



POLITICAL ACTIVITY FOR PUBLIC OFFICIALS – A PRIMER

Introduction

Local elected officials discuss and vote on a myriad of controversial issues, adopt local policies and procedures to best serve local residents, and work to identify solutions to a host of community dilemmas. Local residents expect mayors and councilmembers to speak to these issues, and elected officials take their responsibility to advocate on public policy proposals very seriously. Public employees, likewise, implement adopted policies and strive to meet local government goals. Public employees are knowledgeable and experienced in providing public services and have both professional and personal views about the best way to serve their communities.

In general, state and local law reflects these realities and recognizes that all Montanans – elected officials and public employees included – have a right to express their personal views. Public employees and elected public officers may and do engage publicly in support of or opposition to policies that might impact their communities. Likewise, local public officers and employees may and do lobby for or against the enactment of legislation or policy by state legislators or other public agencies or officials. This is the essence of a representative democracy.

Prohibitions on Advocacy

State statute does place limits on what, where, and when an elected public officer¹ or a public employee² may advocate. Public employees may not solicit support for or opposition to 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. (Section 13-35-226(4), MCA.) “Support or oppose” means using express words that call for the nomination, election, passage, or defeat of a candidate or a ballot issue, or otherwise referring to or depicting a candidate or ballot issue in a manner that “can *only* be reasonably interpreted as a call for” its nomination, election, passage, or defeat. (Section 13-35-101(52); *Monforton v. Motl*, 2020 MT 202, at ¶18.) Statements about a candidate or ballot measure subject to any alternate reasonable interpretation do not meet this definition. (*Monforton*, at ¶18.)

Specifically, a public employee may not use or permit the use of public time, facilities, equipment, supplies, personnel, or funds to solicit support for or opposition to any candidate or 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 or the officer's staff in the normal course of duties. (Sections 2-2-121(3); 13-35-226(4), MCA.) Police officers and members of the police department are also prohibiting from participating in political activity “while on duty or in uniform or if the activity [interferes] with the performance of duties.” (Section 7-32-4114(4), MCA.) With respect to ballot issues, “properly incidental activities” are those related to determining the impact of the ballot issue on local government operations. (Section 2-1-121(3)(b).)

These statutory restrictions mean public employees may not conduct any activities in support or opposition of a candidate or ballot issue during those hours for which the employee receives compensation from his or her public employer (*Molnar v Fox*, 2013 MT 132, ¶38); using public email or computers (*Molnar*, at ¶45); or using the employee’s work address, email, letterhead, or any other public supplies. (*Molnar*, at ¶44.)

¹ A public officer is defined in the ethics code as any elected officer of a local government. This includes the mayor, a city councilmember, city judge, and any other elected officers. (Section 2-2-102(9)(a), MCA.)

² A public employee is defined in the ethics code as any temporary or permanent employee of a local government. (Sections 2-2-102(7)(b).)

The rules are essentially the same for elected officials. However, the Montana Supreme Court recognizes that elected officials, as opposed to public employees, do not necessarily have restricted hours within which they are considered on public time. Accordingly, the Court has held that “...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.” (*Molnar*, at ¶139.) Further, the Montana Attorney General has held that a public employee or official may use their title in expressing their personal political beliefs “so long as public resources were not used.” (51 Mont. AG Op No. 1 (2005).)

Both the statutes and the opinions emphasize that these laws do not restrict the right of a public employee or official to express personal political views. (Sections 2-2-121(3)(c) and 13-35-226(4); 51 Mont. AG Op. No. 1 at 3.) In short, “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 MT A.G. Op. No. 1, at 3.) The Attorney General has also opined that “[a] title or a uniform is simply an accouterment of a public employee’s or officer’s position,” holding that a sheriff would not be required to shed his uniform in order to exercise his personal political beliefs. (*Id.*; see also Advisory Opinion COPP-2014-AO-007 (2014).)

Enforcement

If a local government has established an ethics panel, a complaint must be filed with the panel before making a complaint to the county attorney. (Section 2-2-144(5), MCA.) Otherwise, any person may file a complaint directly with the county attorney, who must decline to bring an action before the person may file a civil action in court. (*Id.*, subsection (3).) A violation may result in a fine of not less than \$50 or more than \$1,000. (*Ibid.*)

Rules to Remember – DO:

- Question, resist, or advocate for local or state policies or regulations that will impact your community. Discuss proposed policies with your constituents and other local elected officials.
- Obtain and distribute information regarding the impacts of policies or proposals, including local or state ballot issues, on local government operations and your community.
- Express support for or opposition to a proposed ballot issue with respect to the impact it will have on state or local government operations.
- Ensure your municipality creates an incidental committee with the COPP office and track and reports all electioneering communication expenditures to the COPP.
- Speak to your legislators, other elected officials, and agencies about how and why proposed legislation or policies will impact your community.
- Advocate for or oppose candidates or ballot issues on your own time, using your personal email, phone, computer, office supplies, vehicle, or funds. Individual contributions to a candidate, political committee, or ballot issue committee do not require individual campaign reporting.

DON'T:

- Express support for or opposition to any candidate while in a local government building or using your local government’s email, email system, computer, phone, vehicle, letterhead, office supplies, funds, or any other public resources. Public employees are further restricted from such advocacy while on duty or at one’s local government job, and police officers are further restricted from such advocacy while in uniform or if it would interfere with their duties.
- Fail to create an incidental committee and track and report all expenditures related to distributing information to your constituents regarding the impacts of local or state ballot issues on your local government operations.