

Accounting and Reporting Manual for Candidates and Treasurers



Commissioner of Political Practices

1209 8th Ave.
PO Box 202401
Helena, MT 59620

Phone: 406-444-2942
Fax: 406-444-1643
www.politicalpractices.mt.gov

Contact us via email: cpphelp@mt.gov or
cppcompliance@mt.gov

'Like' the Montana Commissioner of Political Practices Facebook page for updates and follow us on Twitter:

<https://www.facebook.com/MontanaCOPP>

Twitter: @MontanaCOPP

Introduction

This manual is intended to be a practical guide to campaign finance accounting and reporting procedures for candidates running for elective office, the treasurers of their campaigns, and others involved in the election process.

Montana law, Title 12, chapter 37, MCA, provides for public disclosure of contributions and expenditures made to influence elections; therefore, accurate disclosure of those transactions requires:

- 1) An understanding of the laws and rules; and
- 2) The maintenance of detailed accounts from which periodic finance reports can be prepared.

Part 1, CAMPAIGN ACCOUNTING, discusses the responsibilities of campaign treasurers, outlines basic record maintenance practices and accounting principles, defines and provides examples of campaign contributions and expenditures, and describes contribution limitations as well as contributions that are illegal to receive.

Part 2, CAMPAIGN REPORTING, identifies the different statements and reporting forms required for filing, who must file them, how the various forms are to be completed, and when and where these forms are to be filed.

On-line reporting is **required** for all candidate campaigns and all political committees, 13-35-225, MCA.

CERS (Campaign Electronic Reporting System) is a user-friendly system that aides in tracking things like total-to-date, contribution limits, and other required reporting information. Users will receive notifications of missing required information prior to filing a report. This step could reduce the headache of having to deal with the formal complaint process during your busy campaign season. <https://cers-ext.mt.gov/CampaignTracker/dashboard>

This manual *is not a substitute* for the laws and rules governing campaign finance and practices. Specific citations are noted throughout the manual. If precise legal language is required, users of this manual need to consult Montana Code Annotated (MCA) and Administrative Rules of Montana (ARM).

PART 1: CAMPAIGN ACCOUNTING

STATEMENT OF CANDIDATE

All candidates for Montana public office, with the exception of those associated with certain school districts as well as certain special districts, are required to file (or register) as a candidate with the COPP, 13-37-206, MCA. This registration with the COPP is not set at a definite date but is instead triggered by certain actions of the individual that demonstrate they are a candidate for public office. In general, under Montana law an individual becomes a candidate for public office for COPP reporting and disclosure purposes when he or she declares a candidacy (thereby triggering expenses) or when he or she solicits or accepts campaign contributions. Specifically, Montana law requires an individual to file or register as a candidate with the COPP within 5 days of the first date that the individual solicits or accepts contributions to, or makes expenditures for, his or her campaign. §13-37-201 read with §13-1-101(8)(b) MCA.

A Statement of Candidate form (either Form C-1 or C-1-A) certifies a candidate's treasurer and depository and provides other information required by the Commissioner of Political Practices, 13-37-201 and 205, MCA.

CAMPAIGN TREASURER

Each candidate for public office *must* appoint a campaign treasurer, 13-37-201 and 203, (MCA). The only exceptions are for certain school districts and certain special districts.¹

While a candidate bears the ultimate responsibility for the administration and conduct of the campaign, the treasurer, as the candidate's agent, performs the important functions of depositing and disbursing funds, keeping accurate accounts, and administering the financial affairs of the campaign reporting. A candidate may also appoint himself or herself as treasurer or deputy treasurer.

The appointment of a treasurer is one of the first steps in the organization of any campaign. The name of the treasurer must be certified to the Commissioner of Political Practices, 13-37-201. MCA; see also Part 2, Campaign Reporting section of this manual.

Timely certification is important for several reasons. First, the treasurer is prohibited from performing any duty until a certification statement is filed. Second, the candidate's name cannot be printed on the ballot until all statements and reports are properly filed, 13-37-126, and 13-37-127, MCA.

Only an appointed and certified treasurer or an appointed and certified deputy treasurer² may make deposits and draw checks on the campaign account, 13-37-203, MCA. Some candidates find it convenient to appoint themselves as deputy treasurers so that they, in addition to their treasurers, may draw checks on their

campaign accounts. In order to make deposits or write checks on the campaign account, a candidate *must be* either the treasurer or deputy treasurer.

If more than one person is depositing funds or writing checks on the campaign account, closer management and communication is encouraged in order to ensure accurate accounting as well as timely preparation and filing of campaign finance reports.

The campaign treasurer must keep detailed accounts and the accounts must be:

...current within not more than 10 days of receiving a contribution or making an expenditure, except that accounts shall be current as of the 5th day before the date of filing a report. . . 13-37-208(1), MCA.

In addition to accounting and reporting duties required by law, the campaign treasurer for a candidate is required to preserve campaign accounts and reports for a minimum of four years or for the length of the term of office, whichever is longer, 13-37-208(3), MCA and 13-37-231(2), MCA

CAMPAIGN DEPOSITORY

Each campaign must designate one campaign depository. This depository may be a bank, a credit union, a savings and loan association, or a building and loan association; however, this depository must be authorized to transact business in Montana and must offer accounts on which the equivalent of a check may be drawn. Accounts must be completely separate from any personal accounts, although they can be in the same depository, 13-37-205, MCA.

