



COMMISSIONER OF
POLITICAL PRACTICES

STATE OF MONTANA

JEFFREY A MANGAN
COMMISSIONER
TELEPHONE (406) 444-2942
FAX (406) 444-1643

1209 EIGHTH AVENUE
P.O. BOX 202401
HELENA, MT 59620-2401
www.politicalpractices.mt.gov

May 7, 2018

Amber Maltbie
Attorney for The Fairness Project
NOSSAMAN LLP
777 South Figueroa St, 34th Fl
Los Angeles, CA 90017
amaltbie@nossman.com

Re: COPP-2018-AO-001
Out of State Political Committee – Supporting Statewide Ballot Issue

Dear Ms. Maltbie,

The Commissioner writes in response to your request of April 19, 2018, on behalf of The Fairness Project, for an advisory opinion on the following issues:

ISSUES PRESENTED

“I have a 501(c)(4) client that will make contributions to a ballot issue committee and in so doing, qualify as an incidental committee. I understand that my client can file the C-2 when it appoints a treasurer, or within 5 days of (in our case) making expenditures to support a ballot issue committee. However, is my client required to file the C-2 on the same timeline as the ballot issue committee it plans on supporting (i.e. within 5 days of the Secretary of State approving the ballot issue for signature collection)?

“With regard to the treasurer, is it permissible for one of the out of state officers to perform the functions of the treasurer, so long as a registered Montana voter serves as treasurer? In other words, can we have someone (such as a political compliance firm) actually handle the bank account if they are an officer but not a registered MT voter?

“Does the bank the we use have to have an actual branch location in Montana? And do we need a separate bank account for just the Montana activity?

“When we file the C-2 [electronically], does your office require a wet signature in addition to the e-filing?”

SHORT ANSWERS

A corporation that makes contributions for a ballot issue before it qualifies for signature gathering, is required to file a Form C-2, Statement of Organization, within five (5) business days of the ballot issue qualification for signature gathering.

An out of state committee should appoint a registered Montana voter as treasurer of its committee, who may appoint a deputy out of state treasurer with a written agreement allocating the performance of the treasurer duties.

Campaign depositories are required to be authorized to transact business in Montana. A list of currently authorized depositories is attached to this opinion.

Committees, having certified that the report is true, complete and correct through CERS are not required to provide a physically signed report to COPP.

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 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:

BACKGROUND

On February 22, 2015, a ballot issue was presented to the Montana Secretary of State (SOS) to place an issue on the November ballot to “raise tobacco taxes to fund health care programs[.]”¹ I-185 to was approved for signature gathering by the SOS on April 16, 2018, *id.*

¹ “A citizen proposed ballot issue can only appear on the federal general election ballot once the proposed language has fulfilled three requirements. First, the language must be submitted to Montana’s Legislative Services Division. Second, the Montana Attorney General must conduct a legal review. Finally, after the review process is complete, and the sponsor has been notified by the Secretary of State of the approval or rejection of the

The political committee formed by the people who provided the ballot issue to the SOS is called “Healthy Montana for I-185.” Healthy Montana for I-185 formed as a political ballot issue committee by filing a Form C-2, Statement of Organization, with COPP on April 8, 2018. On May 1, 2018, Healthy Montana for I-185 filed its initial Form C-6, Committee Finance Report, reporting and disclosing the contributions received and expenditures made by the committee.

For the purposes of reporting and disclosure under Montana Campaign Finance laws a statewide ballot issue “becomes a ‘ballot issue’ upon preparation and transmission by the secretary of state of the form of the petition or referral to the person who submitted the proposed issue,” Mont. Code Ann. § 13-1-101(6)(b). The overarching question presented here is when do incidental committees that contribute to ballot issue committees form and incur reporting and disclosure obligations.

DISCUSSION

In 2015 the Montana Legislature passed the Disclose Act, which updated and clarified the ability of corporations and unions to participate in political activity in Montana following court decisions in *Lair v. Murray*, 871 F. Supp. 2d 1058 (D. Mont., May 16, 2012) and *American Tradition Partnership, Inc. v. Bullock*, 567 U.S. 516 (2012).

A corporation or union is required to register as a political committee by filing a Form C-2, Statement of Organization, within 5 days after making an expenditure, Mont. Code Ann. § 13-37-201(2)(b). If a corporation or union decides to make a single contribution, or multiple contributions in the same reporting period, it can file a C-2 and its opening and closing report (C-4 or C-6) all in a single reporting cycle.

