

**\*\*ATTENTION\*\***

Due to the COVID-19 health concerns, the format of the City Council meeting will be held in a virtual videoconferencing environment. In order to honor the Right of Participation and the Right to Know in Article II, sections 8 and 9, of the Montana Constitution, the City of Billings and City Council are making every effort to meet the requirements of the open meeting laws:

- The Agenda Packet is available for viewing on the City's website at: <https://ci.billings.mt.us/117/Agendas-Minutes>
- Councilmembers will attend the meeting via a remote location, using a virtual meeting method. City Hall and the Council Chambers will be closed during the meeting.
- The Public may view the meeting on the Community 7 TV - Channel 7 or Channel 507 – Spectrum Cable. On evenings when there is a conflict with School District No. 2 Board meetings, the City Council meeting will be broadcast on Channel 8 - Spectrum Cable. The Public may also view online at [www.comm7tv.com](http://www.comm7tv.com) and click on the “Watch Live” icon. Community 7 also has links to their Facebook page and YouTube channel in which to view the meeting.
- Public comment will be taken only during the Public Comment periods as indicated on the agenda. Comments may be sent to Council via email before 3:00 PM, on Monday, May 4th, at: <https://ci.billings.mt.us/1538/City-Council-E-mail-Messages>
- Emails received after 3:00 PM and prior to 5:00 PM, may be read during the meeting.
- The Public may call in during specific Public Comment periods at **406.237.6196**. All callers will be in a queued system and are asked to remain on hold and be patient. Calls will be taken in the order in which they are received. Callers will be restricted to 3 minutes of testimony as is customary.

Future delivery methods may be explored as best practice is learned.

Please contact City Clerk, Denise Bohlman, at [bohlmand@billingsmt.gov](mailto:bohlmand@billingsmt.gov), or 657-8210 with any questions.

# CITY OF BILLINGS

## CITY OF BILLINGS VISION STATEMENT:

**“THE MAGIC CITY: A DIVERSE, WELCOMING COMMUNITY WHERE PEOPLE PROSPER AND BUSINESS SUCCEEDS.”**

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### WORK SESSION AGENDA

**Council Chambers are Closed.**  
The meeting will be held remotely via virtual meeting room. Please see coversheet for details and instructions for viewing and participation.

**July 6, 2020**

**5:30 P.M.**

#### **CALL TO ORDER:** Mayor Cole

- 1. COVID-19 Update by Unified Incident Command (UIC)**  
- Public Comment
- 2. Billings Heights Business Association**  
*(Presented by: Ming Cabrera and Jennifer Owens, BHBA)*  
- Public Comment
- 3. Public Safety Mill Levy Discussion**  
*(Presented by Chris Kukulski, City Administrator)*  
- Public Comment

#### **COUNCIL DISCUSSION:**

**PUBLIC COMMENT on “NON-AGENDA ITEMS”.** **Speaker Sign-in required.** *(Restricted to ONLY items not on this printed agenda. Comments are limited to 3 minutes or as set by the Mayor. Please call 237-6196 during the public comment period.)*

#### **ADJOURN:**

**CLOSED EXECUTIVE SESSION\* (Pending Litigation)**

Note:

- This meeting is an “informal” meeting of the City Council. The content of the Agenda is subject to change at the meeting.
- \*In the event there is a Closed Executive Session at the end of a Work Session, the sole purpose is to discuss litigation strategy. The other parties to the case(s) discussed are not public bodies or associations as described in Section 2-3-203(1) and (2), MCA. The meeting is closed, as allowed by Section 2-3-203(4)(a), MCA, “to discuss a strategy to be followed with respect to litigation when an open meeting would have a detrimental effect on the litigating position” of the City of Billings.
- Council meetings may be viewed at any time by accessing Community 7 Television online at [www.comm7tv.com](http://www.comm7tv.com) and clicking on archived programs.

**Council Work Session**

**2.**

**Meeting Date:** 07/06/2020

**TITLE:** Billings Heights Business Association

**Department:** City Hall Administration

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**RECOMMENDATION**

No action required.

**BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)**

**BACKGROUND:** The Billings Heights Business Association (BHBA) was formed in 2019 to bring together business owners in the Heights to improve the overall climate for economic development in the neighborhood. Main Street in the Heights retains its position as the busiest street in Montana, with more than 63,000 vehicles passing through the Main Street-Airport Road intersection every day. Main Street is a vital economic corridor that supports high volumes of commuter, commercial, and freight traffic, and also serves as the economic heart of the Heights. The Heights is itself a distinct neighborhood in the Billings community which, at more than 31,000 residents, would represent the 6 th largest city in Montana if it were independent. Given the strategic economic importance of a prosperous Heights neighborhood, business owners are joining together to take a leadership role in promoting our community and making the case for new and continued investment in the Heights.

In just over a year since formation began, the BHBA has already achieved important goals for its members. In June 2020, Council invited the BHBA to present on the organization, its goals, and its accomplishments.

**ALTERNATIVES**

N/A

**FISCAL EFFECTS**

N/A

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**Council Work Session**

**3.**

**Meeting Date:** 07/06/2020

**TITLE:** Public Safety Mill Levy

**PRESENTED BY:** Chris Kukulski, City Administrator

**Department:** City Hall Administration

**Division:** Administration

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**RECOMMENDATION**

The Council ask questions to clearly understand any limits on their free speech rights regarding the City's upcoming ballot measure to amend the city charter.

**BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)**

On June 22, 2020, The Mayor and Council approved an ordinance and ballot language resolution submitting the Public Safety Mill Levy (PSML) to voters for approval in a special mail ballot election currently scheduled for September 15, 2020. If approved by voters, this mill levy will amend the City Charter by allowing 60 mills to be levied each year indefinitely into future years.

A common question is what limitations does Montana law place on elected officials and city staff to inform the public on the impacts of ballot issues. Public time and money cannot be spent advocating for or against a ballot measure or candidates running for office. Public time and money can be spent to educate. Staff can and will work diligently to educate the community on the impacts of voting for or against the PS2 Levy. We will be careful to educate and not advocate for or against the charter amendment.

Elected officials are viewed differently under the law and guidelines. You can advocate and/or speak against ballot measures and elected officials running for office. However, you should not advocate during formal City board meetings ie city council, parks board, planning board etc. This prohibition does not include community groups and organizations like, Rotary, Chamber of Commerce or neighborhood task forces (neighborhood task forces are not official City boards). For further review please see the attached guidance provided by our legal team and the State of Montana and Crowley, Haughey, Hanson, Toole & Dietrich PLLP and former Attorney General.

The Montana Commission on Political Practices (COPP) is a state agency which regulates political campaign practices and enforces Montana election laws. COPP has indicated that the election rules do apply to cities as they relate to ballot issues such as the PSML.

Because public monies will be expended in educating the public on the PSML ballot issue, the City has registered with the COPP as an Incidental Political Committee and we will appropriately report expenditures. The City will submit the required reports to the State for any time and monies spent in June, July, August and September 2020 to educate our community on the impacts of the PS2 repeal and replace ballot question.

**ALTERNATIVES**

NA

# FISCAL EFFECTS

NA

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## Attachments

City Attorney Opinion  
Ballot Advocacy  
Mr. Mathew J Johnson

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# CITY OF BILLINGS

CITY ATTORNEY'S OFFICE  
P.O. BOX 1178  
BILLINGS, MONTANA 59103

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June 24, 2020

**To:** Chris Kukulski, City Administrator  
Kevin Iffland, Assistant City Administrator  
Rich St. John, Police Chief  
Bill Rash, Fire Chief  
Andy Zoeller, Financial Services Director  
Wyeth Friday, Planning and Community Development Director

**From:** Brent Brooks, City Attorney *BB*  
Gina Dahl, Assistant City Attorney

**Re:** Public Safety Mill Levy Election: Education v. Advocacy Rules and Restrictions for City Staff and Elected Officials

## BACKGROUND

On June 22, 2020, The Mayor and Council approved an ordinance and ballot language resolution submitting the Public Safety Mill Levy (PSML) to voters for approval in a special mail ballot election currently scheduled for September 15, 2020. If approved by voters, this mill levy will amend the City Charter by allowing 60 mills to be levied each year indefinitely into future years. The next step in this process concerns the rules and restrictions for City elected officials and City staff members as information is provided to City voters concerning the levy.