It is essential that *all* monetary receipts—including a candidate's own funds—be deposited in the campaign account and that all money spent must be drawn on the designated depository by check, debit card, wire transfer, or other electronic means that clearly identifies the person receiving the payment. Proper use of the campaign checking account will make record keeping and reporting much easier.

All funds must first be deposited into the campaign depository. **If you believe that you will be collecting contributions for the general election period during the primary election period, those funds are required to be maintained in a separate account (this can be a savings account).¹ The separation of the contributions based on the election type will make tracking and reporting much easier for the treasurer.**

¹ Candidates for election to a legislative office (Senate district or House district) are not required to segregate primary and general election funds. See 13-37-205(6), MCA for more information.

Immediately after designating a primary campaign depository and after appointing a campaign treasurer, a candidate must complete and file a Statement of Candidate, Form C-1 or C-1-A (see pages 18-19) with the Commissioner of Political Practices, using CERS (Campaign Electronic Reporting System), 13-37-201, MCA.

CAMPAIGN RECEIPTS

Contributions from supporters are the principal source of receipts. A contribution is defined by law, in part, as “an advance, gift, loan, conveyance, deposit, payment, or distribution of money or anything of value to support or oppose a candidate or ballot issue. . .” 13-1-101(9), MCA.

Contributions received by a candidate prior to and on the day of a primary election are presumed as primary election contributions and are subject to the aggregate contribution limits for the primary election.

During a primary election period, a candidate in a contested primary may receive contributions designated by the contributors as for the general election; however, those contributions are subject to the contribution limits for the general election and must be maintained in a separate account. General election contributions may not be used until after the primary election. If a candidate has accepted general election contributions and, thereafter, loses a contested primary election or finds that his/her campaign is uncontested in the primary, all general election contributions must be refunded to contributors.

In-kind contributions designated for the general election may not be accepted during the primary election period, 44.11.403, ARM.

Contributions received by a candidate after the day of the primary election are presumed general election contributions and are subject to the aggregate contribution limits for the general election³. A candidate *may* continue to receive contributions designated by the contributor as primary election contributions after the primary election and subject to the contribution limits *but only for the purpose of retiring primary election debt*, 44.11.224(2)(d), ARM. (For information regarding contribution limits, see pages 9 through 10 of this manual.)

All monetary contributions (cash or checks) received by anyone involved with a campaign must be transmitted to the treasurer (or deputy treasurer) and deposited within five days after the contribution is received, 13-37-207. This includes

contributions made through a payment gateway or on-line service provider such as ActBlue, Win Red, or PayPal. An electronic contribution shall be reported as received **within the reporting period that it is received by the online service provider** regardless of whether the contribution has actually been received, 44-11-408. The treasurer must then deposit all funds within five business days of receipt of payment from the third-party provider, ARM 44.11.408. This includes money that candidates contribute to their own campaigns.

Prior to the time a deposit to the campaign account is made, the treasurer is required to prepare a statement showing the amounts received from each contributor, 13-37-207(2), MCA. This statement, the receipt form for cash contributions deposited at the same time, and a deposit slip for the deposit must be kept together as part of the campaign records maintained by the treasurer.

Checks are preferable to contributions of cash. A simple list of the names of contributors and the amounts contributed would be a satisfactory method of maintaining a record of contributions received by checks; however, the easiest and best way to satisfy the statement of contributions requirement is to make photocopies of checks as they are received. This ensures that contributions are properly credited and also preserves useful information for the campaign.

Receipts must be written for any contributions of currency and coin of \$25 or more. Cash receipts must show:

- 1) The contributor's full name
- 2) Complete mailing address (a post office box is acceptable)
- 3) Occupation
- 4) Employer
- 5) The exact amount received
- 6) Date of receipt and
- 7) The name of the individual who received the contribution on behalf of the candidate, 44.11.407, ARM.

While receipts are required only for cash contributions of \$25 or more, the best practice is to write a receipt for all cash contributions whenever possible. In this way, a treasurer can determine if or when an individual's contributions reach reporting thresholds. Written receipts also will assist candidates in identifying the sources of funds contributed to their campaigns. Contributions and expenditures can be easily recorded in CERS and saved to be filed to COPP on reporting day.

All candidates are required to electronically file campaign finance reports, using the Campaign Electronic Filing Service (CERS), 13-37-225, MCA, and should

become familiar with the system on the website to determine how to best keep their records. Candidates that believe they qualify for a waiver from electronic filing may submit a written request to the COPP. The Commissioner may provide a waiver in certain circumstances, 13-37-225(1)(b), MCA.

In addition to the Statement of Candidate and its supporting documents, a campaign treasurer must keep a detailed accounting of all contributors. Any system of record keeping may be used, as long as it maintains the information required by law and necessary for filing reports.

Campaigns may find a computer spreadsheet or card file is a helpful way to maintain information on contributors and their individual contributions so that contribution limits are not exceeded. Such a system will have a record or card for each contributor, giving the full name, complete mailing address, occupations, employer, date of receipt, amount, and nature of donation (currency, check, loan, in-kind, dinner ticket, fundraiser purchase, etc.).

