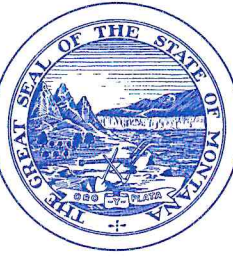


COMMISSIONER OF POLITICAL PRACTICES



STATE OF MONTANA

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November 3, 2023

Derek Goldman
2636 Park St.
Missoula, MT 59801

Subject: Dismissal- *Goldman v. Missoula Mayor political committee,*
COPP-2023-CFP-009

Dear Mr. Goldman;

Being in close proximity to the primary, and then the general election, I previously made a discretionary decision to hold Missoula Mayor related complaints until after the election, as not all of those complaints have been fully investigated and decided. Today you expressed a particular level of disappointment to me regarding your own decision so I am reversing that aspect and releasing the decision as it relates to your complaint.

On July 17, 2023, you filed the above-named Campaign Finance and Practices (CFP) complaint against the Missoula Mayor political committee. On July 21, I wrote to both you and the Missoula Mayor political committee to explain the procedures with respect to this matter, and to specifically request the committee provide a formal response to the complaint. I then reviewed the Missoula Mayor political committee's response and related facts, applicable law, and prior COPP decisions. In my July 21, 2023 letter to you I indicated I would provide a basis for my decision if I determined a dismissal of the complaint was warranted. Since I am dismissing the complaint, the remainder of this correspondence provides you with the basis for this dismissal.

The first alleged violation presented in your complaint concerns the Missoula Mayor political committee's classification as an incidental political committee, specifically an allegation that the committee actually qualifies as an independent committee and should have registered with COPP as such. Montana election law does provide formal definitions for the terms "incidental committee" and "independent committee". An incidental committee is defined as a political committee that "is not specifically organized or operating for the primary purpose of supporting or opposing candidates or ballot issues but that may incidentally become a political committee by receiving a contribution or making an expenditure", Mont. Code Ann (MCA) § 13-1-101(24). As stated in the legal definition, incidental committees are entities established for purposes other than electoral activity, such as a local business, that nevertheless engage in reportable Montana contribution and expenditure activity. In contrast, an independent committee is defined as a political committee "organized for the primary purpose of receiving contributions and making expenditures" to support or oppose candidates or ballot issues, MCA § 13-1-101(25). All political committees regardless of type are required to register with COPP by filing

a C-2 Statement of Organization, MCA § 13-37-201(2)(b).

In this matter, the Missoula Mayor political committee filed a C-2 Statement of Organization on June 1, 2023, classifying itself as an incidental committee. The Missoula Mayor political committee then timely filed an initial C-4 incidental political committee finance report on June 29, 2023, disclosing contributions (monetary and in-kind) it had received and expenditures made, including an independent expenditure supporting candidate Nugent.

Having registered as a political committee with COPP and disclosed contributions received, and expenditures made, the question becomes whether the Missoula Mayor political committee would be appropriately classified as an incidental or independent committee. Mont. Administrative Rule (ARM) 44.11.203 allows the Commissioner to consider certain evidence, including a political committee's allocation and source of budget, allocation of staff or members' activity, and its statement of purpose or equivalent document, to determine the primary purpose. If, based on this analysis, the Commissioner determines that the committee's primary purpose is to support or oppose candidates or ballot issues, the Commissioner may reclassify the committee as an independent committee, 44.11.203(4), ARM.

In my July 21, 2023, letter to the Missoula Mayor political committee, I specifically requested the committee provide information detailing its allocation and source of budget, allocation of staff or members' activity, and a copy of the statement of purpose or similar document adopted by the committee so that I could make a formal determination as to its primary purpose. As requested, on July 25, 2023, the Missoula Mayor political committee provided a formal response to this complaint to COPP. The response stated that "the committee's sole purpose is to independently support Mike Nugent" and that the committee had received monetary contributions totaling \$135,000.00 and made three (3) total expenditures, including one (1) independent expenditure supporting candidate Nugent.

Based on the information provided by the Missoula Mayor political committee on its C-2 Statement of Organization, the initial C-4 incidental committee finance report, and the July 25, 2023, complaint response, I am formally reclassifying the committee as an independent committee, pursuant to the authority granted me under 44.11.203(4), ARM. The Missoula Mayor political committee's primary purpose is to receive contributions and make expenditures supporting Mike Nugent for election to the office of Mayor in the City of Missoula, making it an independent committee, MCA § 13-1-101(24). I have notified the Missoula Mayor Committee of my determination reclassifying their committee status from incidental to independent. Henceforth, the Missoula Mayor Committee is and shall be required to file C-6 periodic reports with this office. Assuming the Missoula Mayor Committee abides by my decision and complies with reporting requirements there is no violation to pursue. The committee did abide.

