

COMMISSIONER OF
POLITICAL PRACTICES



STATE OF MONTANA

JONATHAN R. MOTL
COMMISSIONER
TELEPHONE (406) 444-2942
FAX (406) 444-1643

1205 EIGHTH AVENUE
PO BOX 202401
HELENA, MONTANA 59620-2401
www.politicalpractices.mt.gov

October 29, 2013

Matthew Monforton
Attorney at Law
32 Kelly Court
Bozeman, MT 59718

Re: Montana Family Foundation; LR -120 and LR-126
Issue: Anonymity Disclaimer For Contributions under \$35
COPP-AO- 2013-3

Dear Mr. Monforton:

I write in response to your letters of October 1 and October 28, 2013. Because this inquiry raises an issue of general public concern I am treating this letter as a response to a request for an advisory opinion under 44.10.201 ARM thereby making this response available for general public review.

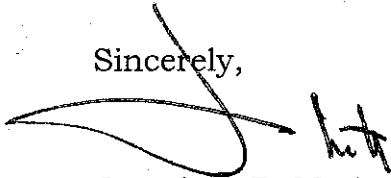
The October 1, 2013 letter implies that the Montana Family Foundation is required by a new Montana law [§13-35-237 MCA] to disclose contribution information for contributors making contributions in amounts less than \$35. This is not the case. Section 13-37-229 MCA only requires contribution disclosure for contributions of \$35 or more. Section 13-35-237 does not amend or change this threshold disclosure requirement. Under §13-35-237 a political committee does not need to "claim[s] to be exempt from disclosing" information for amounts less than \$35 since no such disclosure is required. Stated another way, contrary to the assertions in the October 1, 2013 letter MFF has never had to and will not need to refuse "...to disclose the names of persons contributing under \$35 to the organization", since such a disclosure has not been and is not required under Montana law.

Assuming *arguendo* that the description of the April 12, 2013 floor debate in the October 1, 2013 letter is accurate, the above assessment does not change. Under long standing Montana law when two statutes are in play they must be read to give effect to each: "This Court presumes that the legislature would not pass meaningless legislation; and must harmonize statutes relating to the same subject, giving effect to each." *State ex rel. City of Townsend v. D.A. Davidson, Inc.* (1975), 166 Mont. 104, 531 P.2d 370.

Section 13-37-229 MCA explicitly requires disclosure only for contributions of \$35 or more. Giving effect to §13-37-229 requires that §13-35-237 be read to require the anonymity disclaimer only when the claimed anonymous contributions include amounts of \$35 or more from a single person or entity. There is no need to look to legislative history as the normal statutory construction, giving effect to each statute, resolves the issue without any need to look to history.

Please feel free to contact me should you have further questions on this issue.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jonathan R. Motl', is written over the word 'Sincerely,'.

Jonathan R. Motl
Commissioner of Political Practices

Baker, Mary

From: Baker, Mary
Sent: Wednesday, October 30, 2013 8:33 AM
To: 'matthewmonforton@yahoo.com'
Subject: Response to your request regarding MFF
Attachments: ao 3.pdf

Good Morning Matt,

Hope you are doing well.

Attached is Commissioner Motl's response to your letter regarding the Montana Family Foundation.

If you have any questions, please contact the Commissioner.

Thanks,

Mary Baker

Program Supervisor
Montana Commissioner of Political Practices
(406) 444-7416
mabaker@mt.gov



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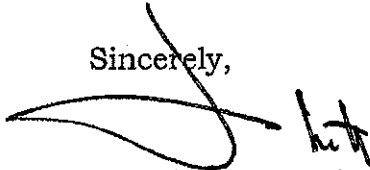
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Please feel free to contact me should you have further questions on this issue.