## PURPOSE of MEMORANDUM

This memorandum addresses the requirements to keep records and report-expenses and time incurred regarding the mill levy election as required of Incidental Political Committees as defined by Montana election statutes.

## DUTY OF FILING REPORTS OF CONTRIBUTIONS AND EXPENDITURES:

Montana Code Annotated (MCA) §13-1-101(31) defines a political committee broadly:

(31)

(a) "Political committee" means a combination of two or more individuals or a person other than an individual who receives a contribution or makes an expenditure:

(i) to support or oppose a candidate or a committee organized to support or oppose a candidate or a petition for nomination;

(ii) to support or oppose a ballot issue or a committee organized to support or oppose a ballot issue; or

(iii) to prepare or disseminate an election communication, an electioneering communication, or an independent expenditure.

(b) Political committees include ballot issue committees, incidental committees, independent committees, and political party committees.

(c) A candidate and the candidate's treasurer do not constitute a political committee.

(d) A political committee is not formed when a combination of two or more individuals or a person other than an individual makes an election communication, an electioneering communication, or an independent expenditure of \$250 or less.

(emphasis added). An electioneering communication includes publicly distributed printed materials that do not support or oppose a ballot issue, that can be received by more than 100 recipients in the district that refers to a ballot issue or other question submitted to the voters. MCA § 13-1-101(16)

Section 13-1-101(23), MCA, defines an "incidental committee" as one that is not specifically organized or operating for the primary purpose of supporting or opposing candidates or ballot issues but that may incidentally become a political committee by receiving a contribution or making an expenditure.

The Montana Commission on Political Practices (COPP) is a state agency which regulates political campaign practices and enforces Montana election laws. COPP has indicated that the election rules do apply to cities as they relate to ballot issues such as the PSML.

Because public monies may be expended in educating the public on the PSML ballot issue, the City must register with the COPP as an Incidental Political Committee and appropriately report expenditures.

### **INCIDENTAL POLITICAL COMMITTEE REGISTRATION PROCESS**

Our office will prepare and file the C-2 Form and then thereafter the C-4 will need to be prepared and filed under the schedule set by the COPP's rules. We suggest that Wynnette Maddox and a staff member primarily shepherd the process and coordinate the reporting, in conjunction with the Finance Department. Someone will need to assist in calendaring and reporting the information which is provided by those City officials or employees who work on the process, similar to that which is involved in lobbying the State Legislature. Attached in this regard is a template to use to track time and expenses that I we have modified for this purpose

In preparing the C-2 Form, I would suggest that Andy Zoeller be designated as the Incidental Committee Treasurer and perhaps Kevin Iffland as Deputy Treasurer, Please let me know your thoughts in this regard.

### **OTHER APPLICABLE STATUTORY PROVISIONS**

#### **1. City Staff Member Restrictions: Education But Not Advocacy**

After registering as an Incidental Political Committee, City staff members will be authorized to expend time and public monies that are allowed under the following criteria provided in MCA §2-2-121(2):

(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 . . . the passage of a ballot issue unless the use is:

(i) authorized by law; or

(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), ... [w]ith respect to ballot issues, properly incidental activities are restricted to:

(i) the activities of a public officer, the public officer's staff, or legislative staff **related to determining the impact of passage or failure of a ballot issue on state or local government operations;**

(Emphasis added)

## 2. Elected Officials

The above restriction in bold font is different with an elected official, such as the Mayor or Councilmembers. A 2005 Montana Attorney General's (AG) opinion provides some guidance on such use of public resources:

Although "public time" is not defined, a reasonable construction would be those hours for which an employee receives payment from a public employer. **Elected officials, of course, do not have specific hours of employment nor do they receive vacation leave or other time off duty. They receive annual salaries rather than hourly wages. Thus, they could be considered to be on "public time" at all times. However, as long as public facilities, equipment, supplies, or funds are not involved, elected officials are not restricted in the exercise of political speech by the provisions of Montana law.**

...

The presumption is that free speech rights are protected and only the very specific restrictions in Mont. Code Ann. § 2-2-121 can be invoked to limit a public officer's or public employee's right to political speech.

