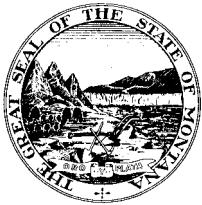


COMMISSIONER OF  
POLITICAL PRACTICES



STATE OF MONTANA

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February 29, 2016

Ronald Rowling  
[Ron.rowling@charter.net](mailto:Ron.rowling@charter.net)

COPP-2016-AO-006

Re: Campaign Advertisement on Public Facilities or equipment

Dear Mr. Rowling,

I write in response to your inquiry of February 12, 2016 requesting the Commissioner of Political Practices' (COPP) advisory opinion regarding campaign advertisement on public facilities or equipment. You raised the following issues and offered the following facts to assist the COPP in preparing the Advisory Opinion:

"I am seeking information regarding campaign advertisement and the usage in government buildings.

I attended a high school basketball game and saw the advertisement of one of my opponents....To top off my concerns, the building that this advertisement was displayed in, also is the same building utilized by the voters to cast their ballots.

During the 2012 election cycle, I approached a company about displaying my campaign sign on a city bus or two and was told no. The reason I was told no was because it is a public bus owned by a government entity.

I am also seeking information on when I may begin posting signage in appropriate areas."<sup>1</sup>

<sup>1</sup> The COPP does not have jurisdiction over the timing or placement of campaign advertising. The placement of signage on highways are regulated by the Department of Transportation (<http://politicalpractices.mt.gov/content/PoliticalSignPlacement2012>) and the timing and placement of signage within the City is regulated by the City-County Municipal Code ([https://www.municode.com/library/mt/buttesilver\\_bow\\_county/codes/code\\_of\\_ordinances](https://www.municode.com/library/mt/buttesilver_bow_county/codes/code_of_ordinances).)

## **ADVISORY OPINION**

The Commissioner is limited to issuing an advisory opinion that addresses "the applicability of a rule or statute administered by the Commissioner." 44.11.102 ARM.

### **SHORT ANSWER**

The certain display of advertising described below, and as based on the facts you provided, does not implicate use of public facilities or public time for political purposes and therefore does not violate Montana's campaign practice or ethics law.

### **DISCUSSION**

The Butte-Silver Bow Transit (BSBT) system as well as the Butte-Silver Bow Civic Center are owned and operated by the City-County of Butte-Silver Bow.<sup>2</sup> Both are publicly owned facilities and equipment which have different advertising opportunities available for commercial, public service and political advertisements. The BSBT makes available bus and bench advertising space, and the Civic Center has meeting and event facilities available along with advertising placement within the center. The sale of advertising space raises revenue for the City-County, which helps offset the cost to the public for maintaining the services provided to the community.

The nuanced issue raised is whether or not a public employee selling political advertising space amounts to an improper use of public facilities or equipment for political purposes in violation of Mont. Code Ann. § 13-35-226(4) which provides:

A public employee may not solicit support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue while on the job or at the place of employment.

However, subject to 2-2-121, this section does not restrict the right of a public employee to perform activities properly incidental to another activity required or authorized by law or to express personal political views.

*Id.*

Montana's campaign finance and practices laws do not define the term "public employee," but the Code of Ethics defines the term as "any temporary or permanent employee of a local government," Mont. Code Ann. § 2-2-102(7)(b). The definition is appropriate because the campaign finance and practice statute above specifically draws in the standards of the Code of Ethics.

(3) (a) Except as provided in subsection (3)(b), a public officer or public employee may not use public time, facilities, equipment, supplies, personnel, or funds to solicit support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue unless the use is:

(i) authorized by law; or

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<sup>2</sup> <http://co.silverbowl.mt.us/>

(ii) properly incidental to another activity required or authorized by law, such as the function of an elected public officer, the officer's staff, or the legislative staff in the normal course of duties.

(b) As used in this subsection (3), "properly incidental to another activity required or authorized by law" does not include any activities related to solicitation of support for or opposition to the nomination or election of a person to public office or political committees organized to support or oppose a candidate or candidates for public office.

Mont. Code Ann. § 2-2-121(3).

The issue raised requires discussion of the specific use of the public facilities or equipment before reaching the larger question. It would be overly simplified to ask "is a public facility or equipment being used for political advertisements?" Under the facts provided: sometimes yes, sometimes no. "Did a public employee lease the space to the candidate or campaign?" Under the facts provided: sometimes yes, sometimes no. This ambiguity could appear like the leasing of the public facility or equipment for improper or biased purposes.

The inquiry does not end there. Is the public facility or equipment used for purely commercial or purely governmental purposes, or are there mixed uses of the public facility for governmental and/or commercial purposes? Some public facilities are primarily used for purely governmental purposes, such as a court house or the county jail. Some public facilities are used for primarily commercial purposes, such as a Civic Center. Finally, some public facilities or equipment have a mixed commercial and governmental purpose such as a local transit system.