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Jonathan R. Motl
Commissioner of Political Practices

Motl, Jonathan

From: Scheier, James
Sent: Tuesday, October 29, 2013 2:08 PM
To: Motl, Jonathan
Subject: RE: letter

Jon,

I agree with the analysis contained in the letter. Under 13-37-229 the name of a contributor must be disclosed only if the person made aggregate contributions of \$35 or more. This requirement applies to all political committees. Nothing in 13-35-237 changes that requirement. 13-35-237 only applies when a committee claims it is exempt from disclosing the name of a person making a contribution. Thus, as I read the statute 13-35-237 would only come into play when a committee has received contributions of \$35 or more from persons (which would normally have to be disclosed), but for some reason the committee claims it is exempt from that disclosure requirement. So to the extent Monforton expresses a concern that the new law requires disclosure of contributions less than \$35, there is no basis to his concern (as far as I can determine).

A few technical corrections to the letter:

- On page 1, second paragraph, the third sentence should read that 13-37-229 requires contribution disclosure for contributions of \$35 or more (rather than "in excess of \$35).
- On page 2, the first complete paragraph should begin with a reference to 13-37-229 (not 239). In addition, that sentence should refer to contributions of \$35 or more (rather than contributions "in amounts greater than \$35."
- The second sentence in that paragraph also incorrectly refers to 13-37-239 (should be 229). And, the reference should be to amounts of \$35 or more rather than amounts greater than \$35.

Jim

From: Motl, Jonathan
Sent: Tuesday, October 29, 2013 12:51 PM
To: Scheier, James
Subject: letter

Jim, please review this.
Jonathan Motl
Commissioner of Political Practices

MONFORTON LAW OFFICES, PLLC

A PROFESSIONAL LIMITED LIABILITY COMPANY
32 KELLY COURT
BOZEMAN, MONTANA 59718

TELEPHONE: (406) 570-2949
FACSIMILE: (406) 551-6919
E-MAIL: matthewmonforton@yahoo.com

Licensed in Montana and California

RECEIVED

2013 OCT 31 A 9:24

POSTMARKED

OCT 28 2013

COMMISSIONER OF
POLITICAL PRACTICES
October 28, 2013

Commissioner Jonathan Motl
Office of the Commissioner of Political Practices
1205 8th Ave.
Helena, Montana 59620

Via U.S. Mail & Facsimile: (406) 444-1643

Re: Enforcement of § 13-35-237, MCA

Dear Commissioner Motl:

I wrote to you four weeks ago on behalf of my client, Montana Family Foundation (MFF). Specifically, I inquired as to whether your office will seek to enforce compliance of the label requirement in § 13-35-237, MCA, based upon a political committee's policy of declining to identify persons making earmarked contributions of less than \$35 towards the committee's communications in support of ballot initiatives. This is a policy MFF has adhered to in the past and will continue to do so in the future.

We have not yet received a response. Could you let us know at your earliest convenience whether your office will be responding to our inquiry and, if so, when we might expect such a response? Thank you for your attention to this matter.

Sincerely,


Matthew G. Monforton
MGM:dm

cc: Mike Black, Esq.

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RECEIVED

2013 OCT 28 P 12:02

COMMISSIONER OF
POLITICAL PRACTICES
Via U.S. Mail & Facsimile: (406) 444-1643



October 28, 2013

Commissioner Jonathan Motl
Office of the Commissioner of Political Practices
1205 8th Ave.
Helena, Montana 59620

Re: Enforcement of § 13-35-237, MCA

Dear Commissioner Motl:

I wrote to you four weeks ago on behalf of my client, Montana Family Foundation (MFF). Specifically, I inquired as to whether your office will seek to enforce compliance of the label requirement in § 13-35-237, MCA, based upon a political committee's policy of declining to identify persons making earmarked contributions of less than \$35 towards the committee's communications in support of ballot initiatives. This is a policy MFF has adhered to in the past and will continue to do so in the future.

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Sincerely,


Matthew G. Monforton
MGM:dm

cc: Mike Black, Esq.

