Rules Related to Constituent Services Accounts

44.10.335 DISPOSAL OF SURPLUS CAMPAIGN FUNDS (1) Candidates shall dispose of surplus campaign funds within 120 days of filing the closing campaign report required by 13-37-228, MCA.

(a) The candidate's closing report shall be filed whenever all debts and obligations are extinguished and no further contributions or expenditures will be received or made which relate to the campaign.

(b) No closing report needs to be filed following a primary election campaign if the candidate will advance to the general election.

(2) "Surplus campaign funds" are those campaign funds remaining when all debts and other obligations of the campaign have been paid or settled, no further campaign contributions will be received, and no further campaign expenditures will be made.

(3) Surplus campaign funds will be considered to have been "disposed of" on the date payment is made by the candidate or the candidate's committee to a permissible person, entity, or account.

(4) The candidate shall be responsible for obtaining a receipt containing the requisite information from all recipients of any surplus campaign funds. Payment of surplus campaign funds shall be evidenced by a receipt from the recipient containing the following information:

(a) the full name and mailing address of the recipient;

(b) the date the funds were received;

(c) the full name of the candidate from whose campaign the funds were received, and;

(d) the exact amount of funds received.

(5) Those candidates with surplus campaign funds shall file a supplement to the closing campaign report, on a form prescribed by the commissioner, showing the disposition of surplus campaign funds. The report shall be accompanied by copies of all receipts required by (4) of this rule. The supplement shall be filed within 135 days after the closing report is filed.

(6) A candidate or eligible elected official shall abide by the prohibitions on the use of surplus campaign funds specified in 13-37-240, and 13-37-402, MCA, ARM 44.10.336, the provisions of this rule, and the rules in this chapter.

(a) For purposes of the restrictions on the disposal of surplus campaign funds set forth in 13-37-240, MCA, "personal benefit" is defined in 13-37-240(2), MCA. For the purposes of this definition, a candidate's or an eligible elected official's "immediate family" includes any individual related or connected to a candidate or an eligible elected official as specified in 2-2-303(1), MCA.

(b) For purposes of the restrictions on the disposal of surplus campaign funds set forth in 13-37-240, MCA, "campaign" means any effort to support or oppose the nomination or election of a candidate for public office, or support or oppose passage of a ballot issue.

(c) Surplus campaign funds, including surplus campaign funds deposited in a constituent services account and any interest accrued as provided in ARM 44.10.543, may only be disbursed as follows:

(i) Return the funds to the contributors, so long as the refund to contributors will not violate the personal benefit or campaign contribution provisions of 13-37-240 and 13-37-402, MCA, ARM 44.10.336, or the rules in this chapter;

(ii) Donate the funds to any organization or entity, so long as the use of the funds will not violate the personal benefit or campaign contribution provisions of 13-37-240 and 13-37-402, MCA, ARM 44.10.336, or the rules in this chapter;

(iii) An elected official other than an eligible elected official may transfer the funds to an account to serve a public purpose related to the officeholder's public duties, so long as the funds will not result in personal benefit or a contribution to a campaign;

(iv) An eligible elected official may transfer the funds to a constituent services account provided for in Title 13, chapter 37, part 4, MCA, and the rules in this chapter.

(7) A candidate or an eligible elected official shall not contribute surplus campaign funds to a political committee, including a leadership political committee maintained by a political officeholder. However, nothing in this section shall be construed as prohibiting the contribution of surplus campaign funds to a political party or a political party committee, so long as the funds are not earmarked for a specific campaign.

(8) Upon a determination that a candidate made a prohibited disposal of surplus campaign funds, the commissioner may employ any enforcement measures within his or her jurisdiction. (History: 13-37-114, MCA; IMP, 13-37-240, MCA; NEW, 1995 MAR p. 2048, Eff. 9/28/95; AMD, 2001 MAR p. 2049, Eff. 10/12/01; AMD, 2008 MAR p. 2009, Eff. 9/12/08.)

44.10.336 PERSONAL BENEFIT

(1) Pursuant to 13-37-240, MCA, the term "direct or indirect benefit" means the distribution of all or any portion of surplus campaign funds, including surplus campaign funds deposited in a constituent services account, that benefit a candidate, an eligible elected official, or a member of a candidate's or an eligible elected official's immediate family, except as specifically authorized by this rule or the rules in this chapter.

