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STATE OF MONTANA

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May 20, 2014

Senator Fred Thomas
1004 South Burnt Fork Road
Stevensville, MT 59870

Sheridan Buck
PO Box 2984
Great Falls, MT 59403-2984

COPP-2014-AO-010

Re: Campaign Schools and legislative forums

Dear Senator Thomas and Ms. Buck:

I write in response to Senator Thomas' email of May 6, 2014 and Ms. Buck's email of May 9, 2014, each asking for an advisory opinion on the issues set out below. The issues are related and therefore are addressed in a single Advisory Opinion. This letter constitutes that advisory opinion.

Issues Posed

Senator Thomas posed the following question for determination by the Commissioner in the form of an advisory opinion response. "I [Senator Thomas] am inquiring about campaign schools and/or seminars that are designed to educate a candidate for the legislature on how to run a campaign, what to do, how to message the voters, how to communicate with them, etc. These events/seminars/schools are sponsored by entities, groups such as the Chamber of Commerce, MT. Electric Cooperative Association, Bankers, etc. In

general are these events a campaign expense to the candidate attending? A reportable donation to the campaign by the sponsor?”

Ms. Buck posed the following question: “[I have a] filing question on 2 similar events: 1) March 18 was a legislative forum in Great Falls at Benefis Hospital in the Cameron Auditorium. It was sponsored via PLUCK, the ARC MT and another disability group. The room was furnished. Water bottles were provided and writing pens. Candidates were questioned in front of an audience. 2) On May 2, 2014 Great Falls Chamber of Commerce invited sitting office holders and candidates to a presentation by NorthWestern Energy. It was located in their conference room and coffee and cookies were provided. I’m not sure if and under what category these [forum costs] are to be reported....[attendees at] the events were not charged any type of entrance fee for attendance nor were they fundraisers, but candidates were identified.

ADVISORY OPINION

Responding first to Senator Thomas, in this Office’s opinion the facts applicable to the event (as explained below) determine whether a campaign school or seminar creates an in-kind contribution that must be reported by the event sponsor and by any candidate in attendance. The general guidelines governing this opinion are set out at 44.10.321(2) ARM and 44.10.513(1) ARM. Both of these rules are set out in full at pages 10 and 11 of the COPP 2014 Accounting and Reporting Manual for candidates.

Section 44.10.321(2) ARM specifies that an in-kind contribution “means the furnishing of services, property or rights without charge or at a charge which is less than fair market value to a candidate or political committee for the purpose of supporting or opposing any candidate...” Section 44.10.513(1) ARM specifies that the contribution “shall be reported at the difference between the fair market value at the time of the contribution and the amount charged the contributee...”

1. There is NO CONTRIBUTION Under Some Facts

The value of a candidate school or seminar becomes a contribution only when the value is applied for “...the purpose of supporting or opposing any candidate...” Section 44.10.513(1) ARM. The facts of the event determine whether the training “supports” or “opposes” a candidate. The following guidelines apply:

- a. In general if a candidate school or seminar is open to all candidates, regardless of political party, then it is serving a civic function (improving campaigns in general) and is not supporting or opposing any candidate. In general, then, the value of services provided and received at this type of “open to all” school or seminar would not constitute a contribution.
- b. Any other comparable showing of civic purpose to a campaign school or seminar would also demonstrate that the activity is not supporting or opposing any candidate.

Mary Baker, the longest serving staff member of this Office, has often taught at such “civic purpose” candidate seminars or schools open to all interested Montana candidates for public office. The value of these seminars or schools has not been reported as a contribution by the event sponsor or reported as a candidate expense by the candidates in attendance. This Advisory Opinion does not change that approach.

It is noted that this Advisory Opinion response is based on the facts related to the training event. Events or actions occurring after the event may change the above analysis. For example, if the personnel involved in the training event make use of the event to select certain candidates for further private training and assistance then that value of materials and services provided would be for “...the purpose of supporting or opposing any candidate...”. The materials and services would therefore be an in-kind expense by the sponsor and an in-kind contribution to the candidate.

2. There IS A CONTRIBUTION Under Some Facts.

In contrast, campaign training that is not open to all interested candidates, but is limited to a selected or invited group of candidates is training that is for “...the purpose of supporting or opposing any candidate...” Section 44.10.321(2) ARM. The candidates in attendance and the training sponsor of such a selected candidate training must report a contribution and expense, respectively, in the amount of “...the difference between the fair market value at the time of the contribution and the amount charged the contributee..” 44.10.513(1) ARM.

The fair market value of the materials and services reported as an expense or contribution must include the in-kind value of the paid professional services of those providing the training. Beginning in 2000 Commissioner Vaughey issued a series of Decisions defining the required measure of in-kind

professional services provided in regard to ballot issue campaigns. In particular Commissioner Vaughey stated: "If a business, corporation, membership association, partnership, club, union, committee, firm or group makes an employee officer, board member or independent contractor available for campaign related services, the fair market value of those services must be reported by the entity as an in-kind contribution." *Griffin v. MontPIRG*, August, 2002, P. 43. (Commissioner Vaughey). Emphasis added. There is only one Title 13 and these Decisions apply equally to comparable actions taken in candidate campaigns. Candidate campaigns must report the value of these services just as ballot issue campaigns have been doing for the past 20 years.