THEREFORE, IT IS MY OPINION:

**A public officer or public employee may engage in political speech so long as his or her speech does not involve the use of public time, facilities, equipment, supplies, personnel, or funds.**

51 Mont. Op. Atty. Gen. 1 (2005), P. 1 (emphasis added).

This AG opinion is attached here along with a 2002 memo from former Montana Attorney General Joseph Mazurek to a citizen group supporting a state-wide Initiative, for your review. As an example of a restriction, the Mayor and Council would not be authorized to advocate during Council meetings or City advisory board meetings since this is using public resources and staff time.

**CONCLUSION:**

The City Attorney's Office has been advised of the stated desire to educate and inform the public as to the effects of passage or failure of the Public Safety Mill Levy ballot issue. Therefore, the City should complete the C-2 Form register as an Incidental Political Committee and report the activities, including staff time and costs expended.

As provided in § 2-2-121, City staff **should not** promote or oppose the Public Safety Mill Levy in the education efforts, but instead restrict their incidental activities to those related to determining and communicating to the public the impact of passage or failure of a ballot issue on City operations.

Undoubtedly there will be unpredictable issues and questions not addressed in this brief memorandum that arise as the education process proceeds and we will assist in answering them.

Attachments

CROWLEY, HAUGHEY, HANSON, TOOLE & DIETRICH P.L.L.P.

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Attorneys are licensed in Montana unless otherwise noted; \* not licensed in Montana; \* also licensed in North Dakota; † also licensed in Wyoming

MEMORANDUM

DATE: September 3, 2002

TO: Tammy Johnson, Campaign Manager, Taxpayer's Against I-145

FROM: Joseph P. Mazurek, Counsel to Committee

RE: Ethics Considerations for Local Officials Regarding Ballot Issues

We have prepared this memo in an attempt to address some of the ethical issues that a public official might face in educating his or her constituents about ballot issues that impact the official's community. Montana's ethics statutes attempt to strike a balance between public officials' duty to work in the best interests of those they serve, while preventing the improper use of public resources to further a political or personal agenda.

In 1995, the Montana Legislature enacted Senate Bill 136 which provided comprehensive ethics statutes for a variety of public officials and employees. SB 136 was codified at §§2-2-101, et seq., MCA. In 2001, the Legislature passed Senate Bill 205 which clarified the class of people covered by the ethics statutes and the activities prohibited. For purposes of the ethics statutes the definition of public officers and employees include elected officers and employees and any temporary or permanent employees of a local government. §2-2-102, MCA. A local government includes a "county, a consolidated government, an incorporated city or town, a school district, or a special district." §2-2-102, MCA. Currently §2-2-121, MCA prohibits public officers and employees from using:

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
- (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.

September 24, 2002

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§2-2-121(3)(a), MCA. The statute further defines the activities that are properly incidental to activities authorized by law relative to ballot issues as "activities of a public officer, the public officer's staff, or legislative staff related to determining the impact of passage or failure of a ballot issue on state or local government operations." §2-2-121(3)(b), MCA. A breach of the restrictions of this statute is "proof the public official has breached public duty." §2-2-121(1), MCA. Any complaints regarding a violation by an official or employee of a local government are handled by the county attorney of the county where the local government is located. §2-2-144, MCA. The county attorney can assess fines of \$50 to \$1,000 and can bring criminal charges if warranted. *Id.* If the county attorney does not bring any action, the complainant can file a civil suit in district court against the official or employee in which a prevailing complainant can recover a civil fine of \$50 to \$1,000. *Id.*

Senator Larry Baer (R-Bigfork) sponsored SB 136 in 1995. The records of the legislative hearings regarding SB 136 show that Senator Baer intended SB 136 to prevent public officials and employees from using public resources to influence elections. He cited as the primary example public school districts using school district resources to support school mill levies.<sup>1</sup> Further testimony and discussions during the legislature's consideration of SB 136 indicates that the proponents believed that public officials should not be allowed to use public resources to influence public elections in any way. In response to a questions by Senator Dorothy Eck, Representative Matt Denny testified to his belief that a public official cannot use public resources to influence a ballot issue even if he or she believes it will be beneficial for the community. However, even the proponents of SB 136 were clear to point out that nothing in SB 136 prohibited a public official from campaigning for a ballot issue on his or her own time.<sup>2</sup>

The statute expressly states that nothing in §2-2-121, MCA should be construed as denying public officers or employees their right of free speech. This simply means that public officers and employees are not prohibited from speaking out about ballot issues on their own time, or with their own resources. The prohibitions imposed by the statute just prevent the use of public resources.

