

COMMISSIONER OF
POLITICAL PRACTICES



STATE OF MONTANA

JONATHAN R. MOTL
COMMISSIONER
TELEPHONE (406) 444-2942
FAX (406) 444-1643

1205 EIGHTH AVENUE
PO BOX 202401
HELENA, MONTANA 59620-2401
www.politicalpractices.mt.gov

November 5, 2014

Roger A. Hagan
Representative, House District 19
117 Gerber Road
Great Falls, MT 59405-8107

COPP-2014-AO-013

Re: Lobbying by former government personnel

Dear Representative Hagan:

I write in response to your letter dated September 22, 2014 asking for an advisory opinion on the issues set out below. This letter constitutes that advisory opinion.

Background and Issue Posed

Roger Hagan is the current Representative to the Montana House of Representatives from House District 19. Representative Hagan was not reelected in 2014 and his current term of office will expire on December 31, 2014.

Representative Hagan now inquires as to his ability to serve as a lobbyist to the 2015-16 Montana legislature¹. This request requires an analysis of applicable Montana laws governing lobbying and lobbyists.

¹ Prior to serving the constituents of House District 19 for the 2013 through 2014 term, Rep. Hagan lobbied on behalf of military and recreation organizations for 34 years.

ADVISORY OPINION

As an initial matter, lobbying is a nuanced area in the Commissioner's jurisdiction for enforcement. Historically, the demands of dealing with campaign finance and practice laws have allowed little time for COPP staff to devote to definition of Montana's lobbying laws of Montanans. The Commissioner begins such further definition with this Advisory Opinion.

Lobbying and a person who lobbies (a lobbyist) are, with exceptions, defined and regulated by Montana law. Lobbying is defined as "the practice of promoting or opposing the introduction or enactment of legislation before the legislature or legislators" and "the practice of promoting or opposing official action of ... the legislature", Mont. Code Ann. § 5-7-102(11). A Lobbyist is "a person who engages in the practice of lobbying", *id.* (12). A lobbyist must apply for and receive a license in order to lobby, Mont. Code Ann. § 5-7-103(5).

These definitions are designed to cover those who are hired to lobby. Accordingly, a lobbyist does not include individuals acting on their own behalf, someone who does not directly lobby, and a person who receives a small amount of payment. Those individuals, while still seeking to influence legislation, do not need to register with the COPP or secure a license to lobby Mont. Code Ann. § 5-7-102(12)(b).

As explained herein, Representative Hagan cannot serve as a paid lobbyist or receive a license to lobby until after December 31, 2016. The applicable law is set out below:

"Prohibition of lobbying by former government personnel. (1) an individual may not be licensed as a lobbyist and a principal may not directly authorize or permit lobbying by an individual if during the 24 months prior to applying for a license that individual served as a state legislator...",

Mont. Code Ann. § 5-7-310. (Emphasis added).

The only exception to the 24 month bar on paid lobbying is for an individual who becomes a lobbyist "as a part of the individual's responsibilities as an employee of state or local government", *id.* (2). Please note that a non-government principal would be in violation of the statute if they authorized or permitted you to directly lobby the legislature or legislators on their behalf in the 2015-2016 legislative session, Mont. Code Ann. § 5-7-310.

With the above discussion in mind, I will take the time to provide direction for lobbyists and principals in general by answering the questions you posed for the Advisory Opinion.

1. If I am offered and accept an opportunity(ies) with all or some of my former principals or new principals, post legislative service in 2015, and we collectively meet the criteria for compensation outlines in MCA's 5-7-102(12)(b)(iii) and 5-7-112 and ARM 44-2-204, will I be considered to be in compliance with MCA 5-7-310?

As discussed above, the answer is NO. Any activity you engaged in 2015-16 would need to be an activity that did not involve lobbying. Likewise, a principal cannot employ you as a lobbyist in 2015-16.

2. What is the current "amount specified under 5-7-112 in a calendar year" for 2015-2016?

The answer is that there is no current amount. After the 2014 general election, the Commissioner is required to undergo the administrative rulemaking process to adjust the amounts specified in Mont. Code Ann. § 5-7-112. The threshold amount for 2013-2014 was \$2,450. The rulemaking process is about to begin, and the threshold amount should be finalized and adopted by mid-January 2015, at which time it will be posted and available on the Commissioner's website.

3. Is this [threshold] amount cumulative among all principals represented for a session?

The threshold amount is cumulative to an individual, whether or not they are a lobbyist, for all payments received from one or several principals or persons during a calendar year. The threshold amount is also cumulative to a principal for all payments made to one or several persons for the purpose of lobbying on the principal's behalf during a calendar year, *see also* answer to question 5 below.

4. Is this compensation amount only considered to be the wages or IRS 1099 contract payments for work completed?

Principals report their total compensation or payments to others that are expended to lobby on the principal's behalf, *see* Mont. R. Admin. 44.12.203, 205, 207, 209. A lobbyist, or a person who could potentially be required to become a licensed lobbyist counts the compensation or payments received from the principal, *see* Mont. R. Admin. 44.12.102. If a lobbyist is employed by an entity, and the principal pays the entity for the lobbyist's services, then the lobbyist would include the compensation received from their employing entity. *See* the definitions of payments, Mont. Code Ann. § 5-7-102(13)(a) and (b).

5. Are personal living expenses and other reimbursements (i.e. travel, lodging, meals, and reimbursements for expenses incurred interacting with legislators) included in the amount specified under 5-7-112?

For a principal, personal and necessary living or travel expenses that are reimbursed to an individual who lobbies on their behalf are not included in the calculations for reaching the threshold of spending in Mont. Code Ann. § 5-7-112. Once a principal exceeds that threshold, all payments except personal and necessary living expenses have to be reported to the COPP, see Mont. R. Admin 44.12.102(8), 104 and 205. Consult the responsibilities of a lobbyist and a principal in regard to the payment of personal living expenses found in Mont. Code Ann. § 5-7-102(13)(b)(i).

For an individual engaged in lobbying, the amounts paid by a principal to that individual in calculating the threshold that triggers licensure with the COPP, does not include the payments of amounts for reimbursement of personal and necessary living or travel expenses, Mont. R. Admin. 44.12.212.

6. Are travel expenses back to home of residence included in personal living expenses?

See the answer to question 5 above. Basically, if a principal agrees to reimburse a lobbyist or an individual involved in lobbying for travel to or from their residence, and their spending exceeds the threshold amount for the year, then the principal is required to report the all their expenses including reimbursement for travel, but excluding reimbursements made for personal and necessary living expenses to the COPP, Mont. R. Admin. 44.12.104. See also Mont. Code Ann. 5-7-208 and Mont. R. Admin. 44.12.205(5).

7. If the compensation paid to me by principals over a two year period (the 2015-2016 Session) does not exceed the annual calendar limits specified by MCA 5-7-112, will I still comply with MCA 5-7-310?

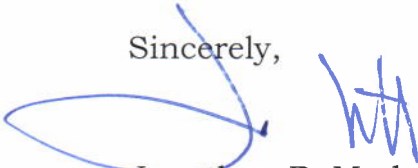
See the discussion on page 1 and 2, hereinabove.

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,

A handwritten signature in blue ink, consisting of a large loop on the left and several vertical strokes on the right.

Jonathan R. Motl
Commissioner of Political Practices