

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](http://www.politicalpractices.mt.gov)

September 30, 2015

Nancy Keenan  
Executive Director  
Montana Democratic Party  
PO BOX 802  
Helena, MT 59624

**Re: COPP-2015-AO-008**

Contribution limit exception for certain paid personal services

Dear Ms. Keenan;

I write in response to your request for an Advisory Opinion from the Commissioner of Political Practices on the following matter.

**QUESTION PRESENTED**

That the COPP evaluate a particular memorandum of understanding (MOU) between the Montana Democratic Party and Friends of Steve Bullock, the incumbent governor and presumptive Democratic Party 2016 nominee for Governor of Montana.

**FACTS PROVIDED**

The facts are those set out in the MOU, a copy of which is attached to this advisory opinion. The specific facts used in this advisory opinion are set out below.

**Advisory Opinion**

The Commissioner is limited to issuing advisory opinions that address an ethics, lobbying or campaign practice issue within the Commissioner of Political Practices' (COPP) jurisdiction, Mont. Admin. R. 44.10.201. A COPP advisory opinion also does not endorse specific language in a campaign related document and instead addresses the principles set out in the language of the document. *Montanans for Community Development* (Issue/Express Advocacy Ad) COPP-2013-AO-001.

## DISCUSSION AND ADVISORY OPINION

The MOU begins with a recitation of the operative advisory opinion language of COPP 2014-AO-009 and the proposed COPP administrative rule 44.11.401 ARM, which, if adopted, will become law of Montana. These recitations accurately cite the Welch advisory opinion (current policy) and 44.11.401 ARM, the proposed administrative regulation, poised to become law. The Welch advisory opinion and the proposed administrative regulation are one and the same in terms of language and effect.

The MOU presents a particular shared staffing relationship between the Montana Democratic Party and the Bullock for Governor (2016 election) campaign. It is a three-page, straightforward, plain language document that, for the purposes of this advisory opinion, does the following:

1. Identifies the associational interest of the Party [“persuade Montana voters to support Democratic candidates”] served by the personal service expenditure.
2. Embraces [at ¶ 4] the full reporting disclosure and disclosure requirements of the personal services costs addressed by the MOU.
3. Assigns party paid staff resources in a reasonable amount<sup>1</sup> to the indirect or direct benefit of a particular candidate.

The MOU document does, of course, describe a coordinated expenditure but there is no consequence to a fully reported and disclosed coordinated expenditure in the context of reasonable paid personal services provided to a candidate by a political party. An expenditure that is coordinated with a candidate becomes a contribution to the candidate and thereby generally loses its independent expenditure status<sup>2</sup> and becomes subject to contribution limits<sup>3</sup> or prohibitions<sup>4</sup>. But, a reasonable paid personal services expenditure by a political party for a candidate is not subject to political party contribution limits (COPP 2014-AO-009 and 44.11.401 ARM) and therefore coordination does matter as to that expenditure so long as the expenditure is fully reported and disclosed.<sup>5</sup>

This limited (based on associational interest) distinction of political party paid staff services provided to candidates is precisely the point of 44.11.401 ARM. As the Welch

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<sup>1</sup> The political party payment for a portion of the one staff person allocated to a state-wide candidate is accepted as a reasonable amount spent to advance the political party associational interest.

<sup>2</sup> An independent expenditure may be made in any amount by any entity, including a corporate entity.

<sup>3</sup> There are limits on what individuals and political committees may contribute to candidates for public office in Montana.

<sup>4</sup> Corporations may not contribute to the campaigns of candidates for public office in Montana.

<sup>5</sup> The word “reasonable” is used in this advisory opinion because it is consistent with a political party’s application of resources in an amount of paid staff that reflect the associational interests of Montanans organized in a political party. In contrast, a large staff allocation by the political party (that is, an unreasonable allocation) could reflect large amounts of money funneled through a political party by a third party to circumvent contribution limits or prohibitions, rather than the party’s allocation of its own resources consistent with this history of this use set out in the discussion in COPP 2014-AO-009.

