

COMMISSIONER OF  
POLITICAL PRACTICES



STATE OF MONTANA

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April 8, 2014

Gary Marbut  
Montana Shooting Sports Association  
PO Box 4924  
Missoula, MT 59806

**COPP-2014-AO-008**

**Re: Candidate Surveys**

Dear Mr. Marbut:

I write in response to your email of March 25, 2014 asking for an advisory opinion on the issue set out below. This letter constitutes that advisory opinion.

**Introduction And Issue Posed**

The Office of the Commissioner of Political Practices has issued several recent Decisions determining, in part, that certain survey based campaign activity by a certain entity (or entities) could, as part of a coordinated effort, become a contribution to a candidate's campaign. *Bonogofsky v. Kennedy*, COPP 2010-CFP-015; *Washburn v. Murray*, COPP 2010-CFP-019; *Ward v. Miller*, COPP 2010-CFP-021; *Bonogofsky v. Boniek*, COPP-2010-CFP-027; *Bonogofsky v. Wittich*, COPP-2010-CFP-031; *Bonogofsky v. Prouse*, COPP-2010-CFP-033; *Bonogofsky v. Wagman*, COPP-2010-CFP-035; *Clark v. Bannan*, COPP 2010-CFP-023; and *Madin v. Sales* COPP-2010-CFP-029. Each of these Decisions involved a 2010 candidate for public office and at least one third party entity that supplied materials or services in support of the candidate. Each of these Decisions determined sufficient facts existed to show that the candidate failed to report certain contributions created by coordination between the candidate and third party. Each of these Decisions was accompanied by a companion Decision also applying

coordination to determine failure to report by a third party entity or entities. See, for example: *Commissioner v. WTP* (Wagman) COPP-2010-CFP-36; *Commissioner v. WTP* (Wittich) COPP-2010-CFP-32; and *Commissioner v. WTP* (Prouse) COPP-2010-CFP-34.

The Montana Shooting Sports Association (MSAA) states it is a Montana not-for-profit corporation. The MSSA intends survey based election activity regarding 2014 legislative candidates. In light of the above Decisions MSAA poses the following question for response in the form of an advisory opinion:

If an entity sends a candidate questionnaire to a candidate for public office soliciting positions on issues relevant to the entity, if the candidate responds with answers to the questions posed by the entity, and if the entity should later endorse the candidate or make an independent expenditure in support of or opposition to the candidate, will the candidate or entity be subject to any adverse determination or enforcement action by your office for having had disallowed coordination with the entity based solely on the candidate's return of the entity's candidate questionnaire?

#### ADVISORY OPINION

In this Office's opinion there is NO coordination between a candidate and a third party entity when the contact between the candidate and the third party entity is the sole act of completing and returning a questionnaire. The MSSA and any other similar third party entity may include this advisory opinion letter with the delivery of a survey to a Montana candidate for public office.

Coordination, as you know, requires a degree of interplay between a candidate and a third party. It is defined as: "an expenditure made in cooperation with, consultation with, at the request or suggestion of, or the prior consent of a candidate..." 44.10.323(4) ARM.

There are prior Decisions by past Commissioners that provide initial guidance on this issue. First, a Candidate survey questionnaire, by itself, does not constitute an election expense (or coordination) because, by itself, it does not advocate a position for or against a candidate. Second, the later use of information by the third party from the questionnaire also does not, by itself, create coordination with an arms-length candidate. Please see *Parrent v. Ames*

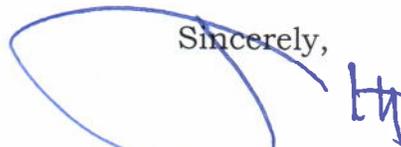
(July 25, 1990, Commissioner Colburg); *Klampe v. Farrell* (December 29, 1992, Commissioner Colburg); *Harris v. Fox* (December 2003, Commissioner Vaughey); and *Close v. Burnett* (November 5, 2008, Commissioner Unsworth). Each of these Decisions involved responses to, or the use of responses from, third party candidate questionnaires. There was no implication of impropriety or coordination arising from the questionnaire, the answers to the questionnaire, or the uses made (including a voting record publication) of the answers to the questionnaire. Nothing in the recent Decisions by this Office changes the propriety of arms-length uses reflected in these earlier Decisions.

The recent coordination Decisions (see above) by this Office are based on facts that starkly contrast to the sole act factual situation posed by the request for an advisory opinion. In the recent Decisions the Commissioner found coordination to lie through a series of connected acts by which a survey became integral to and part of a mass mailing plan described as a “shock and awe electoral bombing campaign.” Further, coordination lay because the candidates consented to involvement in the bombing campaign through their signature, companion issue letter mailings (one by the candidate and another by the third party entity) and allowance of direct work on the candidate’s campaign by the third party entity. See, above Decisions.

#### 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,



Jonathan R. Motl

Commissioner of Political Practices