

OFFICE OF THE CITY ATTORNEY

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Legal Opinion 2020-014

TO: Mayor John Engen, City Council, Dale Bickell, Marty Rehbein, Kirsten Hands, Ginny Merriam, Jaeson White, Scott Hoffman, Mike Colyer, Chris Odlin, Richard Stepper, Laurie Clark, Leigh Griffing, Rob Gannon

CC: Department Attorney

FROM: Jim Nugent, City Attorney

DATE October 21, 2020

RE: Pursuant to Montana state election law, 13-35-218 MCA a person in order to induce or compel a person to vote or refrain from voting may not directly or indirectly use or threaten to use any force, coercion, violence, restraint, or undue influence against any person. Pursuant to 45-7-102 MCA it is a felony criminal offense to threaten harm to attempt to influence a person in political matters including voting.

FACTS:

During the Missoula City Council's Monday evening October 19, 2020 city council meeting, there was concerned comment from at least three citizens about voter safety polling places serving as ballot drop off at the upcoming November 3, 2020 general election.

ISSUE(S):

Are there Montana state and Missoula Municipal Code laws addressing voter safety and any attempted undue influence at election polling places on election day?

CONCLUSION(S):

Yes. Pursuant to Montana state election law 13-35-218 MCA it is unlawful for any person in order to induce or compel a person to vote or refrain from voting to directly or indirectly use or threaten to use force, coercion, violence, restraint, or undue influence any other person. Pursuant to section 45-7-102 MCA it is a felony for any person to threaten harm to attempt to influence a person in political matters, including voting. Pursuant to Missoula Municipal Code section 8.58.010 firearms are prohibited at any public election polling place or any other locations of public assembly where persons gather together to conduct and/or administer any public election while election related activities are taking place.

LEGAL DISCUSSION:

Section 13-35-103 MCA makes knowing violation of Montana election laws a misdemeanor criminal offense. Section 13-35-103 MCA states:

13-35-103. VIOLATIONS AS MISDEMEANOR. A person who knowingly violates a provision of the election laws of this state for which no other penalty is specified is guilty of a misdemeanor"

Section 13-35-218 of Montana's election laws entitled COERCION OR UNDUE INFLUENCE OF VOTERS provides as follows:

13-35-218. Coercion or undue influence of voters. (1) A person, directly or indirectly, individually or through any other person, in order to induce or compel a person to vote or refrain from voting for any candidate, the ticket of any political party, or any ballot issue before the people, may not:

- (a) use or threaten to use any force, coercion, violence, restraint, or undue influence against any person; or
- (b) inflict or threaten to inflict, individually or with any other person, any temporal or spiritual injury, damage, harm, or loss upon or against any person.

(2) A person may not, by abduction, duress, or any fraudulent contrivance, impede or prevent the free exercise of the franchise by any voter at any election or compel, induce, or prevail upon any elector to give or to refrain from giving the elector's vote at any election.

(3) A person may not, in any manner, interfere with a voter lawfully exercising the right to vote at an election in order to prevent the election from being fairly held and lawfully conducted.

(4) A person on election day may not 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 that in any way interferes with the election process or obstructs the access of voters to or from the polling place.

Pursuant to section 13-13-113 MCA, the text of section 13-35-218 MCA, set forth immediately above, must be posted in conspicuous places in polling places along with the text of several other Montana election laws.

13-13-113. Warning notice to be posted. (1) Warning notices must be posted in conspicuous places in the polling place. Each notice must be headed "WARNING" in large letters and must state:

"The sections of law printed below list specific conduct or actions which may cause an elector to be subject to criminal prosecution. This is not intended to be a complete printing of all laws pertaining to election violations."

- (2) Below this statement must be printed the text for sections **13-35-201, 13-35-202, 13-35-206, 13-35-211, 13-35-214, 13-35-217, and 13-35-218**.
- (3) The notice may also contain any other information prescribed by the secretary of state.

Montana state criminal law section 45-7-102 MCA entitled THREATS AND OTHER IMPROPER INFLUENCE IN OFFICIAL AND POLITICAL MATTERS, makes it a felony criminal offense for any person to threaten harm to any person, the person's spouse, child, parent, sibling or the person's property with the purpose to influence the person's decision, opinion, recommendation or vote. Section 45-7-102 MCA states as follows:

45-7-102. Threats and other improper influence in official and political matters.

- (1) A person commits an offense under this section if the person purposely or knowingly:
 - (a) (i) threatens harm to any person, the person's spouse, child, parent, or sibling, or the person's property with the purpose to influence the person's decision, opinion, recommendation, vote, or other exercise of discretion as a public servant, party official, or voter;
 - (ii) threatens harm to any public servant, to the public servant's spouse, child, parent, or sibling, or to the public servant's property with the purpose to influence the public servant's decision, opinion, recommendation, vote, or other exercise of discretion in a judicial or administrative proceeding;
 - (iii) threatens harm to any public servant or party official, the person's spouse, child, parent, or sibling, or the person's property with the purpose to influence the person to violate the person's duty or to prevent the public servant or party official from accepting or holding any public office;
 - (iv) privately addresses to any public servant who has or will have official discretion in a judicial or administrative proceeding any representation, entreaty, argument, or other communication designed to influence the outcome on the basis of considerations other than those authorized by law;
 - (v) as a juror or officer in charge of a jury receives or permits to be received any communication relating to any matter pending before the jury, except according to the regular course of proceedings; or
- (b) injures the person or property of a public servant or injures the servant's spouse, child, parent, or sibling because of the public servant's lawful discharge of the duties of the office or to prevent the public servant from discharging the public servant's official duties.
- (2) It is no defense to prosecution under subsections (1)(a)(i) through (1)(a)(iv) and (1)(b) that a person whom the offender sought to influence was not qualified to act in the desired way, whether because the person had not yet assumed office or lacked jurisdiction or for any other reason.
- (3) A person convicted under this section shall be fined not to exceed \$50,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

