

COMMISSIONER OF
POLITICAL PRACTICES



STATE OF MONTANA

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October 31, 2014

Jayson Peters
Chairman
Flathead County Republican Central Committee
PO Box 2455
Kalispell, MT 59903

COPP-2014-AO-014

Re: Ms. Schnebel's voting registration

Dear Mr. Peters:

I write in response to your letter, filed with the Flathead County Attorney on October 1, 2014, and to follow my letter of October 15, 2014 accepting your letter for consideration of an advisory opinion. This letter constitutes that advisory opinion.

Background and Issue Posed

Stacey Schnebel is a current candidate for County Commissioner in Flathead County on the November 2014 ballot. Mr. Peters is the current Chairman of the Flathead County Republican Central Committee. The Peters' letter you requests that Stacey Schnebel be investigated for illegal voting and for removal from the ballot or office if Ms. Schnebel prevails in the election.

Your letter to the Flathead County Attorney poses the following two questions for consideration and answer in the form of an advisory opinion:

- (1) Will the Commissioner investigate and enforce the allegations of alleged illegal voting (Mont. Code Ann. §§ 13-35-103, 13-35-106(3), and 13-35-210)?
- (2) And will the Commissioner remove Ms. Schnebel from the ballot or elected office if she prevails in the November 2014 election, Mont. Code Ann. § 13-35-106(3)?

ADVISORY OPINION

This Advisory Opinion gives the Answer to question Number 1 as NO and the Answer to question Number 2 as NO. These answers are explained below.

1. The Commissioner Will Not Investigate

Your letter to the Flathead County Attorney alleges a violation of the statute which states “No person may vote who is not entitled to vote”, Mont. Code Ann. § 13-35-210. According to her Voter Profile Report dated September 26, 2014 that you submitted, Ms. Schnebel has been a registered, active and eligible voter since March 19, 2002. “A person may not vote at elections unless the person is: (a) registered as required by law; (b) 18 years of age or older; (c) a resident of the state of Montana and of the county in which the person offers to vote for at least 30 days, except as provided in 13-2-514; and (d) a citizen of the United State”, Mont. Code Ann. § 13-1-111(1). Ms. Schnebel was registered to vote as required by law, and was a citizen of Montana and Flathead County, and entitled to vote in the election. Therefore, in the judgment of the Commissioner, your allegation that Ms. Schnebel was not entitled to vote is misplaced.

Please note that the Commissioner does not have jurisdiction for enforcement of all of the laws in Title 13. Instead, the Commissioner is charged with enforcement of certain portions of Montana’s election laws. Specifically, an alleged violation of Title 13 comes under the Commissioner’s jurisdiction for enforcement if it is a violation of a statute found in Title 13, Chapters 35 or 37, *see* Mont. Code Ann. § 13-37-111.¹ Even when jurisdiction is clear an investigation will not be made based on facts triggering application of an applicable statute of limitations. *See eg.* Mont. Code Ann. § 13-37-124.

Turning back to the facts in your complaint with the Flathead County Attorney, I believe it is likely that you meant to allege a violation of Mont. Code Ann. § 13-2-511 which states “An elector shall notify the election administrator in a written communication signed by the elector of a change in residence within the county or a change in name”.

Analyzing the alleged violation from the Commissioner’s perspective, the failure to notify the election administrator of a change of address could possibly also be a violation of Mont. Code Ann. § 13-35-207, enforceable by the COPP. This would occur if Ms. Schnebel filed a registry card with false or misleading information, or if she “knowingly cause[d] a false statement, certificate or return of any kind to be signed”, *id.* at (1)-(3). We do not know if any such

¹ “Investigative powers and duties -- recusal. (1) Except as provided in 13-35-240 and this section, the commissioner is responsible for investigating all of the alleged violations of the election laws contained in chapter 35 of this title or this chapter and in conjunction with the county attorneys is responsible for enforcing these election laws...”, Mont. Code Ann. § 13-37-111 (2014).

situation was involved in Ms. Schnebel's case but, assuming *arguendo* there was such a situation then prosecution is barred by a statute of limitations.

The penalty for a violation of Mont. Code Ann. § 13-35-207(3) is a misdemeanor. See Mont. Code Ann. §§ 45-7-203(1) and 45-2-101(42). In turn, a misdemeanor "prosecution...must be commenced within 1 year after it is committed", Mont. Code Ann. § 45-1-205(2)(b). According to the information provided with your complaint, the last time Ms. Schnebel allegedly voted illegally was on November 8, 2011. Therefore, any prosecution for violation of election law statute would have had to have been commenced in District Court no later than November 7, 2012, a time that has long past.

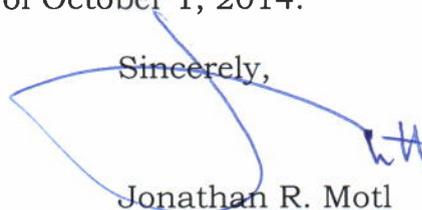
2. Only a Judge can remove a candidate or elected official from office.

Regarding the application of Mont. Code Ann. § 13-35-106(3) to Ms. Schnebel's alleged violation, a candidate or elected official may be removed from office only by a Judge who has ruled that the candidate has violated a provision of Title 13. Since the statute of limitations has expired on Ms. Schnebel's alleged violation a Judge would lack authority to remove her from the ballot or elected office.

LIMITATIONS ON ADVISORY OPINION

This letter is an advisory opinion based on the specific written facts and questions presented in your letter October 1, 2014. 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 written facts presented in your letter of October 1, 2014.

Sincerely,



Jonathan R. Motl

Commissioner of Political Practices