



Legislative Background Paper
for the
State Administration and Veterans Affairs' Interim Committee
2013-14 Interim

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HJR 1 Study:
Legislative History on the
Office of the Commissioner of Political Practices

Structure of Office and Scope of Duties

Purpose

The purpose of this briefing paper is to provide historical context to the committee's examination of the Office of the Commissioner of Political Practices (Commissioner) under the House Joint Resolution No. 1 study so that members of the State Administration and Veterans' Affairs Interim Committee (SAVA) may better understand why and how the laws concerning the Commissioner's nomination and appointment and the structure and power of the office evolved as they did.

Butte's Copper Kings

Montana's colorful history of political corruption during the turn of the last century financed by the Copper Kings of Butte is well-known. A Historical Society introduction to the book "The War of the Copper Kings" by C. B. Glasscock summarizes the state of Montana's politics at the time as follows:

Those who controlled the copper mines stood to make billions of dollars, the prize sought by three men who fought for Butte's mineral wealth with greed and generosity, cruelty and compassion, cowardice and courage. In this astonishing battle, they used their fabulous wealth to buy courts, newspapers, politicians, banks, police, and anything and anyone that could help them or hinder their opponents. To get what they wanted, their money flowed like snowmelt throughout the mile-high city and eventually reached the nation's capital.

As noted in a 2012 Montana Law Review Article, the 1899 election of Copper King William Andrews Clark to the U.S. Senate is the most notorious example of Montana's political corruption. At that time, U.S. Senators were elected by state legislatures. Clark is reputed to have spent millions of dollars to brazenly buy the votes of Montana legislators and thus his U.S. Senate seat.

However, the U.S. Senate Committee on Privileges and Elections investigated the many charges of corruption that were made and ultimately concluded that Clark's election should be declared void. Clark resigned rather than battle the committee's findings, but the seismic waves from the far-reaching effects of political corruption in Montana led to numerous laws aimed at cracking down on political corruption, not only in Montana, but throughout the nation.¹

1912 - Montana Corrupt Practices Act - County Attorneys to Enforce

Reeling from this tide of political corruption, Montana voters attempted to take back their government from the Copper Kings and passed a 55-section statutory initiative known as the Montana Corrupt Practices Act of 1912 (Act). This Act, although it has been substantially updated along the way, forms the core of Montana's campaign practice laws still in statute today.

When the Act took effect in 1913, it provided that the election administrators (i.e., the Secretary of State for statewide offices and local town, city, or county clerks and recorders for local offices) were responsible for monitoring compliance with the Act. Under the Act, any person could initiate a complaint with the election administrator. A complaint had to be in writing, be sworn to, and detail the grounds for the complaint. If an election administrator received a complaint or found irregularities in reports to be filed with the administrator's office, the administrator was required to investigate and "forthwith in writing notify the delinquent person"². If the alleged violator failed to comply within 10 days of notification of the violation, the election official was required to "forthwith"³ contact the appropriate county attorney and provide the county attorney with all the papers relating to the case. The county attorney had 60 days to review the case and either dismiss it or proceed with a civil or criminal action against the alleged violator.

The Act also prohibited a person from accepting, receiving, or paying money or "any valuable consideration for becoming or for refraining from becoming a candidate".⁴ The Act provided that anyone could make a complaint of corruption to any district judge. If the judge was convinced that such bribery had taken place, the judge could direct the county attorney to institute criminal proceedings against any and all persons involved in the corrupt practices. A testament to how frustrated the citizens of Montana had become with the Copper Kings and their cohorts purchasing

¹ Larry Howell, "Once Upon a Time in the West: *Citizens United*, *Caperton*, and the War of the Copper Kings", 73 Mont. L. Rev. 25 (2012).

² Laws of Montana 1913, p. 601. Citizen Initiative, Montana Corrupt Practices Act of 1912, Sec. 14.

³ Ibid.

⁴ Ibid, p. 609, Sec. 37.

political officials, the Act specified that if a county attorney failed to prosecute the case (i.e., to "faithfully perform any duty imposed"⁵ under the Act), the county attorney could be charged with a misdemeanor punishable by forfeiture of the office and by a fine or imprisonment, or both.⁶ Requiring a county attorney to prosecute and threatening civil and criminal penalties for failure to do so was probably not constitutional. But, this provision in the 1912 initiative language seems to be a testament to the level of frustration Montana citizens felt against public officials who failed to do anything to curb blatant acts of political corruption.

1975 - Commissioner of Campaign Finances & Practices

A comprehensive overhaul of Montana's campaign laws came in 1975, when Senator Mike Greely, who later became Montana's Attorney General, carried Senate Bill No. 76. The bill was part of a package of three election reform bills aimed at consolidating and updating the Corrupt Practices Act of 1912. Senate Bill No. 76 revised and reordered existing sections but also enacted several new campaign practices provisions.⁷

Commissioner to be appointed by legislators

Among the bill's new provisions was the creation of the position of a Commissioner of Campaign Finances and Practices (Commissioner). The Commissioner was given the powers and duties previously assigned to the election administrators. The bill provided for the appointment of the Commissioner as follows:

- the Commissioner was to be appointed by a majority of a four-member legislative selection committee, which consisted of the;
 - speaker of the House;
 - president of the Senate;
 - minority leader in the House; and
 - minority leader in the Senate.
- the Montana Supreme Court was to appoint a fifth member to the selection committee if there was a tie vote;
- the Commissioner's term was set at 5 years, the Commissioner could not be reappointed, and the person was precluded from being a candidate for public office for 5 years after the person's term as Commissioner expired;

⁵ Ibid.

⁶ Ibid.

⁷ Ch. 480, L. 1975.

- the Commissioner could be removed by legislative impeachment; and
- the Commissioner's office was administratively attached to the Office of the Secretary of State.

A motion to amend the bill to provide that the Secretary of State would appoint the Commissioner failed in the Senate State Administration Committee by a vote of 5 to 2, but there is no record of substantive debate about this idea.⁸

Commissioner authorized special prosecutors

Under Sen. Greely's 1975 bill, the Commissioner was given the authority to hire or retain attorneys who were empowered to act as special prosecutors. County attorneys retained concurrent jurisdiction to prosecute violations but could waive their right to prosecute. The bill provided that if the county attorney declined to prosecute, the commissioner could initiate the prosecution.

Proponents and opponents

Proponents at the bill included a representative of Governor Tom Judge's office, the AFL-CIO, the League of Women Voters, the state Democratic Party, and Secretary of State Frank Murray. The lone opponent, who appeared only during the senate hearing, was a representative of the Montana Chamber of Commerce who argued that the office would become a "super office" and the Commissioner was being given "super powers".⁹

1979 - Governor to Appoint

Legislators to nominate

During the 1979 regular legislative session, Rep. Ralph Eudaily (R-Missoula) introduced House Bill No. 456, revising campaign laws. According to the minutes of the committee hearings, HB 456 was one of several bills produced by the Interim Subcommittee on Legal Services and Election Laws. The bill provided that the governor rather than the legislative committee would appoint the Commissioner, though the Governor's appointment was subject to Senate confirmation. Under the bill, the four-member legislative committee was transformed into a nomination committee. The nomination committee was required to submit "a list of not less than two or more than five names of individuals for his [the Governor's] consideration".¹⁰ The bill also provided that a "majority of the members of the

⁸ 44th Legislature, Senate State Administration Committee, Minutes, Feb. 15, 1975.

⁹ Ibid.

¹⁰ Sec. 1, Ch. 483, L. 1979.

selection committee shall agree upon each nomination".¹¹ The bill also changed the Commissioner's term of office from 5 years to 6 years. These provisions have not been substantially changed since 1979 and so remain current law.

