

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES (COPP)

SCOTT ROSENZWEIG	COPP-2024-CFP-042
v.	FINDING OF FACTS SUFFICIENT TO SUPPORT VIOLATIONS
MARTY MALONE (Montana House District 81 candidate)	

COMPLAINT

On October 9, 2024, Scott Rosenzweig of Bozeman, MT, filed a Campaign Finance and Practices (CFP) complaint against Montana House District 57 candidate and current HD 59 Representative, Marty Malone of Pray, MT. The complaint alleged that Rep. Malone failed to properly disclose contributions received and expenditures made on campaign finance reports filed with COPP; accepted contributions exceeding Montana’s allowable limits from political party committees, individual contributors, and independent political committees; and failed to disclose receipt of a contribution from the Montana Republican State Central Committee related to a campaign mailer supporting his candidacy.

The complaint conforms to the requirements of Admin. R. Mont (ARM) 44.11.106 and alleges violations of statutes which fall under my jurisdiction as Commissioner of Political Practices. Therefore, I accepted it as filed, and in accordance with Montana Code Annotated (MCA) § 13-37-132, I requested a response from Rep. Malone. Rep. Malone provided the requested response on October 14, 2024. The complaint and response are posted on COPP’s website, politicalpractices.mt.gov.

ISSUES

Reporting of contributions received and expenditures made by candidates, MCA § 13-37-225 through 229; campaign contribution limits, MCA § 13-37-216 and ARM 44.11.227.

BACKGROUND

Marty Malone filed a C-1 Statement of Candidate as a candidate seeking election to the Montana House of Representatives, District 57, with COPP on November 20, 2023. In this filing with COPP, candidate Malone indicated he was a Republican party candidate. Candidate Malone additionally filed as a Republican candidate when formally filing as a candidate for election to HD 57 with Montana's Secretary of State (SOS). No other Republican candidates, including write-in candidates, filed as candidates for election to HD 57 prior to Montana's June 4, 2024, primary election. According to election results available via Montana's SOS office¹, the Gallatin County elections department website², and the Park County elections department website,³ candidate Malone was unopposed in the Republican HD 57 primary election.

Rep. Malone filed his initial C-5 periodic campaign finance report on January 5, 2024, and has substantially adhered with the statutorily mandated COPP reporting calendar. Rep. Malone designated all contributions and expenditures as 'primary' on finance reports prior to his C-5 finance report for the reporting period in which the primary election occurred and has designated all contributions and expenditures as 'general' on all C-5 finance reports following reporting period which encompasses the primary election. The C-5 finance report which includes the dates of the primary election contains both primary and general contributions and expenditures.

Relevant to this matter, Rep. Malone's C-5 finance report for the period ending September 15, 2024, includes the receipt of general election contributions in the amount of \$6,147.51. This transaction is labeled as a refund from Bank of the Rockies, Rep. Malone's campaign depository. Rep. Malone's finance reports also disclose three "refund[s] of overcontribution" provide to three political party committees – the Gallatin County Republican Central Committee, the Park County Republican Central Committee, and the Richland County Republican Central Committee. On November 1, 2024, following a telephone conversation with COPP's attorney on October 31, 2024, Rep. Malone filed a C-7E report disclosing refunds to: Tom Barry in the amount of \$300; Gayleen Malone in the amount of \$450; Ryan Malone in the

¹ <https://electionresults.mt.gov/resultsSW.aspx?type=HOUSE&map=DIST&eid=450002570>

² https://www.gallatinmt.gov/sites/g/files/vyhlf606/f/uploads/2024_june_federal_primary_official_results.pdf

³ <https://www.parkcounty.org/uploads/files/pages/184/Fed-primary-24-official-canvass.pdf>

amount of \$450; Montana Contractors Association PAC in the amount of \$450, Montana Farm Bureau PAC in the amount of \$400, and the Park Country Republican Central Committee in the amount of \$500. On November 4, 2024, Rep. Malone amended his C-5 report for the reporting period of August 16 through September 15, 2024, to report an expenditure by Malone for HD 57 in the amount of \$6,147.51, detailed as “Transfer of Primary funds to general election Fund.” (COPP Records.)