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32 KELLY COURT
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2013 OCT -7 A 9:15

COMMISSIONER OF
POLITICAL PRACTICES

Via U.S. Mail & Facsimile: (406) 444-1643

October 1, 2013

Commissioner Jonathan Motl
1205 8th Ave.
Helena, Montana 59620

Re: Enforcement of § 13-35-237, MCA

Dear Commissioner Motl:

Thank you for your letter regarding my client, Montana Family Foundation (MFF). Our concern about § 13-35-237, MCA arises from an issue not described in your letter. MFF has accepted, and will continue to accept, contributions from persons in amounts of less than \$35 for use in communicating its support for ballot initiatives such as LR-120 and LR-126. MFF's policy, which is consistent with § 13-37-229(2), MCA, has been to refuse to disclose the names of such persons. MFF will follow this policy in the future.

The plain language of § 13-35-237, MCA, makes clear that MFF's policy of not identifying these contributors will now require MFF to include on all of its election-related communications the following disclaimer: "This communication is funded by anonymous sources. The voter should determine the veracity of its content."

Our concerns are heightened by the legislative history of the statute. On April 12, 2013, Sen. Jennifer Fiedler proposed an amendment to HB 254 (the bill that ultimately became § 13-35-237, MCA) that would have added the following language: "Contributions under the threshold amount in 13-37-229 are not considered anonymous as that term is used in this section." After extensive debate, the Senate rejected this amendment.

Thus, both the plain language of § 13-35-237, MCA, and the statute's legislative history show that MFF's refusal to disclose the names of persons contributing under \$35 will require it to include the statute's "anonymous funding" disclaimer on its election-related communications. Given that one provision of the state's campaign finance law permits political committees to withhold from disclosure the names of certain contributors, it seems unfair that political committees availing themselves of this right will now be penalized by being required to affix a negative disclaimer on all of their election-related communications.

Could you please assure us, in writing, that your office will not attempt to enforce § 13-35-237, MCA, as a result of MFF continuing its policy of refusing to disclose the names of persons contributing under \$35 to the organization?

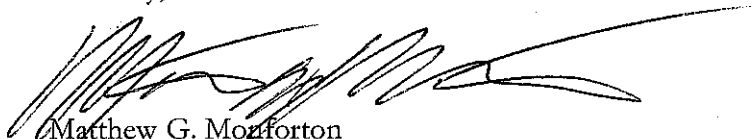
Given that the statute takes effect as of today, we would appreciate an answer at your earliest convenience. Thank you in advance for your prompt attention to this matter.

Commissioner Jonathan Motl

October 1, 2013

Page 2

Sincerely,

A handwritten signature in black ink, appearing to read 'Matthew G. Mozforton', written over a horizontal line.

Matthew G. Mozforton

MGM:dm

cc: Mike Black, Esq.

Attorney at Law

September 26, 2013

Matthew Monforton

32 Kelly Court
Bozeman, MT 59718

Re: Montana Family Foundation; LR -120 and LR-126

Dear Mr. Monforton:

I write in response to your letter of September 11, 2013.

As your letter represented, in 2012 Montana Family Foundation (MFF) did register, attribute, disclose and report as an "incidental political committee", reporting expenses in regard to LR-120 and other activities. In total in 2012 MFF reported over \$200,000 in expenditures and, in addition, reported a number of earmarked contributions. While attribution is not shown in the MFF incidental committee reports, I presume that attribution was properly made as "paid for by MFF" along with the other required information. I make this presumption because no complaints were filed against MFF for improper attribution during the 2012 elections.

If MFF similarly intends 2014 expenses of its regular or earmarked funds in opposition to LR-126, then the applicable laws are §§13-37-225,226 MCA and 44.10.519 ARM in regard to earmarks. Those laws were in effect in 2012 and remain in effect in 2013/2014. Those laws were unchanged by §13-35-237 MCA .

If your letter means to imply that in 2014 MFF will receive earmarked contributions from a third party source that it wishes to keep anonymous, then the law at play is 44.10.519

ARM, the same law that was in effect in 2012. The disclosure/reporting requirement of 44.10.519 ARM was not changed by the passage of §13-35-237 MCA.

If you have facts that illustrate a situation different than that described above I will be glad to respond further, including issuing an advisory opinion if facts are provided that would justify such an opinion. At this point, though, I do not see how MFF will place itself in a position where it can claim to be inhibited in some way by §13-35-237 MCA .

Sincerely,

Jonathan R. Motl
Commissioner