

VOLUME NO. 34

Opinion No. 11

**ELECTION - Corrupt Practice Act - Expenditures by constitutional convention delegate candidates. Sections 23-3301, 43-310, 94-1427, 94-1428, R.C.M. 1947; Article XIX, section 8, Montana Constitution.**

**HELD: A candidate for delegate to the constitutional convention may expend himself no more than \$180.00 in a primary election and \$120.00 in a general election for campaign expenditures.**

August 19, 1971

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

Dear Mr. Murray:

You have requested my opinion as to whether candidates for the office of delegate to the constitutional convention are limited in personal campaign expenditures, pursuant to section 94-1427 and 94-1428, Revised Codes of Montana, 1947, to the amount allowed candidates for the house of representatives, specifically, \$180.00 for the primary and \$120.00 for the general election (based on \$20.00 a day for 60 days).

Article XIX, section 8, of the Montana Constitution provides in part:

“ . . . The number of members of the convention shall be the same as that of the house of representatives, and they shall be elected in the same manner, at the same places, and in the same districts.”

The phrase "elected in the same manner" was interpreted by the Montana Supreme Court in the case of **Forty-second Legislative Assembly v. Lennon**, 28 St. Rptr. 125, decided February 19, 1971. In this case, the court stated at page 132:

"The phrase 'elected in the same manner' used in Article XIX, section 8, of the Montana Constitution refers both to constitutional and statutory provisions for 'nomination' and 'election' of members of the house of representatives.

\* \* \* \*

"Section 23-3301, R.C.M. 1947, expressly provides that delegates to a constitutional convention are chosen by the same nominating and primary election procedures as are members of the house of representatives."

And the court further stated at page 133:

"We hold that the phrase 'elected in the same manner' means exactly what it plainly says — that constitutional delegates are required to be elected by the same election procedures applicable to election of members of the house of representatives without limitation as to the source of such election procedures be they constitutional or statutory."

Therefore, the election procedures used in determining delegates to the constitutional convention are exactly the same as those used in determining members of the house of representatives.

Section 94-1427, R.C.M. 1947, provides in part:

"**No sums of money shall be paid**, and no expenses authorized or incurred, **by or on behalf of any candidate** 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, provides in part:

"**No sums of money shall be paid** and no expenses authorized or incurred **by or on behalf of any candidate who has received the nomination to any public office** or position in this state, except such as he may contribute towards payment for his political party's or independent statement in the pamphlet herein provided for, to be paid by him in his campaign for

election, in excess of ten percent of one year's salary or compensation of the office for which he is nominated; provided, that no candidate shall be restricted to less than one hundred dollars." (Emphasis supplied.)

Pursuant to these code provisions, a candidate for public office is limited in personal campaign expenditures to fifteen percent of his yearly salary in a primary election, and to ten percent of his yearly salary in a general election.

Section 43-310, R.C.M. 1947, provides in part:

"(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."

Article V, section 5, of the Montana Constitution provides that no session of the legislative assembly shall exceed sixty days. Thus, based upon the maximum allowable legislative session, the yearly salary of a legislator would be for sixty days twenty dollars per day for a total of twelve hundred dollars. Applying the above-stated statutory limitations of campaign expenditures to the office of representative, he would be allowed to spend one hundred eighty dollars in personal campaign expenditures in a primary election and one hundred twenty dollars in personal campaign expenditures in a general election. See also 33 **Opinions of the Attorney General**, no. 24, setting forth limitations on personal campaign expenditures by legislative candidates.

Following the rationale of **Forty-second Legislative Assembly v. Lennon**, *supra*, candidates for the office of delegate to the constitutional convention are limited in personal campaign expenditures for the special primary and general election in the same manner as are representatives.

THEREFORE, IT IS MY OPINION that a candidate for the office of delegate to the constitutional convention may spend a maximum of one hundred eighty dollars in personal campaign expenses for the primary election, and a maximum of one hundred twenty dollars in personal campaign expenses in the general election.

Very truly yours,

ROBERT L. WOODAHL  
Attorney General