The ultimate goal of the statute appears to be the elimination of the use of public funds from influencing campaigns. The rationale behind this policy seems to be that public officials should not be able to influence campaigns through the use of public resources that are not available to the opposition. Thus, even if a public officer believes a ballot issue will have a devastating effect on his or her government and constituents, public resources should not be used to oppose a ballot measure. However, in an effort to prevent abuse, the statute arguably has the potential to deny the public access to the public officers or employees who are likely to have the best information regarding the issue. In an attempt to mitigate this problem to some extent, the statute expressly permits public officers and employees to use public resources to determine the impact of a ballot measure on the local government which the officer or employee serves. While not expressly stated, the obligation to educate the public regarding the impacts is implicit in determining the impact. A public official who embarks on an investigation to determine the impacts of a ballot measure and who does not share the fruits of that investigation with his or her constituents has arguably breached an even higher duty to the public.

<sup>1</sup> i.e. Minutes of Senate Judiciary Committee, Feb. 6, 1995 p. 6.

<sup>2</sup> i.e. Minutes of Free Conference Committee on Senate Bill 136, April 11, 1995.

The issue that is not resolved by this statute is where determination of and education about the impacts of a ballot issue which are permissible become impermissible advocacy. Clearly, commissioning a study of the effects of I-145 on the local property tax base would fall under the former, while a county commission authorizing the expenditure of county resources to campaign against I-145 would fall under the latter. However, the area between those two extremes seems to be varying shades of gray. Further complicating the matter for public officers and employees is their own right of free speech. Obviously, a local official using his or her official telephone or claiming mileage or using a government vehicle to travel to a meeting to oppose a ballot measure would run afoul of the statute. However, an official giving a speech to a civic group on his or her own time would be exercising a personal right of free speech.

In evaluating what an officer or employee can and cannot do, the person must determine first if he or she is using public resources to carry out the action. If not, then the right of free speech permits almost any activity. If public resources are used, then the person must determine if the activity is advocacy or simply an effort to determine the impacts and educate the public. With these factors in mind, we believe there are activities that are clearly permissible and impermissible under §2-2-121, MCA.

First, virtually any efforts by a local official to determine the effects of I-145 on the local government would be properly incidental to the official duties. Making that information available to the public, to the extent it requires the use of public resources, would also be properly incidental. Thus, a local officer could request public employees to determine and report about the impact of I-145 on the local tax base and future revenue projections. Further, it is our belief that such a report could and should be shared with the public. This report must be impartial, and presented as facts rather than advocacy. We further believe that it falls within the duty of a local official or employee to respond in an impartial way to requests for information from members of the public and press. So long as the information is presented in a neutral way and available to opponents and proponents of I-145 alike, we believe that local governments can and must carry out their duty to keep their constituents informed.

Second, public officers have very broad freedoms to oppose I-145 on their own. Such opposition could include activities such as speaking to civic groups, signing petitions, providing testimonials to be used by private opponents in advertising campaigns, or otherwise actively participating in any opposition activity, so long as the participation is on the official's personal time.

As for prohibited activities, we believe the statute prohibits a local government from taking formal action, such as passing a resolution opposed to I-145. Similarly, the statute prohibits the use of public funds to campaign against I-145. Thus, a local government could not contribute funds, services, or other resources to the campaign against I-145.

Local government officers and employees who have questions about these issues may want to consult with their local county attorney.

51 Mont. Op. Atty. Gen. No. 1 (Mont.A.G.), 2005 WL 273513

Office of the Attorney General

State of Montana  
Opinion No. 1  
January 31, 2005

**HELD: A public officer or public employee may engage in political speech so long as his or her speech does not involve the use of public time, facilities, equipment, supplies, personnel, or funds.**

\*1 PUBLIC EMPLOYEES - Right to exercise political speech;

PUBLIC OFFICERS - Right to exercise political speech;

STATUTORY CONSTRUCTION - Construing plain meaning of words of statute;

[MONTANA CODE ANNOTATED - Section 2-2-121, \(3\), \(a\), \(b\), \(c\).](#)

Mr. Mathew J. Johnson  
Jefferson County Attorney  
P.O. Box H  
Boulder, MT 59632

Dear Mr. Johnson:

You have requested my opinion on a number of questions concerning public officers and political speech. I have rephrased your questions as follows:

Does [Mont. Code Ann. § 2-2-121](#) limit a public officer's or employee's right to support or oppose a political candidate or passage of a ballot issue?

