

COMMISSIONER OF
POLITICAL PRACTICES



STATE OF MONTANA

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April 8, 2015

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COPP-2015-AO-001

Re: Federal and State Candidate Joint Fundraising Committees

Dear Mr. Wang;

I write in response to your email request for an advisory opinion of February 3, 2015 regarding the propriety of state and federal candidates participating in a Joint Fundraising Committee, as regulated by the Federal Election Commission (FEC). You requested an Advisory Opinion from the Commissioner regarding the regulation of a state candidate under Montana's Campaign Finance and Practice laws.

ISSUE PRESENTED

Whether Montana state candidates can participate in a "joint fundraising committee¹" with a federal candidate(s) for office?

FACTS PRESENTED

You supplied an extensive review of your interpretation of Federal law and specific questions, I will set them out in full as posed to the Commissioner for this Advisory Opinion.

¹ For a primer compiled by the FEC on Joint Fundraising Committees, see "Joint Fundraising, FEC Online Presentation"
<https://www.youtube.com/watch?v=myIQKxJbF6w>. Uploaded on Oct 31, 2011.

“Federal candidates who jointly raise money at a fundraising event are required to form a ‘joint fundraising committee’ (‘JFC’), and such JFCs may include nonfederal candidates as well. See 11 C.F.R. § 102.17(a)(1)(1)(i); FEC, Joint Fundraising Brochure, at <http://www.fec.gov/pages/brochures/jointfundraising.shtml>.”

“Contributors to a joint fundraising event typically will write a combined check made out to the JFC with the understanding that their contributions will be allocated to the candidates participating in the JFC according to a pre-established ratio set forth in a written agreement. See 11 C.F.R. § 102.1(c)(1). For example, a JFC involving 1 federal candidate and 1 Montana candidate for Governor may have the maximum allocation ratio of 2,600 (federal): 650 (Montana) (or 4:1) – which represents the maximum amounts that an individual may give per election under federal (\$2,600) and state laws (\$650), respectively.”

“The participating candidates also will pay for the costs of the event in advance in proportion to the allocation ratio for contributions received. See *id.* § 102.1(b)(3).”

“If a contributor has already contributed independently to any of the participating candidates such that an additional contribution to the JFC according to the allocation ratio will cause the contributor to exceed his or her contribution limit with respect to any of the participating candidates, the allocation ratio will be adjusted so that the contributor doesn’t exceed any limits with respect to any of the candidates, and if that doesn’t work, any excess amount will be refunded to the contributor. See *id.* § 102.1(c)(6).”

“If the allocation ratio for the contributions received has to be adjusted, then the amounts the candidates must pay for the costs of the event also will be adjusted, and any differences will be reconciled after event. See *id.* § 102.1(c)(7)(A).”

“With this overview of the federal law, my specific questions regarding Montana law are as follows:

“1) Generally speaking, would a Montana state candidate be permitted to participate in a JFC with federal candidates?”

“2) Is the federal requirement for participating candidates to split their allocable costs according to the ratio of funds they receive permissible under Montana law?”

“3) Would the JFC have to file reports in Montana as a federal committee under ARM 44.10.413?”

“4) Would the JFC and participating Montana state candidate have to report the contributions as earmarked under ARM 44.10.519?”

ADVISORY OPINION

The Commissioner is limited to issuing an advisory opinion that addresses an ethics, lobbying, or campaign practice issue under Montana law, *see* Mont. Admin. R. 44.10.201. Please note that the Commissioner did not write the above interpretation of federal law contained in the Facts Presented section, nor will the Commissioner interpret or apply the applicable federal code to the proposed activities. Instead, this Advisory Opinion will examine and apply Montana law to a Montana state or local candidate, not a federal candidate. With that qualification in mind, the Commissioner issues the following Advisory Opinion:

INTRODUCTION

A candidate for state or local office in Montana does not create and use a political committee, rather the contributions are made to and expenses are paid from a candidate or the candidate's committee, Mont. Code Ann. § 13-1-101(6) and (22), Mont. Admin. R. 44.10.325(2). Candidates in Montana are limited by statute on the amount of a contribution that they can receive from an individual, political parties, and political action committee(s), Mont. Code Ann. §§13-37-216 and 218. Further, Montana candidates are strictly prohibited from receiving corporate contributions, Mont. Code Ann. § 13-35-227. Finally, contributors to Montana candidates must make their contribution in their own name, Mont. Code Ann. § 13-37-217.

SHORT ANSWERS TO FOUR QUESTIONS

- 1) NO. For reasons discussed below, a Montana state or local office candidate could not participate in a Joint Fundraising Committee with a Federal candidate for office.
- 2) NO. For reasons discussed below, Montana state and local office candidates cannot split contributions or costs to their campaign under a fundraising ratio or agreement which may be permissible under federal law.
- 3) NO. Since a Montana state or local office candidate cannot participate in a JFC, the JFC would not have to report and disclose with the Montana Commissioner of Political Practices.
- 4) NO. Since a Montana state or local office candidate cannot participate in a Federal JFC, the JFC would not have to report and disclose unless it received a contribution earmarked for a Montana state candidate.

