

VOLUME NO. 33

Opinion No. 24

ELECTIONS - Corrupt Practices Act - Expenditures by legislative candidates. Sections 43-310, 94-1427 and 94-1428, R.C.M. 1947.

HELD: A candidate for the state legislative assembly may expend himself no more than \$180.00 in a primary election and \$120.00 in a general election for campaign expenditures.

June 30, 1970

Honorable Frank Murray
Secretary of State
State Capitol
Helena, Montana 59601

Dear Mr. Murray:

This is to reply to your inquiry concerning the amount and composition of the compensation or salary of members of the legislative assembly for the purpose of determining the proper amount of campaign expenditures which can be made by such legislators themselves under the Corrupt Practices Act of Montana, chapter 14, Title 94, Revised Codes of Montana, 1947.

Section 43-310, R.C.M. 1947, reads in part as follows:

“(1) Holdover members of the legislative assembly and members hereafter elected shall receive twenty dollars (\$20.00) per day, payable weekly, during the session of the legislative assembly, and nine cents (9c) per mile for each mile of travel to and from their residences and the place of holding the session, by the nearest traveled route.

“(2) Members shall also receive fifteen dollars (\$15.00) per day, payable weekly during the session of the legislative assembly, as **reimbursement for expenses** incurred in attending the session. (Emphasis supplied.)

“(3) The majority and minority parties in each house shall hold pre-session caucuses for the purpose of preliminary organization of the respective houses. Holdover senators, senators-elect, and representatives-elect shall receive mileage at the rate of nine cents (9c) per mile for each mile of travel to and from their residences and the place or places of holding the pre-session caucuses.”

Section 94-1427, R.C.M. 1947, states in part as follows:

“No sums of money shall be paid, and no expenses authorized or incurred, by or on behalf of any candidatè to be paid by him, except such as he may pay to the state for printing, as herein provided, in his campaign for nomination to any public office or position in this state, in excess of fifteen percent of **one year’s compensation or salary** of the office for which he is a candidate; provided, that no candidate shall be restricted to less than one hundred dollars in his campaign for such nomination. . . .” (Emphasis supplied.)

Section 94-1428, R.C.M. 1947, has a similar restriction for campaign expenditures for general elections except the restriction is 10 percent instead of 15 percent.

It should be noted that the restrictions set forth in sections 94-1427 and 94-1428, R.C.M. 1947, are limited to monies expended by or on behalf of any legislator for campaign expenses to be paid by such legislator himself.

The first question to be answered is which of the payments to be made to members of the legislative assembly under the terms of section 43-310, R.C.M. 1947, constitutes compensation or salary for the purposes of the Corrupt Practices Act?

The court in **State ex rel. Jaspers v. West**, 125 P.2d 694, 696-697, 13 Wash.2d 514, held that salary and compensation impart the idea of compensation for personal services and not repayment of money necessarily expended in the discharge of the duties of the office.

In the case of **Kirkwood v. Soto**, 25 Pac. 488, 489, 87 Cal. 394, the court found that compensation is synonymous with salary and does not include travel or other incidental expenses.

The Montana Supreme Court in a somewhat similar case, **Kommers et al. v. Palagi**, 111 Mont. 293, 108 P.2d 208, decided that the

term salary or compensation includes only the actual salary paid to a sheriff and does not include the value of the living quarters furnished to him, the amount he received for the board of prisoners and for mileage collected by his office.

In view of the above, it is my opinion that the only payment to legislators pursuant to section 43-310, R.C.M. 1947, which constitutes compensation or salary for the purposes of sections 94-1427 and 94-1428, R.C.M. 1947, is \$20.00 per day. All other payments provided under section 43-310, R.C.M. 1947, constitute reimbursement for expenses or mileage which under the above authority must be excluded.

Sections 94-1427 and 94-1428, R.C.M. 1947, restrict campaign expenditures to a percentage of "one year's compensation or salary." The last question to be answered then is what constitutes one year's compensation or salary of a member of the legislative assembly.

I can locate no decision of the Montana Supreme Court on this point, nor any former attorneys' general opinions. In my opinion, a fair interpretation of such phrase would be that such one year's compensation or salary would constitute an amount equal to the number of days of the regular session, being sixty (60), multiplied by \$20.00, or a total of \$1,200.00.

THEREFORE, IT IS MY OPINION that a candidate for the state legislative assembly may expend himself no more than fifteen (15) percent of twelve hundred dollars (\$1,200.00) compensation or one hundred eighty dollars (\$180.00), in a primary election for campaign expenditures, and such legislator may expend himself no more than ten (10) percent of twelve hundred dollars (\$1,200.00) compensation or one hundred twenty dollars (\$120.00), in a general election for campaign expenditures.

Very truly yours,

ROBERT L. WOODAHL
Attorney General