Separation of powers at issue

According to the summary minutes available from committee hearings on HB 456, there had been a state district court decision arising out of an alleged violation of the campaign laws in Missoula County.¹² Although the case was dismissed and there is nothing in the court's decision concerning appointment powers, testimony during the hearings on HB 456 and a report to the governor by the Commissioner imply that, during the course of that case, concerns arose about the method of the Commissioner's appointment. The concern was that the legislative appointment of the Commissioner and the Montana Supreme Court's role in appointing a member to the selection committee to break tie votes could be unconstitutional because legislators and the Montana Supreme Court were being given powers that properly belonged to the executive branch under the separation of powers doctrine. This concern could be why the bill not only provided for the Governor to make the appointment but also struck the provision that the Montana Supreme Court would appoint a fifth member to the legislative committee to break a tie vote. At any rate, although the Montana Supreme Court's role was stricken, the bill did not make any substitute provision for breaking a tie vote in what became the four-member nominating committee.

1980 - Initiative No. 85 - The Lobbyist Disclosure Initiative

Legislation failed, citizen initiative passed

After legislation proposed to tighten Montana's lobbying disclosure laws in 1977 and 1979 failed,¹³ a group called Montanans for Lobbying Disclosure¹⁴ successfully petitioned to place their Lobbyist Disclosure Initiative on the November 1980 ballot. The initiative passed 259,698 votes to 76,358 votes.¹⁵

Lobbying and ethics duties become Commissioner's

Under the initiative, the Commissioner rather than the Secretary of State became

¹¹ Ibid.

¹² *State v. Matthews*, 183 Mont. 405, 600 P.2d 188 (1979).

¹³ Legislative Services Division, History and Final Status, 1977 and 1979.

¹⁴ Newspaper Archive of The Mountaineer, Big Sandy, Montana, November 29, 1979, p. 3.
<http://mou.stparchive.com/Archive/MOU/MOU11291979P03.php>

¹⁵ Montana Office of Secretary of State.

responsible for the administration and enforcement of Montana's lobbying laws contained in Title 5, chapter 7, of the Montana Code Annotated (MCA). The initiative also required elected officials to file business disclosure statements with the Commissioner under a statute now codified in Title 2, chapter 1, MCA. This chapter of code governs ethical conduct by elected officials, appointed state officials, and public employees. Finally, the initiative changed the title of the Commissioner's office from Commissioner of Campaign Finances and Practices to the Commissioner of Political Practices.

2005 - Qualifications and Restrictions for Holding Office

During the 2005 Legislative Session, Rep. John Sinrud (R-Bozeman) introduced House Bill No. 386, which, as passed:

- required the Commissioner to be a U.S. citizen, a resident of Montana, and a registered voter;¹⁶ and
- prohibited the Commissioner from:
 - holding any other position of public trust or engaging in any other occupation or business that interferes with or is inconsistent with the duties of the office;
 - participating in any political activity or campaign during the Commissioner's term of office;
 - making contributions to support or oppose a candidate, political committee, or ballot issue;
 - attending any political fundraising event;
 - participating in any matter that results in a real or perceived conflict of interest or that involves a relative.¹⁷
- required that a decision by the Governor to remove the Commissioner must be stated in writing and that the removal was subject to judicial review;¹⁸
- eliminated the provision prohibiting the Commissioner from being a candidate for public office for 5 years after leaving office as Commissioner;¹⁹

¹⁶ Section 13-37-107, MCA, enacted by Sec. 1, Ch. 479, L. 2005.

¹⁷ Section 13-37-108, MCA, enacted by Sec. 2, Ch. 479, L. 2005.

¹⁸ Amendment to section 13-37-102(2), MCA, by Sec. 5, Ch. 479, L. 2005.

¹⁹ Amendment to section 13-37-103, MCA, by Sec. 6, Ch. 479, L. 2005.

and

- required the Commissioner to recuse himself or herself in matters where there could be a real or perceived conflict of interest and to appoint a deputy who meets the qualification criteria.²⁰

One proponent testified in the House State Administration Committee hearing. No one testified in opposition. The Commissioner of Political Practices, Gordon Higgins, testified as an informational witness.²¹ No proponents, opponents, or informational witnesses testified during the Senate State Administration Committee hearing.²² The bill received third-reading votes of 84 to 16 in the House and 50 to 0 in the Senate.²³

In Summary

Originally, under the Corrupt Practices Act of 1912, the Secretary of State and local election administrators monitored compliance with campaign finance disclosure laws, while county attorneys prosecuted alleged violations. Complaints of political corruption and bribery could be made by anyone directly to a district court judge. If a county attorney failed to prosecute when a judge directed the county attorney to prosecute, the county attorney could be charged with a misdemeanor for failure to faithfully execute the duties of the office and be forced to forfeit office.

A bill by Sen. Mike Greely established the Office of Commissioner of Campaign Finances and Practices in 1975. The bill also substantially revised and updated the Corrupt Practices Act. Under the bill, the Commissioner was to be appointed by a four-member legislative committee and was given the powers to receive complaints, investigate, and issue orders of noncompliance, which were previously in the hands of election administrators. County attorneys retained jurisdiction to prosecute but could waive that right. If the county attorneys declined prosecution, attorneys hired or contracted by the Commissioner could become special prosecutors.

Concern over the 1975 law's method of appointing the Commissioner led to a bill by Rep. Eudaily in 1979 to change the law so that the Governor would appoint the Commissioner, subject to Senate approval. The four-member legislative selection committee was changed to a nominating committee, but the Governor was not required to appoint a person who the committee nominated. The Supreme Court's

²⁰ Amendment to section 13-37-111, MCA, to create new subsections (3) through (5) by Sec. 7, Ch. 479, L. 2005.

²¹ House State Administration Committee, Minutes, Feb. 4, 2005.

²² Senate State Administration Committee, Minutes, April 1, 2005.

²³ Legislative Services Division, History and Final Status, 2005.

role in appointing a member to the four-member committee to break ties was also axed.

A citizen initiative in 1980, the Lobbying Disclosure Act, substantially tightened regulations on lobbyists and those who hired them, and handed the job of enforcing those laws to the Commission. The initiative also gave the Commissioner the responsibility to enforce ethics laws and created a new requirement that public officials file business disclosure statements. Under the initiative, the Commission's title was changed from Commissioner of Campaign Finances and Practices to the Commissioner of Political Practices.

Qualifications and restrictions were added to the law in 2005 as a result of a bill brought by Rep. John Sinrud. The bill provided that the Commissioner had to be a U.S. citizen and registered voter in Montana, prohibited the Commissioner from holding another public or private job that would interfere with the Commissioner's performance of duties, and required the Commissioner recuse himself or herself if the Commissioner had a real or perceived conflict of interest in a case.

Understanding this evolution of current laws governing the structure of the Commissioner's office and the scope of the Commissioner's jurisdiction will inform SAVA's HJR 1 study on whether and how to further revise the Commissioner's office and authority.

Attachment 1 - Montana Corrupt Practices Act of 1912

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CORRUPT PRACTICES ACT
PASSED BY INITIATIVE

LAWS OF MONTANA 1913

592 LAWS INITIATED AND PASSED BY THE PEOPLE.

1912

LAWS INITIATED AND PASSED BY THE PEOPLE. 593

ating Elections Law shall be certified in like manner as nominations of candidates of such political parties for elective public offices. Every such delegate to a national convention to nominate candidates for President and Vice-President, shall subscribe to an oath of office that he will uphold the Constitution and the laws of the United States and of the State of Montana, and that he will, as such officer and delegate, to the best of his judgment and ability, faithfully carry out the wishes of his political party as expressed by its voters at the time of his election.