DISCUSSION

Groups of Montanans, organized as political committees, can and do hold election related fundraising events. For example, the Teton County Republican Central Committee, a political party committee, holds a regular "Shrimp Peel" fundraising event, using the net proceeds to fund independent expenditures in elections or to make

contributions to candidates consistent with limits, *Baker, et al. v. Anderson*, COPP-2014-CFP-017. Groups of Montanans, organized as a political committee, also hold one-time fundraising events on behalf of a candidate. This type of political committee will immediately pass both event expenses and event contributions through to the candidate, allowing the candidate to report and disclose the contributions, consistent with limits, made to the candidate at the event, *Clark v. Datsopoulos, MacDonald & Lind P.C.*, COPP-2014-CFP-033A.

Candidates also may work together in campaigning, sharing the cost of campaign expenses. For example, two candidates agreed to split the costs of a campaign mailer to voters which support both of their candidacies, *Page-Nei v. Reynolds, Hester, and O'Brien*, COPP-2013-CFP-020. Likewise state and local candidates can agree to split the costs of a promotional event, such as a booth at a fair, but each candidate must report and disclose the contributions that they are individually able to raise from the event.

The Montana fundraising and expense sharing systems described above are simple and direct. Each insures that Montana's contribution limits are followed and not circumvented, Mont. Code Ann. § 13-37-216. Each insures that Montana's law requiring disclosure of the name of the true contributor is followed, Mont. Code Ann. § 13-37-217.

The JFC system addressed by this Advisory Opinion differs in general from the above described Montana fundraising activity because it sets in place a middleman multi-candidate committee entity that accepts lump sum amounts and then redirects those amounts to the candidates who are part of the joint fundraising committee. In particular, the use of a candidate pool allows for acceptance of large donor checks that, in turn, create opportunity for circumvention and donor manipulation that are not possible under Montana's traditional fundraising approaches. *See* Huffington Post, "Democrats, Republicans Take Advantage of New Big-Money Rules", by Paul Blumenthal, dated October 16, 2014².

The general differences could perhaps be resolved if Montana law allowed this, but it does not. First, Montana law does not permit the formation of, or recognize the legitimacy of, large donor fundraising through a multiple candidate fundraising committee. Under Montana law a political committee is defined as "a combination of two or more individuals or a person other than an individual who makes a contribution or expenditure ... to support or oppose...a candidate or a committee...or a ballot issue", Mont. Code Ann. § 13-1-101(22). A political committee formed to support two or more candidates would be classified as an independent political committee, Mont. Admin. R. 44.10.327(1)(b) and (2)(b).

A JFC, according to your proposed facts, would be a political committee formed by at least one federal candidate and one state candidate for office. The JFC would accept checks from contributors to the full amount of combined contribution limits of all candidates. Thus, for example, under your proposal a Montana candidate with a \$170

² http://www.huffingtonpost.com/2014/10/16/mccutcheon-2014-super-joint-committee_n_6000500.html

limit could combine with 10 federal candidates with a \$2,700 limit each and a donor could provide the JFC with a check in the amount of \$27,170, the combined limits for all 11 candidates.

While the COPP appreciates the cost/contribution sharing formula, Montana's law still treats that \$27,170 contribution to the JFC as an over the limit donation to the Montana candidate. Montana gets there because Montana's contribution law takes away any independent committee status for a committee in which the candidate exercises a degree of control:

"A committee that is not independent of the candidate is considered to be organized on the candidate's behalf... an independent committee...is not controlled either directly or indirectly by a candidate or candidate's committee in conjunction with the making of expenditures or accepting contributions",
Mont. Code Ann. § 13-37-216(2)(a).

Because your proposed JFC is formed by and includes the Montana candidate, the JFC would not be independent of the candidate's control and any contribution made to the JFC would also be considered a contribution to the candidate's own committee, Mont. Code Ann. § 13-37-216(1)(b). The \$27,170 single donation (using the example) would be in violation of law as a Montana candidate "may not accept any contributions, including in-kind contributions, in excess of the limits of this section", Mont. Code Ann. § 13-37-216(5).

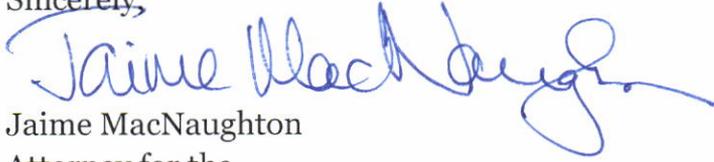
Second, Montana law requires both the contributor and the candidate know and intend the actual campaign use of a contribution, Mont. Code Ann. § 13-37-217. While, again, the COPP appreciates the cost/contribution sharing formula, there is no assurance that Montana's anti-laundersing law will be followed. Indeed, it seems just the opposite as the purpose of the JFC is to create a large donor opportunity based on a large pool of candidates.

For the above reasons, a state or local office Montana candidate will be at risk of violation of Montana's campaign practice laws if he or she participates in a JFC allowed upon application of federal campaign finance law.

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.

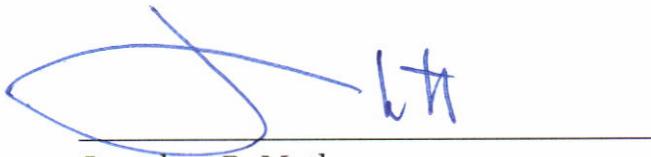
Sincerely,



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 8th day of April, 2015.



Jonathan R. Motl
Commissioner of Political Practices