By definition any loan to a campaign is a contribution, ARM 44.11.405, ARM. Contributions limits apply to any loan received by a campaign.

Many candidates contribute their own money to their campaigns. A candidate has the choice of recording and reporting his or her own donations as either a contribution or a loan, depending on whether or not the candidate wishes to be reimbursed from the campaign account for personal contributions. If the candidate expects to be repaid from the campaign account, at a later date, these donations should be recorded and reported as a loan; if no repayment will be made, these donations should be reported as a contribution to the campaign. Some candidates use personal funds to purchase goods or services for their campaigns; this activity is discouraged unless it is used on a very limited basis (See COPP website for recent decisions). Best practice is to deposit all contributions, including candidate loans/contributions, into the designated depository. If a candidate cannot avoid spending some funds out of personal means for the campaign, then we recommend depositing the funds into the account and run all transactions through the campaign account.

Mass collections from fundraising events (such as passing the hat or selling campaign pins, raffle tickets, or baked goods) also need to be recorded and reported.

The treasurer may account for proceeds from such fundraising activities by recording:

- 1) The date of the event,
- 2) The approximate number of people attending,
- 3) A description of the event, and
- 4) The total amount of contributions received, 44.11.406, ARM.

There is, however, an *exception to this rule*. If an individual donates \$50 in the aggregate or more, the donation or purchase must be recorded and reported individually. We recommend using a contribution envelope that requests basic contact information to ensure an accurate tracking of individual aggregate limits. **Anonymous contributions are not allowed in the State of Montana.** Even proceeds collected from Pass the Hat or raffle types of events are required to be recorded. In some cases, an individual could attend a Pass the Hat fundraiser and contribute \$25 then attend a second fundraiser and contribute another \$25. The second fundraiser contribution triggers the requirement to detail the total to date for the contributor on the next report. This, again, is why it is imperative that the source of the contribution is always documented.

In-kind contributions must be accounted for and reported in the same manner as other contributions. The in-kind item or service must be identified. The term “in-kind contribution” means the furnishing of services, property, or rights without charge or at a charge which is less than fair market value to a candidate or political committee for the purpose of supporting or opposing any candidate, ballot issue or political committee as defined provided in 44.11.403, ARM.

Frequently, in-kind contributions come in the form of services for which charges usually are made but which are rendered to the campaign free of charge or at lesser amount than is customary.

If something is sold to the campaign at less than fair market value, the difference must be recorded as an in-kind contribution.

Example: The fair market value of a mailing that your graphic designer friend charges clients is \$1.25 per mailing, but your friend only charges your campaign \$.50 per mailing. The \$.75 per mailing difference is an in-kind contribution that needs to be reported by the campaign.

Certain small in-kind contributions, such as food brought to a potluck dinner or small items donated to a garage sale, need not be reported, although the campaign may wish to keep a record of them. The use of a person’s real property for a

fundraising reception or other political event also would not qualify as a reportable contribution.

Sometimes goods donated to a campaign are intended to be sold; an art auction fundraiser is a common example. In this example, the fair market value of the donated piece of art is recorded and reported as an in-kind contribution by the donor. The purchaser of the art at the auction makes a contribution to the campaign in the amount paid for the item. This information must be reported by the campaign as an in-kind contribution received. Any non-incorporated business or entity that makes an in-kind contribution to a candidate, including auction items, raffle prizes, or gift certificates may have reporting and disclosure requirements to the COPP.

For guidance on determining the fair market value of an in-kind contribution refer to the below administrative rule:

- 44.11.403, ARM** (1) A candidate or political committee shall report an in-kind contribution on the appropriate reporting schedule and shall describe what was received consistent with the reporting requirements specified in ARM 44.11.402.
- (2) A candidate who makes personal expenditures benefitting his or her campaign shall also report and disclose the expenditures as in-kind contributions or loans to the campaign; see ARM 44.11.501.
- (3) The total value of the services, property, or rights contributed in-kind shall be deemed to have been consumed in the reporting period in which received.
- (4) The value of an in-kind contribution shall be determined as follows:
- (a) It shall be reported as its fair market value at the time of the contribution;
 - (b) It shall be reported as the difference between the fair market value at the time of the contribution and the amount charged the contributor;
 - (c) It shall be reported as the actual monetary value or worth at the time of the contribution; or
 - (d) If due to extraordinary circumstances none of these provisions would be appropriate or no reasonable fair market value can be established, it shall be sufficient to report a precise description of such in-kind contribution so received.
- (5) Upon receiving or making an in-kind contribution, its value shall be calculated and reduced to writing, reflecting the calculation method used under (4) and the writing shall be retained by the treasurer and available for inspection as provided by 13-37-111, 13-37-208, and 13-37-209, MCA. The value shall also be reported consistent with ARM 44.11.502.

Any interest earned in a checking or savings account rebates, or refunds received by a campaign must be recorded and reported on campaign finance reports. so accounts will balance.

Some things are not included in the legal definition of “contribution.” For instance, any services provided by *individuals* who volunteer their time without compensation need not be recorded or reported, 13-1-101 (9) (b), MCA.

LIMITATIONS ON CONTRIBUTIONS

There is no limit on the amount a candidate may contribute to his or her own campaign. Keep in mind that expenditures for personal use are those that have no direct connection with or effect upon expenditures to support or oppose a candidate’s campaign.