Sec. 5. The committee or organization which shall file a petition to place the name of any person on the nominating ballot of their political party to be voted for by its members for expression of their choice for nomination as the candidate of such party for President or Vice-President of the United States, shall have the right, upon payment thereof, to four pages of printed space in the campaign books of such political party provided for by law. In this space said committee shall set forth their statement of the reasons why such person should be voted for and chosen by the members of their party in Montana and in the Nation as its candidate. Any qualified elector of any such political party who favors or opposes the nomination of any person by his own political party as its candidate for President or Vice-President of the United States, may have not exceeding four pages of space in his aforesaid party nominating campaign book, at a cost of one hundred dollars per printed page, to set forth his reasons therefor.

Sec. 6. Every person regularly nominated by a political party, recognized as such by the laws of Montana for President or Vice-President of the United States, or for any office to be voted for by the electors of the State at large, or for Senator or Representative in Congress, shall be entitled to use four pages of printed space in the State campaign book provided for by law. In this space, the candidate, or his supporters with his written permission filed with the Secretary of State, may set forth the reasons why he should be elected. No charge shall be made against candidates for President and Vice-President of the United States for this printed space. The other candidates above named shall pay at the rate of one hundred dollars per printed page for said space, and said payment shall not be counted as a part of the ten per cent. of one year's salary that each candidate is allowed to spend for campaign purposes.

Sec. 7. All acts or parts of acts in conflict with the provisions of this act are hereby repealed.

A BILL.

To propose by initiative petition a law to limit candidates' election expenses; to define, prevent and punish corrupt and illegal practices in nominations and elections; to secure and protect the purity of the ballot; to provide for furnishing information to the electors and to provide the manner of conducting contests for nominations and elections in certain cases.

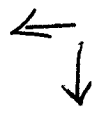
Be it enacted by the People of the State of Montana:

Section 1. 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 per cent. 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. No sums of money shall be paid, and no expenses authorized or incurred, contrary to the provisions of this act, for or on behalf of any candidate for nomination. For the purposes of this law the contribution, expenditure, or liability of a descendant, ascendant, brother, sister, uncle, aunt, nephew, niece, wife, partner, employer, employee, or fellow official or fellow employee of a corporation shall be deemed to be that of the candidate himself.

Section 2. Any candidate, and unless he notifies the Secretary of State that he refuses them permission, the friends of any candidate for nomination to any state or district office, when the district is composed of one or more counties, may file with the Secretary of State, for publication as herein provided, not later than the thirty-third day before the biennial primary nominating election, with his portrait cut if he wishes, a printed or typewritten statement or statements, on the conditions hereinafter set forth, over his or their signatures, stating the reasons why he should be nominated; provided, that no candidate, nor his friends, shall be allowed to file any such statements, unless his petition for nomination is duly filed with the Secretary of State, not later than the forty-first day before said nominating election. Any person or persons opposing the nomination of any such candidate may, not later than the thirty-ninth day, before said nominating election,

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file with the Secretary of State their printed or typewritten statements over their signatures, of the reasons why such candidate should not be nominated, but every such statement shall be accompanied by proof, by affidavit or sheriff's return, that they have caused to be served personally and in person, upon such candidate a true copy of such statement. Each candidate shall be allowed one page of printed matter and those opposing him shall each be allowed one page of space on equal terms with him as hereinafter provided. Nothing in this law shall be deemed to make any such statement or the authors thereof, free or exempt from any civil or criminal action or penalty, because of any false, slanderous or libelous statements offered for printing or contained in said pamphlet. The person or persons procuring, making, composing or offering such statements for filing, shall be deemed the authors and publishers thereof.

Section 3. Candidates for nomination shall pay for one page of space in the publication herein provided for as follows: For the office of United States Senator in Congress, one hundred dollars; for Representative in Congress one hundred dollars; for Justice of the Supreme Court, seventy-five dollars; for Governor, one hundred dollars; for Secretary of State, one hundred dollars; for State Treasurer, one hundred dollars; for State Auditor, one hundred dollars; for State Superintendent of Public Instruction, seventy-five dollars; for Railroad Commissioner, one hundred dollars; for Attorney General, one hundred dollars; for Clerk of the Supreme Court, seventy-five dollars; for Lieutenant Governor fifty dollars; for Senator or Representative in the Legislative Assembly, ten dollars; for District Judge, fifty dollars; for candidates for any other office for a district consisting of one or more counties or state office, fifty dollars. Any candidate may have additional space at the rate of one hundred dollars per page, but no payment shall be received for less than a full page; provided, that not more than three additional pages shall be allowed to any one candidate. All payments required by this section shall be made to the Secretary of State when the statement is offered to him for filing, and be by him paid into the general fund in the state treasury.

Section 4. Not later than the thirtieth day before the primary nominating election, the Secretary of State shall hand to the Official Printer all of such statements and portrait cuts, properly compiled, edited, prepared and indexed for printing; it shall be the Official Printer's duty to print and bind the same in pamphlet form, printing the pictures of candidates

with and as a part of their several statements, where such portrait cuts are offered; statements of those who directly oppose any candidate shall follow next after his statement. All of the statements filed for and against all the candidates for nomination to each office shall be printed in the order in which candidates' names are grouped under the title to their offices on the official ballot at the nominating election. In preparing said pamphlets for printing, the Secretary of State shall compile the copy for the same in such form as to make it most convenient for the Official Printer to print and bind under one cover, separately for each political party, the statements only of candidates to be voted for by members of that party for nomination in the same electoral district or division; that is to say, the statements and arguments of all candidates seeking republican votes in Ravalli county for nominations by the republican party to state and district offices, for a district comprising one county or more, shall be printed and bound under one cover, and the same with the democratic and any other party required to nominate its candidates at said nominating election. The same method shall be applied in printing the pamphlets for all other counties and districts, but no picture, statement or argument for or against any candidate for nomination shall be included in the copy of said pamphlet going to any county where such candidate is not to be voted for. The Official Printer shall begin the delivery of said pamphlets to the Secretary of State as quickly as possible, and not later than the twentieth day before the nominating election, and complete the same not later than the fifteenth day before said nominating election, printing and delivering first so far as practicable, the pamphlets for the counties in the order of their distance from the state capital. At the time of delivering the copy to the Official Printer, the Secretary of State shall order the number of copies he estimates will be necessary for each county.

Section 5. The several county clerks shall obtain the post-office address of each voter who registers and on the seventeenth day preceding the nominating election, said county clerks shall mail to the Secretary of State the name and post-office address of every voter registered at that time in their respective counties; immediately on the close of registration for such nominating election, and again at the close of registration for the general election, they shall deliver to the Secretary of State the postoffice address of every voter who registers during the said interval. At least eight days before the regular biennial primary nominating election, the Secretary of

State shall forward by mail to every voter a copy of each pamphlet containing the names and statements herein provided for. The pages of the pamphlets required by this act shall be six by nine inches in size, and the printed matter therein shall be set in eight point Roman faced type, single leaded, and twenty-five ems pica in width, with proper heads. In the foot margin of every page of the party pamphlets for nominating election shall be shown the authority for the information therein, as "The information furnished by (name of candidate or name of his friends or opponents)," as the case may be. In the foot margin of every page of the pamphlet herein provided for the general election shall be shown the authority for the statements thereof, as "This information furnished by (title of committee or managing agent of the political party or name of the independent candidate)," as the case may be.

Section 6. Not later than the thirtieth day before the regular biennial general election the state executive committee or managing officers of any political party or organization having nominated candidates, but no others except independent candidates, may file with the Secretary of State portrait cuts of its candidates and typewritten statements and arguments for the success of its principles and the election of its candidates, and opposing or attacking the principles and candidates of all other parties. Not later than the twenty-eighth day before said general election the Secretary of State shall deliver to the Official Printer properly compiled and prepared for printing, the said portrait cuts, statements and arguments, with an order for the number of pamphlet copies of the same necessary to supply one, at least, complete as to the candidates to be voted for in any county for which the same may be designed, for every registered voter within the State of Montana. The Official Printer shall begin delivering said pamphlets to the Secretary of State as soon as possible, and shall complete the same within twelve days. The Secretary of State shall begin mailing the pamphlets to the voters of the state as soon as they are delivered to him, and shall complete the mailing on or before the tenth day before said general election.