AO discusses at length, successive past Commissioners struggled with the issue of political party paid staff assistance to candidates and the result was that some political party staff assistance provided to candidates was not treated as a contribution or expenditure and therefore not reported or disclosed at all. This approach protected the associational interests of political parties but it did not protect the interests of Montanans in full reporting and disclosure. ARM 44.11.401 continues to protect the associational interests of political parties by excepting from contribution limits reasonable paid personal services provided by political parties to candidates but, at the same time, requiring that any amounts so spent be fully reported and disclosed.

The Commissioner hereby issues this advisory opinion to the effect that the MOU content is consistent with COPP 2014-AO-009 and the proposed COPP administrative rule 44.11.401 ARM. In making this determination the Commissioner does not endorse the specific details of the MOU but instead advises (see numbered points 1 through 3 , above) that the MOU is consistent, in principle, with the overall requirements of COPP 2014-AO-009 and the proposed COPP administrative rule 44.11.401 ARM.<sup>6</sup>

This request presents an issue that is of importance to all three political parties recognized by the State of Montana. A copy of this Advisory Opinion will be sent to each political party. The MOU will be posted for public viewing with this Advisory Opinion.

#### 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 black ink, appearing to read 'Jonathan Motl', written over a large, stylized loop.

Jonathan Motl  
Commissioner of Political Practices

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Montana Republican Party  
Montana Libertarian Party

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<sup>6</sup> The Democratic Party and the Bullock campaign will need to act consistent with the principle set out in the MOU.

**DRAFT FOR CONSIDERATION**

**HAND DELIVERED**

**RECEIVED**

**LETTER FROM NANCY KEENAN TO COMMISSIONER JONATHAN MOTL**

SEP 25 A 10:39



**Request for Advisory Opinion**

COMMISSIONER OF  
POLITICAL PRACTICES

Dear Commissioner Motl:

Enclosed is a copy of a Memorandum of Understanding and Agreement between the Montana Democratic Party and the Friends of Steve Bullock (a registered political committee).

We have entered into this MOU and Agreement based on an analysis and understanding of your May 19, 2014 Advisory Opinion and proposed Rule 44.11.401. We appreciate the clarity each of those sources provide, and have structured the MOU and Agreement with the purpose and intent of fully complying with Montana's campaign finance laws. As set forth in the agreement, all expenditures and contributions relating to the MOU and Agreement will be reported and disclosed.

By this letter, we respectfully request an advisory opinion from your office, to inform us whether the MOU and Agreement meets the requirements of Montana's campaign finance laws. Thank you.

Sincerely,

*Nancy Keenan*

Nancy Keenan, Executive Director  
Montana Democratic Party

## **MEMORANDUM OF UNDERSTANDING AND AGREEMENT**



This Memorandum of Understanding and Agreement is entered into between the Montana Democratic Party (MDP) and Friends of Steve Bullock (FSB) for purposes of establishing the terms and conditions pursuant to which MDP will provide in-kind paid personal services to FSB.

### Background

The Montana Commissioner of Political Practices issued a formal advisory opinion, dated May 19, 2014 (“the Advisory Opinion”) providing:

Title 13 of the Montana Code Annotated requires that the value of any personal services rendered by an individual paid by a political committee, including a party committee, to a campaign, including a candidate campaign, constitutes an in-kind contribution to the campaign subject to applicable reporting, disclosure and limits. However, a political committee’s provision of, or payment for, personal services providing internal legal and accounting services to a political committee or candidate committee for non-election purposes is not such an in-kind contribution. Further, a provision of in-kind paid personal services by a political party committee to a candidate, while still a contribution for reporting and disclosure purposes, does not count toward the monetary limits placed on contributions by political parties.

Based on this advisory opinion and the rationale supporting it, the Commissioner of Political Practices has proposed a new rule 44.11.401, which provides:

(2) For the purposes of determining compliance with political party contribution limits established pursuant to 13-37-216, MCA, a “contribution” does not include a coordinated expenditure made solely by a political party committee in the form of provision of personal services by paid staff of the political party that benefit the associational interest of the political party but also constitute election activity benefitting a particular candidate of the same political party.

