

**Corrupt Practices Act, Expenses, Candidate Limit of.  
Lieutenant Governor, Expenses of. Candidate, Expenses  
of. Office, Candidate for expenses of.**

The Corrupt Practices Act, with reference to expenditures by Lieutenant Governor, examined and construed.

September 30th, 1916.

Hon. W. W. McDowell, Lieutenant Governor,  
Butte, Montana.

Dear Sir:

I am in receipt of your inquiry relative to the construction of the Corrupt Practices Act of the State of Montana.

- (1) As to the amount which a candidate for the office of Lieutenant Governor is permitted to expend;
- (2) As to whether a political party may rightfully engage one of its candidates as a speaker for the Party and pay his legitimate traveling expenses, and
- (3) As to whether parties not candidates for office may expend money to aid in the election either of a single candidate or of the candidates of a political party.

The Corrupt Practices Act of Montana has not been analyzed by our own Supreme Court, and the questions here presented do not appear to have been considered by Courts of last resort in other jurisdictions having similar laws. It must be conceded that the Act in all its terms and provisions, is not explicit and definite. Its purpose undoubtedly is to prevent corruption and in this light it must be construed. The wisdom of the law is not called in question by anyone, and even if it were unwise it would present a question for legislative consideration. Both the duty and the desire of this office is to ascertain the real meaning of the law and to yield obedience to its mandates.

In Section 8 of the Act, a candidate for the office of Lieutenant Governor is restricted in his expenditures to the sum of \$100.00. It is then provided in the same Section, in effect, that the expenditures made by any of the candidate's relatives, employees or fellow officials "shall be deemed to be that of the candidate himself." Hence, under a literal construction of this law, it is within the power of any of the persons last named to expend in their own way and manner, the full amount allowed for the candidate and thus prevent him from making any campaign whatsoever. Or, if the candidate expended the full \$100

and his relatives expended any sums whatsoever, he would thereby exceed the limit and would be a criminal, although he had no control whatsoever over the parties so expending their own money. This literal construction, of course, cannot obtain.

In the last paragraph of Section 10 of the Act, it is provided that none of the provisions of the Act shall be construed as relating to the rendering of services by speakers, writers, publishers or others, for which no compensation is asked, and it is further provided that the terms of the Act do not prohibit expenditures by Committees of political parties for public speakers, traveling expenses, etc. In Section 12 of the Act, provisions are found relative to political Committees and expenditures of money by private individuals, and there does not appear to be any limit placed upon the amount which may be expended. The phrases "political Committee" and "political agent" are defined in Section 10. "Political Agent" is a person who, upon request or under agreement, receives or disburses money in behalf of the candidate. "Political Committee" is any combination of persons to promote the success or defeat of a candidate, etc. Nowhere does the law attempt to prescribe the qualifications of speakers engaged by political parties, nor does it any place contain any prohibition against the engaging of anyone for such purposes.

This entire Act, in so far as it is penal in its nature, must be strictly construed and we may also keep in mind the constitutional right of citizens, whether candidates or otherwise, to freely advocate their doctrines and principles and to discuss public questions. It is also fundamental that all laws should operate equally upon persons belonging to the same class, yet, here we find that some candidates for State Office are permitted to expend seven or eight hundred dollars, while other candidates, whose duty as candidates requires them to cover the same territory, are limited to one hundred dollars. This, however, may go to the wisdom of the law.

While the opinions of this Department are not final nor binding, nor can we say to a certainty what view a Court of last resort will take relative to these questions, yet, I am of the opinion that,

(1) The candidate for the office of Lieutenant Governor, under the terms of the Act, is permitted to expend \$100.00 and that the expenditures made by his relatives, employes or fellow officials cannot be charged as a part of that \$100, except such expenditure was made by them as his political agents as that term is defined in Section 10 of the Act.

(2) That a political party may engage one of its candidates as a public speaker to advocate the doctrines of the party and may pay his traveling expenses. Of course, if the party engages the candidate merely as a subterfuge and for the purpose of violating the Act, then, the law would be violated, but those are questions which must be determined from the evidence. If good faith is used, the law is not violated.

(3) That persons not candidates may expend money to promote the election or defeat of any candidate or candidates, and that such money so expended is not a part of the amount which may be expended

by the candidate, unless such persons of political committees are made the agents of the candidate as the term is defined in Section 10 of the Act, and that the amount which may be expended by such political committee or private individual is not limited.

Yours very truly,

J. B. POINDEXTER,

Attorney General.