Lastly, the complainant alleges Rep. Malone failed to report an in-kind contribution from the Montana Republican State Central Committee. The campaign material in question is a mailer in support of Representative Malone which contains the attributions statement “Paid for by Montana Republican State Central Committee, Brad Tschida, Treasurer, PO Box 935, Helena MT 59624. No C-5 reports include any disclosures related to the provided mailer. (COPP Records.) This allegation requires proof that the Montana Republican State Central Committee expenditures was coordinated with Rep. Malone’s campaign. 44.11.502(6)(c) and 44.11.602, Admin. Rules of Montana.

DISCUSSION

I. Allocation of funds as primary or general.

The complaint first asserts that Rep. Malone’s primary balance should be \$0.00, but that “[a]t present, the date shows a double-counting” of \$6,147.51.

MCA § 13-37-229 requires candidates report all contributions and expenditures made to support their candidacy. MCA 13-37-229(a) specifically requires that the campaign report “the amount of cash on hand at the beginning of the reporting period.”

In reviewing Rep. Malone’s campaign finance reports, COPP was able to determine that a discrepancy occurred when he attempted to transfer funds designated for the “primary” election to the “general” election column in Montana’s Campaign Electronic Reporting System (CERS) when filing his September monthly C-5 campaign finance report. At that time, Rep. Malone’s reporting indicated a “primary” election Cash in Bank balance of \$6,147.51, an amount he attempted to transfer to the “general” election column by reporting receipt of a “general” election contribution received from Bank of the Rockies his designated campaign depository.

By entering a “general” election contribution of \$6,147.51 in CERS, Rep. Malone did in fact ‘show’ an additional \$6,147.51 in “general” election funds available to the campaign.

However, Rep. Malone neglected to take the corresponding step of reporting a “primary” expenditure in this same amount to zero out the “primary” balance.

In his formal written response to COPP, Rep. Malone states that “I carefully followed the directions in the file sent to me by your staff to show funds transferred from the unspent funds from the primary election to the general election.” Despite Rep. Malone’s assertion, he did not follow the first of the two “directions” provided by COPP- zeroing out the “primary” election balance via entering an expenditure in the amount being transferred to the “general” election column. This introduced unnecessary confusion into the amount of “primary” versus “general” election funds available to Rep. Malone when reviewing his reports, as CERS still listed a Cash in Bank balance for the “primary” election of \$6,147.51.

This oversight is a technical violation of MCA § 13-37-229. The Malone campaign failed to report an expenditure from his ‘primary’ account to his “general” account, creating an inaccurate reporting of the “Cash in Bank” balance. While this did serve to create some confusion, Rep. Malone has subsequently remedied this error, and as these were not contribution or expenditures from outside sources, Montana voters were still provided access to the Malone campaign’s financial activity and this violation is excused as de minimis.

II. Contributions in excess of statutorily established limits.

Montana's campaign contribution limits are established under MCA § 13-37- 216. The relevant campaign contribution limits are calculated by COPP each biennium pursuant to MCA 13-37-216(3) and published in ARM 44.11.227. In 2024, candidates for election to Montana’s House of Representatives are limited to accepting \$450.00 per election from individual contributors and political committees other than political party committees, and no more than \$2,250.00 in aggregate contributions from political party committees, ARM 44.11.227(1)(c) and (2)(e).

In order to determine the contribution limits as applied to a particular candidate, it must first be determined if there is more than one election to which the \$450 limit applies. MCA § 13-37-216(6) specifies ““election” means the general election or a primary election that involves two or more candidates for the same nomination. If there is not a contested primary there is one limit. If there is a contested primary there are two limits.” The related administrative rule adds, “if only one candidate seeks Party B’s nomination for the same public office, it is not a contested

primary with respect to Party B's nomination, and there is only one election to which the contribution limits in 13-37-216, MCA apply." ARM 44.11.222(2)(b).

Here, Rep. Malone filed with both COPP and Montana's Secretary of State's office (SOS) as a Republican candidate seeking election to Montana's House of Representatives, District 57. No other individuals filed with either COPP or SOS as Republican candidates intending to contest this nomination, nor did any other individuals - including write-in candidates - formally or officially contest that nomination in Montana's June 4, 2024, primary election.

