

COMMISSIONER OF
POLITICAL PRACTICES



STATE OF MONTANA

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June 10, 2011

Will Deschamps
Montana Republican Party
PO Box 395
Helena MT 59624

Subject: Complaint against Steve Bullock, Filed March 8, 2011

Mr. Deschamps,

I have carefully reviewed your complaint allegations that Steve Bullock is violating Montana's campaign finance and reporting laws and rules by neglecting to disclose the office for which he is running and that Mr. Bullock has violated §13-37-240, MCA, §13-37-402, MCA, and ARM 44.10.336 by using campaign funds for his personal benefit.

Your complaint and Count I allege that "a candidate for public office must specify 'the name, office sought, and party affiliation'" on both their Statement of Candidate (C-1) and Candidate Campaign Finance Report (C-5).

§13-1-101(6)(b), MCA, addresses the situation where an individual accepts contributions and makes expenditures even though the office that may ultimately be sought has not been decided. §13-1-101(6)(b) reads, in pertinent part:

"Candidate" means:

...

(b) for the purposes of chapter 35, 36, or 37, an individual who has solicited or received and retained contributions, made expenditures, or given consent to an individual, organization, political party, or committee to solicit or receive and retain contributions or make expenditures on the individual's behalf to secure nomination or election to any office at any time, **whether or not the office for which the individual will seek nomination or election is known when the:**

- (i) solicitation is made;
- (ii) contribution is received and retained; or
- (iii) expenditure is made...." Emphasis added.

The emphasized language was adopted during the 1989 legislative session in House Bill 407. Before the 1989 amendments were adopted, an individual who solicited or received contributions for an exploratory campaign, but who ultimately decided not to seek election or nomination, did not have to report those contributions or expenditures.

A September 20, 1989, letter from former Commissioner of Political Practices Dolores Colburg to former Montana Republican Party Executive Director Jacqueline Irby describes in detail the effect of HB 407 and the 1989 amendments:

This issue was expressly debated by the Ad Hoc Committee on election reform, which drafted the 1975 legislation revising Montana's campaign report laws. The majority of the Ad Hoc Committee declined to require individuals conducting exploratory campaigns to report those expenditures unless they became announced candidates for the office. The argument against such disclosure was that the public wouldn't care where the money came from if the person never became an announced or declared candidate.

Executive Director Irby's inquiry to Commissioner Colburg related to travel funds solicited, received, and spent by individuals who were considering filing for an elective office even though the office to be sought had not been determined. Commissioner Colburg correctly advised that the 1989 amendments and the current definition of candidate in 13-1-101(6)(b), MCA, allows individuals to solicit, receive, and spend contributions before deciding which office to run for, even if the individual eventually decides not to formally file as a candidate with the Secretary of State. So long as the contributions and expenditures are publicly reported to this office in compliance with applicable campaign reporting requirements, the receipt and expenditure of exploratory campaign contributions is permitted.

Count I of your complaint alleges that Mr. Bullock is required to declare which office he is seeking when filing his C-1 reports and C-5 statement based on the reporting requirements of §13-37-201, §13-37-225, §13-37-229, and §13-37-230, MCA, and ARM 44.10.405. All of these statutes and rules use the term "candidate." The definition of "candidate" in §13-1-101(6)(b) is controlling for the reasons set forth in this letter. The legislature, beginning in 1989, concluded that it was better public policy and consistent with Montana's commitment to full disclosure to amend the "candidate" definition to require an individual who begins soliciting, receiving, and spending contributions to report those contributions and expenditures even if the office to be sought has not been finally determined. If Mr. Bullock has not determined which office he will seek in 2012, or even if he decides not to be a candidate for elective office in 2012, he is obligated to fully disclose the campaign contributions received and spent in 2011 and 2012.

Count II of your complaint alleges that Mr. Bullock is expending funds for his own personal benefit or for "some purpose not related to an election for office." You allege that such expenditures are prohibited by §13-37-240, MCA, §13-37-402, MCA, and ARM 44.10.336.

§13-37-240 reads, in pertinent part, as follows:

"Surplus campaign funds. (1) A candidate shall dispose of any surplus funds from the candidate's campaign within 120 days after the time of filing the closing campaign report pursuant to 13-37-228. In disposing of surplus funds, a candidate may not contribute the funds to another campaign, including the candidate's own future campaign, or use the funds for personal benefit.... A candidate shall provide a supplement to the closing campaign report to the commissioner showing the disposition of any surplus campaign funds.

(2) For purposes of this section, "personal benefit" means a use that will provide a direct or indirect benefit of any kind to the candidate or any member of the candidate's immediate family." Emphasis added.

ARM 44.10.335 and 44.10.336 implement §13-37-240 and the constituent services account legislation in §13-37-401 and §13-37-402, MCA. ARM 44.10.335(1) requires candidates to dispose of "surplus campaign funds within 120 days of filing the closing report required by 13-37-228, MCA." The term "surplus campaign funds" is defined in ARM 44.10.335(2) to be "those campaign funds remaining when all debts and other obligations of the campaign have been paid or settled, no further campaign contributions will be received, and no further campaign expenditures will be made." The remaining provisions of ARM 44.10.335 specify in great detail how surplus campaign funds may be lawfully disposed of after a campaign is concluded and a closing report is filed. ARM 44.10.336 further defines the term "direct or indirect benefit" relating to the distribution of surplus campaign after a closing report has been filed.

§13-37-402, MCA, is part of the constituent services account legislation enacted in 2007. Constituent services accounts may be established by a "successful candidate" and allows an elected official to deposit "only surplus campaign funds in a constituent services account." However, a constituent services account cannot be created if the elected official "has an open campaign account." §13-37-402(2)(b), MCA, and ARM 44.10.335(6). §13-37-402, MCA, applies only to successful candidates who have been elected and are fortunate enough to have surplus campaign funds that may be deposited in a constituent services account.

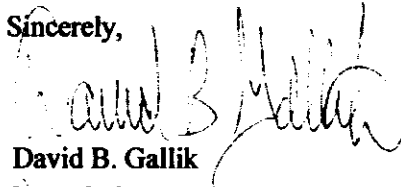
§13-37-240, MCA, §13-37-402, MCA, and ARM 44.10.335 and 44.10.336 expressly and clearly apply only to "surplus campaign funds" remaining in a candidate's campaign account after a campaign has ended and a closing report has been filed. Mr. Bullock's current campaign has not ended and he has not filed a closing report that would trigger the prohibitions in §13-37-240 and ARM 44.10.335 and 44.10.336.

Other than §13-37-240, §13-37-402, and ARM 44.10.336, your complaint does not cite any other statutes or rules supporting your allegation that Mr. Bullock's reported campaign-related expenditures for food, phone, travel, event sponsorships, and postage are illegal. As you know, most candidates for statewide office, both Republicans and Democrats, use campaign contributions to make expenditures of the type reported by Mr. Bullock. In addition, contributions have been historically used to pay for other campaign-related expenditures such as campaign office rental, office supplies, or vehicle leases for transportation. This office is not aware of any Montana statute or rule that would preclude a candidate involved in an active and on-going campaign from making campaign-related expenditures for travel, meals, lodging, and social events

The allegations in your complaint against Mr. Bullock fail to state potential violations of statutes or rules within the Commissioner's jurisdiction and no investigation is required or will be conducted. ARM 44.10.307(3)(a). Accordingly, your complaint is dismissed.

If you have any questions, please contact this office.

Sincerely,



David B. Gallik
Commissioner

cc: Steve Bullock, Peter Michael Meloy