

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)

March 4, 2014

Marilyn Hartley  
Assistant Finance Director, Park County  
414 E. Callender St.  
Livingston, MT 59047

**COPP-2014-AO-006**

**Re:** Ethics of dual public employment

Dear Ms. Hartley:

I write in response to your e-mail inquiry of February 6, 2014, requesting an advisory opinion as to a certain employment arrangement. You provided the following facts on which to base the advisory opinion:

1. You are currently employed in an accounting position as a full-time Park County Public employee.
2. You are also currently employed in a part-time public employee position as the bookkeeper for Cooke City Water/Fire Districts, involving 5-6 hours of work a week.
3. The hours for your two current public employee positions do not overlap in that the full time position is a normal 8:00 AM to 5:00 PM type job while the hours worked on the special district bookkeeping job are limited (5-6 hours per week) and take place on weekends and nights.

You explained that you are considering filing for the position of Park County Clerk and Recorder. That position is an elected position and, if elected, you would become a local government public official working full-time. You asked whether or not you could also continue in your current part-time bookkeeping public employment with the two special district entities.

## DISCUSSION

The ethical measure of shared public employment related conflicts is set out in Section 2-2-104 MCA, entitled: “[r]ules of conduct for public officers, legislators and public employees.” As an employee of Park County and/or the special districts, Ms. Hartley is currently a public employee (§ 2-2-102(7) MCA) under the above listed rules of conduct. Assuming election as Park County Clerk and Recorder, Ms. Hartley would become a public officer. (§ 2-2-102(8) MCA). In pertinent part § 2-2-104(3) MCA prohibits a public officer or public employee from receiving “...salaries from two separate public employment positions that overlap for the hours being compensated...”

## ADVISORY OPINION

Ms. Hartley currently receives a salary from two local government public employers. Because the hours worked for each employer do not overlap Ms. Hartley does not violate her ethical duties under § 2-2-104(3) MCA. Upon election as Clerk and Recorder Ms. Hartley intends to resign her current full-time (8:00 AM to 5:00 PM) position and replace it with the Clerk and Recorder’s position, also a full time 8:00 AM to 5:00 PM type position. Any such change in work status (from public employee to public officer) does not affect analysis under the pertinent law. Because the hours worked for each public employer do not overlap, in the event Ms. Harley serves as Clerk and Recorder and special district bookkeeper, it is the opinion of this Office that Ms. Hartley would not violate her ethical duties under § 2-2-104(3) MCA.

Ms. Hartley should note that she is required to “disclose the amounts received from the two separate public employment positions to the commissioner of political practices.” § 2-2-104(3)(c) MCA. The disclosure can be made on the Commissioner’s Form E-1, available for download on the Commissioner’s website.

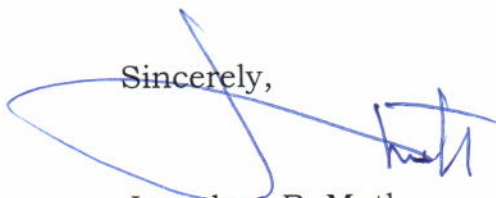
## LIMITATIONS ON ADVISORY OPINION

The Commissioner notes that an ethics complaint against a local government employee or officer, such as Ms. Hartley, will need to be addressed to the appropriate county attorney. § 2-2-144(1) MCA. The Commissioner, however, is generally responsible for accepting and addressing ethics complaints against public employees and public officers. Further all public employees, including Ms. Hartley, are required to disclose the dual public employment amounts paid to the Commissioner. § 2-2-104(3)(c) MCA. This advisory opinion is issued by the Commissioner consistent with that general responsibility and authority placed in the Commissioner’s Office.

The Commissioner further notes that prior Commissioners have deferred opportunities to consider and issue advisory opinions dealing with matters of ethics. This deference stemmed from the informal hearing examiner role assigned to the Commissioner (see §2-2-136(1)(c) MCA) in regard to ethics complaints. Commissioners, understandably, wished to avoid an action, such as an advisory opinion, that may later interfere with their ability to later sit in a quasi-judicial role as a neutral hearing officer. There is, however, no legal limitation on the Commissioner's authority to issue an ethics related advisory opinion (See 44.10.201(1)(a) ARM). Further, a judicial body can and will issue an advisory opinion concerning conduct for which it may be the ultimate authority. See *In re Advisory Opinion to the Comm'n on Practice*, (1971) 159 Mont. 541, 495 P.2d 1128. Still further, under § 2-2-104(3)(c) MCA the Commissioner is charged to "determine compliance" of a "two salary" public employment circumstance with ethics law. Given the defined and limited facts of this matter, the special placement of this ethics matter in law, as well as the efficiency and benefit to all parties, the Commissioner chooses not to defer, but issues this 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,



Jonathan R. Motl  
Commissioner of Political Practices