Rep. Malone indicated in his response to this complaint, that he accepted both primary and general election contributions from certain contributors "as allowed by law." Rep. Malone's conclusion in this regard is incorrect. Because no other individual, including write-in candidates, contested Rep. Malone's Republican nomination, he did not have a contested primary, and therefore only one election to which Montana's campaign contribution limits applied.

Political party contributions

In reviewing all campaign finance reports filed by Rep. Malone, COPP identified \$4,200.00 in aggregate (total) contributions received from political party committees: an initial \$500.00 from the Park County Republican Central Committee, reported as "primary" election funds; \$2,250.00 from the Gallatin County Republican Central Committee; \$1,000.00 from the Park County Republican Central Committee; and \$450.00 from the Richland County Republican Central Committee, reported as "general" election funds. COPP also identified \$1,450.00 in political party committee contributions that Rep. Malone reported returning - \$700.00 to the Gallatin County Republican Central Committee, \$300.00 to the Park County Republican Central Committee, and \$450.00 to the Richland County Republican Central Committee. This leaves Rep. Malone as having accepted \$2,750.00 from political party committees, exceeding the applicable \$2,250.00 per election limit under MCA § 13-37-216 and ARM 44.11.227(2)(e) by \$500.00 (see Table 1).

Individual contributors

The submitted complaint in this matter next alleges four (4) individual contributors provided contributions to Rep. Malone exceeding Montana's campaign contribution limits: Tom Barry, Gayleen Malone, Ryan Malone, and Ken Walsh. COPP reviewed all campaign finance reports filed by Rep. Malone and identified the following.

Contributor Tom Barry provided \$300.00 in reported “primary” election contributions and \$450.00 in reported “general” election contributions. This contributor provided a total of \$750.00 in campaign contributions to Rep. Malone’s campaign, exceeding the applicable \$450.00 limit by \$300.00 (see Table 1).

Contributor Gayleen Malone provided \$450.00 in reported “primary” election contributions and \$450.00 in reported “general” election contributions. This contributor provided a total of \$900.00 in campaign contributions to Rep. Malone’s campaign, exceeding the applicable \$450.00 limit by \$450.00 (see Table 1).

Contributor Ryan Malone provided \$450.00 in reported “primary” election contributions and \$450.00 in reported “general” election contributions. This contributor provided a total of \$900.00 in campaign contributions to Rep. Malone’s campaign, exceeding the applicable \$450.00 limit by \$450.00 (see Table 1).

Contributor Ken Walsh provided \$800.00 in reported “general” election contributions. This contributor provided a total of \$800.00 in campaign contributions to Rep. Malone’s campaign, exceeding the applicable \$450.00 limit by \$350.00 (see Table 1). Rep. Malone’s formal written response in this matter states that “I have only received \$400.00 from Rep. Walsh for the general election. Deposited on 8/23/2024 and was included in the September filing. I will correct the error of a second posting by amending the August report.” (Response.) Mr. Malone has subsequently amended the applicable C-5 report to correct this error.

Political committee contributions

The submitted complaint in this matter then identified two (2) political committees- other than political party committees- who had allegedly provided contributions to Rep. Malone exceeding Montana’s campaign contribution limits: the Montana Contractors Association and the Montana Farm Bureau PAC. COPP reviewed all campaign finance reports filed by Rep. Malone and identified the following.

The Montana Contractors Association PAC provided \$450.00 in reported “primary” election contributions and \$450.00 in reported “general” election contributions. This contributor provided a total of \$900.00 in campaign contributions to Rep. Malone’s campaign, exceeding the applicable \$450.00 limit by \$450.00 (see Table 1).

The Montana Farm Bureau PAC provided \$400.00 in reported “primary” election contributions and \$450.00 in reported “general” election contributions. This contributor provided

a total of \$850.00 in campaign contributions to Rep. Malone’s campaign, exceeding the applicable \$450.00 limit by \$400.00 (see Table 1).

Summary

In total, Rep. Malone accepted **\$2,550.00** in over-limits campaign contributions- \$500.00 from political party committees, \$1,100.00 from individual contributors, and \$850.00 from political committees. Rep. Malone does not deny receipt of any of the above-discussed contributions.