Example: Personal use items are normal living needs, food or clothing that are not specifically required for a campaign activity, costs for travel, lodging, or registration for a conference that does not serve a campaign interest, ARM 44.11.608.

If your campaign decides that a laptop is needed for keeping up with campaign e-mails, this is likely an allowable expenditure. However, please note that purchasing real property with a value of \$50 or higher will require you to dispose of the real property at the end of the campaign by one of the following ways:

- Sale of the property at fair market value;
- Donation of the property under one of the options set out in ARM 44.11.702.

The disposal of such real property must be reported as specified under 13-37-240, MCA and 44.11.702, ARM, including the date of disposition or donation, the name and address of the purchaser or donee, and the description of the property.

The passage of Initiative 118 in 1994 limited the amount that individuals (other than the candidate), political committees—both independent committees and political party committees—may contribute to a candidate, 13-37-216, MCA.

Limitations are not for the entirety election cycle but are applied to EACH election: primary and general, if there is a contested primary.

“Election” is defined as: 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 only one election to which the contribution

limits apply. If there is a contested primary, then there are TWO elections to which the contribution limits apply, 13-37-216(5), MCA.

An individual or political committee may contribute the following amount for an election:

Governor/Lt. Governor	\$1,000
Other statewide offices	\$700
All other public offices	\$400

These limits include **both** monetary and in-kind contributions effective upon publication of rules.

Political party committee means a political committee formed by a political party organization and includes all county and city central committees. Some examples are the Montana State Democratic Party, Gallatin County Republican Action Club, or Helena Republican Women.

Contributions to candidates by political party committees are subject to the following **aggregate limits from ALL political party committees:**

Governor/Lt. Governor	\$100,000
Other statewide offices	\$75,000
Public Service Commission	\$15,000
State Senate	\$3,000
Other public offices	\$2,000

These limitations apply to **EACH** election: the contested primary and the general. These limitations include **BOTH** monetary and in-kind contributions, are subject to change pending Court action.

Example: A candidate for the office of Governor can receive \$100,000 in the aggregate from political party committees. In other words, the candidate can receive one \$100,000 check or multiple smaller checks up to \$100,000. When the candidate has reached the \$100,000 aggregate for political party contributions, they cannot accept any more political party contributions. It is important for the campaign to track the political party contributions to avoid exceeding the limits. See exception, ARM 44.11.225(3).

For the most current information on contribution limits, visit www.politicalpractices.mt.gov.

ILLEGAL CONTRIBUTIONS

While corporations are allowed to make independent expenditures related to a candidate, they are prohibited from making direct corporate contributions to a candidate, 13-35-227, MCA. Earmarked contributions by a corporation to a person as a contribution designated for a candidate's campaign are also prohibited.

If a corporate check is deposited inadvertently, a refund must be made immediately upon discovery. The practice of photocopying all checks coming into the campaign is especially helpful in this instance. A photocopy of the refund check should be sent promptly to the Commissioner of Political Practices.

Most candidates and large corporations know this; however, some supporters may unwittingly write contribution checks on their business accounts. In such cases, the treasurer of the candidate or the political committee receiving the contribution will have to verify whether it is an individual or corporate contribution. Looking at the check itself will not reveal in every case whether it is drawn on a corporate account—for instance, many corporations are designated in ways other than the familiar “Inc.”

Many campaigns coordinate their campaign activities with political party committees or other non-incorporated entities. The coordinated election activity is required to be within the statutory contribution limits.

Example: The Firefighter PAC and Charlie Brown's campaign work together on an advertisement that advocates for Charlie Brown's campaign. Charlie can accept up to the limit as a contribution from the Firefighter PAC. Any excess cost beyond the limit will have to be paid by the campaign.

As noted previously corporate entities are strictly prohibited from coordinating with any candidate. For example, candidate Charlie Brown and Lucy's Services, Inc. would be prohibited from working on an election activity together.

Any check deposited by a campaign treasurer that is drawn on a business account and that is verified not to be a corporate account must be reported in the name of

the individual(s) actually making the contribution—not in the name of the business (Unless it is from an incidental committee; discussed later in this manual). Usually, that will be the name of the individual signing the check, however, since a bookkeeper (who is not the contributor) may be authorized to sign checks, the treasurer of the candidate or the political committee receiving the contribution must verify exactly who is making the contribution.

The best practice for a candidate, a committee that supports or opposes candidates, or a political party is to accept only personal checks.

Anonymous contributions are illegal in Montana, 13-37-217, MCA.

Detailed information, including name and address, for contributors of less than the threshold reportable amount of \$50 need not be disclosed on reporting forms; however, campaign records must maintain the contributions and the contributor. Contributions must be refused when the source is not known or when the person offering money wishes not to be known. Pass the hat types of fundraisers tend to often be misunderstood. All contributions are required to have a source.

Example: If a contributor attends four pass the hat events and puts \$15 in the hat each time, the contributor has exceeded the aggregate of \$35 which requires detailed reporting.

We recommend using an envelope for the attendees to put their cash in. The envelope should at least include the names of the attendees. This small step can avoid some complicated accounting for your campaign. If your campaign does inadvertently receive an anonymous contribution the best thing to do is to donate it to an organization and maintain a record of the donation.

