

COMMISSIONER OF
POLITICAL PRACTICES



STATE OF MONTANA

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May 20, 2014

Steve Sem
221 - 29th Ave. NE
Great Falls, MT 59404

COPP-2014-AO-011

Re: Electioneering

Dear Mr. Sem:

I write in response to your letter dated May 5, 2014 (and received May 8, 2014) asking for an advisory opinion on the issue set out below. This letter constitutes that advisory opinion.

Background and Issue Posed

The COPP website, under the “campaign information” heading sets out a two page question and answer sheet titled “electioneering.” The sheet is dated April of 2008. On page two the sheet poses and answers the following question: “Can Candidates be Present in the Polling Place? Can they work the polls? A. These statutes do not prohibit candidates in the polling place – they prohibit electioneering (which includes campaigning) in or about the polling place.”

You cited to the above listed electioneering question and answer sheet and posed the following issue for an advisory opinion:

I agree that candidates can be present in the polling place, but in my opinion they should be restricted to exercising their right to vote, just like all citizens. And to remain in the polling place would be a violation of MCA 13-35-211 ARM 44.10.311. Why do I believe this?

Politics is based on recognizing candidates and their position on issues. Their names and faces appear on billboards, campaign material and in the media. They campaign door-to-door for that same purpose. If they linger in the polling place, regardless of their motives, they will be recognized by many of their constituents and therefore COULD influence them. I believe this is an example of the “personal persuasion” mentioned in the ARM and to “encourage recognition” in the MCA. There should be a distinct line between the campaign and the polling place and your answer to the question in the pamphlet seems to blur that line. Is there any case law that supports a candidate being able to stay longer than to vote?

ADVISORY OPINION

In this Office’s opinion, YES, the April 2008 question and answer is still an appropriate and accurate response. The reasoning for this Advisory Opinion is set out below.

Article II, §13 of the Montana Constitution declares that “[a]ll elections shall be free and open...” Consistent with that directive Montana voting judges must proclaim polls open and closed (§13-13-101 MCA), a “qualified elector” is privileged from arrest while going to vote (Art. IV, §6), “poll watchers” must be allowed at the polling place (§13-13-120 MCA) and “a candidate” may request additional poll watchers (§13-13-122 MCA).

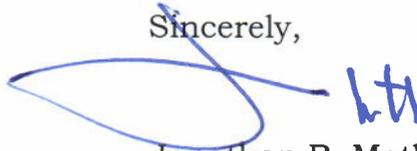
In short, Montana law protects and promotes the election presence rights of electors (who vote) and the presence of those who monitor the fairness of the vote. At the forefront of those who care about the fairness of the vote are candidates. A candidate can be present at a polling place during voting and, so long as she or he is not campaigning, a candidate’s presence should aid the integrity of the voting process because it provides another layer of scrutiny insuring that fraud, voting buying and other corruption does not enter the voting process. It is that type of transparency that the constitution guarantees with its “free and open” declaration. Accordingly, there is no campaign practice violation resulting from a candidate’s presence at a polling place.

To the extent allowed by Montana’s constitution, the appropriate local election authorities can establish rules as to what they consider appropriate candidate presence at a polling place. When doing so they should keep in mind the “free and open” guarantee of Montana’s constitution.

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, consisting of a large, stylized loop followed by the initials "JM".

Jonathan R. Motl

Commissioner of Political Practices