Table 1: Over-limits contributions summary

Contributor	“Primary” Amount	“General” Amount	Amount returned	Total Amount	Amount over
Political party committees (aggregate)	\$500.00	\$3,700.00	\$1,450.00	\$2,750.00	\$500.00
Barry, Tom	\$300.00	\$450.00	\$0.00	\$750.00	\$300.00
Malone, Gayleen	\$450.00	\$450.00	\$0.00	\$900.00	\$450.00
Malone, Ryan	\$450.00	\$450.00	\$0.00	\$900.00	\$450.00
Montana Contractors Association PAC	\$450.00	\$450.00	\$0.00	\$900.00	\$450.00
Montana Farm Bureau PAC	\$400.00	\$450.00	\$0.00	\$850.00	\$400.00

Rep. Malone has since returned all of the over-the-limit contributions listed above and reported them on a C-7E report filed on November 1, 2024.

III. Mailer in support of Rep. Malone’s candidacy

Finally, this complaint states that Rep. Malone has failed to report a campaign mailer supporting his candidacy as an in-kind contribution received, which would create a further over-the-limit contribution.

While coordinated expenditures on the part of a political committee must be reported as in-kind contributions in accordance with MCA § 13-37-216, independent expenditures in support of a candidate are reportable only by the political committee. “[T]he candidate or political committee benefitting from the independent expenditure does not have to report the expenditure.” ARM 44.11.502(6)(c).

Here, the flyer provided by the complainant contains an attribution statement stating that it was “paid for by Montana Republican State Central Committee,” a registered political party

committee in Montana (commonly referred to as MTGOP). COPP additionally reviewed committee finance reports filed by the MTGOP and concluded that the committee did disclose this mailer, as a debt owed, on a committee finance report filed with COPP. In his written response, Rep. Malone states that “I was not aware of the mailer sent out by the Montana Republican State Central Committee, they did not contact me by any method prior to the publication and mailing of the document. It was not authorized by my campaign.” (Response.)

Based on the available information, the MTGOP’s mailer qualifies as an independent expenditure financed by that committee. MCA § 13-1-101(28). No evidence has been provided to call into question Rep. Malone’s assertion that the mailer financed by MTGOP was not coordinated with his campaign. 44.11.602, ARM. Therefore, this expenditure is not an in-kind contribution or expenditure reportable by the Malone campaign and this allegation is dismissed.⁴ 44-11-502(6)(c).

ENFORCEMENT

The duty of the commissioner to investigate alleged violations of election law is statutorily mandated. MCA § 13-37-111. Upon a determination that sufficient evidence of election violations exists, the commissioner next determines if there are circumstances or explanations that may affect whether prosecution is justified. *Rose v. Glines*, COPP-2022-CFP-030. “The determination of whether a prosecution is justified must take into account the law and the particular factual circumstance of each case, and the prosecutor can decide not to prosecute when they in good faith believe that a prosecution is not in the best interests of the state.” *Montana Freedom Caucus v. Rep. Zephyr*, COPP-2023-CFP-010, at 26.

MCA § 13-37-124(1) requires that I refer a matter to the appropriate county attorney when I find sufficient evidence “to justify a civil or criminal prosecution.” The county attorney may then choose to prosecute the matter or refer it back to me for appropriate civil or criminal action. *Id.* While I do not have discretion to pursue a civil action without first referring the matter to the affected county attorney, I do have discretion to determine if enforcement action and therefore referral to the

⁴ See the discussion in *Gaub v. MT United PAC, et al*, COPP-2024-CFP-025, at pages 3-7, regarding the elements or evidence COPP requires to determine if coordination exists.

county attorney is justified. *Rep. Zephyr, 23, Doty v. Montana Commissioner of Political Practices*, 2007 MT 341, 340 Mont. 276, 173 P.3d 700.

Recently, in *MTGOP v. Mullen*, *MTGOP v. Alke*, and *O’Neill v. Wilson*, I discussed in detail the objective factors I apply in determining when prosecution is justified. COPP-2024-CFP-30, 18, 22. These primarily consist of proximity to the election, a campaign’s pattern of compliance, the size of unlawful contributions or expenditures, and finally, responsiveness of the campaign. The above factors are listed in order of relevance, with proximity to the election being the most determinative factor.