Use of an intermediary to pass funds along from a third party as a means of concealing the identity of the true donor is illegal. A campaign may not knowingly accept a contribution in a name other than that of the person who is the actual contributor, 13-37-217, MCA.

Federal law prohibits foreign nationals from making contributions in connection with any state, local, or federal election. Contributions cannot be made directly, or through any other person. Further, no person may solicit, accept, or receive such a contribution. If your campaign receives a check with a foreign address, it could be that of a US citizen that is overseas for military purposes, etc. Best practices include notifying COPP staff that your campaign has researched the contributor to ensure that it is not a foreign national. Candidates can accept contributions from US citizens residing outside the country.

CAMPAIGN DEBTS AND OBLIGATIONS

Reporting of campaign debts and obligations is one of the most commonly missed requirements during the reporting process. A candidate shall report the full name and mailing address of each person or entity to whom a debt or obligation is owed at the end of a reporting period, including the amount, date contracted, and purpose of each debt. If the exact amount is unknown at the time, the estimated amount shall be reported. (44.11.506, ARM)

Example: Debts and obligations that shall be reported are candidate loans or contracted campaign materials through a vendor where payment is expected later.

All debts or obligations must be in writing at the time the debt or obligation is incurred and must be signed by the parties and retained for inspection.

CAMPAIGN EXPENDITURES

An expenditure is defined in law as “a purchase, payment, distribution, loan advance, promise, pledge, or gift of money or anything of value made by a candidate or political committee to support or oppose a candidate or ballot issue,” 13-1-101 (18), MCA. As such, an expenditure means just about anything a campaign expends in support of or in opposition to a candidate or ballot issue with a few exceptions; services, food, or lodging provided in a manner that are not considered contributions, and personal necessities for the candidate or the candidate’s immediate family.

The candidate filing fee is required to be reported by a candidate’s campaign on campaign finance reports. Campaigns may use campaign funds to pay the filing fee and report the filing fee as a campaign expenditure. The filing fee can also be reported as a candidate contribution or a loan to the campaign, if the candidate pays using personal funds.

All money spent must be by check, debit card, wire transfer or other electronic means that clearly identifies the person receiving payment drawn on the campaign account, 44.11.502, ARM. The person who draws the check must be an appointed treasurer or an appointed deputy treasurer who has been certified to the Commissioner of Political Practices.

A small campaign might be able to note all expenditures in its checkbook, but a larger campaign might need to introduce cards or ledgers—manually or electronically—to maintain accounting control.

Example: An expenditure card might be prepared for each recipient of campaign checks. The cards or ledgers could then be organized by categories of expenses that would assist the campaign in knowing where its resources are being spent and would be helpful in preparing reports.

With computer capabilities, the tasks of recording, aggregating and reporting expenditures are made easier. In any case, expenditures must be recorded showing each person or business to whom an expenditure is made including:

- 1) The full name,
- 2) The complete mailing address,
- 3) The date,
- 4) The amount, and
- 5) The purpose of the expenditure.

Note: A common mistake is the reporting of consultants. Reports of expenditures made to a consultant, advertising agency, polling firm, etc. must be itemized and must be described in, sufficient detail to disclose the *specific services performed*, 13-37-229(b), MCA.

Large campaigns that employ salaried staff may find a separate payroll account helpful. Such an account may be established in the same depository as the regular campaign account.

In calculating a payroll, the campaign treasurer would include the gross salary of staff, the employer's contribution to Social Security (FICA), workers' compensation, unemployment insurance, and any other employer liability. The total of the payroll would then be deposited periodically into the payroll account (for campaigns using such an account) by a check drawn on the regular account. As such, this check is not an expenditure but a transfer of funds. Checks would then be drawn on the payroll account to pay staff members the net amounts due to them.

The amounts for employee withholding, along with the amounts for employer obligations, would remain in the payroll account until these funds were required

to be remitted to state and federal revenue departments. As checks are drawn on the payroll account, each amount would be recorded as a campaign expenditure.

While a payroll account introduces more complexity to campaign accounting, its use conforms to basic accounting principles and has the benefit of keeping dedicated money out of the regular account.

Funds not currently needed by a campaign may be deposited into savings or other *interest-bearing accounts or may be used to purchase certificates of deposit*. To do so, a check would be drawn on the campaign checking account. This would not be reported as an expenditure.

Bank services charges (if any) are typically not paid by a check drawn on the campaign account; however, bank service charges should be recorded in the accounts to ensure balanced books and should be reported as expenditures on financial reports.

LIMITATIONS ON EXPENDITURES

Surplus campaign funds must be disposed of within 120 days after the time of filing the closing campaign report, 13-37-240, MCA. Surplus campaign funds cannot be contributed to another campaign, including the candidate's own future campaign, nor can they be used for personal benefit.

“Personal benefit” is defined as: “a use that will provide a direct or indirect benefit *of any kind* to the candidate or any member of the candidate's immediate family,” 13-37-240 (2), MCA.

