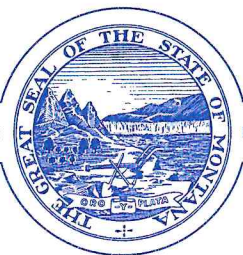


COMMISSIONER OF  
POLITICAL PRACTICES



STATE OF MONTANA

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April 30, 2024

Shiela Hogan  
Montana Democratic Party  
PO Box 802  
Helena, MT 59624

Subject: *Dismissal – Montana Democratic Party v. Montana Republican Party*  
COPP-2018-CFP-032

Dear Ms. Hogan,

On July 31, 2018, on behalf of the Montana Democratic Party “MDP”, Executive Director Nancy Keenan filed the above-named Campaign Finance and Practices complaint against the Montana Republican Party “MTGOP” and Mike Hopkins in his official capacity as Treasurer. The complaint alleges violations of Mont. Code Ann. § 13-37-229(2)(ii) which specifies the manner in which political committees must report expenditures. The complaint was accepted as filed and a response requested from MTGOP.

At the time this complaint was filed, the time under which an action could be brought by this office was four (4) years. MCA § 13-37-130 (2021)<sup>1</sup>. In the three (3) years following submittal of the complaint, COPP was unable to move forward while *Mangan v. Montana Republican Party* worked its way through the court system. 2021 MT 99, 404 Mont. 80, 485 P.3d 741. Following the decision in that case, which is addressed later in this letter, it became impracticable to further pursue any allegations in this complaint. Consequently, this complaint sat dormant.

As the current Commissioner of Political Practices, it is incumbent upon me to address all complaints accepted by this office and therefore I am issuing this response. While the statute of limitations requires the dismissal of this complaint, there also exists a substantive basis for

<sup>1</sup> In 2023 the Montana Legislature amended the statute of limitations under MCA § 13-37-130 to two (2) years.

dismissal and some discussion of MTGOP's response is warranted. The remainder of this correspondence addresses these issues.

The above-named complaint centers around statutorily required campaign finance reports and the associated reporting of personal services provided by political committees to candidates. MCA §13-37-229. MDP alleges that MTGOP failed to report significant staff time dedicated to assisting Republican candidates as required by law. Montana requires that any time spent by staff members of a political party on the campaign of a candidate be reported in an addendum as "personal services." *COPP Accounting and Reporting Manual for Political Committees*, 6 (2018).

Although personal services provided by the staff of a political party committee are not considered in-kind contributions for the purpose of the contribution limits outlined in MCA § 13-37-216, under most circumstances they are still reportable as in-kind contributions and are always reportable as expenditures. MCA § 13-37-229(2)(a)(ii) and ARM 44.11.401. Contribution limits notwithstanding, reporting of these transactions is vital to providing full disclosure and transparency to Montana voters. The respondent requested that the complaint be dismissed on two grounds which this letter addresses individually.

First, MTGOP asserts that MCA § 13-1-101(9)(a)(iv), which defines "Contribution" as "the payment by a person other than a candidate or political committee of compensation for the personal services of another person that are rendered to a candidate or political committee" does not apply to them as a matter of law. MTGOP asserts that while MTGOP is a *person* under the statute, their employees are not *another* person. Additionally, MTGOP points to the exception, "other than a candidate or political committee" to assert that an expenditure in the form of salaries to employees made by a political committee is not a contribution to candidates.

This rationalization by MTGOP fails to address MDP's allegations. The definition of "contribution" addressed in MTGOP's response is not referred to in the complaint. Instead, MDP alleges violations of MCA § 13-37-229(2)(a)(ii) - *expenditure* reporting. Therefore, any analysis must necessarily begin with expenditures.

According to MCA § 13-1-101(21)(a)(i), an "Expenditure" means a purchase, payment, distribution, loan, advance, promise, pledge, or gift of money or anything of value: made by a candidate or political committee to support or oppose a candidate or a ballot issue." Disclosure requirements for political party committees specifies that reports must include "the full name, mailing address, occupation and principal place of business, if any of each person to whom an expenditure for *personal services, salaries, and reimbursed expenses* has been made, including the amount, date, and purpose of that expenditure and the total amount of expenditures made to each person". MCA § 13-37-229(2)(a)(ii) (*emphasis added*). Here, there is no exception which corresponds to "other than a candidate or political committee" found in the definition of contribution. As no exception is provided, MTGOP must report expenditures for personal services rendered to a candidate by their staff.

ARM 44.11.401(1)(e) establishes that a coordinated (rather than an independent) expenditure is a contribution for reporting purposes. A coordinated expenditure is "reportable

election activity that is made by a person in cooperation with, in consultation with, under the control of, or at the direction of, in concert with, at the request or suggestion of, or with the express prior consent of a candidate or an agent of a candidate.” ARM 44.11.602. A “coordinated expenditure” shall be treated and reported as an in-kind contribution from and expenditure by the person funding, facilitating, or engaging in the election communication, electioneering communication, or reportable expenditure.” *Id.* § (5). Therefore, while personal services provided to candidates must be disclosed in accordance with MCA § 13-37-229(2)(a)(ii), when those expenditures are coordinated with a candidate, they also become an in-kind contribution, reportable by the candidate. ARM 44.11.602.