Enforcement factors applied to Rep. Malone

- Proximity to the election - the complaint in this matter was received on October 8, 2024, less than one month before Montana’s general election to be held on November 5, 2024. While one report remained due on October 20, 2024, no contributions were refunded at that time. Other than amending his September C-5 report to correct the duplicate reporting of Rep. Walsh’s \$400 contribution, Rep. Malone did not refund any of the over-the-limit contribution listed above until November 1, 2024, four days prior to the election. Therefore, this factor weighs heavily in favor of prosecution.
- Pattern of compliance - Rep. Malone has consistently complied with the reporting calendar, but rather than the occasional over-the-limit contribution, the Malone campaign has routinely accepted contributions in excess of allowable limits. Therefore, this factor weighs in favor of prosecution.
- The size of unlawful contributions - The over-the-limit contributions accepted are not just small amounts that can be attributed to simple errors, but are often double the allowable limit, weighing in favor of prosecution.
- Responsiveness – Rep. Malone did comply with early requests by COPP to resolve excess aggregate contributions but did not refund any over-the-limit contributions when he became aware of them via this complaint. However, when directly told to do so, by COPP staff, Rep. Malone immediately refunded these amounts and resolved the reporting error that resulted in the appearance of excess

primary funds. Consequently, I find this factor has little bearing on whether prosecution is justified.

Considering all the facts and circumstances described above, I hereby determine that a civil action or penalty under MCA § 13-37-128 is justified.

CONCLUSION

When the commissioner finds sufficient evidence to justify a prosecution, the commissioner notifies the affected county attorney and transfers all relevant information, allowing the county attorney the opportunity to prosecute the offending party. MCA § 13-37-124(1). The county attorney has 30 days in which to initiate a civil or criminal action, at which time, if action is not taken the matter is waived back to the commissioner. *Id.* If the matter is waived back, the commissioner “may then initiate” legal action, but may exercise his discretion as to whether the matter is best solved by a civil action or the payment of a negotiated fine. MCA § 13-37-124(1), See also, *Bradshaw v. Bahr*, COPP-2018-CFP-008, at 4. In negotiating a fine, the commissioner may exercise his discretion and consider any and all mitigating factors. *Id.* If the matter is not resolved through the aforementioned negotiation, the commissioner retains statutory authority to bring a claim in district court against any person “who intentionally or negligently violates any requirement of campaign practice law.” *Id.*, 5.

The district court will consider the matter de novo, providing full due process to the alleged violator. The court, not the commissioner, determines the amount of liability when civil actions are filed under MCA § 13-37-128, and the court may take into account the seriousness of the violation(s) and the degree of a defendant’s culpability. MCA § 13-37-129.

Based on the above discussion, I find there is sufficient evidence to determine the following:

- Rep. Malone violated MCA 13-37-229 by failing to enter an expenditure from his ‘primary’ account when reallocating those funds to his ‘general’ account. This violation is dismissed as de minimis and is not referred to the county attorney.

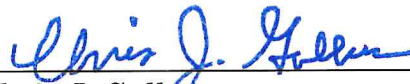
- Rep. Malone did not violate MCA § 13-37-226 by failing to report a flyer produced by MTGOP as an in-kind contribution.

Prosecution is justified only in relation to the following violation:

- Rep. Malone violated MCA § 13-37-216 by accepting contributions in excess of legal limits by \$2550. Prosecution of this matter is justified and will be referred to the Park County Attorney.

Having determined that prosecution is justified, this matter will now be referred to the Park County Attorney in accordance with the provisions of MCA § 13-37-124. The County Attorney's office is free to conduct their own investigation under MCA § 13-37-125, request additional material from COPP, or refer the matter back to this office for potential prosecution. Most matters are returned to COPP and are concluded with a negotiated settlement where mitigating factors are considered, and a civil penalty is determined pursuant to MCA § 13-37-128. If a negotiated settlement is unsuccessful, the Commissioner will pursue the matter in Park County District Court.

Dated this 8th day of November, 2024,



Chris J. Gallus
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