Section 7. All the portrait cuts, statements and arguments of all the political parties and independent candidates shall be bound together in one pamphlet, and no party shall have more than twenty-four pages, nor an independent candidate more than two pages therein. The political parties and independents shall pay to the Secretary of State for the public

treasury for said pamphlet at the time of filing their copy with him, at the rate of fifty dollars for each printed page of space in said pamphlet used by such party or independent candidate. The provisions of the preceding sections requiring estimates of the number of pamphlets for each county, limitations on the candidates' names, statements and pictures to be included in the pamphlets going to each county, and the manner of distribution, shall apply in like manner to the pamphlets herein provided for the general election.

Section 8. 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 per cent. 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. No sum of money shall be paid and no expenses authorized or incurred by or on behalf of any political party or organization to promote the success of the principles or candidates of such party or organization, contrary to the provisions of this act. For the purposes of this act the contribution, expenditure or liability of a descendant, ascendant, brother, sister, uncle, aunt, nephew, niece, wife, partner, employer, employee or fellow official or fellow employee of a corporation shall be deemed to be that of the candidate himself.

Section 9. In cities of more than ten thousand population, any candidate for nomination or election to any elective municipal office may file with the City Clerk, Auditor or Recorder, not later than the fifteenth day before the municipal primary nominating election, a statement of the reasons why he should be nominated and elected, and portrait cut if he desires, on the conditions hereinafter set forth. Such candidate shall pay for the services herein provided at the rate of twenty dollars for each printed page of space; no payment shall be received for less than a full page. All payments made under this section shall be made to the City Clerk, Auditor or Recorder at the time the statement is offered to him for filing, and shall be by him paid into the general fund in the city treasury. The City Clerk, Auditor or Recorder shall properly compile, edit, prepare and index said statements and arguments for printing, and if there shall be any municipal measures to be voted upon at the ensuing municipal election he may bind in with

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said pamphlet a copy of each and of the arguments submitted thereon in like manner as the Secretary of State is required to do in state elections, and shall cause the same to be printed in the same manner that other city printing is done, and have them all bound under one cover; and he shall, at least eight days before the regular nominating election, forward a copy of said pamphlet with postage fully prepaid, to each voter in the city whose postoffice address he may have or can obtain from the city directory, registration books or otherwise. The provisions of this section shall not apply to cities of less than ten thousand inhabitants, as shown by the census next preceding such municipal election. The provisions of the preceding sections for statements opposing candidates shall apply also to municipal elections, under this section, subject to the same rules of filings, payments, etc., required of candidates' statements by this section.

Section 10. Terms used in this act shall be construed as follows, unless other meaning is clearly apparent from the language or context, or unless such construction is inconsistent with the manifest intent of the law:

"Persons" shall apply to any individual, male or female, and, where consistent with collective capacity, to any committee, firm, partnership, club, organization, association, corporation, or other combination of individuals.

"Candidate" shall apply to any person whose name is printed on an official ballot for public office, or whose name is expected to be or has been presented for public office, with his consent, for nomination or election.

"Political agent" shall apply to any person who, upon request or under agreement, receives or disburses money in behalf of a candidate.

"Political committee" shall apply to every combination of two or more persons who shall aid or promote the success or defeat of a candidate, or a political party or principle, and the provisions of law relating thereto shall apply to any firm or partnership, to any corporation, and to any club, organization, association, or other combination of persons, whether incorporated or not, with similar purposes, whether primary or incidental.

"Public Office" shall apply to any national, state, county or city office to which a salary attaches and which is filled by the voters, as well as to the office of presidential elector, United States Senator, or presiding officer of either branch of the Legislature.

"Give," "provide," "expend," "contribute," "receive,"

"ask," "solicit," and like terms, with their corresponding nouns, shall apply to money, its equivalent, or any other valuable thing; shall include the promise, advance deposit, borrowing, or loan thereof, and shall cover all or any part of a transaction, whether it be made directly or indirectly.

None of the provisions of this act shall be construed as relating to the rendering of services by speakers, writers, publishers, or others, for which no compensation is asked or given; nor to prohibit expenditure by committees of political parties or organizations for public speakers, music, halls, lights, literature, advertising, office rent, printing, postage, clerk hire, challengers or watchers at the polls, traveling expenses, telegraphing or telephoning, or making of poll lists.

Section 11. Every candidate for nomination or election to public office, including candidates for the office of Senator of the United States shall within fifteen days after the election at which he was a candidate, file with the Secretary of State, if a candidate for Senator of the United States, Representative in Congress, or for any state or district office in a district composed of one or more counties, or for members of the Legislative Assembly from a district composed of more than one county, but with the County Clerk for legislative districts composed of not more than one county, and for county and precinct offices, and with the City Clerk, Auditor or Recorder, of the town or city in which he resides if he was a candidate for a town, city or ward office, an itemized sworn statement setting forth in detail all the moneys contributed, expended or promised by him to aid and promote his nomination or election, or both, as the case may be, and for the election of his party candidates, and all existing unfulfilled promises of every character and all liabilities remaining uncanceled and in force at the time such statement is made, whether such expenditures, promises and liabilities were made or incurred before, during or after such election. If no money or other valuable thing was given, paid, expended, contributed, or promised, and no unfulfilled liabilities were incurred by a candidate for public office to aid or promote his nomination or election, or the election of his party candidate, he shall file a statement to that effect within fifteen days after the election at which he was a candidate. Any candidate who shall fail to file such a statement shall be fined twenty-five dollars for every day on which he was in default, unless he shall be excused by the court. Fifteen days after any such election the Secretary of State, or County Clerk, City Clerk, Auditor or Recorder, as the case may be, shall notify the County Attorney of any failure to file

Reporting →

such a statement on the part of any candidate, and within ten days thereafter such prosecuting officer shall proceed to prosecute said candidate for such offense.

Section 12. Every political committee shall have a treasurer, who is a voter, and shall cause him to keep detailed accounts of all its receipts, payments and liabilities. Similar accounts shall be kept by every person, who in the aggregate receives or expends money or incurs liabilities to the amount of more than fifty dollars for political purposes and by every political agent and candidate. Such accounts shall cover all transactions in any way affecting or connected with the political canvass, campaign, nomination or election concerned. Every person receiving or expending money or incurring liability by authority or in behalf of or to promote the success or defeat of such committee, agent, candidate or other person or political party or organization, shall, on demand, and in any event within fourteen days after such receipt, expenditure or incurrance of liability, give such treasurer, agent, candidate or other person on whose behalf such expense or liability was incurred detailed account thereof, with proper vouchers. Every payment, except payments less in the aggregate than five dollars to any person, shall be vouched for by a receipted bill stating the particulars of expense. Every voucher, receipt and account hereby required shall be a part of the accounts and files of such treasurer, agent, candidate or other person, and shall be preserved by the public officer with whom it shall be filed for six months after the election to which it refers. Any person not a candidate for any office or nomination who expends money or value to an amount greater than fifty dollars in any campaign for nomination or election, to aid in the election or defeat of any candidate or candidates, or party ticket, or measure before the people, shall within ten days after the election in which said money or value was expended, file with the Secretary of State in the case of a measure voted upon by the people, or of state or district offices for districts composed of one or more counties or with the County Clerk for county offices, and with the City Clerk, Auditor or Recorder for municipal offices, an itemized statement of such receipts and expenditures and vouchers for every sum paid in excess of five dollars, and shall at the same time deliver to the candidate or treasurer of the political organization whose success or defeat he has sought to promote, a duplicate of such statement and a copy of such vouchers. The books of account of every treasurer of any political party, com-

Treasure
+
Finance
Records

Filing petition
for nomination

Enforcement
by office
where petition
is filed

mittee or organization, during an election campaign, shall be open at all reasonable office hours to the inspection of the treasurer and chairman of any opposing political party or organization for the same electoral district; and his right of inspection may be enforced by writ of mandamus by any court of competent jurisdiction.