(3) For the purposes of determining compliance with contribution reporting required by 13-37-225 through 13-37-229, MCA, any coordinated expenditure not counted toward contribution limits pursuant to (2) must be reported as a contribution and shall be reported based upon the actual cost for such paid staff including, but not limited to, total compensation in the form of any salaries, wages, bonuses, benefits, expense reimbursement, or other supplemental payments, and a pro rata share of any taxes, fees, or assessments paid by the political party for each staff person.

Based on the Advisory Opinion and proposed Rule 44.11.401, the MDP has determined that the interests of the MDP and all of its statewide and legislative candidates in 2016 will be best served by concerted and coordinated efforts to re-elect Steve Bullock as Governor. These efforts will serve the important associational interests of the MDP by enhancing the Party's ability to persuade Montana voters to support Democratic candidates on the 2016 ballot.

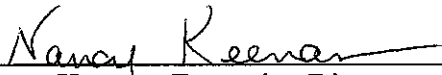
### Agreement


The MDP shall employ Eric Hyers (Hyers) to perform services described herein, and subject to the terms and conditions of this Memorandum of Understanding and Agreement.

1. Hyers shall be responsible for directing both the Bullock for Governor Campaign, and the MDP's Coordinated Campaign. Hyers brings particular experience, knowledge, and skills, based on his background and experience as an Executive Director of a state Democratic Party, as a Director of a coordinated campaign, and as a Director of a gubernatorial race.
2. Although Hyers will not be subject to direct supervision and control by MDP's Executive Director, Nancy Keenan, with respect to his responsibilities for the Bullock for Governor Campaign and MDP's Coordinated Campaign, Hyers shall consult and communicate on a regular basis with MDP's executive director, Nancy Keenan, and/or other MDP staff, with respect to campaign activities and strategies for the 2016 election cycle. Consistent with the terms of this MOU and Agreement, Hyers is subject to direction and instruction from Steve Bullock with respect to his responsibilities for the Bullock for Governor Campaign.
3. Hyers shall be responsible for hiring and supervising field staff for the 2016 Coordinated Campaign.
4. MDP will pay 100% of Hyers' salary and benefits. Those payments, except as reimbursed by FSB pursuant to paragraph 5 below, will be reported and disclosed as in-kind contributions to FSB, not subject to the MDP contribution limits to FSB. FSB shall report the receipt of the in-kind contributions.
5. FSB shall reimburse the MDP 20% of the total cost of Hyers' salary and benefits on a monthly basis, in recognition of maximum services that will exclusively benefit the Bullock for Governor Campaign and not likely otherwise meet the associational interests of managing the coordinated campaign or re-electing Bullock. FSB shall report that monthly payment as a campaign expenditure.
6. MDP will pay personal, reimbursable expenses relating to Hyers' work for the Coordinated Campaign. FSB will pay personal, reimbursable expenses relating to Hyers' work relating solely to the Bullock for Governor Campaign. These payments shall be reported as expenditures by the MDP and FSB, respectively.

7. In the event that the MDP or any committee affiliated with it considers the possibility of engaging in independent expenditure activities as defined by Montana law relating to any election involving a democratic candidate for office, written firewall policies isolating Hyers from any knowledge of or participation in the independent expenditure activity shall be agreed upon and established, and firewall statements shall be filed with the Commissioner of Political Practices in a timely manner. Such firewall statements shall be filed by all appropriate persons, including Hyers and Keenan.
8. Unless terminated before, this Memorandum of Understanding and Agreement shall be in effect from the effective date below through November 30, 2016.
9. This Memorandum of Understanding and Agreement may be terminated by either the MDP or FSB. The party terminating the Agreement shall provide written notice to the other party.
10. A copy of this Agreement shall be filed with the Montana Commissioner of Political Practices.

EFFECTIVE AS OF THE 24<sup>th</sup> Day of August, 2015.

  
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Nancy Keenan, Executive Director  
Montana Democratic Party

  
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Siri Smillie, Treasurer  
Friends of Steve Bullock