[Mont. Code Ann. § 2-2-121](#) sets forth the rules of conduct for public officers and employees. Subsection (3) includes a prohibition against the use of public time and resources for political speech, as well as a provision protecting a public officer or employee's freedom to express personal political beliefs. It provides:

(3)(a) 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

(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 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. With respect to ballot issues, properly incidental activities are restricted to the activities of a public officer, the public officer's staff, or legislative staff related to determining the impact of passage or failure of a ballot issue on state or local government operations.

**(c) This subsection (3) is not intended to restrict the right of a public officer or public employee to express personal political beliefs.**

(Emphasis added.)

It is not personal political speech that is prohibited by subsection (3)(a); rather, it is the use of public time or resources in the presentation or furtherance of political speech. While a public officer or employee is not required to shed his public persona in order to exercise his right to free speech, he may not use public resources when expressing personal political beliefs.

\*2 Your questions pose scenarios involving elected officers, like county commissioners and sheriffs, whose unique positions require them to work a schedule outside of the typical 8 to 5 schedule of most public employees. You ask, for instance, what of the county commissioner who receives phone calls at home in the evenings, or the sheriff who is on call 24 hours a day?

In [Keyishian v. Board of Regents of Univ. of State of N.Y.](#), 385 U.S. 589, 605-606 (1967), the Supreme Court stated, “a government employee does not relinquish all First Amendment rights otherwise enjoyed by citizens just by reason of his or her employment.” Likewise, a county commissioner or sheriff (or any other public employees or officers) does not relinquish her First Amendment rights by the mere fact that she may be a public official. Pursuant to the plain language of [Mont. Code Ann. § 2-2-121\(3\)\(a\)](#), so long as a public officer or employee is not using “public time, facilities, equipment, supplies, personnel, or funds” she may engage in political speech. See [Dahl v. Uninsured Employers’ Fund](#), 1999 MT 168, ¶ 16, 295 Mont. 173, 983 P.2d 363.

Although “public time” is not defined, a reasonable construction would be those hours for which an employee receives payment from a public employer. Elected officials, of course, do not have specific hours of employment nor do they receive vacation leave or other time off duty. They receive annual salaries rather than hourly wages. Thus, they could be considered to be on “public time” at all times. However, as long as public facilities, equipment, supplies, or funds are not involved, elected officials are not restricted in the exercise of political speech by the provisions of Montana law.

You also ask if subsection (3) prohibits a public employee or officer from signing a letter to the editor with his official title or prevents a law enforcement officer from wearing a uniform to campaign for a political issue or candidate. I conclude that, for the reasons stated above, subsection (3)(c) allows a public official to sign a letter to the editor, expressing personal political beliefs, with his official title, so long as public resources were not used to create the letter. Moreover, a sheriff would not be prohibited from wearing a uniform while campaigning for a political issue or candidate. In my opinion, neither activity would be prohibited by subsection (3).

Again, subsection (3)(a) only prevents use of “public time, facilities, equipment, supplies, personnel, or funds” in the furtherance of personal political speech. A title or a uniform is simply an accouterment of a public employee’s or officer’s position. A sheriff is not required to shed all associations, including his uniform, with his official position in order to exercise his protected right to express personal political beliefs.

The presumption is that free speech rights are protected and only the very specific restrictions in [Mont. Code Ann. § 2-2-121](#) can be invoked to limit a public officer’s or public employee’s right to political speech.

\*3 THEREFORE, IT IS MY OPINION:

A public officer or public employee may engage in political speech so long as his or her speech does not involve the use of public time, facilities, equipment, supplies, personnel, or funds.

Very truly yours,

Mike McGrath  
Attorney General

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51 Mont. Op. Atty. Gen. No. 1 (Mont.A.G.), 2005 WL 273513