Section 13. The Secretary of State shall, at the expense of the state, furnish to the County Clerk, and to the City and Town Clerks, Auditors and Recorders, copies of this act as a part of the election laws. In the filing of a nomination petition or certificate of nomination, the Secretary of State, in the case of state and district offices for districts composed of one or more counties, and County Clerks for county offices, and the City and Town Clerks, Auditors or Recorders for municipal offices, shall transmit to the several candidates, and to the treasurers of political committees, and to political agents, as far as they may be known to such officer, copies of this act, and also to any other person required to file a statement such copies shall be furnished upon application therefor. Upon his own information, or at the written request of any voter, said Secretary of State shall transmit to any other person believed by him or averred to be a candidate, or who may otherwise be required to make a statement, a copy of this act.

Section 14. The several officers with whom statements are required to be filed shall inspect all statements of accounts and expenses relating to nominations and elections filed with them within ten days after the same are filed; and if upon examination of the official ballot it appears that any person has failed to file a statement as required by law, or if it appears to any such officer that the statement filed with him does not conform to law, or upon complaint in writing by a candidate or by a voter that a statement filed does not conform to law or to the truth, or that any person has failed to file a statement which he is by law required to file, said officer shall forthwith in writing notify the delinquent person. Every such complaint filed by a citizen or candidate shall state in detail the grounds of objection, shall be sworn to by the complainant, and shall be filed with the officer within sixty days after the filing of the statement or amended statement. Upon the written request of a candidate or any voter, filed within sixteen days after any convention, primary or nominating election, said Secretary of State, County Clerk, City or Town Clerk, Auditor or Recorder, as the case may be, shall demand from any specified person or candidate a statement of all his receipts, and from whom received, disbursements and liabilities in connection

with or in any way relating to the nomination or election concerned, whether it is an office to which a salary or compensation is attached or not, and said person shall thereupon be required to file such statement and comply with all the provisions relating to statements herein contained. Whoever makes a statement required by this act shall make oath attached thereto that it is in all respects correct, complete, and true, to the best of his knowledge and belief, and said verification shall be substantially the form herein provided.

Section 15. Upon the failure of any person to file a statement within ten days after receiving notice under the preceding section, or if any statement filed as above discloses any violation of any provision of this act relating to corrupt practices in elections, or in any other provision of the election laws, the Secretary of State, the County Clerk, or the City Clerk, Auditor or Recorder, as the case may be, shall forthwith notify the County Attorney of the county where said violation occurred and shall furnish him, with copies of all papers relating thereto, and said County Attorney shall within sixty days thereafter examine every such case, and if the evidence seems to him to be sufficient under the provisions of this act he shall in the name of the state forthwith institute such civil or criminal proceedings as may be appropriate to the facts.

← Enforcement
by
County
Attorney
after
notice of
violation
- SHALL

Section 16. The district court of the county in which any statement of accounts and expenses relating to nominations and elections should be filed, unless herein otherwise provided, shall have exclusive original jurisdiction of all violations of this act, and may compel any person who fails to file such a statement as required by this act, or who files a statement which does not conform to the provisions of this act in respect to its truth, sufficiency in detail or otherwise to file a sufficient statement, upon the application of the Attorney General or of the County Attorney, or the petition of a candidate or of any voter. Such petition shall be filed in the district court within sixty days after such election if the statement was filed within the fifteen days required, but such a petition may be filed within thirty days after any payment not included in the statement so filed.

Section 17. All statements shall be preserved for six months after the election to which they relate, shall be public records subject to public inspection, and it shall be the duty of the officers having custody of the same to give certified copies thereof in like manner as of other public records. The totals of each statement, filed with him, with the name of the person or candidate filing it, shall be published in the next annual report of the Secretary of State, the County Clerk or the City Clerk, Auditor or Recorder, as the case may be.

Contributions →

Section 18. No person shall make a payment of his own money or of another person's money to any other person in connection with a nomination or election in any other name than that of the person who in truth supplies such money; nor shall any person knowingly receive such payment or enter or cause the same to be entered in his accounts or records in another name than that of the person by whom it was actually furnished; provided, if the money be received from the treasurer of any political organization it shall be sufficient to enter the same as received from said treasurer.

Disclosure →

Section 19. No person shall, in order to aid or promote his nomination or election, directly or indirectly, himself or through any other person, promise to appoint another person, or promise to secure or aid in securing the appointment, nomination or election of another person to any public or private position or employment, or to any position of honor, trust or emolument, except that he may publicly announce or define what is his choice or purpose in relation to any election in which he may be called to take part, if elected, and if he is a candidate for nomination or election as a member of the Legislative Assembly he may pledge himself to vote for the people's choice for United States Senator, or state what his action will be on such vote.

Section 20. No holder of a public position or office other than an office filled by the voters, shall pay or contribute to aid or promote the nomination or election of any other person to public office. No person shall invite, demand or accept payment or contribution from such holder of a public position or office for campaign purposes.

Section 21. No holder of a public position other than an office filled by the voters shall be a delegate to a convention for the election district that elects the officer or board under whom he directly or indirectly holds such position, nor shall he be a member of a political committee for such district.

Section 22. No person shall invite, offer or effect the transfer of any convention credential in return for any payment of money or other valuable thing.

Section 23. No person shall pay, or promise to reward another in any manner or form for the purpose of inducing him to be or refrain from or cease being a candidate, and no person shall solicit any payment, promise or reward from another for such purpose.

Section 24. No person shall demand, solicit, ask or invite any payment or contribution for any religious, political, chari-

table or other cause or organization supposed to be primarily or principally for the public good, from a person who seeks to be or has been nominated or elected to any office; and no such candidate or elected person shall make any such payment or contribution if it shall be demanded or asked during the time he is a candidate for nomination or election to or an incumbent of any office. No payment or contribution for any purpose shall be made a condition precedent to the putting of a name on any caucus or convention ballot or nomination paper or petition, or to the performance of any duty imposed by law on a political committee. No person shall demand, solicit, ask or invite any candidate to subscribe to the support of any club or organization, to buy tickets to any entertainment or ball, or to subscribe for or pay for space in any book, program, periodical or other publication; if any candidate shall make any such payment or contribution with apparent hope or intent to influence the result of the election, he shall be guilty of a corrupt practice; but this section shall not apply to the soliciting of any business advertisement for insertion in a periodical in which such candidate was regularly advertising prior to his candidacy nor to ordinary business advertising nor to his regular payment to any organization, religious, charitable or otherwise of which he may have been a member, or to which he may have been a contributor, for more than six months before his candidacy nor to ordinary contributions at church services.

Section 25. No corporation, and no person, trustee, or trustees owning or holding the majority of the stock of a corporation carrying on the business of a bank, savings bank, cooperative bank, trust, trustees, surety, indemnity, safe deposit, insurance, railroad, street railway, telegraph, telephone, gas, electric light, heat, power, canal, aqueduct, water, cemetery, or crematory company, or any company having the right to take or condemn land or to exercise franchise in public ways granted by the state or by any county, city or town, shall pay or contribute in order to aid, promote or prevent the nomination or election of any person, or in order to aid or promote the interests, success or defeat of any political party or organization. No person shall solicit or receive such payment or contribution from such corporation or such holder of a majority of such stock.

