



COMMISSIONER OF
POLITICAL PRACTICES

STATE OF MONTANA

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January 17, 2018

Bridger Mahlum
Government Relations Director
Montana Chamber of Commerce
900 Gibbon Street/P.O. Box 1730
Helena, MT 59624
bridger@montanachamber.com

Re: COPP-2017-AO-004
Corporate Contributions to Political Campaign Committee

Dear Mr. Mahlum,

The Commissioner writes in response to your request for an advisory opinion of December 13, 2017 on the following issue:

ISSUES PRESENTED

“The Montana Chamber of Commerce has among its members the full gamut of types of businesses, as well as interested individuals, that do business in Montana. Among these are corporations that are interested in participating in the political process by contributing to one or both of the party's legislative campaign committees--the DLCC [Democratic Legislative Campaign Committee] and/or the RLCC [Republican Legislative Campaign Committee]. But some of these do not have a relationship with a political action committee. Rather, they would prefer to simply contribute to the legislative campaign committees as a means of participating in and, they hope, enhancing the political debate in Montana.

“Review of relevant Montana statutes, regulations, and pertinent litigation leaves some question as to the proper, legal, way to do this. I can tell you that we think, after such a review and conversations with numerous interested parties, that a corporation may contribute directly to a party's legislative campaign committee, without a limitation, if it registers as an incidental committee. If this is correct, when it would need to register,

either before the contribution or after, is unclear to me. In addition, if this is correct, it seems the legislative campaign committee may have to segregate the corporate contribution into an account not used for direct support of a candidate, but we would appreciate some clarification on that assumption.”

SHORT ANSWER

If a corporation registers as an incidental committee it may contribute directly to a party's legislative campaign committee, without a limitation.

A corporation must register as an incidental committee within 5 business days of making a contribution directly to a party's legislative campaign committee.

A political committee receiving a corporate contribution must segregate the corporate contribution into an account not used for direct or in-kind contributions to candidates.

ADVISORY OPINION

The Commissioner is limited to issuing advisory opinions that address campaign finance reporting and disclosure questions within the Commissioner of Political Practices' (COPP) jurisdiction, Mont. Admin. R. 44.11.102. The consideration of the questions and facts in this matter are limited to the information which was provided to the COPP in your request and information which is publicly available and specifically referenced herein. Based upon the foregoing identified scope of information, the Commissioner issues the following Advisory Opinion:

DISCUSSION

In 2015, the Montana Legislature passed the Disclose Act, which updated and clarified the ability of corporations and unions to participate in political activity in Montana following court decisions in *Lair v. Murray*, 871 F. Supp. 2d 1058 (D. Mont., May 16, 2012) and *American Tradition Partnership, Inc. v. Bullock*, 567 U.S. 516 (2012).

Direct contributions to candidates from all sources are limited in amount under Montana law, Mont. Code Ann. §13-37-216 (individual and political committee limits), and Mont. Code Ann. §13-37-218 (political committee aggregate limit). Further, contributions are limited by source in that corporations and unions are prohibited from making, and candidates prohibited from accepting, direct or indirect contributions to candidates. Mont. Code Ann. §13-35-227(1), (2); *Lair*, 871 F. Supp. 2d at 1068-70. However, corporations or unions are allowed to establish a separate account of funds

from which to make direct contributions to candidates “if the fund consists only of voluntarily contributions solicited from an individual who is a shareholder, employee or member of the corporation of union.” Mont. Code Ann. §13-35-227(4).

The question presented here addresses the last category of contributions, those corporate or union contributions received by a political committee which is not a corporation or a union, Mont. Code Ann. § 13-35-227(3). If the political committee only makes independent expenditures and does not make contributions¹ to a candidate, then the political committee’s use of the corporate or union funds is permissible however the receiving political committee sees fit.²

However, if the political committee does directly contribute to a candidate, then the corporate or union funds which were received may not be used to make the contribution to the candidate. Rather, the receiving political committee should establish a separately segregated fund from which to make candidate contributions which consist of funds from sources which are “noncorporate and nonunion,” in origin, *id.* The political committee would also have an additional segregated fund of corporation or union contributions and any other contributions it wishes to use for independent expenditures.

When a corporation or union makes a contribution of \$250 or more to a political committee, it is making an independent expenditure which makes it a political committee under Mont. Code Ann. §13-1-101(31). *See also id.*, at (25). Whether it becomes an incidental committee or independent committee is determined on a case by case basis, and would be better answered at the time of the involvement in the election process, *see e.g.* Mont. Admin. R. 44.11.202 through 204.

A corporation or union is required to register as a political committee by filing a Form C-2, Statement of Organization, within 5 days making an expenditure, Mont. Code Ann. § 13-37-201(2)(b). If a corporation or union decides to make a single contribution, or multiple contributions in the same reporting period, it can file a C-2, and its opening and closing report (C-4 or C-6) all in a single reporting cycle.

¹ Both direct contributions and in-kind contributions, ARM 44.11.401.

² However, if the corporation or union “earmarks” a contribution to be spent on an independent expenditure in one or more specific candidate or ballot issue races, then the contribution shall be reported as received to influence those specific races or questions on the ballot by both the corporation/union and the receiving political committee, ARM 44.11.404.

CONCLUSION

While there has been discussion about how corporate contributions, both direct and in-kind, are prohibited to be given to candidates, the Office of the Commissioner of Political Practices believes that this guidance will be valuable to many committees and corporations or unions. The parties at interest have a right to know and understand their reporting and disclosure responsibilities. We appreciate the opportunity to discuss how the Act applies in the context of a corporation's contribution to a political committee which may make direct contributions to candidates.

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 17th day of January, 2018.



Jeffrey A. Mangan
Commissioner of Political Practices