

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES (COPP)

JENI DODD v. JANE WEBER	COPP-2024-CFP-002 DISMISSAL
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COMPLAINT

On January 12, 2024, Jeni Dodd of Great Falls, MT, filed a campaign practices complaint against Jane Weber, Candidate for House District 19, also of Great Falls. The complaint alleged that candidate Weber failed to properly deposit primary and general election contributions received into separate accounts, and that the campaign improperly utilized funds designated as primary funds to prepay for billboards to be used for the general election.

ISSUES

Deposit and designation of contributions received by a candidate as primary and general funds, Montana Code Annotated (MCA) § 13-37-205; applicable election and reporting requirements for campaign expenditures, Administrative Rules of Montana (ARM) 44.11.224.

BACKGROUND

Jane Weber filed a C-1 Statement of Candidate with COPP, as a Democratic candidate seeking election to the office of Representative for Montana House District No. 19, on July 11, 2023. She additionally filed as such with Montana’s Secretary of State on January 11, 2024. Sandor Hopkins filed a C-1 Statement of Candidate with COPP as a Democratic candidate for the same office on June 20, 2023, but did not at any time file as such with the Secretary of State. On January 11, 2024, Mr. Hopkins filed a Closing C-5 campaign report for his candidacy for HD 19 and filed a new C-1 Statement of Candidate for HD 23. On February 11, 2024, Mr. Hopkins also filed formally with Montana’s Secretary of State. As of the close of candidate filing with Montana’s Secretary of State’s office on March 11, 2024, no individual other than Jane Weber had filed as a Democratic candidate seeking election to HD 19. Therefore, according to COPP

records, Ms. Weber was in a contested primary for the Democratic nomination to HD 19 from July 11, 2023, when she entered the race, until January 11, 2024, when Mr. Hopkins withdrew in order to change districts.

At the time this complaint was filed, Jane Weber had filed two C-5 campaign finance reports, one on October 4, 2023, for the period of July 11 through September 30, 2023, and one on January 3, 2023, for the period of October 1 through December 31, 2023. On these two reports, all contributions received and expenditures made were designated as primary funds.

On January 23, 2024, prior to formally accepting this complaint, COPP's investigator contacted candidate Weber to inquire about the September 25, 2023, transaction specified in the complaint, an expenditure to Lamar in the amount of \$10,056.00 for "Billboard advertising Great Falls – 8 billboards -service dates 5-6-24 through 6-4-24 and 10-7-24 through 11-5-24."

Complaint, 2. Candidate Weber explained to the investigator that she had reserved billboards for the primary and general elections and was required to pay for the cost of the billboards in full in order to reserve them, and that at that time, she had a primary opponent in the race for HD 19. Ms. Weber documented this conversation in her response which is posted along with the complaint on the COPP website.

Prior to 2021, by administrative rule, all candidates for public office were required to maintain separate accounts for primary and general election funds and were not permitted to spend general election funds until after the primary. ARM 44.11.224(2)(c). In 2021, the Montana legislature passed Senate Bill 224 which invalidated this rule as applied to legislative candidates. MCA § 13-37-205(6) allows legislative candidates to maintain one account for all contributions as long as they; (a) maintain "records concerning whether contributions received are designated for the primary election or the general election; and (b) maintain a balance in their account equal to the amount of funds received for the general election until the day following the primary election.

The Campaign Electronic Reporting System (CERS) which all candidates are required to use, provides for candidates to designate contributions and expenditures as 'primary' or 'general' and tracks the totals for each. The system does not allow candidates to designate funds as 'either.'

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DISCUSSION

I. Separation of contributions received into primary and general funds.

This complainant in this matter first alleges that candidate Weber failed to separate campaign contributions into primary and general funds as required by law, and as outlined in the COPP Accounting and Reporting Manual for Candidates (the Green Book) posted on the agency's website.

Here, the complainant's observation regarding Ms. Weber's reporting is accurate but her statement of law is not. The version of the Green Book used by the complainant is not the most recent version published and posted to the agency website. The relevant portion of the Green Book has been updated to include changes by the 2021 Montana legislature resulting from the passage of Senate Bill 224. MCA § 13-37-205(6) reads:

6) A candidate for the legislature may use the same account in a campaign depository for primary election contributions received and general election contributions received and is not required to segregate the funds if:

(a) the candidate maintains records concerning whether contributions received are designated for the primary election or the general election; and

(b) the balance in the account that contains commingled primary election funds and general election funds does not drop below the amount of general election contributions received until after the day of the primary election.

The passage of the above statute necessarily invalidated ARM 44.11.224(2)(c), "general election contributions received prior to the day of the primary election must be maintained in a separate account and shall not be used until after the day of the primary election" as applied to legislative candidates. In other words, unlike all other candidates, those candidates seeking election to the Montana Senate or House of Representatives are no longer required to deposit primary and general election contributions into separate accounts as long as certain parameters are met.