Section 26. Any person or candidate who shall either by himself or by any other person, either before or after an election, or while such person or candidate is seeking a nomination or election, directly or indirectly, give or provide, or pay, wholly or in part, the expenses of giving or providing any meat

or drink or other entertainment or provision, clothing, liquors, cigars or tobacco, to or for any person for the purpose of or with intent on hope to influence that person or any other person to give or refrain from giving his vote at such election to or for any candidate or political party ticket, or measure before the people, or on account of such persons or any other person having voted or refrained from voting for any candidate or the candidates of any political party or organization or measure before the people, or being about to vote or refrain from voting at such election shall be guilty of treating. Every elector who accepts or takes any such meat, drink, entertainment, provision, clothing, liquor, cigars or tobacco, shall also be guilty of treating; and such acceptance shall be a ground of challenge to his vote and of rejecting his vote on a contest.

Section 27. Whenever any person's right to vote shall be challenged, and he has taken the oath prescribed by the statutes, and if it is at a nominating election, then it shall be the duty of the clerks of election to write in the poll books at the end of such person's name the words "challenged and sworn," with the name of the challenger. Thereupon the chairman of the board of judges shall write upon the back of the ballot offered by such challenged voter the number of his ballot, in order that the same may be identified in any future contest of the results of the election, and be cast out if it shall appear to the court to have been for any reason wrongfully or illegally voted for any candidate or on any question. And such marking of the name of such challenged voter, nor the testimony of any judge or clerk of election in reference thereto, or in reference to the manner in which said challenged person voted, if said testimony shall be given in the course of any contest, investigation or trial wherein the legality of the vote of such person is question for any reason, shall not be deemed a violation of section 8130, Revised Codes of Montana.

Section 28. Every person who shall directly or indirectly, by himself or any other person in his behalf, makes use of or threaten to make use of any force, coercion, violence, restraint, or undue influence, or inflict or threaten to inflict, by himself or any other person, and temporal or spiritual injury, damage, harm, or loss upon or against any person in order to induce or compel such person to vote or refrain from voting for any candidate or the ticket of any political party, or any measure before the people, or any person who, being a minister, preacher or priest, or any officer of any church, religious or other corporation or organization, otherwise than by public speech or print, shall urge, persuade or command any voter to vote or

refrain from voting for or against any candidate or political party ticket or measure submitted to the people, for or on account of his religious duty, or in the interest of any corporation, church or other organization, or who shall by abduction, duress or any fraudulent contrivance, impede or prevent the free exercise of the franchise by any voter at any election, or shall thereby compel, induce or prevail upon any elector to give or to refrain from giving his vote at any election, shall be guilty of undue influence, and shall be punished as for a corrupt practice.

Section 29. Any candidate who, before or during any election campaign, makes any bet or wager of anything of pecuniary value, or in any manner becomes a party to any such bet or wager on the result of the election in his electoral district or in any part thereof, or on any event or contingency relating to any pending election, or who provides money or other valuable to be used by any person betting or wagering upon the results of any impending election, shall be guilty of a corrupt practice. Any person who for the purpose of influencing the result of any election makes any bet or wager of anything of pecuniary value on the result of such election in his electoral district or any part thereof, or of any pending election, or on any event or contingency relating thereto, shall be guilty of a corrupt practice, and in addition thereto any such act shall be ground of challenge against his right to vote.

Section 30. Any person shall be deemed guilty of the offense of personating who, at any election, applies for a ballot in the name of some other person, whether it be that of a person living or dead, or of a fictitious person, or who having voted once at an election applies at the same election for a ballot in his own name; and on conviction thereof such person shall be punished by imprisonment in the penitentiary at hard labor for not less than one nor more than three years.

Section 31. Any person shall be guilty of a corrupt practice within the meaning of this act if he expends any money for election purposes contrary to the provisions of any statute of this state, or if he is guilty of treating, undue influence, personation, the giving or promising to give, or offer of any money or valuable thing to any elector with intent to induce such elector to vote for or to refrain from voting for any candidate for public office, or the ticket of any political party or organization, or any measure submitted to the people, at any election, or to register or refrain from registering as a voter at any state, district, county, city, town, village or school district election for public offices or on public measures. Such

corrupt practice shall be deemed to be prevalent when instances thereof occur in different election districts similar in character and sufficient in number to convince the court before which any case involving the same may be tried that they were general and common, or were pursuant to a general scheme or plan.

Section 32. It shall be unlawful for any person to pay another for any loss or damage due to attendance at the polls, or in registering or for the expense of transportation to or from the polls. No person shall pay for personal service to be performed on the day of a caucus, primary, convention, or any election, for any purpose connected therewith, tending in any way, directly or indirectly, to affect the result thereof, except for the hiring of persons whose sole duty is to act as challengers and watch the count of official ballots. No person shall buy, sell, give or provide any political badge, button or other insignia to be worn at or about the polls on the day of any election, and no such political badge, button or other insignia shall be worn at or about the polls on any election day.

Section 33. No publisher of a newspaper or other periodical shall insert, either in its advertising or reading columns, any paid matter which is designed or tends to aid, injure or defeat any candidate or any political party or organization, or measure before the people, unless it is stated therein, that it is a paid advertisement, the name of the chairman or secretary, or the names of the other officers of the political or other organization inserting the same, or the name of some voter who is responsible therefor, with his residence and the street number thereof, if any, appear in such advertisement in the nature of a signature. No person shall pay the owner, editor, publisher or agent of any newspaper or other periodical to induce him to editorially advocate or oppose any candidate for nomination or election, and no such owner, editor, publisher or agent shall accept such payment. Any person who shall violate any of the provisions of this section shall be punished as for a corrupt practice.

Section 34. It shall be unlawful for any person at any place on the day of any election to ask, solicit, or in any manner try to induce or persuade any voter on such election day to vote for or refrain from voting for any candidate, or the candidate or ticket of any political party or organization, or any measure submitted to the people, and upon conviction thereof he shall be punished by a fine of not less than five dollars nor more than one hundred dollars for the first offense, and for the second and each subsequent offense occurring on the same

*Electronizing
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or different election days, he shall be punished by fine as aforesaid, or by imprisonment in the county jail for not less than five nor more than thirty days, or by both such fine and imprisonment.

Section 35. It shall be unlawful to write, print, or circulate through the mails or otherwise any letter, circular, bill, placard or poster relating to any election or to any candidate at any election, unless the same shall bear on its face the name and address of the author, and of the printer and publisher thereof; and any person writing, printing, publishing, circulating, posting, or causing to be written, printed, circulated, posted or published any such letter, bill, placard, circular or poster as aforesaid, which fails to bear on its face the name and address of the author and of the printer or publisher shall be guilty of an illegal practice, and shall, on conviction thereof, be punished by a fine of not less than ten dollars nor more than one thousand dollars. [If any letter, circular, poster, bill, publication or placard shall contain any false statement or charges reflecting on any candidate's character, morality or integrity, the author thereof and every person printing or knowingly assisting in the circulation shall be guilty of political criminal libel and upon conviction thereof shall be punished by imprisonment in the penitentiary for not less than one nor more than three years.] If the person charged with such crime shall prove on his trial that he had reasonable ground to believe such charge was true and did believe it was true, and that he was not actuated by malice in making such publication, it shall be a sufficient defense to such charge. But in that event, and as a part of such defense, the author and the printer or publisher or other person charged with such crime shall also prove that, at least fifteen days before such letter, circular, poster, bill or placard containing such false statement or statements was printed or circulated, he or they caused to be served personally and in person upon the candidate to whom it relates a copy thereof in writing, and calling his attention particularly to the charges contained therein, and that, before printing, publishing or circulating such charges, he received and read any denial, defense or explanation, if any, made or offered to him in writing by the accused candidate within ten days after the service of such charge upon the accused person.

