



COMMISSIONER OF
POLITICAL PRACTICES

STATE OF MONTANA

JEFF MANGAN
COMMISSIONER
TELEPHONE (406) 444-2942
FAX (406) 444-1643
www.politicalpractices.mt.gov

1209 EIGHTH AVENUE
P.O. BOX 202401
HELENA, MT 59620-2401

August 22, 2022

Jake Eaton
406-233-9121
Eaton.jacob@gmail.com

Re: COPP-2022-AO-001

Dear Mr. Eaton;

I write in response to your inquiry of August 2, 2022, requesting the Office of the Commissioner of Political Practices (COPP's) application of independent expenditures to campaign materials that direct a contribution to a candidate's website, fundraiser, or through a mailing campaign.

Issues Presented

On August 2, 2022, Jake Eaton of Billings, Montana requested an advisory opinion from COPP to answer the following question:

Is it permissible for Montana political committees to utilize independent expenditures as defined in MCA 13-1-101(26) to solicit contributions that are directed to a particular candidate's campaign?

The following facts were offered for the COPP to consider in preparing this Advisory Opinion:

Myself and others would like to start a new political committee to engage in independent expenditures on behalf of certain candidates. One of the committee's activities would be to conduct fundraising solicitations that are directed to a particular candidate's campaign. These activities ... include... :

- Fundraising email solicitations that utilize a paid email service platform and contain a link directly to the particular candidate's website;
- utilizing paid email service platforms or paid social media advertising to promote publicly known fundraising events put on by a particular candidate's campaign; and
- direct mail solicitations that include a reply device so that donors could return their contribution directly to a particular candidate's campaign.

(Edited to limit to facts alleged in the Advisory Opinion Request).

ADVISORY OPINION

The Commissioner is limited to issuing an advisory opinion that addresses a campaign finance issue, on a set of specific facts of proposed activities, and the opinion is binding between the Commissioner and the requestor to the statement of fact provided for the Commissioner's consideration, Mont. Admin. R. 44.11.201.

Short Answer

Political committees may make entirely independent expenditures which solicit contributions to be made directly to a candidate's campaign.

Discussion

Montana campaign finance law does not contain a statute that dictates the content of a candidate or committee's election communications, other than the requirement that the advertisements contain an attribution so that the public may use the information to obtain the candidate or committee's campaign finance disclosures, *accord Sanders County Republican Central Committee v. Bullock*, 698 F.3d 741 (2012). That being said, Montana law prohibits coordinated campaign expenditures which exceed contribution limits, and strictly prohibits any candidate coordination with corporations or unions, Mont. Code Ann. § 13-35-227.

An 'independent expenditure' by any political committee or candidate, may not be 'coordinated'. Coordination is defined as being "made in cooperation with, in consultation with, at the request of, or with the express prior consent of a candidate or political committee or agent of a candidate or political committee", Mont. Code Ann. § 13-1-101(10) and the rule provides further clarity for the actions of the committee, candidates and the agents of both, Mont. Admin. R. 44.11.602. Simply said, the proposed activity must be truly independent of the candidate, their campaign, and their agents.

The expenditures you proposed, if independent of the candidate, would be allowed

under current Montana law. Specifically, linking to or referencing a candidate's website, publicizing a candidate's already publicized fundraiser, or providing an envelope addressed to the candidate's campaign address with a mailer from the committee are all allowable independent expenditures.

Best practice would be for you to do all you practicably can to avoid actually receiving any contributions solicited for the candidate as they are required to be reported both by you and the candidate as earmarked contributions, Mont. Code Ann. § 13-37-217 and Mont. Admin. R. 44.11.404.

LIMITATIONS ON ADVISORY OPINION

This letter is an advisory opinion based on the specific written facts and questions as presented above. This advisory opinion may be superseded, amended, or overruled by subsequent opinions or decisions of the Commissioner of Political Practices or changes in applicable statutes or rules. This advisory opinion is not a waiver of any power or authority the Commissioner of Political Practices has to investigate and prosecute alleged violations of the Montana laws and rules over which the Commissioner has jurisdiction, including alleged violations involving all or some of the matters discussed above.

Sincerely,



Jaime MacNaughton
Attorney for the
Commissioner of Political Practices

I agree with this Advisory Opinion and afford it the full weight of the Commissioner's authority.

DATED 23rd day of August, 2022.



Jeffrey A. Mangan
Commissioner of Political Practices