

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 39

OPINION NO. 62

ELECTIONS - Ballot measures, gathering petition signatures at polling place;
ELECTIONS - Duty of election administrator regarding obstructions at polling place;
INITIATIVE AND REFERENDUM - Petitions, gathering signatures at polling place;
MONTANA CODE ANNOTATED - Sections 13-13-122, 13-35-211, 13-35-218;
MONTANA CONSTITUTION - Article II, section 6; article II, section 7; article III, section 4; article V, section 1.

HELD: Orderly gathering of initiative petition signatures at a polling place which does not interfere with the election process or obstruct voter access to the polls may not be prohibited.

4 June 1982

Robert L. Deschamps, III, Esq.
Missoula County Attorney
Missoula County Courthouse
Missoula, Montana 59801

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Dear Mr. Deschamps:

You have requested my opinion regarding the collection of initiative petition signatures at polling places during the primary election. There are no provisions of Montana law that prohibit gathering signatures at the polling place.

Section 13-35-211, MCA, provides:

Electioneering. (1) No person may do any electioneering on election day within any polling place or any building in which an election is being held or within 200 feet thereof, which aids or promotes the success or defeat of any candidate or ballot issue to be voted upon at the election.

(2) No person may buy, sell, give, wear, or display at or about the polls on an election day any badge, button, or other insignia which is designed or tends to aid or promote the success or defeat of any candidate or ballot issue to be voted upon at the election.

This statute prohibits political activity which aids or promotes a ballot issue to be voted upon at the election. The gathering of signatures for initiatives proposed for future elections does not violate the provisions of section 13-35-211, MCA.

During the 1981 legislative session two bills were introduced which would have banned the collection of petition signatures at a polling place. One of the bills, Senate Bill 87, did not pass; the other was significantly modified before passage. 1981 Mont. Laws, ch. 561. Chapter 561 amended section 13-35-218, MCA, which now provides:

(5) No person on election day may obstruct the doors or entries of any polling place or engage in any solicitation of a voter within the room where votes are being cast or elsewhere in any manner which in any way interferes with the election process or obstructs the access of voters to or from the polling place.

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[Emphasis added.] Section 13-13-122, MCA, allows local election administrators to prevent obstructions. Thus local election administrators have the authority to limit the collection of signatures if that activity creates an obstruction at a specific polling place. However, in my opinion, orderly signature gathering which does not interfere with the election process may not be prohibited.

Your inquiry has constitutional implications. The United States Supreme Court has held that states may require shopping centers to allow citizens to distribute handbills and gather signatures. Pruneyard Shopping Center v. Robins, 447 U.S. 74 (1980). The Supreme Court held that it would defer to each state's interpretation of its own constitution in this field.

Montana's Constitution contains a number of provisions that guarantee an open initiative process. Article III, section 4, specifically grants the people the right to enact laws by initiative. Article V, section 1, provides that the powers of initiative and referendum are reserved to the people. These provisions, coupled with the provisions of our constitution ensuring freedom of speech, art. II, § 7, and the right to petition for grievances, art. II, § 6, demonstrate a strong commitment by the framers of our constitution to the initiative process. Any interference with the initiative process must be narrowly construed in light of those constitutional provisions.

THEREFORE, IT IS MY OPINION:

Orderly gathering of initiative petition signatures at a polling place which does not interfere with the election process or obstruct voter access to the polls may not be prohibited.

Very truly yours,

MIKE GREELY
Attorney General