Senator Thomas listed several third party entities (Chamber of Commerce, MT. Electric Cooperative Association, Bankers) that sponsored campaign training events for legislators. If the campaign training event offered by these entities was "open to all" candidates, then the analysis of paragraph 1, above, applies. If, however, the training was offered only to a selected group of candidates then the value of the materials and services provided must be reported as an in-kind expenditure or contribution. In that regard, each sponsor should report to each participating candidate a proportional share of the full cost of the seminar, including material costs and the value of staff time involved, less any fee paid by the candidate. The candidate, in turn, will need to report the in-kind expense as an in-kind contribution to their campaign.

3. Candidate Forums Are Subject to the Same Analysis

Responding next to Ms. Buck's question, the Commissioner applies the same logic and approach to candidate forums. That is, a candidate forum open to all candidates does not create a contribution and expenditure because the forum was not arranged for "...the purpose of supporting or opposing any candidate..." Section 44.10.321(2) ARM. In contrast, a forum arranged for selected candidates is subject to contribution and expense reporting and disclosure requirements. The same analysis and reporting/disclosure responsibilities apply to the event sponsor and candidate.

4. Political Party Committees and Contribution Limits

Candidates and the third party event sponsor need to remember that contribution limits and the ban on corporate contributions apply to the in-kind contribution. The reportable in-kind contribution value of the materials and services provided to a candidate through selected candidate seminars, training sessions or forums is considered the same as a cash contribution to the

candidate. §13-37-216(5) MCA. Accordingly, the in-kind value counts as part of the contribution limit to candidates, meaning that in a 2014 election a candidate can accept no more than \$170 from the entity sponsoring the seminar, training session or forum. Further, a corporation cannot directly make a contribution to a candidate (§13-35-227 MCA) so a corporate entity wishing to sponsor a “selected candidate” event will need to register as a political committee and fund, disclose and report the contribution through the political committee.

The entity sponsoring a “selected candidate” training session, seminar or forum resulting in an in-kind contribution to a candidate in attendance needs to keep the contribution limit and corporate contribution ban in mind when organizing the event. Event co-sponsors can be added (allowing for multiple contribution limits) or the candidate can be assessed an attendance fee sufficient to reduce the in-kind contribution amount to the \$170 amount allowed as a contribution. A corporate entity cannot be directly involved in sponsoring or funding the event, including use of paid corporate staff. Montana has a 100-plus year history of separating corporations from direct involvement in a candidate’s campaign and that prohibition includes cash and cash-like value, through paid personal services, provided by selected candidate events.

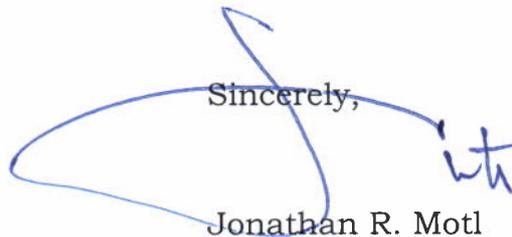
A training seminar or forum offered for candidates by a political party is subject to different rules. A political party training event will by definition be a “selected candidate” event because it will be open only to candidates from one political party. Consequently, the political party committee sponsoring the event and the candidates attending the event will need to report and disclose in-kind value of the materials and services provided. However, the constitutionally based associational rights of political party activity means there is no limit on the amount of such paid personal services a political party can provide (in-kind personal services do not count toward the contribution limit for political party committees); See 13-37-216 MCA, as interpreted by *Montana Republican Party v. Bullock*, April 15, 2012 (Deputy Commissioner, Dufrechou), as modified by Welch COPP-2014-AO-009. The candidates for office in 2014 should take note that they need not report the value of an in-kind contribution from a political party committee until after the passage of administrative rules by the Commissioner defining the method, means and timing of this reporting. *Id.*

PERSONAL NOTE AND LIMITATIONS ON ADVISORY OPINION

The Commissioner and the COPP staff hereby add a personal note to the effect that they recognize that legislative candidate campaigning is changing in Montana. The influx of money and paid staff use into ballot issue campaigns in the late 1990s caused a need for clarification by the COPP in manner of disclosure and reporting, including reporting of paid signature gatherers, required from ballot issue committees. The last three election cycles have shown that additional money and paid staff use are now regularly entering into Montana's legislative campaigns. The Welch Advisory Opinion, this Advisory Opinion and other communications from the COPP are the start of similar clarification in the reporting and disclosure required to preserve transparency Montana laws require in legislative election campaigns. The Commissioner and staff appreciate the efforts of Senator Thomas, former candidate Welch and candidate Buck to seek clarification through the public means of an Advisory Opinion, thereby providing prospective guidance to all candidates.

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