



COMMISSIONER OF
POLITICAL PRACTICES

STATE OF MONTANA

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January 3, 2018

Denise Roth Barber
drothbarber@gmail.com

Re: COPP-2017-AO-003
Treatment of Candidate Contributions to Other Candidate Campaigns

Dear Ms. Roth Barber:

The Commissioner writes in response to your request for an advisory opinion of November 28, 2017 on the following issue:

ISSUE PRESENTED

Can the COPP revisit how contributions from a candidate's campaign committee should be treated by the receiving candidate's campaign committee? Specifically, the COPP should treat a contribution from a candidate's campaign committee as a contribution from the committee, rather than a contribution from the individual as the money is entirely separate from an individual's personal accounts and funds.

ADVISORY OPINION

The Commissioner is limited to issuing advisory opinions that address campaign finance reporting and disclosure questions within the Commissioner of Political Practices' (COPP) jurisdiction, Mont. Admin. R. 44.11.102. The consideration of the questions and facts in this matter are limited to the information which was provided to the COPP in your request and information which is publicly available and specifically referenced herein. Based upon the foregoing identified scope of information, the Commissioner issues the following Advisory Opinion:

SHORT ANSWER

No. A candidate, as an individual, is subject to a single contribution limit to another candidate for public office's campaign account. There is no separate political committee created when a candidate runs for office, therefore a single contribution limit applies to the contributions of the individual candidate.

DISCUSSION

A candidate is defined in Montana's Campaign Practice and Finance Laws as "an individual who has filed a declaration or petition for nomination, acceptance of nomination, or appointment as a candidate for public as required by law..." Mont. Code Ann. § 13-1-101(8)(a) (2017). An individual is defined as "a human being." Mont. Code Ann. § 13-1-101(26). The law also provides that "[a] candidate and the candidate's treasurer do not constitute a political committee." Mont. Code Ann. § 13-1-101(31)(c). The COPP must read and apply the statutes to give meaning to all provisions as required by the rules of statutory construction, Mont. Code Ann. § 1-2-101.

Contributions to candidates are limited in amount and source under Montana law, Mont. Code Ann. § 13-35-227 (prohibited corporate contributions), Mont. Code Ann. § 13-37-216 (individual and political committee limits), and Mont. Code Ann. § 13-37-218 (political committee aggregate limit). Specifically, contributions to a candidate are limited to the "aggregate contributions for each election in a campaign by a political committee or by an individual, other than the^[1] candidate, to a candidate are limited as follows..." Mont. Code Ann. § 13-37-216(1)(a) (emphasis explained in footnote 1). A candidate and their treasurer, by definition, are not a political committee. Rather a candidate is an individual under Montana law, and is subject to the individual contribution limit to any candidate.

A direct contribution of money to a candidate's campaign is but one way in which Montana law provides for an individual to express association with a candidate of their choice. A candidate for office may make a contribution from their campaign account expressing their associational interest with and to another candidate, and/or through their own personal funds. A candidate cannot, through status as a candidate and use of campaign funds, gain an additional individual limit to contribute to another candidate for a second time. Because a candidate is an individual, they are subject to the same single contribution limit that any other individual has under Montana law.

¹ A candidate's contribution to their own campaign is exempt from the aggregate limit.

CONCLUSION

There has been little discussion in previous decisions or opinions of the Office of the Commissioner of Political Practices as to how Montana's Campaign Finance and Practice Act is applied to a candidate's contribution to another candidate. The parties at interest have a right to know and understand their reporting and disclosure responsibilities. We appreciate the opportunity to discuss how the Act applies in the context of candidate's contribution to another candidate.

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 2nd day of January, 2018.



Jeffrey A. Mangan
Commissioner of Political Practices