

**BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES
STATE OF MONTANA**

In the Matter of the Complaint)	SUMMARY OF FACTS,
Against MEA-MFT COPE and Democratic)		STATEMENT OF FINDINGS,
Legislators Alumni Association.)	AND CONCLUSION

Flathead County, Montana, resident Edwin X. Berry submitted a complaint on December 11, 2011, alleging that several political committees had exchanged funds in support of an effort to affect the outcome of a state legislative race during the 2010 election cycle. It is alleged the committees' conduct constitutes "money laundering" and that the committees engaged in the conduct to obscure the identity of the persons who contributed the money.

The complaint alleges that MEA-MFT COPE, a political committee operated by MEA-MFT, failed to report contributions properly and then transferred contributed funds to the Montana Democratic Party, which in turn ran the money through four other PACs for the purpose of obscuring the sources for the PACs' funds prior to their expenditure to affect the outcome of a legislative race.

The statute alleged to have been violated is Montana Code Annotated section 13-37-217 (Contributions in name of undisclosed principal).

SUMMARY OF FACTS

1. MEA-MFT COPE receives the vast majority of its contributions in amounts of less than \$35 dollars per contribution. It reported these funds as under \$35 contributions in 2010 and 2011 rather than reporting them as individual contributions when those contributions exceeded the \$35 limit. MEA-MFT COPE was aware of this reporting error on January 13, 2011, after meeting with COPP staff to discuss reporting of contributions that exceed \$35 in the aggregate. MEA-MFT COPE indicated it would correctly report individual contributions when they exceeded \$35 from January 13, 2011, forward, however, MEA-MFT COPE failed to accurately report those contributions until 2012. MEA-MFT COPE was further aware of this deficiency when this complaint was filed.

2. MEA-MFT COPE made several contributions to the Montana Democratic Party ("MDP"). It donated \$5,000 each for support of the Mansfield-Metcalf Dinner and the State Democratic Convention. It also donated a total of \$50,000 to the Montana Democratic Legislative Campaign Committee. MEA-MFT COPE and the Montana Democratic Party properly reported the contribution and receipt of these funds.

3. During the 2010 election cycle, the Democratic Legislators Alumni Association Political Action Committee ("DLAA") sought to make independent expenditure in close state legislative races.

4. On August 16, 2010, the MDP gave the DLAA \$49,384.02. The MDP properly reported the donation on its campaign finance reporting documents, and the DLAA properly reported receipt of the funds on its campaign finance reports.

5. DLAA Treasurer Dave Gallik was aware that Democratic candidate Kendall Van Dyke was in a hotly contested Senate race against Roy Brown in Billings, and thought DLAA should make expenditures in the race. He contacted Steve Braun, the Treasurer of North Valley PAC and Adam Pimley, a Democratic activist, and enlisted their support for the idea.

6. Pimley contacted a friend, Chris Cady, who agreed that he was interested in assisting Democrats in legislative races. Pimley put Cady in contact with Gallik, who agreed to fund a PAC. Cady formed the Values, Energy, and Growth PAC ("VEGPAC") on September 30, 2010 for the purpose of making the advertising expenditures.

7. DLAA gave VEGPAC a total of \$29,000 in three separate contributions between September 30 and October 18, 2010. DLAA also gave \$9,000 to North Valley PAC. DLAA, North Valley PAC,

and VEGPAC properly reported the expenditures and receipts of these funds.

8. VEGPAC and North Valley PAC expended funds in support of Van Dyke's election. Pimley designed the campaign materials. There is no evidence in this case¹ that any of the political committees coordinated with Van Dyke's campaign as far as the expenditure of any of these funds.

STATEMENT OF FINDINGS

Berry's suggestion that the political committees engaged in money laundering in violation of Mont. Code Ann. § 13-37-217 is rejected. That statute provides:

A person may not make a contribution of the person's own money or of another person's money to any other person in connection with any election in any other name than that of the person who in truth supplies the money. A person may not knowingly receive a contribution or enter or cause the contribution to be entered in the person's accounts or records in another name than that of the person by whom it was actually furnished.

As further explained below, it is lawful for a committee to contribute funds to another committee, as long as both committees report the contribution as required by law.