This reclassification is the full and final action I will take regarding this allegation. In this case, the Missoula Mayor political committee's classified itself as is typically done. Missoula Mayor did attempt to properly classify itself by contacting this office. I can only surmise that the Missoula Mayor Committee misunderstood its obligation and did not share all pertinent information with COPP staff. Regardless, the typical approach by this office is reclassification upon the discovery of any error without penalty, especially in instances where the misapplication

was inadvertent, unintentional, and did not deprive the public of timely and accurate information, which is the fundamental purpose of the campaign finance disclosure law. While a previous commissioner did find a failure by an independent committee to properly register as such worthy of potential enforcement, the Sufficiency Decision was issued specifically and only because the committee had failed to disclose the source of contributions received in the manner required of independent committees under Montana law, *Zabawa v. North Fund*, COPP-2020-CFP-043 at p. 26.¹ Unlike in *North Fund*, the Missoula Mayor political committee did not fail to meet its legal obligation to reveal to the public the source of any contributions received or expenditures made. To the contrary, the Missoula Mayor political committee directly disclosed all contributions received and expenditures made on its initial finance report, including disclosure of an independent expenditure for billboards specifically supporting candidate Nugent.² Because the Missoula Mayor political committee did not “deprive the public the knowledge of” its support for candidate Nugent or the source of its contributions received and expenditures made, no enforcement action is warranted by COPP, *Tonkay v. Caferro*, COPP-2022-CFP-003 at p. 5.

In a July 24, 2023, email message sent to COPP, you refer to the Missoula Mayor political committee’s independent expenditure activity as “an illegal billboard”. I disagree. Protections on free speech are afforded under both the United States (First Amendment) and Montana (Article II, Section 7) Constitutions, and these protections apply to political committees as well as individual citizens. Limiting or disallowing a Montana political committee’s political speech would constitute a blatant violation of both the United States and Montana Constitutions, *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010). In other words, the Missoula Mayor political committee is free to engage in political speech supporting or opposing candidates and issues for election in Montana, including the purchase of billboards supporting or opposing the candidates of its choice. Montana law simply requires that they register with COPP and disclose contributions received and expenditures made to do so, obligations the Missoula Mayor political committee has met.

Your complaint also specifically alleges that the Missoula Mayor political committee failed to include the name of candidate Nugent on its C-2 Statement of Organization despite making independent expenditures intended to support his candidacy. Montana law and administrative rule (44.11.201(1)(f), ARM) does require that a political committee’s Statement of Organization include the “name, office sought, and party affiliation (if any) of each candidate on whom the committee makes a reportable election expenditure”.

I agree that, as originally filed on June 1, 2023, the Missoula Mayor political committee failed to meet the requirements of 44.11.201(2)(f), ARM by not indicating its support for candidate Nugent on the C-2 Statement of Organization. However, on July 14, 2023, the Missoula Mayor political committee filed an amended version of its C-2 Statement of Organization that directly names candidate Nugent as a candidate on whom the committee had

¹ I further note that the COPP Sufficiency Decision in this matter was ultimately reversed in a Final Agency Determination issued by COPP upon appeal by the North Fund political committee.

² In addition to disclosing this independent expenditure and the fact that it supported candidate Nugent on its initial finance report, the Missoula Mayor political committee included an attribution message of “Paid for By Missoula Mayor, Shannon Winterer, Treasurer, 2814 Brooks St. Box 203, Missoula, MT 59801” on each billboard, clearly identifying that it had financed the material.

made a reportable independent expenditure supporting. This occurred prior to COPP's receipt of your complaint, which occurred first via email and then via U.S. Mail July 17, 2023.

As the error was appropriately remedied by the Missoula Mayor political committee via amendment of its C-2 Statement of Organization prior to this Office's receipt of your complaint, I am dismissing this allegation. Finding the Missoula Mayor political committee in violation of 44.11.201(2)(f) when the error was remedied prior to COPP even having a formal complaint to consider would not serve any public purpose, nor is there any legitimate policy reason for COPP to do so, *Marbut v. Dudik*, COPP-2014-CFP-061 at p. 5, *Eaton v. Olsen*, COPP-2018-CFP-2018. As noted above, by disclosing this expenditure on its initial finance report the Missoula Mayor political committee did not deprive the public, including yourself, of knowledge that it supported candidate Nugent.

Regards,

/s/ Chris J. Gallus

Chris J. Gallus
Commissioner of Political Practices

Cc: Shannon Winterer (Treasurer) and James Bachand (Deputy Treasurer), Missoula Mayor political committee