

VOLUME NO. 36

Opinion No. 42

COMMISSIONER OF CAMPAIGN FINANCES AND PRACTICES—Jurisdiction; CORRUPT PRACTICES ACT—Jurisdiction of Commissioner of Campaign Finances and Practices; ELECTIONS—Jurisdiction of Commissioner of Campaign Finances and Practices; Sections 23-4701, 23-4776, 23-4786, 23-4788, R.C.M. 1947.

HELD: 1. The scope of the Commissioner of Campaign Finances and Practices investigative, enforcement, and prosecutorial powers and duties extends to all of Title 23, R.C.M. 1947.

2. The Commissioner of Campaign Finances and Practices has jurisdiction over all violations in Title 23, with section 23-4701 extending his prosecutorial power over all willful and knowing violations by an election official of any election law.

December 1, 1975

Mr. John N. Hanson
Commissioner of Campaign Finances and Practices
Capitol Station
Helena, Montana 59601

Dear Mr. Hanson:

I am in receipt of your letter concerning Chapter 480, Laws of Montana, Forty-fourth Session. You have requested my opinion on the following questions:

1. Does the scope of the Commissioner's investigative, enforcement, and prosecutorial powers and duties extend to:
 - (a) all of Montana's election laws:
 - (b) Title 23, R.C.M. 1947;
 - (c) Title 23, Chapter 47, R.C.M. 1947?
2. In the context of the answer to the above question, do the types of violations to which the Commissioner's investigative, enforcement and prosecutorial powers and duties extend to:
 - (a) all violations;
 - (b) willful violations which are knowingly and fraudulently performed in contravention or violation of provisions of Title 23, Chapter 47, R.C.M. 1947 (Corrupt Practices Act)?

Title 23 is entitled "Elections", and contains most of the Montana law concerning elections.

Chapter 47 of Title 23 is entitled "Election Frauds and Offenses—Corrupt Practices Act", and created the office of Commissioner of Campaign Finances and Practices. The Act became effective April 21, 1975, giving the Commissioner the power to investigate and prosecute alleged violations which occur from that date forward. The Act also gives the Commissioner the power to promulgate rules and regulations to carry out the provisions of Title 23. These rules are prospective in nature, and will become effective 10 days after publication by the secretary of state. An exception to the effective date of April 21, 1975 is that the first reporting period for any candidate or political committee does not begin until January 1, 1976. Section 22, Ch. 480, Laws of 1975.

There are other sections regarding elections throughout the Revised Codes of Montana 1947. For example, some provisions relating to county elections are found in Title 16; provisions relating to city elections are found in Title 11; provisions relating to school elections are found in Title 75.

The title of Chapter 480 reads in part as follows:

An Act ... Authorizing the Commissioner, in conjunction with the County Attorneys, to enforce Montana's election laws and to regulate Montana's campaign finance laws as specified in Title 23, R.C.M. 1947;

...

The sections pertinent to the scope of the Commissioner's powers and duties are as follows:

23-4776. It is the purpose of this act to ... consolidate and clarify the authority to enforce the election and campaign finance laws as specified in Title 23, R.C.M. 1947.

23-4786. The commissioner shall exercise the following powers and perform the following duties:

- (1) The commissioner of campaign finances and practices shall be responsible for investigating all of the alleged violations of the election laws contained in Title 23, R.C.M. 1947 and shall in conjunction with the county attorneys, be responsible for enforcing all of the state's election laws.
- (2) The commissioner shall select an appropriate staff to enforce the provisions of Title 23, R.C.M. 1947
- (3) The commissioner may hire or retain attorneys ... to prosecute violations of Title 23, R.C.M. 1947. Any ... attorneys so retained or hired ... shall have the power to prosecute ... any criminal or civil actions arising out of a violation of any provision of Title 23, R.C.M. 1947.

The ambiguity you refer to arises out of the title of Chapter 480 and language in section 23-4786 (1). The title of Chapter 480 refers to "Montana's election laws". Section 23-4786 (1) refers to "enforcing all of the state's election laws." Throughout the remainder of Chapter 480, the scope of the commissioner's powers and duties is limited to Title 23, with the exception of section 23-4701, which will be discussed later.

