistakenly" changed hands and pay a civil penalty of \$1,000. Boyd's letter said, "This agreement, unless violated, completely bars any further action with respect to the alleged infraction."

Four months later, I received a copy of the fully executed conciliation agreement. It was not the one that had been offered on March 2nd. The new agreement required payment of the \$1,000 civil penalty, but reference to repaying \$12,500 had been removed. As before, the agreement "is a complete bar to any further actions with respect to matters covered in the conciliation agreement."

"My recollection is that we required reimbursement of illegal corporate contributions as part of any settlement. Has there been some interpretation of the Act or rules of which I am not aware?"

- John Boyd

The inside view

I found the resolution of this case to be astounding, so I filed a request for background documents under the Freedom of Information Act in hope of gaining a better understanding of the process that led to the conclusion. There are gaps in the documentation, at least in what was sent to me, but there are indications that this was an irregular case.

On March 1, John Boyd, the front-line attorney handling the case, received email instructions to: 1) "draft a letter dismissing allegations against Baxter"; and, 2) "draft conciliation agreement requiring PAC to return \$12,500 and assessing \$1,000 civil penalty

against treasurer for filing inaccurate report.”

In the margin of the directive to draft a letter dismissing allegations against Baxter, Boyd wrote, “why? wait until CA [conciliation agreement] is signed?” His reaction as to proper sequence was later proven correct. But he followed through with the directive.

The GDL PAC retained an attorney, Mark Mandell, to handle its interactions with the Department of State. In regard to returning the \$12,500 to Baxter Machine & Tool, Mandell wrote, “the PAC does not have the ability to pay back such a large contribution.”

Mandell also took the position that, while it was illegal to *give* a corporate check to a PAC, the Campaign Finance Act was silent on *receiving* a corporate check. A mere campaign finance administrative rule said that “a committee treasurer shall not accept as a contribution a check written on a corporate account.” Mandell said, “Although a clerical error may have resulted in violation of this rule by Greater Detroit Leadership PAC, the PAC has not violated the Act. Since a civil penalty or fine may only be issued by the secretary of state for a violation of the Act, the Greater Detroit Leadership PAC should not be required to pay the civil fine described in the conciliation agreement.”

In an email message to Ann Corgan, the director of the Department of State’s Legal and Regulatory Service’s Administration, John Boyd recounts Mandell’s position and notes that Mandell had described

to Boyd a conversation Mandell had had with Corgan. Mandell told Boyd that Corgan tended to agree with him. Boyd concludes his message as follows: “This is not my recollection as to how these cases were handled when I last did them. My recollection is that we required reimbursement of illegal corporate contributions as part of any settlement. Has there been some interpretation of the Act or rules of which I am not aware? Please advise.”

My FOIA packet does not include a response from Corgan to Boyd’s question. However, a subsequent email message dated April 28 from Corgan to Boyd says, “This is an unusual case in that we don’t have a corporation at risk of being charged with a section 54 felony [making a corporate contribution], so we don’t have any leverage for insisting on the return of the \$12,500. Please go ahead and draft a new conciliation agreement that requires the committee to pay a \$1,000 civil penalty for filing an inaccurate campaign statement.”

Of course, Boyd had been directed earlier to dismiss the complaint against the corporation.

Finally, on May 17, Corgan sent Boyd a message that said, in part, “I am not willing to negotiate much further on this. If we can’t get this conciliated, we’ll take it to the next level.”

By then, 93 percent of the sanction had been negotiated away. Mandell and GDL PAC took the deal and walked away.

What does this case mean?

The knee-jerk reaction to campaign finance violations is to suggest that stiffer penalties are needed. That is probably true, but this case lays bare much more profound problems and invites a number of important questions. What would have happened if a complaint had not been filed? Do penalties matter at all if the enforcement bureau is mandated to settle things by informal methods such as conciliation? Are all violators treated equally under this law? Given the prevailing level of enforcement of the law, what is the prevailing level of respect for the law? Can this system be fixed?

Honest answers to those questions are unsettling.

Postscript

So the reader will not be led to believe that Secretary Land's soaring rhetoric at the beginning of this article was empty puffery, it should be noted that a second complaint I filed has been referred by the Department of State to the Department of the Attorney General for investigation. That case also involves a Detroit-based PAC – and illegal contributions to a municipal officeholder who is officially nonpartisan but known to be a Democrat.

