



COMMISSIONER OF
POLITICAL PRACTICES

STATE OF MONTANA

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June 2, 2016

Russ Doty, Coordinator/Volunteer
Montana Community Affordable Renewable Energy Saves (MTCARES)
P.O. Box 21012
Billings, MT 59105
rd@mtcares.org

Re: COPP-2016-AO-012
Ballot Initiative Signature Gathering by Candidate on Election Day

Dear Mr. Doty,

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

QUESTION PRESENTED BY MTCARES

- 1) May a candidate for office collect signatures (at a primary election polling place) to put an initiative on the general election ballot:
 - a) if the candidate does not wear any campaign button or campaign material, tag identifying the candidates by name or other identifying item, and
 - b) if the candidate refrains from discussing or initiating any discussion of his or her candidacy at the polling place, and deflects any discussion by persons who ask about the candidacy to a later time and place?
- 2) Are there any other practices a candidate collecting signatures at a primary election should follow in order to be in compliance with Montana law?

ADVISORY OPINION

The Commissioner is limited to issuing advisory opinions that address a campaign practice issue 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 Montana Community Affordable Renewable Energy Saves (MTCARES) and information which is publically available and specifically referenced herein. Based upon the foregoing scope of information, the Commissioner issues the following Advisory Opinion:

SHORT ANSWER

Based on the facts provided with the request of MTCARES, the Commissioner makes the following determination:

- 1) A candidate in the primary election may gather signatures at a polling place for a ballot issue initiative if they comply with the laws and rules governing electioneering on Election Day.
- 2) The laws governing the signature-gathering process are administered by the Montana Secretary of State (SOS) and must be complied with in gathering signatures.

DISCUSSION

The COPP has jurisdiction over the reporting and disclosure of amounts paid to signature gatherers for ballot issue committees or independent committees who make those expenditures, Mont. Code Ann. §§ 13-27-112 and 113. The COPP also has jurisdiction over Montana Code Title 13, Chapters 35 and 37. The SOS has jurisdiction over the rest of the laws and rules in Title 13, Chapter 27, Montana Code Annotated, which govern this process. To the extent that MTCARES is seeking an advisory opinion regarding signature gathering duties and responsibilities in its second question, the Commissioner directs it to the Secretary of State for guidance.

Concurrent Constitutional Rights

Montanans have a constitutionally protected right to enact laws through direct appeal to fellow Montanans by qualifying an initiative for placement on the ballot, Mont. Const. Art III, § 4. Montanans also have a constitutionally protected right to run for public office, Mont. Const. Art IV, § 4. The Montana Legislature, along with the SOS and COPP, have "established certain procedures, steps and safeguards defining the process, integrity and fairness," for exercising each of these constitutional rights.¹

Signature Gathering, By Itself

In November of 2015, John Soderberg sponsored a ballot issue proposal to the Montana Secretary of State which proposes to change Montana's law to "[r]equire investor-owned utilities to supply incrementally higher percentages of their electricity from renewable energy sources, and establish a displaced fossil-fuel workers program and a fossil-fuel pensioner program."² On January 20, 2016 the SOS approved the initiative for the gathering of signatures required for placement on the general election ballot. Once approved for signature gathering, the SOS assigned the ballot issue the identifier "I-180."

¹ <http://www.politicalpractices.mt.gov/content/2recentdecisions/HawkyMontanaTrapFreeDecision>

² <http://sos.mt.gov/Elections/2016/BallotIssues/index.asp>

MTCARES is in the process of gathering signatures to qualify for placement of the initiative on the November 2016 general election ballot. In general, any individual who, on a volunteer or paid basis, meets the statutory qualifications may gather signatures in order to qualify an initiative for the ballot, Mont. Code Ann. § 13-27-102. Here, the I-180 issue will not be on the June ballot, and therefore a signature gatherer on primary Election Day is not engaged in electioneering, 39 A.G. Op. 62 (1982).³

Electioneering on Election Day, By Itself

All persons are required to abide by the provisions of law regarding electioneering on Election Day at the polls, Mont. Code Ann. § 13-35-211. Electioneering is defined as:

The solicitation of support or opposition to a candidate or issue to be voted upon at the election or polling place in question, by means of: personal persuasion, electronic amplification of the human voice, or the display or distribution of election materials, or offering or distribution of food, drink, or any other material benefit in a manner calculated to encourage recognition, support or opposition to a candidate or issue.