An expenditure that is deemed to be “coordinated” between a candidate and another entity or person is treated as though it is a contribution to and/or expense by the candidate's own committee. Contributions to a candidate are limited in amount from any source and prohibited completely from a corporate source. (*See* §§13-35-227, 13-37-216, MCA). Because a coordinated third-party election expense is deemed to be a contribution to a candidate it becomes subject to the limits and prohibition of these laws.

A third party, including a corporation, can participate in an election through an independent expenditure. An independent election expenditure is subject only to reporting and attribution and is not subject to contribution limits or bans. The Courts, in upholding coordination findings, have recognized that there is a temptation to go past an independent expenditure and coordinate:

Independent expenditures “are poor sources of leverage for a spender because they might be duplicative or counterproductive from a candidate’s point of view” (*FEC v. Colo. Republican*, 533 US 431 at 446 (2001)). By contrast, expenditures made after a ‘wink or nod’ often will be “as useful to the candidate as cash,” *Id.* at 442 and 446. For this reason, Congress has always treated expenditures made “at the request of suggestion of” a candidate as coordinated.

An example of a sufficiency finding that found coordination was Commissioner Vaughey’s decision in *Little v. Progressive Missoula*, July 22, 2004. The Commissioner, identified crossover activity, finding that members of the Progressive Missoula (PM) steering committee were directly involved in the candidate’s campaign (Allison Handler). Further, the Commissioner found specific evidence showing that Handler and the individual committee members knew of the negative attack role that Progressive Missoula would play in support of the candidate’s campaign. The Commissioner found that certain barriers between the Handler campaign and Progressive Missoula, including a letter of reproach from Progressive Missoula to Handler, were artifices designed to disguise the real cooperation. The Commissioner found that the PM’s expenditures for flyers opposing candidate K. were made with “...prior knowledge, consent and encouragement of Handler...” Thus they were coordinated expenditures.

PART 2: CAMPAIGN REPORTING

STATEMENTS AND REPORTS

All candidates are required to file their reporting forms electronically. The on-line service is available on the Commissioner of Political Practices’ website www.politicalpractices.mt.gov . (CERS) The Campaign Electronic Reporting Service can be accessed from the homepage. The website also offers guidance for electronic reporting. The friendly staff is always available to answer questions and assist in navigating these services. On-line training videos are available to assist in navigating you through the online reporting steps.

All state district, including district court judges, and statewide, including Supreme Court Justice, candidates are required to file a Business Disclosure Statement (Form D-1) with the COPP within 5 days of official filing with the Secretary of State as a candidate or appointment to office.

The campaign finance report filing requirements of MCA Title 13, chapter 37, apply to all candidates, *with the exception* of county, municipal, and school candidates spending *less than \$500* in all elections in a campaign, 13-37-226 (4), MCA. Candidates for defined special district offices are also exempt from filing, 13-37-206, MCA. All other candidates must file periodic reports disclosing campaign contributions and expenditures as well as other information required by law, 13-37-229,, MCA.

A candidate uses Form C-5, Candidate Campaign Finance Report, to report their campaign's financial activities. A candidate also uses a special notice (Form C-7 & C-7E) for large contributions received and expenditures made, close to Election Day.

See 13-37-226, MCA for candidate reporting calendars and 13-37-228, MCA for the time period covered by reports. This information is also available on the COPP's website, under the Reporting Calendars section.

Please note, in addition to the regularly scheduled reports that are due, contributions and/or expenditures that are received close to an election have additional reporting obligations, that are triggered by the campaign itself. See 13-37-226 (1)(c) and (d), MCA.

If a candidate fails to file statements and reports as required by law, the candidate's name "may not be printed on the official ballot for an election," 13-37-126(1), MCA. Further, even if elected, a candidate will not receive a certificate of election unless the statements and reports have been properly and timely filed. Without a certificate of election, an individual may not assume the powers and duties of office, 13-37-127, MCA.

Closing reports must be filed when all debts and obligations are satisfied, and no further campaign activity is anticipated following an election. Some campaigns have continued to make expenditures after the election that are not campaign related. This is not allowable. If all debts and obligations of the campaign have been met, the closing report has been submitted and there is still a balance in the campaign account the campaign has several options to choose from to dispose of the surplus funds or property:

1. If your campaign was successful, then you can establish a constituent services account. Constituent services accounts require some reporting as well. For more information on reporting requirements for constituent services accounts

see Administrative Rules of Montana 44.11.703 – 44.11.711. Some helpful guidance is also available on the COPP website.

2. Surplus campaign funds can be returned to the contributors, so long as the refunds will not violate the personal benefit or campaign contribution limitations in 13-37-240 and 13-37-402, MCA.
3. Donate the funds to any organization or entity, so long as the donation does not violate the personal benefit provisions.

PREPARING STATEMENTS

FORM C-1- Statement of Candidate

All candidates for statewide and state district offices in Montana must file form C-1, the Statement of Candidate. Form C-1 must be filed within 5 days of filing a declaration or petition for nomination, acceptance of nomination, or appointment as a candidate for public office, receiving a contribution, making an expenditure, whichever comes first. Form C-1 must be filed electronically, using the CERS system.

If any changes occur after the original C-1 Statement of Candidate has been filed, a candidate must file an amended form providing the new information. For example, a candidate may remove a campaign treasurer, or change a campaign depository. The amended C-1 Statement of Candidate must be filed within five days after a change is made, 13-37-204, MCA; 44.11.304, ARM.