The man in the middle of the Baxter / GDL PAC affair, Brian Pierce, is now the executive director of the Kent County Republican Party. On ascending to his new office, he told the *Grand Rapids Press* that he had enjoyed great success as a fundraiser and political consultant in 2004 and he

was looking forward to even greater accomplishments in Kent County. Brian Pierce's wife, Allison Pierce, is Attorney General Cox's official spokesperson.

Greater Detroit Leadership PAC has dissolved. But nothing precludes the players from coming back in a new incarnation.

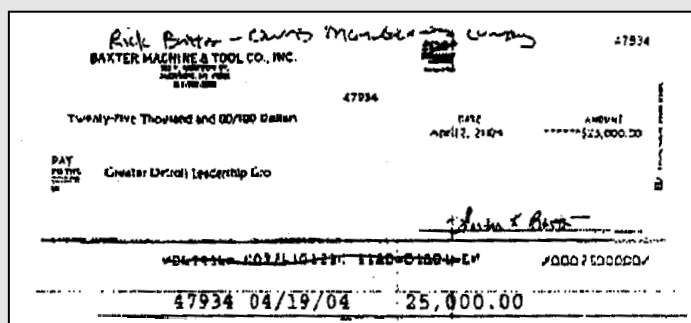
Rick Baxter has won serious notoriety for an attribution as coauthor of an opinion essay on Michigan's economy that ran in the *Wall Street Journal*.

Attorney General Mike Cox has charged Detroit Reps. George Cushingberry and Lamar Lemmons III with various campaign finance violations.

The following transcript is from a candidate forum on Jackson's WKMH radio on July 30, 2004. Candidate Jon Williams asks candidate Rick Baxter a question.

JW: On 4-16 of 2004, Rick, you cut a check for \$25,000 to the Greater Detroit Leadership PAC. The Greater Detroit Leadership PAC, of course, is a PAC that helps candidates, you know, get elected to office. So that \$25,000 is above and beyond the number of dollars that you've already spent in this campaign, if you would consider that a campaign expense. Now the interesting thing is that seven days later, the Greater Detroit Leadership PAC cut your committee a check for \$5,000. Why would you contribute \$25,000 to a Detroit PAC, only to take \$5,000 back during a campaign where you're already spending \$70,000 of your own money?

RB: First off, I was just actually brought this to my attention, that when they reported their contributions, that they put my name on the front-end statement, when they actually had the address right, and that's the business address, the actual check was from our company. The Greater Detroit Leadership Group is a organization based in the Detroit area that has relationships with the automotive industry, with the manufacturing industry, and Baxter Machine as a company has an association with many different associations; some being the Michigan Chamber of Commerce, Jackson Chamber of Commerce, Small Business Association, Michigan Manufacturing Association and also the Greater Detroit Leadership Group. They are one that we have a relationship with because of their connections in Detroit and their connections to the automotive industry. So we obviously hold our membership there and we've obviously paid funds to them throughout the campaign, or throughout our relationship with them. As far as their contribution to my campaign, was the fact that they interviewed with me, sat down, and talked about the positions, talked about my background, and they, in turn, endorsed and sent us a \$5,000 check. So, I mean, you know, and you'd be right that it would make no sense that you would give someone a large sum of money and they give you back a quarter or a fourth of it.



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All articles were written by Rich Robinson, executive director of the Michigan Campaign Finance Network.

Citizen's Guide Available Now

The Citizen's Guide to Michigan Campaign Finance, 2004 is available now from the Michigan Campaign Finance Network. The *Guide* includes campaign finance summaries of the 2004 presidential campaign, the federal political parties, 527 committees, Michigan's congressional campaigns, Michigan House campaigns, judicial campaigns, the state parties, political action committees and 2004 and 2006 ballot committees. It also has summaries of off-year fundraising by Michigan senators and statewide officeholders, and lists of top contributors to all state officeholders, political parties and leadership PACs.

The Citizen's Guide is free (although your contributions are welcome and encouraged). Request yours by calling (517) 482-7198; mail to MCFN, 200 Museum Drive, Lansing, MI 48933; or email to mcfn@mcfn.org.



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