In section 23-4776, the purpose of the act is, in part, "to consolidate and clarify the authority to enforce the election and campaign finance laws as specified in Title 23, R.C.M. 1947." In section 23-4786 (1) the commissioner is charged with investigating alleged violations of election laws contained in Title 23. Section 23-4786 (2) deals with enforcing the provisions of Title 23, and section 23-4786 (3) deals with prosecuting violations of Title 23.

From these repeated references, and the text of Chapter 480 as a whole, it seems obvious that the legislature intended to restrict the scope of the commissioner's powers and duties as to Title 23. It is probable that the word All in section 23-4786 (1) was inserted through inadvertence. If this was the case, the word should be treated as surplusage and disregarded. **Rose v. Sullivan**, 56 Mont. 480, 484, 185 P. 562 (1919). The Montana Supreme Court has also held that:

When the intention of the legislature can be ascertained from the statute, words may be modified, altered or supplied so as to compel conformity of the statute to that intention (2 Lewis Sutherland, *Statutory Construction* [2d. Ed.], 663). **The State of Montana v. Holmes**, 114 Mont. 372, 376, 136 P.2d 220 (1943).

Although the language in the title of Chapter 480 could be read as causing an inconsistency, it causes no ambiguity. Under the accepted rules of statutory construction, the title of a statute may not be resorted to in order to create an ambiguity. The title of a statute is also subordinate to the text in construing the statute. **Manufactures Acceptance Corporation v. Krsul**, 151 Mont. 28, 438 P.2d 667, 671 (1968).

It is clear from these rules of statutory construction that the obvious intent of the legislature, which was to limit the scope of the commissioner's powers and duties to Title 23, should prevail.

Your second question concerns the type of violation over which the commissioner's jurisdiction extends. Your specific question is whether the commissioner's jurisdiction extends to all violations, or is limited to willful and knowing violations.

Section 23-4786 (1) states, in part, that the commissioner ... shall be responsible for investigating **all** of the alleged violations of the election laws contained in Title 23, (Emphasis supplied) Section 23-4786 (3) provides for the prosecution of any criminal or civil action arising out of a violation of **any provision** of Title 23, R.C.M. 1947. (Emphasis supplied). This prosecution power, however, is subject to the control and supervision of the commissioner and section 23-4788. Section 23-4788 deals with the prosecutions and powers of the county attorney.

It is evident from this language that the commissioner has jurisdiction over all violations of Title 23. In addition to this jurisdiction, section 23-4701 specifically extends the commississioner's jurisdiction to include willful or knowing violations of any election law by an election official. Section 23-4701 reads as follows:

23-4701. Every person charged with the performance of any duty, under the provisions of any law of this state relating to elections, or the registration of the names of electors, or the canvassing of the returns of elections, who willfully neglects or refuses to perform such duty, or who, in his official capacity, knowingly and fraudulently acts in contravention or violation of any provision of such laws, is punishable by fine not exceeding one thousand dollars (\$1,000), or by imprisonment in a county jail not exceeding six (6) months, or both.

As discussed earlier, the commissioner's basic jurisdiction is limited to Title 23. This jurisdiction includes investigative, enforcement and prosecutorial powers over electors, contributors, candidates and election officials. Section 23-4701, however, specifically extends the commissioner's prosecutorial powers to cover any willful or knowing violations of any Montana election law by an election official. This extension for example, would cover only willful and knowing violations by election officials of election laws contained in Title 16, Title 11, and Title 75.

THEREFORE, IT IS MY OPINION:

1. The scope of the Commissioner's investigative, enforcement, and prosecutorial powers and duties extends to all of Title 23, R.C.M. 1947.
2. The commissioner has jurisdiction over all violations of Title 23, with section 23-4701 extending his prosecutorial powers over all willful

and knowing violations by an election official of any Montana election law.

Very truly yours,
ROBERT L. WOODAHL
Attorney General