Mont. Admin. R. 44.11.606(1)(a) and (b).

Electioneering activities which are prohibited on Election Day at the polling place are:

- 1) Everyone is prohibited from campaigning "within 100 feet of any entrance to the building in which the polling place is located that aids or promotes the success or defeat of any candidate or ballot issue to be voted upon at the election" Mont. Code Ann. § 13-35-211(1) and Mont. Admin. R. 44.11.606(1)(a).
- 2) A candidate, a candidate's family member or campaign worker or volunteer is prohibited from offering or distributing anything of value, including food and drink, to any voters "within a polling place or a building in which an election is being held or within 100 feet of an entrance to the building," Mont. Code Ann. § 13-35-211 (2) and Mont. Admin. R. 44.11.606(1)(b).
- 3) Everyone is prohibited from buying, selling, giving, wearing or displaying "at or about the polls on election day any badge, button or other insignia that is designed or tends to aid or promote the success or defeat of any candidate or ballot issue to be voted upon at the election," Mont. Code Ann. § 13-35-211(3). However, the "display of ordinary bumper stickers on automobiles" is excluded from the definition of electioneering, Mont. Admin. R. 44.11.606(1)(c).
- 4) Finally, everyone is prohibited from soliciting information from voters while in "a polling place or any building in which the election is being held" any information

³ <http://www.mtcounties.org/sites/default/files/forms-downloads/resources/attorney-general-opinions-letters-advice/opinions/volume-39/v39-O62.pdf>

as to how the voter voted, or intends to vote, Mont. Code Ann. § 13-35-211(4).

Obviously, a candidate is not prohibited from going to a polling place to cast a ballot. None of the proposed activities of the candidate, as presented by MTCARES, violate the electioneering laws. The question remains: what must a candidate whose name appears on the June ballot do to avoid electioneering for her or his own campaign while gathering signatures?

Candidate Signature Gathering and Electioneering, Combined

As presented by MTCARES, a candidate whose name appears on a June ballot wishes to engage in solicitation of signatures in order to qualify I-180 for the November ballot. A candidate can, of course, gather signatures for I-180 outside of the 100 foot boundaries, as I-180 is not on the June ballot, Mont. Code Ann. § 13-35-211. MTCARES, however, anticipates that its signature gatherers may be inside of the 100 foot boundary, triggering a nuanced analysis as to any candidate who is gathering signatures on Election Day.

A candidate who is gathering signatures at a polling place where the candidate's name is not on the ballot does not come into conflict with the electioneering laws. Of course, any signature gatherer must still abide by the SOS laws regarding orderly gathering of signatures on Election Day.

Can a candidate, whose name is on the ballot at that polling place, effectively shed his or her candidacy in order to exercise a constitutional right to petition other Montanans for their signatures in support of qualifying an initiative for the ballot? Stated another way, so long as the candidate is not overtly campaigning for his or her own election, then how can potential facial recognition by the public override a constitutionally protected reason for being at the polling place?

As long as a candidate forgoes campaigning for his or her own election, and rebuffs attempts to engage in conversation regarding his or her candidacy "to a later time and place," there is no basis in law for prohibiting the candidate's gathering of signatures on Election Day. Based on the proposed facts as provided by MTCARES, in the Commissioner's opinion, a candidate may engage in the same Montana constitutional right available to all signature gatherers at the polling place on election day.

Potential Public Perception

There is a perception held by some voters that, on Election Day, candidates should simply cast their ballot and then leave the polling place.⁴ The public's perception of a candidate gathering signatures at a polling place, although allowed, may or may not influence voters as they cast their ballots. Historically, primary Election Day is a good day to find large numbers of registered voters in one place, and therefore polling places

⁴ See eg. [Steve Sem Electioneering, COPP-2014-AO-0011](#).

are a prime location for signature gathering when trying to qualify an initiative for the ballot. Ultimately it is up to the candidate to determine whether or not to gather signatures at a polling place on primary Election Day.

CONCLUSION

A candidate whose name appears on the ballot on Election Day may gather signatures so long as the candidate abides by the signature gathering regulations and procedures administered by the SOS, and the electioneering restrictions on campaign activity at a polling place on Election Day, as administered by the COPP.

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 2nd day of June, 2016.



Jonathan R. Motl
Commissioner of Political Practices