1. Committee Reporting Is Triggered By Its Own Activity

Although the question presented contemplated future contributions to a statewide ballot issue committee, COPP’s records reflect that The Fairness Project made contributions to the committee before the ballot issue was qualified by the SOS for signature gathering. In this situation, an incidental ballot issue committee is formed at the same time that the ballot issue qualifies for signature gathering, Mont. Code Ann. § 13-1-101(6)(b). In other words, the incidental committee should file a C-2, Statement of Organization within 5 days of the issue qualifying for signature gathering. Here, I-185

ballot issue, the sponsor must collect sufficient verified signatures from qualified voters in Montana.” SOS website, *Proposed 2018 Ballot Issues* http://sos.mt.gov/elections/ballot_issues/2018#603444483-all-submitted-ballot-issues (last visited 5/3/18).

qualified for signature gathering on April 16, 2018, and The Fairness Project correctly filed its Statement of Organization within 5 days, on April 20, 2018.

For entities that incidentally become a committee by making a contribution or an expenditure after a statewide ballot issue has been approved for signature gathering, the committee must register with COPP within 5 days after the entity makes or authorizes an expenditure, Mont. Code Ann. § 13-37-201(2)(b) and (c). Corporations are required to file these reports regardless of their corporate form or IRS tax filing status, Mont. Code Ann. § 13-37-233.

2. Treasurer and Deputy Treasurer

Montana law requires that “any campaign or deputy campaign treasurer ... must be a registered voter in this state,” Mont. Code Ann. § 13-37-203. An appointed campaign treasurer may then appoint a deputy campaign treasurer who

may exercise any of the powers and duties of a campaign treasurer as set forth in [chapter 37] when specifically authorized in writing to do so by ... the campaign treasurer and presiding officer of the political committee The written authorization must be maintained as a part of the records required to be kept by the treasurer[.]

Mont. Code Ann. § 13-37-202(2).

In similar situations for committees headquartered outside of Montana, COPP has approved the committee’s appointment of a Montana treasurer together with a deputy out of state treasurer.² Montana law requires that the reporting and disclosure duties must be carried out by a duly appointed treasurer, Mont. Code Ann. 13-37-201. Out of state committees should appoint a Montana treasurer who then can enter a written agreement with the committee and deputy treasurer that the duties may be carried out by a deputy out of state treasurer, Mont. Code Ann. § 13-37-202(2).

The Commissioner understands that this guidance necessarily conflicts with the requirement that deputy treasurer must be a registered voter in Montana, Mont. Code Ann. § 13-37-203. However, the Commissioner has also been directed by the legislature to provide guidance for “committees headquartered outside the state of Montana” to be able to report and disclose pursuant to Montana laws, Mont. Code Ann. § 13-37-227, Mont. Admin. R. 44.11.305(2). In harmonizing the statutes to effectuate the purpose of the law, the Commissioner determines that the appointment of a Montana treasurer

² *Smith v. Republican State Leadership Committee-Judicial Fairness Initiative Montana PAC*, 2016-CFP-040, <http://politicalpractices.mt.gov/Portals/144/2recentdecisions/SmithvRepublicanJudicialDecision.pdf>

who then deputizes a nonresident treasurer fulfills the legislative intent of both statutes—that is, it requires every committee to have a duly appointed Montana voter as its treasurer, while also allowing an out of state committee to function in its home state by using a deputy treasurer in that location to fulfill Montana’s reporting and disclosure requirements.

3. Banking Requirements

Montana law requires that campaign depositories be “[o]nly a bank, credit union, savings and loan association, or building and loan association authorized to transact business in Montana[,]” Mont. Code Ann. § 13-37-205.³ All contributions and expenditures are required to be made through the designated depository, *id.* For out of state committees, COPP has approved an out of state committee’s designation of a Montana bank as a primary depository, and an out of state bank as a secondary depository.

4. Electronic Filing

Incidental Committees that make a contribution to a statewide ballot issue committee are required to file their reports electronically through the use of the Campaign Electronic Reporting System (CERS), Mont. Code Ann. § 13-37-226(1).⁴ All reports and disclosures filed with COPP are required to be signed, and certified by the oath or affirmation of the officer as “true, complete and correct[,]” Mont. Code Ann. § 13-37-231.

When filing a report through CERS, upon reaching the file tab, the officer will put in the closing date of the report being filed and then check a box certifying that the report is “true, complete and correct to the best of my knowledge.” This electronic certification is accepted as the committee’s electronic signature on the report fulfilling the requirements of the statute, Mont. Admin. R. 44.11.302(4)(a). There is no need to file a hard copy, or “wet”, signature.

CONCLUSION

We appreciate the opportunity to discuss how Montana’s campaign finance and disclosure laws apply in the context of an out of state corporation’s contribution to a statewide ballot issue committee.

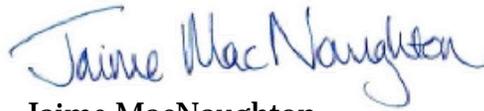
³ Montana Division of Banking and Financial Institutions list as of May 7, 2018.

⁴ <https://camtrackext.mt.gov/CampaignTracker/dashboard;jsessionid=84B0A3DA355DFB4012A3B42DDF1D4039>

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 9th day of May, 2018.



Jeffrey A. Mangan
Commissioner of Political Practices