



COMMISSIONER OF
POLITICAL PRACTICES

STATE OF MONTANA

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October 4, 2016

Dee Brown
Box 444
Hungry Horse, MT 59919

Via email: brownsford2@yahoo.com

Re: COPP-2016-AO-014

Liquor stores as State Actors Relating to Campaigns

Dear Senator Brown:

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

QUESTION PRESENTED

Can a liquor store holding a franchise from the State of Montana engage in activity supporting or opposing a candidate or ballot issue?

ADVISORY OPINION

The Commissioner is limited to issuing advisory opinions that address a campaign practice issue within the Commissioner of Political Practices' (COPP) jurisdiction, Mont. Admin. R. 44.11.102. Based upon the foregoing scope of information, the Commissioner issues the following Advisory Opinion:

SHORT ANSWER

A person holding an agency liquor store franchise agreement with the State of Montana is not restricted by Montana law in campaign practice use of the business property serving as the liquor store.

DISCUSSION

Montana law (the Montana Alcoholic Beverage Act) allows the State of the Montana to operate and maintain an "agency liquor store" under the supervision of the Montana Department of Revenue, Liquor Control Division. It is commonly said that these stores are "state owned" liquor stores and, if so state owned, then campaign activities at a state owned liquor store (in the form of soliciting votes for or against a candidate or ballot issue) would be regulated by Title 2 of the Montana Code (ethics)

and by Title 13 (campaign practice), by incorporation through §13-35-226(4), MCA.

An agency liquor store, however, is not state owned. It is instead, by law and by franchise agreement, an arrangement of agency in which the agent is an independent contractor. (Model Franchise Agreement, p. 12). Further, the franchise holder and his or her employees are specifically agreed to be independent employees and NOT state employees. (*id.*) A review of the 16 page franchise agreement shows responsibility of the liquor store to comply with health and safety laws, including workers' compensation, but there is no similar incorporation of ethics or campaign practice laws. Further, a review shows that the franchise holder is solely responsible for premises costs and must "pay in full for liquor purchased from the state liquor warehouse within 60 days of the invoice date." (*id.*, p. 3).

The Commissioner determines that an agency liquor store purchases its property privately (including liquor) and further determines that all agency liquor store employees are private and not public employees. There being neither public employees or public property involved, an agency liquor store can engage in campaign acts without triggering the ethical and campaign practice considerations that come into play when public time, facilities, equipment, supplies, personnel or funds are involved. The agency liquor store must, of course, register as a political committee and report and disclose its activity as a contribution or independent expenditure, as required by law. In that regard, independent expenditures of less than \$250 do not trigger reporting and disclosure. §13-1-101(30)(d), MCA.

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,

Jonathan Motl

Jonathan Motl
Commissioner of Political Practices