FORM C-1A

All candidates for county, municipal (city) and school offices in Montana must file form C-1A, the Statement of Candidate. Form C-1A must be filed within 5 days of filing a declaration or petition for nomination, acceptance of nomination, or appointment as a candidate for public office, receiving a contribution, making an expenditure, whichever comes first. Form C-1A must be filed electronically, using the CERS system.

Unlike form C-1, the C-1A Statement of Candidate includes an Affidavit of Reporting status section concerning anticipated campaign contributions or expenditures. This affidavit must be completed by the candidate, 44.11.304, ARM.

Candidates for county, municipal, and school offices are required to file campaign finance reports:

. . . only if the total amount of contributions received or the total amount of funds expended for all elections in a campaign, exceeds \$500. . . . 13-37-226(3), MCA.

If any changes occur after the original C-1A Statement of Candidate has been filed, a candidate must file an amended form providing the new information. For example, a candidate may remove a campaign treasurer, or change a campaign depository. The amended C-1A Statement of Candidate must be filed within five days after a change is made, 13-37-204, MCA; 44.11.304, ARM.

If a candidate completes the affidavit by indicating that campaign contributions and expenditures will not exceed \$500 and either later exceeds \$500, the candidate must file an Amended C-1A reflecting this change in reporting status **within five days**. The candidate would also be required to begin filing C-5 campaign finance reports with the Commissioner of Political Practices within five days.

FORM D-1

All state district, including district court judges, and statewide, including Supreme Court Justice, candidates are required to file a Business Disclosure Statement (Form D-1) with the COPP within 5 days of filing with the Secretary of State as a candidate or appointment to office. In accordance with Montana Code Annotated 2-2-106, the form must include the following:

Name, address, and type of business of the individual;

- Type of business in which currently engaged or formerly engaged prior to election or appointment;
- Each present or past employing entity from which benefits, including retirement benefits, are currently received by the individual;
- Each business, firm, corporation, partnership, and other business or professional entity or trust in which the individual holds an interest;
- Each entity in which the individual is an officer or director, including not for profit entities; and
- All real property, other than a personal residence, in which the individual

CANDIDATE CAMPAIGN FINANCE REPORT

FORM C-5

Form C-5 is the candidate campaign finance report. Form C-5 must be filed by all candidates for election to statewide or state district office, and by county, municipal (city) or school candidates who indicate contributions or expenditures will exceed \$500. A C-5 campaign finance report discloses any contributions received and expenditures made by the candidate during a given reporting period. Form C-5 must be filed electronically using the CERS system.

Form C-7 Notice of Pre-Election Contributions

All candidates for statewide office must file form C-7, the Notice of Pre-Election Contributions, to disclose any contributions of \$250.00 or more received from a single source between the 15th day of the month preceding an election in which the candidate participates and the day before the election. All other candidates must file form C-7, the Notice of Pre-Election Contributions, to disclose any contributions of \$125.00 or more received from a single source between the 15th day of the month preceding an election in which the candidate participates and the day before the election. Form C-7 must be filed within two (2) business days and must be filed electronically using the CERS system.

Form C-7E Notice of Pre-Election Expenditures

All candidates for statewide office must file form C-7E, the Notice of Pre-Election Expenditures, to disclose any expenditures of \$250.00 or more made between the 15th day of the month preceding an election in which the candidate participates and the day before the election. All other candidates must file form C-7, the Notice of Pre-Election Contributions, to disclose any expenditures of \$125.00 or more received made between the 15th day of the month preceding an election in which the candidate participates and the day before the election. Form C-7E must be filed within two (2) business days and must be filed electronically using the CERS system.

FORM C-118- DISPOSITION OF SURPLUS CAMPAIGN FUNDS

Within 120 days of filing a closing campaign finance report, a candidate must dispose of any surplus campaign funds, 13-37-240(1), MCA.

Within 120 days of filing a closing campaign report, Form C-118 must be filed reporting the disposition of the surplus funds, 44.11.702, ARM. This supplemental report must be accompanied by copies of all receipts from all recipients of any surplus campaign funds, 44.11.702(4), ARM.

A candidate may not contribute surplus funds to another campaign, including the candidate's own future campaign, or use the funds for personal benefit. "Personal benefit" means a use that will provide a direct or indirect benefit *of any kind* to the candidate or any members of the candidate's immediate family, 13-37-240(2), MCA.

Examples of permissible uses of surplus campaign funds are:

- a) The return of funds to a contributor;
- b) Donation of the funds to an organization; and/or
- c) Upon election, use of the funds to establish an account to serve constituents.

If you have a constituent services account (constituency account), or intend to open one, you're strongly encouraged to study the statutes and rules applicable to these accounts. See our website or contact the Commissioner's office for a copy. Montana law restricts the use of these funds to certain activities, requires detailed accounting, and periodic reports. These restrictions and requirements are spelled out in the rules and described in a "Frequently Asked Questions" handout available on website.