While MTGOP correctly quotes MCA 13-1-101(9)(a)(vi) as excepting compensation for personal services by “a person other than a candidate or political committee,” MCA 13-1-101(9)(a)(iii) includes in the definition of contribution “an expenditure, including an in-kind expenditure, that is made in coordination with a candidate or ballot issue committee and is reportable by the candidate or ballot issue committee as a contribution.” ARM 44.11.602 clearly states that expenditures, when coordinated with a candidate are reportable in-kind contributions. It is difficult to imagine a circumstance where personal services might be provided to a candidate without coordination. Therefore, while an expenditure for personal services is always reportable by the political committee, it will generally also be reportable by the candidate as an in-kind contribution. MCA § 13-73-229(2)(a)(ii) and ARM 44.11.602.

While reporting compliance is at issue here, some consideration of contribution limits is warranted. Although an expenditure for personal services must be reported, contribution limits do not always apply. Specifically, ARM 44.11.401(2) stipulates “for the purposes of determining compliance with political party contribution limits. . . a “contribution” does not include a coordinated expenditure made solely by a political party committee in the form of provision of personal services by paid staff of the political party.” Historically there has been some confusion on this point, and in order to clarify, COPP issued an advisory opinion in 2014 which states that “a provision of in-kind paid personal services by a political party committee to a candidate, while still a contribution for reporting and disclosure purposes, does not count toward the monetary limits placed on contributions by political party committees.” COPP-2014-AO-009.

Regardless, at issue in this circumstance is an alleged lack of expenditure reporting by MTGOP. MCA § 13-37-229(2)(a)(ii) applies here and MTGOP must report payments to staff for personal services provided to candidates. The applicability of MCA § 13-1-101(9)(a)(vi), as addressed by MTGOP in their response, is a consideration for reporting by the recipient – not MTGOP.

As a second grounds for dismissal, MTGOP maintains that they rarely make payments for personal services to a candidate and any such services have been properly reported. MTGOP states that their activities vary greatly from those of MDP, and staff is “always under MTGOP’s exclusive and complete control.” *See Bopp Law Firm response.* Their response asserts that their activities are not primarily to support or oppose a candidate but rather their employees and volunteers are focused on “general party-building activities” and “voter contact,” neither of which are candidate specific. *Id.*

As evidence for the purported violations, MDP compared their expenditures with those of MTGOP. As an example, MDP provided their reportable expenditures for personal services and contrasted those with the expenditures reported by MTGOP. In 2016, MDP reported 4,479 personal services transactions while MTGOP reported four (4). *See complaint*, 3. Here, MDP states that 90% of its expenditures are dedicated to “personal services” and therefore MTGOP, if equally involved in election activity, must have grossly underreported their personal services expenditures. *Id.* While the differences are notable, they are primarily conjecture and do not provide adequate evidence to determine if a violation exists. Unfortunately, MTGOP has refused to provide documentation, beyond routine COPP filings, which is necessary to determine the veracity of their claims and their compliance with campaign finance laws.

COPP’s request for employment records and relevant correspondence for the election years 2016, 2017, and 2018 as well as a list of “voter contact” and “general party-building activities” was rejected by MTGOP and the Montana Supreme Court. *Mangan v. Montana Republican Party*, 2021 MT 99, 404 Mont. 80, 485 P.3d 741. Here, the Court relied on a separation of powers argument and the plain meaning of MCA § 13-37-111 which uses the word subpoena in referencing witnesses but does not include subpoena in reference to compelling documents. 2021 MT 99, ¶¶ 11,12,15. In interpreting statutory language, the Court often employs the principle of statutory construction that demands “different language is to be given a different construction” *Gregg v. Whitefish City Council*, 2004 MT 262, ¶ 38. In *Mangan*, the Court concluded that “COPP’s statutory authority to “require the production” of documents does not include the authority to issue a documentary subpoena.” *Id.* ¶ 15. In holding that the COPP could not subpoena documents from MTGOP, the Court significantly hindered the COPP’s ability to investigate MDP’s allegations.

COPP is charged to “protect and ensure the integrity and transparency of campaigns, politics, and government in Montana”<sup>2</sup> and has statutory authority under MCA § 13-37-111 which states “The commissioner may: (c) administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, bank account statements of a political committee or candidate, or other records that are relevant or material for the purpose of conducting any investigation pursuant to the provisions of chapter 35 of this title or this chapter.” In holding that COPP could not subpoena documents from MTGOP, the Court significantly hindered COPP’s ability to investigate MDP’s allegations. This decision frustrates the fundamental notions of full disclosure, but I am duty bound to adhere to the Court’s holding in this matter.

Absent legislative modification to MCA § 13-37-111 to include the authority to subpoena documents along with witnesses, political committees like MTGOP, are not obligated to adhere to our requests. Nevertheless, cooperation with COPP is still beneficial to resolving complaints and COPP is permitted to “draw inferences” against a party when “it appears that it is within the power of the party to offer stronger and more satisfactory evidence. . .” but they choose not to do so. MCA §§ 26-1-303(5) and 26-1-501. However, due to the long-expired statute of limitations in this matter, I am left with no choice but to dismiss the complaint based on the evidence that I am provided.

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<sup>2</sup> A full description of the duties of the Office of the Commissioner of Political Practices can be found at <http://leg.mt.gov/committees/interim/sava/commissioner-political-practices/>



If true, MTGOP's contentions provide a sufficient reason to dismiss this complaint. Based on the expiration of the statute of limitations, on the reasonable assertion that MTGOP operates in a manner that limits personal services to candidates, and on the limited evidence provided to COPP, an allegation that MTGOP violated MCA § 13-27-229(2)(ii) is not supported. The complaint allegations have been considered as described above and are dismissed for lack of sufficient facts. This complaint is hereby dismissed in full.

Regards,



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