

COMMISSIONER OF
POLITICAL PRACTICES



STATE OF MONTANA

JONATHAN R. MOTL
COMMISSIONER
TELEPHONE (406) 444-2942
FAX (406) 444-1643

1209 EIGHTH AVENUE
PO BOX 202401
HELENA, MONTANA 59620-2401
www.politicalpractices.mt.gov

July 2, 2015

Jennifer McKee
Communications & Policy Director
Commissioner of Securities & Insurance
840 Helena Ave
Helena, MT 59601

Re: COPP-2015-AO-005
State Official Public Service Announcement

Dear Ms. McKee;

I write in response to your request for an Advisory Opinion from the Commissioner of Political Practices on the following matter.

QUESTION PRESENTED

That the COPP evaluate a particular PSA and the role of a public official involved in the PSA to determine whether or not it violates the Montana Code of Ethics for Public Employees and Officials based on the facts provided below.

FACTS PROVIDED

"In December of 2014, the Office of the Montana Commissioner of Securities and Insurance, Montana State Auditor, was approached by Bruce Halcro, president of the Montana Collision Repair Association. Mr. Halcro had seen a PSA-style television spot from Oklahoma which featured an insurance department official from that state."

"Mr. Halcro asked if Commissioner Lindeen would be willing to be featured in a similar spot sponsored by the Montana Collision Repair Association. The spot would be filmed and distributed at the expense of the Montana Collision Repair Association and the Montana Broadcaster's Association."

"Mr. Halcro provided Lindeen's office with a script patterned after the Oklahoma spot."

"Auto collision repair is an issue Commissioner Lindeen had worked on throughout her six-year term as insurance commissioner. She was willing to participate in this the association's effort as it did not conflict with our research on elected officials appearing in PSAs."

“No state resources were spent in writing, filming, producing or distributing the spot.”

“The spot was not a project of the Office of the Montana Commissioner of Securities and Insurance, Montana State Auditor.”

Advisory Opinion

The Commissioner is limited to issuing advisory opinions that address an ethics, lobbying or campaign practice issue within the Commissioner of Political Practices’ (COPP) jurisdiction, Mont. Admin. R. 44.10.201. The COPP used Ms. Lindeen’s campaign finance disclosures publically on file with the COPP to establish the basis of facts in this opinion. Also, the COPP accessed the Montana Commissioner of Securities and Insurance’s website for facts used in this opinion. The consideration of the question in this matter is limited to the information which was provided to the COPP, and that could be ascertained from those reports and the website. With that qualification in mind, the Commissioner issues the following Advisory Opinion:

SHORT ANSWER

The COPP finds, based on the facts provided with the request, that there has been no violation by Ms. Lindeen of the Code of Ethics for Public Employees and Officials.

DISCUSSION

The Code of Ethics for Montana public officers and public employees is found in Title 2, Chapter 2 of Montana Code Annotated. There is a particular portion of the statute that deals with PSAs made by state officers¹:

A state officer may not use or permit the use of **public time, facilities, equipment, supplies, personnel, or funds** to produce, print, or broadcast any advertisement or public service announcement in a newspaper, on radio, or on television that contains the state officer's name, picture, or voice **except** ...or in the case of an announcement directly related to a program or activity under the jurisdiction of the office or position to which the state officer was elected or appointed.”

Mont Code Ann. § 2-2-121(4)(b) (2014).

¹ Ms. Lindeen filed a Statement of Candidate form with the Commissioner of Political Practices (COPP) for the Montana Secretary of State position on May 29, 2014 for the election to be held in November of 2016. Ms. Lindeen is also candidate for public office, pursuant to Mont. Code Ann. § 13-1-101 (6). Subsection (a) prohibits a candidate’s use of state funds only, Mont. Code. Ann. § 2-2-121(4). However, the prohibitions for state officer’s in Mont. Code Ann. § 2-2-121(4)(b) are much broader and the use of state funds is included in the prohibition on use of public funds. Therefore in the instance when a state officer happens to also be a candidate, their actions will be analyzed under Mont. Code. Ann. § 2-2-121(4)(b).

Monica Lindeen currently serves as the Montana State Auditor, Commissioner of Securities and Insurance, having been elected to a second term in November of 2012 and currently serving through December of 2016. The position of State Auditor is an elected officer of the executive branch of state government, Mont. Code Ann. § 2-15-102. The provisions of Mont. Code Ann. § 2-2-121(4)(b) apply to her in her capacity as a state officer.

Subsection (b) is easier to understand if you break it down into its parts:

- i. A **state officer** may not use or permit the use of
- ii. public time, facilities, equipment, supplies, personnel, or funds
- iii. **to** produce, print, or broadcast any advertisement or public service announcement in a newspaper, on radio, or on television
- iv. that contains the state officer's name, picture, or voice
- v. **except** ... in the case of an announcement directly related to a program or activity under the jurisdiction of the office or position to which the state officer was elected or appointed.

In order to violate Mont. Code Ann. § 2-2-121(4)(b) as a state officer, Ms. Lindeen would have had to meet the criteria of romanette i-iv, and not fall within the exception provided in v. Ms. Lindeen is a state officer, and the PSA included her name, picture and voice, so the criteria i and iv are met². However, romanette's ii and iii also have to be met in order to find a violation. Public time, facilities, equipment, supplies, personnel or funds must be used to produce, print or broadcast the PSA.

Based on the facts presented, public funds were not used because the PSA was produced and broadcast by the Montana Collision Repair Association and the Montana Broadcaster's Association. No public funds were used in the production or broadcast of the PSA on the radio or television.

It could be argued that as a state officer, Ms. Lindeen had to use public time in order to appear in the PSA. As an elected official on an annual salary, arguably she is on duty at all times. See MT AG Opinion, Vol 51, Op. 1, January 31, 2005, and COPP-2014-AO-002, Jan 29, 2014³.

Even if public time was used in the making of the PSA, there is an exception found in the final sentence of Mont. Code Ann. § 2-2-121(4)(b). A state officer may use public time to produce a PSA that is "directly related to a program or activity under the jurisdiction" of the Montana State Auditor, Commissioner of Securities and Insurance. The State Auditor's Office is tasked with protecting "Montana's consumers by ensuring fairness, transparency and access for Montanans in two of Montana's largest industries — securities and insurance"⁴. The PSA itself provides Montanans with information about their ability, by law, to choose any repair shop to perform repairs to their cars

² The PSA can be found online at https://www.youtube.com/watch?v=nftwgSk_oXs, last accessed July 1, 2015.

³<http://www.politicalpractices.mt.gov/content/5campaignfinance/KnudsenPublicOfficeLActsAdvisoryOpinion>

⁴ <http://csimt.gov/about/>, last accessed July 1, 2015.

before the insurance agency settles their claims. This information is within the jurisdiction of the Commissioner of Securities and Insurance; in fact there is an entire webpage on their site dedicated to providing information about Auto Insurance to Montanans, <http://csimt.gov/your-insurance/auto/>.

Therefore, in the COPP's opinion, in participating in the creation of a PSA that was produced, distributed and aired using non-public funds, and using minimal public time to appear, Ms. Lindeen did not violate the Code of Ethics as a state officer because her involvement was "directly related to a program or activity under the jurisdiction of the office or position to which the state officer was elected", Mont. Code Ann. § 2-2-121(4)(b).

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 2nd day of July, 2015.



Jonathan R. Motl
Commissioner of Political Practices