

COMMISSIONER OF
POLITICAL PRACTICES



STATE OF MONTANA

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February 5, 2016

Sandy Welch
sandywelch406@gmail.com

COPP-2016-AO-001
Re: Candidate Filing Fees as Campaign Expenditure

Dear Ms. Welch:

I write in response to your inquiry of January 19, 2016 requesting the Commissioner of Political Practices' (COPP) advisory opinion regarding a candidate's use of campaign funds to pay the filing fee to run for office.

You requested a COPP advisory opinion regarding the following issue:

- (1) It was fairly common for candidates to pay their filing fee from campaign funds in the past. Do candidates have to retroactively pay their filing fee and refile their campaign finance reports to correct the error from prior campaigns?

ADVISORY OPINION

The Commissioner is limited to issuing an advisory opinion that addresses an ethics or campaign practice issue. *See* 44.10.201 ARM.

SHORT ANSWER

The Commissioner will not require that candidates correct the payment of filing fees from their campaign accounts for candidacies on the ballot prior to the 2016 election cycle. For candidates on the 2016 ballot, the correction should be made and instructions are set out below.

DISCUSSION

As discussed extensively in *Wemple v. Connell*, COPP-2014-CFP-041,¹ the Commissioner's office had a historic practice of allowing candidates to use campaign funds to pay their candidate filing fees to the Secretary of State or local election administrator. In the *Wemple* decision, the Commissioner drew a line in time and determined the following:

For the purposes of 2016 elections and thereafter the Commissioner determines that a candidate may not use campaign funds to pay the candidate's filing fee and any existing Decision or policy of the COPP to the contrary is hereby changed in conformance with this determination.

Id., at 7.

In a footnote to that determination, The Commissioner recognized such payments had been historically allowed and thus excused the candidate and "all other similarly situated candidates, from any campaign practice violation based on this particular campaign practice". *Id.*, n. 3.

Candidates for office from 2016 onward are therefore required to pay filing fees from their personal funds, rather than out of their campaign account. Further, candidate payment of the filing fees may not be considered a loan to nor repaid from campaign funds.

This correction to the prior practice was made because of statutory language explaining that an "[e]xpenditure does not mean... payments by a candidate for a filing fee or for personal travel expenses, food, clothing, lodging, or personal necessities for the candidate and the candidate's family." Mont. Code Ann. § 13-1-101(17)(b)(ii). If filing fees cannot be an expenditure of the campaign, then a candidate may not use campaign funds to pay their filing fees with the Secretary of State or county election office.

The COPP has recently become aware that several candidates did not know of this correction in practice when they filed for office in 2016 with the Secretary of State or with their local election administrator and thus paid the filing fee with campaign funds. The COPP has adopted a procedure by which a candidate who mistakenly paid their filing fee from their campaign funds should remedy the situation.

- (1) The candidate should make a cash or check contribution from the candidate's personal funds to the candidate's own primary election campaign for the entire

¹ <http://www.politicalpractices.mt.gov/content/2recentdecisions/WemplevConnellDecision2pp-5-7>.

amount of the candidate filing fee and report the contribution on Form C-5, Schedule A, Part 1 or tab "Candidate"; and

- (2) The candidate should then report the payment of the filing fees to the proper election official as an Expenditure on Form C-5, Schedule B, Part 2 or tab "Other Expend". Under "Purpose", the candidate should indicate that the expenditure was for the candidate filing fee and was "made from campaign account, corrected by candidate contribution to campaign."

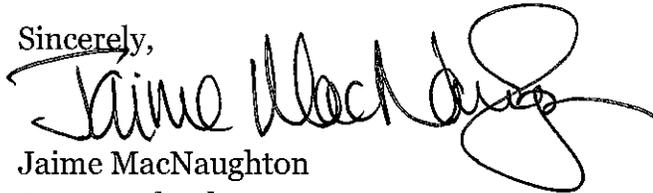
CONCLUSION

Given the change in interpretation by the COPP candidates are excused from any campaign finance reporting or campaign practice consequences for any election prior to 2016. Candidates are further excused from any obligation to correct campaign finance reports prior to 2016. Candidates for the 2016 election cycle who follow the above procedure for correction of payment of filing fees from the campaign account will be in compliance for 2016.

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.

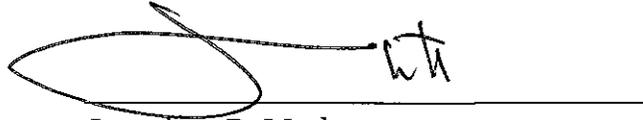
Sincerely,

A handwritten signature in black ink, appearing to read "Jaime MacNaughton". The signature is fluid and cursive, with a large loop at the end.

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 5th day of February, 2016.

A handwritten signature in black ink, consisting of a large, stylized loop followed by the initials "JM". The signature is written above a horizontal line.

Jonathan R. Motl
Commissioner of Political Practices