First, a candidate with only one account for both primary and general funds must maintain "records concerning whether contributions received are designated for the primary or the general election." MCA § 13-37-205(6)(a). Here, Ms. Weber states that none of her contributors designated their funds for the primary or the general. Therefore, Ms. Weber followed the ARM rule that "generally" contributions received during the primary are designated for the primary election. ARM 44.11.224(b). "Generally" is not a hard and fast requirement and Ms. Weber could have easily designated some contributions as general. The only reason she

would be *required* to designate contributions as general is if she received contributions in excess of the limits for a single election – in this case, the primary election.

Second, a candidate with only one account must maintain a balance that “does not drop below the amount of general election contributions received until after the day of the primary election. ARM 44.11.224(c). This subsection serves to ensure that if a candidate has accepted contributions in excess of the amount allowed for the primary election, but due to an unsuccessful primary does not advance to the general, funds remain available to repay contributors, avoiding unlawful contributions in excess of the statutory limit.

In this matter, Jane Weber is a “candidate for the legislature” under MCA § 13-37-205(6), having filed as a candidate seeking election to Montana’s House of Representatives in District No. 19 with both COPP and Montana’s Secretary of State. As Ms. Weber did not accept any contributions in excess of the limits for one election, she was not required to designate any funds for the general nor to maintain a balance equal to general election contributions. MCA § 13-37-205(6) expressly allows candidate Weber to deposit *all* campaign contributions received into one account. Consequently, this allegation is dismissed in its entirety.

II. Primary funds expended for general election expenses

The second allegation raised by the complainant in this matter is that candidate Weber improperly utilized primary election funds to finance a general election expenditure before the primary. Candidate Weber did indeed utilize election funds that she had reported as primary contributions to prepay for billboards to be used for the general election, but this activity is not prohibited.

The complainant again relies on ARM 44.11.224(2)(c) to advance this allegation, specifically its language that “general election contributions received prior to the day of the primary election must be maintained in a separate account and shall not be used until after the day of the primary election.” As previously stated, this administrative rule no longer applies to legislative candidates. When the 2021 Legislature repealed the requirement for separate primary and general accounts for legislative candidates, the additional requirement that general funds not be used until after the primary necessarily became void as well. Without separate accounts, the requirement that general election funds not be spent until after the primary becomes impracticable and impossible to enforce. Additionally, prohibiting the spending of contributions

accepted during the primary is problematic with regards to financing expenditures that require advance planning. That is the case here, with Ms. Weber's billboards requiring reservations and prepayment. The same may apply to event centers, television advertising and other in demand products and services.

However, even if this administrative rule applied to candidate Weber, this rule prohibits the spending of general election funds until after the primary. There is no similar restriction on the spending of primary funds for general election expenses.

ARM 44.11.224(b) addresses how contributions should generally be designated but does address spending:

As a general rule, contributions received by a candidate prior to and on the day of a primary election are designated for the primary election, and are subject to the aggregate contribution limits for the primary election; however, a candidate in a contested primary may receive contributions designated for the general election during the primary election period (except for in-kind contributions) subject to the contribution limits of the general election.

This rule, while offering some guidance on how funds should be designated, clearly does not restrict when these funds can be spent. In this matter, candidate Weber has been reporting all campaign contributions received and expenditures made using the "primary" election column in CERS, primarily because of a good faith assumption (based on candidate filings made with COPP) that another Democratic candidate would seek election to Montana House District 19. Following the withdrawal of her opponent, Ms. Weber continued this practice in accordance with the guidance in ARM 44.11.224(b), that contributions received prior to the primary are *generally* designated for the primary election. The designation of contributions as 'primary' does not restrict when Ms. Weber can spend these funds and Ms. Weber was under no obligation to restrict her spending to either the primary or general election.

The allegation that Ms. Weber inappropriately made general election expenditures with primary funds is hereby dismissed in full.

III. Additional guidance for Ms. Weber and other candidates

Ms. Weber's good faith designation of contributions as 'primary' is not only allowable by law, but this in no way denied Montana citizens (including complainant Dodd) access to the source of those campaign contributions received or expenditures made. Ms. Dodd's reporting of

contributions and expenditures is in accordance with the law. In her conversation with COPP, Ms. Weber indicated her intention to transfer all contributions to the general following the primary. In this situation, that is perfectly acceptable. ARM 44.11.224(e) “leftover funds for the primary election may be used for general election purposes if all primary debt has been paid.” Primary debt is not at issue here because Ms. Weber does not have a primary election and did not acquire any debt during the period when it appeared a primary was forthcoming.

However, in order to avoid confusion and additional complaints in the future, I recommend candidates begin designating contributions as “general” as soon as it becomes an impossibility that a contested primary will occur. Ms. Weber has done so on her most recent C-5 report. *COPP Records*.

CONCLUSION

In this matter, Ms. Weber was under no obligation to maintain separate primary and general accounts or to refrain from using her funds designated “primary” to pay for upcoming general election expenses. All allegations made by the complainant have been considered as described above and are hereby dismissed in full.

Dated this 13th day of June 2024.



Chris J. Gallus
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