Section 36. The name of a candidate chosen at a primary nominating election, or otherwise shall not be printed on the official ballot for the ensuing election unless there has been filed by or on behalf of said candidate the statements of ac-

Discloses or circulates Election materials

Criminal Political Libel

Can't "buy" a candidate

Power of Judge

Duty of County Attorney

counts and expenses relating to nominations required by this act, as well as a statement by his political agent and by his political committee or committees in his behalf, if his statement discloses the existence of such agent, committee or committees, The officer or board entrusted by law with the preparation of the official ballots for any election shall, as far as practicable, warn candidates of the danger of the omission of their names by reason of this provision, but delay in making any such statement beyond the time prescribed shall not preclude its acceptance or prevent the insertion of the name on the ballot if there is reasonable time therefor after the receipt of such statements. Any such vacancy on the ballot shall be filled by the proper committee of his political party in the manner authorized by law, but not by the use of the name of the candidate who failed to file such statements. No person shall receive a certificate of election until he shall have filed the statements required by this act.

Section 37. It shall be unlawful for any person to accept, receive, or pay money or any valuable consideration for becoming or for refraining from becoming a candidate for nomination or election, or by himself or in combination with any other person or persons to become a candidate for the purpose of defeating the nomination or election of any other person and not with a bona fide intent to obtain the office. Upon complaint made to any district court if the judge shall be convinced that any person has sought the nomination or seeks to have his name presented to the voters as a candidate for nomination by any political party for any mercenary or venal consideration or motive, and that his candidacy for the nomination is not in good faith, the judge shall forthwith issue his writ of injunction restraining the officer or officers whose duty it is to prepare the official ballots for such nominating election from placing the name of such person thereon as a candidate for nomination to any office. In addition thereto the court shall direct the County Attorney to institute criminal proceedings against such person or persons for corrupt criminal proceedings against such person or persons for corrupt practice, and upon conviction thereof he and any person or persons combining with him shall be punished by a fine of not more than one thousand dollars, or imprisonment in the county jail for not more than one year.

Section 38. Where, upon the trial of any action or proceeding under the provisions of this act for the contest of the right of any person declared nominated or elected to any office, or to annul or set aside such nomination or election, or to remove

a person from his office, it appears from the evidence that the offense complained of was not committed by the candidate, or with his knowledge or consent, or was committed without his sanction or connivance, and that all reasonable means for preventing the commission of such offense at such election were taken by and on behalf of the candidate, or that the offense or offenses complained of were trivial, unimportant and limited in character, and that in all other respects his participation in the election was free from such offenses or illegal acts, or that any act or omission of the candidate arose from inadvertence or from accidental miscalculation, or from some other reasonable cause of a like nature and in any case did not arise from any want of good faith, and under the circumstances it seems to the court to be unjust that the said candidate shall forfeit his nomination or office or be deprived of any office of which he is the incumbent, then the nomination or election of such candidate shall not by reason of such offense or omission complained of be void, nor shall the candidate be removed from or deprived of his office.

Section 39. If, upon the trial of any action or proceeding under the provisions of this act, for the contesting of the right of any person declared to be nominated to an office, or elected to an office, or to annul and set aside such election, or to remove any person from his office, it shall appear that such person was guilty of any corrupt practice, illegal act, or undue influence in or about such nomination or election, he shall be punished by being deprived of the nomination or office, as the case may be, and the vacancy therein shall be filled in the manner provided by law. The only exception to this judgment shall be that provided in section 38 of this act. Such judgment shall not prevent the candidate or officer from being proceeded against by indictment or criminal information for any such act or acts.

Section 40. Any action to contest the right of any person declared elected to an office, or to annul and set aside such election, or to remove from or deprive any person of an office of which he is the incumbent, for any offense mentioned in this act, must, unless a different time be stated, be commenced within forty days after the return day of the election at which such offense was committed, unless the ground of the action or proceeding is for the illegal payment of money or other valuable thing subsequent to the filing of the statements prescribed by this act, in which case the action or proceeding may be commenced within forty days after the discovery by the complainant of such illegal payment. A contest of the nomination

or office of Governor or Representative or Senator in Congress must be commenced within twenty days after the declaration of the result of the election, but this shall not be construed to apply to any contest before the Legislative Assembly.

Section 41. An application for filing a statement, payment of a claim or correction of an error or false recital in a statement filed, or an action or proceeding to annul and set aside the election of any person declared elected to an office, or to remove or deprive any person of his office for an offense mentioned in this act, or any petition to excuse any person or candidate in accordance with the power of the court to excuse as provided in section 38 of this act, must be made or filed in the district court of the county in which the certificate of his nomination as a candidate for the office to which he is declared nominated or elected is filed or in which the incumbent resides.

Section 42. A candidate nominated or elected to an office, and whose nomination or election thereto has been annulled and set aside for any offense mentioned in this act, shall not, during the period fixed by law as the term of such office, be elected or appointed to fill any office or vacancy in any office or position of trust, honor or emolument under the laws of the State of Montana or of any municipality therein. Any appointment or election to any office or position of trust, honor or emolument made in violation of or contrary to the provisions of this act shall be void.

Section 43. If any County Attorney shall be notified by any officer or other person of any violation of any of the provisions of this act within his jurisdiction, it shall be his duty forthwith to diligently inquire into the facts of such violation, and if there is reasonable ground for instituting a prosecution it shall be the duty of such County Attorney to file a complaint or information in writing, before a court of competent jurisdiction, charging the accused person with such offense; if any County Attorney shall fail or refuse to faithfully perform any duty imposed upon him by this act, he shall be deemed guilty of a misdemeanor, and upon conviction thereof shall forfeit his office. It shall be the duty of the County Attorney, under penalty of forfeiture of his office, to prosecute any and all persons guilty of any violation of the provisions of this act, the penalty of which is fine or imprisonment, or both, or removal from office.

Section 44. If, in any case of a contest, on the ground of illegal votes, it appears that another person than the one returned has the highest number of legal votes, after the illegal votes have been eliminated, the court must declare such person nominated or elected, as the case may be.

*Duty of
County
Attorney
Penalty
for
failure
to act*

Right to contest election

Section 45. Any elector of the state, or of any political or municipal division thereof, may contest the right of any person to any nomination or office for which such elector has the right to vote, for any of the following causes:

1. On the ground of deliberate, serious and material violation of any of the provisions of this act, or of any other provision of the law relating to nominations or elections.

2. When the person whose right was contested was not, at the time of the election, eligible to such office.

3. On account of illegal votes or an erroneous or fraudulent count or canvass of votes.

Section 46. Nothing in the third ground of contest specified in section 45 is to be so construed as to authorize a nomination or election to be set aside on account of illegal votes, unless it appear, either that the candidate or nominee whose right is contested had knowledge of, or connived at such illegal votes, or that the number of illegal votes given to the person whose right to the nomination or office is contested, if taken from him, would reduce the number of his legal votes below the number of votes given to some other person for the same nomination or office, after deducting therefrom the illegal votes which may be shown to have been given to such other person.

Section 47. When the reception of illegal votes is alleged as a cause of contest, it shall be sufficient to state generally that in one or more specified voting precincts, illegal votes were given to the person whose nomination or election is contested, which, if taken from him, will reduce the number of his legal votes below the number of legal votes given to some other person for the same office; but no testimony shall be received of any illegal votes unless the party contesting such election deliver to the opposite party, at least three days before such trial, a written list of the number of illegal votes, and by whom given, which he intends to prove on such trial. This provision shall not prevent the contestant from offering evidence of illegal votes not included in such statement, if he did not know and by reasonable diligence was unable to learn of such additional illegal votes and by whom they were given, before delivering such written list.