A political committee is a separate reporting entity, not simply an aggregation of individual donors. Once a committee receives and reports a donation that is not specifically

¹Berry's complaint did not allege coordination between Van Dyke's campaign and any of the political committees. Accordingly, the investigator did not inquire into the question and there are no facts before me now to suggest such coordination.

restricted by the donor, the donated funds cease to be the funds of the donor and become the fungible funds of the committee.

Accordingly, the statutes governing limits on contributions to candidates provide a limit for contributions by individuals and a separate limit for contributions by independent political committees. Mont. Code Ann. § **13-37-216** (1) (a) provides: "Subject to adjustment as provided for in subsection (4), aggregate contributions for each election in a campaign by a **political committee or by an individual**, other than the candidate, to a candidate are limited as [provided by the statute]." (Emphasis added). Cf. Mont. Code Ann. § 13-37-216 (1) (b), which treats contributions to committees that are not independent as contributions to the candidate. If the committee's funds were considered the funds of its donors for purposes of Mont. Code Ann. § 13-37-217, the separate limits in Mont. Code Ann. § 13-37-216 would make no sense.

Berry's arguments are inconsistent with the overall statutory scheme that treats independent committees as separate reporting entities. Since statutory support for the arguments is absent, they are rejected.

There is no statutory prohibition against political committees cooperating for the purpose of affecting the outcome of an election. As long as all other laws such as those governing reporting of receipts and expenditures are obeyed,

committees may communicate, strategize, and exchange funds with the objective of electing a particular candidate.

The statutes tacitly permit the activity. Mont. Code Ann. §13-37-229 (5) requires reporting of "the name and address of each political committee ... from which the reporting committee ...received any transfer of funds, together with the amount and dates of all transfers." See Mont. Code Ann. § 13-37-230(1) (requiring reporting of "the full name ... of each person to whom expenditures have been made by the committee..."); and Mont. Code Ann. § 13-1-101(20) (including a "committee" in the definition of "person"). No statute either expressly or implicitly prohibits it.

Berry's complaint at least suggests that committees are subject to an independent expenditure restriction similar to the one that applies to candidates under Mont. Code Ann. § 13-37-216 (2) (a). That section establishes a limit on contributions a candidate may receive from any individual or committee. It considers expenditures by a person or committee that are coordinated with the candidate as though they were contributions to the candidate, and exposes such coordinated expenditures to the same limits as donations made directly to the candidate.

The statute contains a definition of "independent committee":

For the purposes of this section, an independent committee means a committee that is not specifically organized on behalf of a particular candidate or that is not controlled either directly or indirectly by a candidate or candidate's committee and that does not act jointly with a candidate or candidate's committee in conjunction with the making of expenditures or accepting contributions.

Thus, for purposes of this section only, the legislature has differentiated between candidate-controlled committees, and committees coordinating **with the candidate**, from other committees, like the ones at issue here, that are both independently organized and not acting in coordination with the candidate.

There is no statute that applies this kind of independence requirement to political committees coordinating among themselves. As long as they act in compliance with all other requirements of law, political committees may coordinate **with each other** to affect the outcome of an election without violating any statutory requirement in the election code.

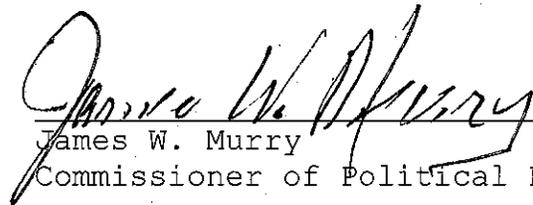
CONCLUSION

Based on the preceding Summary of Facts and Statement of Findings, there is sufficient evidence to conclude MEA-MFT COPE violated Montana campaign finance reporting and disclosure laws, with the violation summarized below, and a civil penalty action under Mont. Code Ann. § 13-37-128 is warranted.

- MEA-MFT COPE failed to report contributions over \$35 in the aggregate as individual contributions in 2010 and 2011. The total amount incorrectly reported was \$9,638 (\$5,726 and \$3,912 respectively).

There is insufficient evidence to conclude DLAA violated Montana campaign finance reporting and disclosure laws.

DATED this 7 day of September, 2012.


James W. Murry
Commissioner of Political Practices

C: Edwin X. Berry
Erik Burke for MEA-MFT COPE
David Gallik for DLAA