Part 3: Required Attribution, Disclaimers & Notices

Attribution

Campaign materials must include a "Paid for by..." attribution statement (sometimes called a "disclaimer.") Communications that advocate the success or defeat of a candidate, political party or ballot issue are all covered by the requirement. Those communications include, but are not limited to, TV or radio, newspapers, billboards, direct mail (brochures, postcards), posters, bumper stickers, yard signs, and websites, 13-35-225(1), MCA and ARM 44.11.601(3), and provides additional guidance/requirements for how to appropriately attribute campaign materials:

All election materials are required by 13-35-225, MCA, to clearly and conspicuously include the appropriate attribution language. To ensure compliance with this statutory directive, the Commissioner established the following requirements and specifications:

1. (a) For election materials financed by a candidate or a candidate's campaign, the attribution must include either:
 - The name and address of the candidate; or
 - The name and address of the candidate's campaign.
- (b) An attribution using the name of the candidate's campaign number include the first and last name of the candidate if the name of the campaign does not include at least the candidate's last name.
- (c) Additional information, such as the name of the campaign treasurer, may be included within the attribution language, but it is not required.

Examples of an appropriate attribution for a candidate are:

Paid for by John Smith
P.O. Box 1000
Helena, MT, 59605

Or

Paid for by Smith for Senate
P.O. Box 20000
Helena, MT 59605

2. (a) For written election materials, including but not limited to those published, broadcast, or otherwise disseminated through print media or digital media, as defined in these rules:
 - The reader or observer should have no difficulty locating and reading the attribution language;
 - The attribution language should be of sufficient type size to be clearly readable by the recipient or reader of the communication;
 - The language should be contained in a printed area or segment set apart from the other contents of the election materials;
 - The language should be printed with a reasonable degree of color contrast between the background and the printed statement; and
 - In the case of yard signs or other campaign signs, the attribution language should appear on the side of the sign that contains the campaign message.
- (b) For broadcast election materials, including but not limited to those published, broadcast, or otherwise disseminated through broadcast media or digital media, as defined by these rules:

- The attribution language for broadcast election communications containing audio content shall be spoken in the communication;
- The attribution language for broadcast election materials containing visual content shall be displayed in the communication. The language may simultaneously be spoken, but it is not required.

(c) In partisan candidate elections, election communications and electioneering communications financed by a candidate or a political committee organized on the candidate's behalf must state either the candidate's party affiliation or include the candidate's party symbol.

- To meet the party affiliation disclosure requirement, election materials should state the name or a reasonable and comprehensible abbreviation of the name of one of the qualified political parties in Montana: "Democrat," "Libertarian," or "Republican."
- To meet the party symbol disclosure requirement, election materials should include either the symbol for one of the qualified political parties in Montana or the capitalized first letter of one of the parties. Acceptable symbol designations are:
 - Democrat: the donkey symbol or "D";
 - Libertarian: the Statue of Liberty symbol or "L"; or
 - Republican: the elephant symbol or "R."
- The commissioner may determine that other language or a symbol included within a particular election material complies with the statutory directive, as long as there is some objective basis for the use of the language or symbol and the identity of the party is readily discernable.
- The party affiliation or symbol may appear with the attribution language, or within the body of the message content in the election materials.

(d) Printed election material that contains information about another candidate's voting record must include all the information specified in 13-35-225, MCA. The signed statement referred to in the statute may consist of a facsimile of an actual hand signature or an electronic signature. An acceptable electronic signature will be in the following format: "/s/ John Smith." An electronic signature that appears on written election materials shall have the same effect as an actual hand signature or a facsimile of a hand signature.

Examples:

Paid for by John Williams
PO Box 1234
Helena, MT 59601

Paid for by Jones for County Commissioner
PO Box 7894
Townsend, MT 59845

Clean Campaign Act

The “Clean Campaign Act” requires candidates and committees supporting candidates to provide opposing candidates with copies of new campaign advertising that is intended to be distributed within the 10 days prior to an election. The copies must be provided at the time the material is published, broadcast, disseminated, or otherwise made available to the public. The law applies to any campaign advertising in print or broadcast media, see 13-35-402, MCA.

The date used to determine the date “intended for public distribution for material distributed by:

1. Print media is the date of the postmark
2. If no postmark is provided on the mailing, the date the mailing is mailed or “dropped,” as reported by the mail distributor, is the equivalent of the postmark date.
3. Broadcast media, digital media, or published material is “at the time” the material is published or broadcast or disseminated to the public. “At the time” is defined in, 44.11.607(b)(i), ARM. It means at or before the earliest date and time the message is scheduled to be published, broadcasted, or disseminated to the public.

The requirement **does not** apply if:

1. Identical material was already published or broadcast, or
2. The material does not identify or mention the opposing candidate.

FOOTNOTES/REFERENCES

¹ An excepted school district is “(1) a first-class district located in a county having a population of less than 15,000; (2) a second- or third-class district; or (3) a county high school district having a student enrollment of less than 2,000.” Excepted *special* districts include, but are not limited to, “a conservation district, a weed management district, a fire district, a community college district, a hospital district, an irrigation district, a sewer district, a transportation district, or a water district,” 13-37-2506, MCA.

² Several deputy treasurers may be appointed, but no more than one in each county in which a candidate or committee takes part in an election.

³ For more complete information on secondary depositories and access to them by deputy treasurers, see 13-37-202 and 13-37-205, MCA

⁴ Money borrowed from a lending institution is considered to be from the person who is the obligor on the note and not from the lending institution itself, 44.11.405, ARM.