Section 48. Any petition contesting the right of any person to a nomination or election shall set forth the name of every person whose election is contested, and the grounds of the contest, and shall not thereafter be amended, except by leave of the court. Before any proceedings thereon the petitioner shall give bond in the state in such sum as the court may order, not exceeding two thousand dollars, with not less than two sure-

ties, who shall justify in the manner required of sureties on bail bonds, conditioned to pay all costs, disbursements and attorney's fees that may be awarded against him if he shall not prevail. If the petitioner prevails, he may recover his costs, disbursements and reasonable attorney's fees against the contestee. But costs, disbursements and attorney's fees, in all such cases, shall be in the discretion of the court, and in case judgment is rendered against the petitioner it shall also be rendered against the sureties on the bond. On the filing of any such petition the clerk shall immediately notify the judge of the court, and issue a citation to the person whose nomination or office is contested, citing them to appear and answer not less than three nor more than seven days after the date of filing the petition, and the court shall hear said cause, and every such contest shall take precedence over all other business on the court docket and shall be tried and disposed of with all convenient dispatch. The court shall always be deemed in session for the trial of such cases.

Section 49. The petitioner (contestant) and the contestee may appear and produce evidence at the hearing, but no person other than the petitioner and contestee shall be made a party to the proceedings on such petition; and no person other than said parties and their attorneys shall be heard thereon, except by order of the court. If more than one petition is pending, or the election of more than one person is contested, the court may, in its discretion, order the cases to be heard together, and may apportion the costs, disbursements and attorneys fees between them, and shall finally determine all questions of law and fact, save only that the judge may in his discretion empanel a jury to decide on questions of fact. In the case of a contested nomination or election for Senator or Representative in the Legislative Assembly, or for Senator or Representative in Congress, the court shall forthwith certify its findings to the Secretary of State to be by him transmitted to the presiding officer of the body in question. In the case of other nominations or elections, the court shall forthwith certify its decision to the board or official issuing certificates of nomination or election, which board or official shall thereupon issue certificates of nomination or election to the person or persons entitled thereto by such decision. If judgment of ouster against a defendant shall be rendered, said judgment shall award the nomination or office to the person receiving next the highest number of votes, unless it shall be further determined in the action, upon appropriate pleading and proof by the defendant, that some act has been done or committed which would have

been ground in a similar action against such person, had he received the highest number of votes for such nomination or office, for a judgment of ouster against him; and if it shall be so determined at the trial, the nomination or office shall be by the judgment declared vacant, and shall thereupon be filled by a new election, or by appointment, as may be provided by law regarding vacancies in such nomination or office.

Section 50. In like manner as prescribed for the contesting of an election, any corporation organized under the laws of or doing business in the State of Montana may be brought into court on the ground of deliberate, serious and material violation of the provisions of this act. The petition shall be filed in the district court in the county where said corporation has its principal office, or where the violation of law is averred to have been committed. The court, upon conviction of such corporation, may impose a fine of not more than ten thousand dollars, or may declare a forfeiture of the charter and franchises of the corporation if organized under the laws of this state, or if it be a foreign corporation may enjoin said corporation from further transacting business in this state, or by both such fine and forfeiture, or by both such fine and injunction.

Section 51. Whoever violates any provision of this act, the punishment for which is not specially provided by law, shall on conviction thereof be punished by imprisonment in the county jail for not more than one year, or by a fine of not more than five thousand dollars, or by both such fine and imprisonment.

Section 52. Proceedings under this act shall be advanced on the docket upon request of either party for speedy trial, but the court may postpone or continue such trial if the ends of justice may be thereby more effectually secured, and in case of such continuance or postponement, the court may impose costs in its discretion as a condition thereof. No petition shall be dismissed without the consent of the County Attorney unless the same shall be dismissed by the court. No person shall be excused from testifying or producing papers or documents on the ground that his testimony or the production of papers or documents will tend to criminate him; but no admission, evidence or paper made or advanced or produced by such person shall be offered or used against him in any civil or criminal prosecution or any evidence that is the direct result of such evidence or information that he may have so given except in a prosecution for perjury committed in such testimony.

Section 53. A petition or complaint filed under the provisions of this act shall be sufficient if it is substantially in the following form:

Form of Complaint

IN THE DISTRICT COURT OF THE
..... JUDICIAL DISTRICT.

For the County of..... STATE OF MONTANA.
A. B., (or A. B. and C. D.) Contestants,

vs.

E. F., Contestee.

The petition of contestant (or contestants) above named alleges:

That an election was held (in the State, district, county or city of.....), on the..... day of..... A. D. 19... for the (nomination of a candidate for) (or election of a) (State the office)

That..... and..... were candidates at said election, and the board of canvassers has returned the said..... as being duly nominated (or elected) at said election.

That contestant A. B. voted (or had a right to vote, as the case may be) at said election (or claims to have had a right to be returned as the nominee or officer elected or nominated at said election, or was a candidate at said election, as the case may be), and said contestant C. D. (here state in like manner the right of each contestant).

And said contestant (or contestants) further allege (here state the facts and grounds on which the contestants rely).

Wherefore, your contestants pray that it may be determined by the court that said....., was not duly nominated (or elected) and that said election was void (or that the said A. B. or C. D., as the case may be) was duly nominated (or elected) and for such other and further relief as to the court may seem just and legal in the premises.

Said complaint shall be verified by the affidavit of one of the petitioners in the manner required by law for the verification of complaints in civil cases.

Section 54. The statement of expenses required from candidates and others by this act shall be in substantially the following form:

State of Montana, County of....., ss.

I,....., having been a candidate (or expended money) at the election for the (state) (district) (county) (city) of..... on the..... day of..... A. D., 19... being first duly sworn, on oath do say: That I have carefully examined and read the return of my election expenses and receipts hereto attached, and to the best of my knowledge and belief that return is full, correct and true.

And I further state on oath that, except as appears from this return, I have not, and to the best of my knowledge and belief, no person, nor any club, society or association, has on my behalf, whether authorized by me or not, made any payment, or given, promised, or offered any reward, office, employment or position, public or private, or valuable consideration, or incurred any liability on account of or in respect of the conduct or management of the said nomination or election.

And I further state on oath, that, except as specified in this return I have not paid any money, security, or equivalent for money, nor has any money or equivalent for money to my knowledge or belief been paid, advanced, given or deposited by any one to or in the hands of myself or any other person for my nomination or election or for the purpose of paying any expenses incurred on my behalf on account or in respect of the conduct or management of the said election.

And I further state on oath that I will not, except so far as I may be permitted by law, at any future time make or be a party to the making or giving of any payment, reward office, position or employment, or valuable consideration for the purpose of defraying any such expenses or obligation as herein mentioned for or account of my nomination or election, or provide or be a party to the providing of any money, security or equivalent for money for the purpose of defraying any such expense.

(Signature of Affiant.).....

Subscribed and sworn to before me by the above named on the day of A. D. 19...

Attached to said affidavit shall be a full and complete account of the receipts, contributions and expenses of said affiant, and of his supporters of which he has knowledge, with numbered vouchers for all sums and payments for which vouchers are required as to all money expended by affiant. The affidavit and account of the treasurer of any committee or any political party or organization shall be as nearly as may be in the same form, and so also shall be the affidavit of any person who has received or expended money in excess of the sum of fifty dollars to aid in securing the nomination or election or defeat of any candidate, or of any political party or organization, or of any measure before the people.

Section 55. Any person who shall knowingly make any false oath or affidavit where an oath or affidavit is required by this law shall be deemed guilty of perjury and punished accordingly.

A BILL

To propose by initiative a law to instruct the members of the legislative assembly to vote for and elect the candidates selected by the people for United States senator from Montana.

Be it enacted by the People of the State of Montana:

Section 1. That we, the people of the state of Montana, hereby instruct our representatives and senators in our legislative assembly, as such officers, to vote for and elect the candidates for United States Senator from this state who receive the highest number of votes at our general elections.