

COMMISSIONER OF
POLITICAL PRACTICES



STATE OF MONTANA

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March 7, 2014

Carl Ibsen
Sheriff, Missoula County
Missoula County Sheriff's Office
200 West Broadway
Missoula, MT 59802

COPP-2014-AO-007

Re: Public Employee Campaigning Issues

Dear Sheriff Ibsen:

I write in response to your inquiry of February 18, 2014 regarding the propriety of certain election related actions by personnel of the Sheriff's office. We appreciate your diligence in attempting to establish a shared understanding of allowed actions by personnel under your supervision.

Introduction

The appropriate election related activity of a uniformed public employee, be he/she a sheriff's deputy, local police officer or a highway patrol officer, has been discussed in several prior documents providing a degree of legal authority. On February 3, 2014 I responded to several earlier questions posed by the Missoula County Sheriff's Office. I did so by letter, rather than by advisory opinion, as in our view those earlier questions had already been answered by established authority. The February 3 letter cited to and attached copies of the following authority:

.AG Opinion Vol. 51, No. 1 (January 31, 2005), defining election related use of a title or uniform.

.Advisory Opinion COPP-2014-AO-002, defining use of a Sheriff's name on a patrol car.

.*Fasbender v. Toole*, Ethics Opinion, February 21, 2012, defining use of a public facility for campaign publicity purposes.

You have now requested clarification on the two specific issues set out below. These issues were narrow such that this office thought it best to respond more formally through an advisory opinion.

ADVISORY OPINION

You asked whether or not it would be permissible for an officer to put his or her uniform on "specifically for a campaign function." You pointed out that the Missoula County Sheriff's uniforms are purchased with public funds.

In this Office's opinion "Yes" it would be permissible for an officer to put on his or her uniform specifically for a campaign function. As stated in the February 3, 2014 letter, "as an accouterment the uniform may be used by choice of the Officer, just as the Governor or Attorney General must choose to use his or her title, even in a campaign setting."

The authority for this position is AG Opinion Volume 51, No. 1. Additional authority lies in ethics opinion *Valazquez v. Galt* (July 26, 2004, Commissioner Vaughney) which states, "A public officer or a public employee is only prohibited from soliciting support for or opposition to a candidate if the solicitation involves the use of public time, facilities, equipment, supplies, personnel or funds." Because a uniform is an accouterment it is deemed to be outside of the public equipment limitation such that it may be used by choice, even for a campaign function, by an officer.

The 2013 Montana legislature modified AG Opinion Vol. 51, No. 1 by specifying that a Montana highway patrol officer may not use his or her title for election related purposes and further specifying that the official highway patrol uniform is "public equipment" such that the uniform may not be used for election related purposes. § 2-2-121(3)(d) MCA. That statute, however, was limited to highway patrol officers and did not extend to a Sheriff or Sheriff's Deputy. Accordingly, for the purposes of this Advisory Opinion the language of AG Opinion Vol. 51, No. 1 still applies and that language provides that an officer's uniform is not public equipment, but is an "accouterment" that may be used by choice by the Sheriff or Sheriff's deputy.

Second, you asked whether a sheriff of sheriff's deputy could use his or her meal or break time for campaign purposes. You pointed out that an officer is paid for break or lunch time. It is the opinion of this Office that paid break

time or paid lunch time is public time that cannot be used for campaign purposes, if that involves solicitation of “support for or opposition to” a candidate or ballot issue. § 2-2-121(3)(a) MCA. Please be informed, however, that Montana law also expressly states that the public time campaigning prohibition “is not intended to restrict the right of a public officer or public employee to express personal political views.” § 2-2-121(3)(c) MCA. Accordingly, a sheriff or sheriff’s deputy may freely state his or her personal political views so long as they do not constitute support for or opposition to a candidate or ballot issue.

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 blue ink, appearing to read 'J. Motl', is written over the printed name.

Jonathan R. Motl

Commissioner of Political Practices