Pursuant to section 8.58.010 Missoula Municipal Code, most recently amended in 2018 prior to the 2018 general election, the City of Missoula prohibits the wearing, bearing, or otherwise carrying any firearm, whether concealed or unconcealed, or any explosive device into any public election polling places or any locations of public assembly where persons gather to conduct and/or administer any public election while election related activities are taking place. Section 8.58.010 MMC provides as follows:

8.58.010 Firearms prohibited in certain public buildings or other locations of public assembly—Exceptions

A. Under the authority provided to counties, cities, towns, consolidated local governments or other local government units by 45-8-351 (2)(a) Montana Code Annotated which states “For public safety purposes, a city or town may regulate the discharge of rifles, shotguns, and handguns. A county, city, town, consolidated local government, or other local government unit has power to prevent and suppress the carrying of concealed or unconcealed firearms to a public assembly, publicly owned building, park under its jurisdiction, or school, and the possession of firearms by convicted felons, adjudicated mental incompetents, illegal aliens, and minors,” no person shall wear, bear, or otherwise carry any firearm, whether concealed or unconcealed, or any explosive device into:

1. Missoula city hall
2. Missoula City Council Chambers
3. City Council meeting buildings
4. Public museums
5. Public library
6. Public parks under the City’s jurisdiction as shown in [Exhibit A](#). Amendments to Exhibit A shall be made by City Council resolution.
7. Any public election polling places
8. Public school building within the city, excluding The University of Montana
9. Any other locations of public assembly where persons gather together to conduct and/or administer any public election while election related activities are taking place.

B. This section shall not apply to:

1. Peace officers of the state or the United States government;
2. Persons participating or displaying guns and weapons at shows authorized by the city or school;
3. Persons participating in hunter or gun safety courses sanctioned by the Montana Fish Wildlife and Parks Department and authorized by the city or school;
4. Open space conservation lands that are under the City’s jurisdiction;
5. Commuter shared use paths or trails as listed in [Exhibit B](#). Amendments to Exhibit B shall be made by City Council resolution;
6. Persons specifically authorized by the city or school to carry firearms or demonstrate or use explosive devices on its premises.

Since there is a general election November 3, 2020, it is also an important time to generally remind persons of the provisions of section 13-35-226 MCA which states as follows:

13-35-226. Unlawful acts of employers and employees. (1) It is unlawful for any employer, in paying employees the salary or wages due them, to include with their pay the name of any candidate or any political mottoes, devices, or arguments containing threats or promises, express or implied, calculated or intended to influence the political opinions or actions of the employees.

(1) It is unlawful for any employer, in paying employees the salary or wages due them, to include with their pay the name of any candidate or any political mottoes, devices, or

arguments containing threats or promises, express or implied, calculated or intended to influence the political opinions or actions of the employees.

(2) It is unlawful for an employer to exhibit in a place where the employer's workers or employees may be working any handbill or placard containing:

(a) any threat, promise, notice, or information that, in case any particular ticket or political party, organization, or candidate is elected:

(i) work in the employer's place or establishment will cease, in whole or in part, or will be continued or increased;

(ii) the employer's place or establishment will be closed; or

(iii) the salaries or wages of the workers or employees will be reduced or increased; or

(b) other threats or promises, express or implied, intended or calculated to influence the political opinions or actions of the employer's workers or employees.

(3) A person may not coerce, command, or require a public employee to support or oppose any political committee, the nomination or election of any person to public office, or the passage of a ballot issue.

(4) A public employee may not solicit support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue while on the job or at the place of employment. However, subject to **2-2-121**, this section does not restrict the right of a public employee to perform activities properly incidental to another activity required or authorized by law or to express personal political views.

(5) A person who violates this section is liable in a civil action authorized by **13-37-128**, brought by the commissioner of political practices or a county attorney pursuant to **13-37-124** and **13-37-125**.

CONCLUSION(S):

Yes. Pursuant to Montana state election law 13-35-218 MCA it is unlawful for any person in order to induce or compel a person to vote or refrain from voting to directly or indirectly use or threaten to use force, coercion, violence, restraint, or undue influence any other person. Pursuant to section 45-7-102 MCA it is a felony for any person To threaten harm to attempt to influence a person in political matters, including voting. Pursuant to Missoula Municipal Code section 8.58.010 firearms are prohibited at any public election polling place or any other locations of public assembly where persons gather together to conduct and/or administer any public election while election related activities are taking place.

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/s/

Jim Nugent, City Attorney

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