### **Butte-Silver Bow Civic Center**

The Butte-Silver Bow Civic Center is a public facility which is available for lease for "local sporting events and concerts as well as trade shows and political events".<sup>3</sup> The Civic Center also has advertising space available for lease around the arena. Here, the City-County has made a determination that the public facility and advertising space is available to interested parties who are willing to lease the space at the going rate when being used for commercial purposes regardless of the type of event. Under the facts you provided, the display of a political advertisement during a basketball tournament is an appropriate commercial use of the public space so long as it was leased by the candidate or committee at a fair market rate.

The other issue you raised regarding the Civic Center is its occasional governmental use as a polling place. Citizens of Butte Precincts 1 through 25 vote at the Civic Center.<sup>4</sup> When the Civic Center is being used for this governmental purpose, the display of an otherwise properly leased political advertisement comes into conflict with another law which prohibits electioneering on election day:

A person may not do any electioneering on election day within any polling place or any building in which an election is being held or within 100 feet of

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3 <http://co.silverbow.mt.us/575/Civic-Center>

4 <http://www.co.silverbow.mt.us/187/Voting-Elections>

any entrance to the building in which the polling place is located that aids or promotes the success or defeat of any candidate or ballot issue to be voted upon at the election.

Mont Code Ann. § 13-35-211(1).

Electioneering "means the solicitation of support or opposition to a candidate or issue to be voted upon at the election or polling place in question, by means of...the display or distribution of campaign materials," Mont. Admin R. 44.11.606(1)(a).<sup>5</sup> Therefore, any candidate or ballot issue campaign advertisement must not be displayed inside or within 100 feet of the entrance of the Butte-Silver Bow Civic Center on election day when the facility is being used for a governmental purpose. This is a requirement that the COPP believes the local election administrators and polling place officials to be well aware of, as we have not received a complaint of political advertising within or around the Butte-Silver Bow Civic Center on election day.

### **Butte-Silver Bow Transit**

The Butte-Silver Bow Transit system includes public equipment and facilities which provide mixed governmental and commercial use to the residents of Butte. The governmental use is in providing access to transit to certain individuals in cooperation with the Federal Transit Administration and the Montana Department of Transportation. The commercial use of the BSBT involves the sale of advertising on its buses or benches in order to bring in revenue to offset the cost of the program to the public.<sup>6</sup>

BSBT has an agreement governing advertising on the buses or benches. The City-County of Butte-Silver Bow and Blair Unlimited, have agreed by contract that any "political and issue-oriented advertising of any kind ... is subject to approval by the City-County." As a general rule, the City-County does not approve requests for bus or bench advertising of political candidates or ballot issues.<sup>7</sup> This is a policy determination by the City-County of Butte-Silver Bow over the commercial use of its advertising space on the public equipment which serves both mixed governmental and commercial uses. Under the facts you provided, the decision to not allow your campaign to lease space to advertise on the bus benches in prior campaigns, was consistent with BSBT's stated practice of not making the public space available for political advertising.

### **Public Employee**

Having explored the governmental and commercial use of public facilities and equipment, the larger question remains: When a public employee leases space for political advertisements is the employee "soliciting support for or opposition to" a particular candidate or issue? Mont. Code Ann. § 13-35-226(4). A public employee performing duties consistent with direction of the governmental body, through contract or employment, in leasing public facilities to a committee or a candidate is not soliciting

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<sup>5</sup> For more information on electioneering on election day see  
<http://politicalpractices.mt.gov/content/5campaignfinance/Electioneering100ft.rule.pdf>

<sup>6</sup> <http://co.silverbow.mt.us/178/Transit-Services>

<sup>7</sup> COPP investigative conversation with a Butte Silver-Bow City-County employee regarding advertising on BSBT.

support for the particular candidate. What the governmental entity is generating is revenue to offset the cost of the services provided to the members of the community.

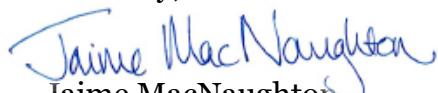
## **CONCLUSION**

The commercial sale of advertising space by a public employee, as defined in this advisory opinion, does not rise to the level of "solicitation of support for or opposition to" a candidate or ballot issue. Butte-Silver Bow City-County has developed a facility advertisement policy for commercial use of the public spaces, and has demonstrated mindfulness of potential conflicts of advertising in public spaces while the public facility or equipment is in a governmental use.

## **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,



Jaime MacNaughton  
Attorney for the  
Commissioner of Political Practices

I agree with this Advisory Opinion and afford it the full weight of the Commissioner's authority.

DATED this 29<sup>th</sup> day of February, 2016.



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Jonathan R. Motl  
Commissioner of Political Practices