



COMMISSIONER OF
POLITICAL PRACTICES

STATE OF MONTANA

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October 18, 2017

Janice Hoppes
Pondera County Commissioner
Pondera County Courthouse
20 4th Ave SW, Ste 205
Conrad, MT 59425-2340
pococo@3rivers.net

Re: COPP-2017-AO-002
Recall Election Reporting and Disclosure Requirements

Dear Commissioner Hoppes,

We write in response to your October 16 2017, request for an Advisory Opinion from the Commissioner of Political Practices on the following matter.

ISSUE PRESENTED

“Our sheriff is the subject of a recall petition that has been filed in Pondera County. Should he choose to solicit contributions to fund expenses he may incur in reaching out to voters with his side of the story, such as newspaper ads, radio ads, etc., would those contributions and expenses be reported to your offices in the same manner as campaign finances?”

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 by Commissioner Hoppes 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:

COMMISSIONER'S ADDITIONAL FACTS

To fully discuss the Issue Presented, the Commissioner takes quasi-judicial notice of the following generally known facts:

Finding of Fact No. 1: In the November 2014 general election, Carl Suta was elected Pondera County Sheriff. On November 26, 2014, Carl Suta was appointed to fill former Sheriff Tom Kuka's unexpired term through the end of 2014, beginning his own term of office in January of 2015.¹

Finding of Fact No. 2: On or about July 17, 2017, the Pondera County Clerk and Recorder Kody Farkell approved a Petition by Ms. Stacy Welker to gather signatures to qualify a recall petition regarding Sheriff Suta.

Finding of Fact No. 3: Clerk and Recorder Farkell informed the press that the signature gatherer(s) had 90 days to obtain 530 signatures of registered voters in Pondera County, and when verified, that Sheriff Suta would be provided with a letter notifying him that the required signatures had been obtained.²

Finding of Fact No. 4: On or about October 12, 2017, Clerk and Recorder Farkell verified that the recall petition had gathered more than the required number of signatures to place the recall election on the ballot.³

Finding of Fact No. 5: Also on or about October 12, 2017, Clerk and Recorder Farkell mailed a letter to Sheriff Suta informing him that the required number of signatures had been gathered for a recall election. *Id.*

Finding of Fact No. 6: According to news reports, Clerk and Recorder Farkell has provided Sheriff Suta until October 17, 2017 to resign, or the county will pursue a recall election with the ballot issue question of whether Sheriff Suta should be recalled from his position.⁴

¹ *Pondera County officials resign: Kuka & Suta to take office early, both sworn in on November 26*, The Valerian, http://www.cutbankpioneerpress.com/the_valerian/news/article_1fe07f8e-74e2-11e4-8ccb-ab5f3502a980.html (Nov. 26, 2014).

² *LeAnne Kavanagh, Sheriff Suta responds to recent recall effort*, The Valerian, http://www.cutbankpioneerpress.com/the_valerian/news/article_054176f8-7172-11e7-8a64-230359446ebc.html (July 26, 2017).

³ *Ricky Blackburn, Petition to recall Pondera County Sheriff Verified*, KFBB, <http://www.kfbb.com/story/36585095/petition-to-recall-pondera-county-sheriff-verified> (Oct. 12, 2017).

⁴ *Rachel Crow Spreading Wings, Pondera County Sheriff may soon change*, KFBB, <http://www.kfbb.com/story/36594387/pondera-county-sheriff-may-soon-change> (Oct. 13, 2017).

DISCUSSION

At the time of this Advisory Opinion, it is unknown whether Sheriff Suta will elect to resign or participate in the recall election. Should Sheriff Suta resign, the County will appoint a replacement as provided by law to serve the remainder of Sheriff Suta's unexpired term. Mont. Code Ann. § 2-16-622.⁵ Should Sheriff Suta choose not to resign, then Pondera County must hold an election for the voters to submit their views on whether Sheriff Suta should be recalled from public office. *Id.* This advisory opinion will examine the issue from the second perspective, *i.e.*, that Sheriff Suta chooses to participate in the recall election.

The definition of a "candidate" in Montana's campaign practice laws includes "an officeholder who is the subject of a recall election." Mont. Code Ann. § 13-1-101(8)(c). Thus, any contributions received or expenditures made by Sheriff Suta to support his retention of the office of Pondera County Sheriff in the election will be subject to reporting and disclosure as a candidate office holder pursuant to Mont. Code Ann. § 13-37-226(3).

Similarly, a recall election is defined as a "ballot issue" under Montana's campaign practice laws. Mont. Code Ann. § 13-1-101(6). A "[b]allot issue committee" is formed when "a combination of two or more individuals or a person other than an individual who receives a contribution or makes an expenditure... to support or oppose a ballot issue" in excess of \$250. Mont. Code Ann. §§ 13-1-101(7) and (31)(a)(ii) and (d). Therefore, any contributions received or expenditures made in excess of \$250 are also subject to reporting and disclosure under Mont. Code Ann. § 13-37-226.

Finally, all election and electioneering communications and independent expenditures made in the recall election should be properly attributed with the information required by Mont. Code Ann. § 13-35-225, so that voters can easily determine the source of the communication.

CONCLUSION

There has been little discussion in previous decisions or opinions of the Office of the Commissioner of Political Practices as to how Montana's Campaign Finance and Practice Act is applied to a recall election. 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 ballot issue question regarding the retention or recall of a public office holder.

⁵ See also, generally, *Hanes v. Roche and Citizens to Recall Mayor Whitlock*, Commissioner Colberg, Dec. 11, 1992 (mayor resigned and no special election was held). <http://politicalpractices.mt.gov/Portals/144/2recentdecisions/CityofHamiltonvCitizenstorecallMayorWhitlockDecision92.pdf>

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 18th day of October, 2017.



Jeffrey A. Mangan
Commissioner of Political Practices