



COMMISSIONER OF
POLITICAL PRACTICES

STATE OF MONTANA

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April 6, 2016

Timothy Gould, Executive Director
Montana Republican Party
P.O. Box 935
Helena, MT 59624
tgould@mtgop.org

COPP-2016-AO-008
Re: Earmarked Contributions

Dear Mr. Gould,

I write in response to your inquiry of March 30, 2016 requesting the Commissioner of Political Practices' (COPP) advisory opinion regarding a candidate's use of earmarked contributions. You raised the following issue and offered the following facts to assist the COPP in preparing the Advisory Opinion:

"Can a candidate with no contested primary election use Montana's earmarked contribution provision to contribute primary funds to another political committee, assuming the candidate obtains permission from the original donor to do so and all funds are properly reported?"

ADVISORY OPINION

The Commissioner is limited to issuing an advisory opinion that addresses "the applicability of a rule or statute administered by the Commissioner." Mont. Admin. R. 44.11.102.

SHORT ANSWER

Based on the facts provided, a candidate may refund the contribution to the original donor, so that the original contributor may redirect the contribution to the candidate or political committee of their choice. In contrast, a candidate cannot short-circuit the process by attempting to create a retroactive earmarked contribution.

DISCUSSION

In order for the earmarked contribution rule to apply the contribution to the unopposed candidate would have earmarked by the contributor when it was first made to

the candidate.

Montana law provides that no contributions may be received by a person "in connection with any election" in the name of anyone other than the true contributor, Mont. Code Ann. § 13-37-217. Based on the facts provided, the person contributing to the candidate's campaign was making a contribution to that particular candidate.

"An earmarked contribution is a contribution made with the express, implied, oral, written, direct, or indirect designation or instruction, that all or part of it be transferred to or expended on behalf of a specified candidate, ballot issue committee, political party committee, independent committee, or petition for nomination. An earmarked contribution is the same as a designated contribution".

Mont. Admin R. 44.11.401(1) (emphasis added).

If the contributor intended the unopposed candidate to take a contribution and provide it to a different candidate or committee, then the reporting provisions of the earmarked rule would come into play. The rule requires the earmarked contribution receiving candidate to report the contribution as earmarked, to whom the contribution was ultimately intended, and to inform the intended candidate or political committee the name of the original contributor, *id.* (3). Further, the intended receiving candidate or political committee would then be required to report and disclose the contribution as earmarked, having been received from the unopposed candidate, and having come from the original contributor, *id.*

Based on the facts provided, the unopposed primary candidate intends to ask the particular contributor to retroactively designate their contribution to another candidate or political committee's campaign. Reporting and disclosure for all parties involved would be easier for the unopposed primary candidate to simply refund the money to the original contributor and allow the contributor to then make the contribution to the candidate or committee of their choice. Of course, the unopposed primary candidate would still have the obligation of reporting the original contribution and the refund to the contributor.

There are a couple things to keep in mind. An unopposed primary candidate is only allowed one contribution limit for the entire 2016 election cycle, Mont. Code Ann. §§ 13-37-216(5), 13-37-218 and Mont. Admin. R. 44.11.222, 44.11.226. Further, the earmark contribution receiving candidate also has aggregate contribution limits applied to contributions which she or he may receive from individuals and political committees that could possibly be disrupted by use of the earmarked contribution reporting and disclosure requirements in the manner proposed by the question presented.

CONCLUSION

Based on the facts provided by the Montana Republican Party, an unopposed primary candidate may refund a contribution made to their campaign to the original contributor, so that the contributor may then redirect the contribution to another candidate or committee of their choice. A candidate may not retroactively alter the original intent of the contributor to create an earmarked contribution. The COPP appreciates the

opportunity the Montana Republican party has provided to clarify the application of facts to the proper reporting and disclosure requirements of an earmarked contribution.

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 7th day of April, 2016.



Jonathan R. Motl
Commissioner of Political Practices