(2) Surplus campaign funds or constituent services account funds may be donated to a group of individuals or an organization to which the candidate or an eligible elected official, or a member of the candidate's or an eligible elected official's immediate family belongs or is a member, as long as:

(a) The candidate, an eligible elected official, or a member of a candidate's or an eligible elected official's immediate family do not control how the group or organization spends the surplus campaign funds or constituent services account funds received by the group or organization.

(b) The candidate, an eligible elected official, or a member of the candidate's or the eligible elected official's immediate family abstains from voting on or taking any action to approve or disapprove a decision by the group or organization to spend the surplus campaign funds or constituent services account funds received by the organization; and

(c) The candidate, an eligible elected official, or a member of the candidate's or an eligible elected official's immediate family receive a benefit that is only incidental to their membership or participation within the group or organization. A benefit is "incidental" if a benefit bestowed on or available to a candidate, an eligible elected official, or a member of a candidate's or an eligible elected official's immediate family is the same as a benefit bestowed on or available to the public or other members of the group or organization.

(3) Surplus campaign funds or constituent services account funds may be donated to a government entity under ARM 44.10.335(6)(c)(ii), even if the candidate, an eligible elected official, or a member of the candidate's or an eligible elected official's immediate family is an employee of the government entity or serves on the government entity's policy making or advisory board, as long as:

(a) The candidate, an eligible elected official, or a member of a candidate's or an eligible elected official's immediate family does not control how the government entity spends the surplus campaign funds or constituent services account funds received;

(b) The candidate, an eligible elected official, or a member of the candidate's or the eligible elected official's immediate family abstains from voting on or taking any action to approve or disapprove a decision by the government entity to spend the surplus campaign funds or constituent services account funds received; and

(c) The candidate, an eligible elected official, or a member of the candidate's or an eligible elected official's immediate family receives a benefit that is only incidental to their employment by or participation as a board member. A benefit is "incidental" if a benefit bestowed on or available to a candidate, an eligible elected official, or a member of a candidate's or an eligible elected official's immediate family is the same as a benefit bestowed on or available to the government entity's other employees or board members.

History: 13-37-114, MCA; IMP, 13-37-240, MCA; NEW, 1996 MAR p. 784, Eff. 3/22/96; AMD, 2008 MAR p. 2009, Eff. 9/12/08.

44.10.536 DEFINITIONS For the purposes of Title 13, chapter 37, part 4, MCA, 13-37-240, MCA, and this chapter:

(1) "Compensation" includes all direct or indirect payments of salaries, fees, wages, and benefits to an individual or a person to provide constituent services. The term includes all payments made to an individual or a person to provide constituent services on behalf of an eligible elected official, including but not limited to, payments for overtime, compensatory time, retirement, health insurance, membership fees for social, civic, and professional organizations, life insurance, professional liability insurance, unemployment or worker's compensation insurance, personal use of a vehicle, rental car payments, disability insurance, travel, meal, and lodging reimbursement, and other benefits.

(2) "Constituent" means an individual who resides in, is employed in, provides goods or services in, attends school in, or has an ownership interest in property or a business in the district or geographic area represented by an eligible elected official.

(3) "Constituent services" has the meaning generally defined in 13-37-401(1), MCA, and more specifically defined in ARM, 44.10.540.

(4) "Constituent services account" means an account established under Title 13, chapter 37, part 4, MCA, 13-37-240, MCA, and the rules in this chapter.

(5) "Eligible elected official" means an individual elected or appointed to a statewide office, the Public Service Commission, or the Legislature.

(6) "In-kind donation" means the furnishing of services, property, equipment, supplies, rights, or anything of value without charge or at a charge which is less than fair market value to an eligible elected official for the purpose of providing constituent services.

(7) "Leaves public office" means that an eligible elected official ceases to occupy the public office for which a constituent services account has been established. The term does not include an eligible elected official who is re-elected to the same public office.

(8) "Pre-existing account" means an account related to a public official's office that existed before May 14, 2007 (the effective date of 13-37-401 and 13-37-402, MCA). History: SEC. 13-37-114, MCA, IMP SEC. 13-37-401, 13-37-402, MCA, NEW 2008 MAR p. 474, Eff. 9/12/08

44.10.537 APPLICABILITY OF RULES (1) All of the rules in this chapter apply to a constituent services account established by an eligible elected official under Title 13, chapter 37, part 4, MCA, and 13-37-240, MCA, on or after May 14, 2007.

(2) Only the personal benefit and campaign contribution prohibitions in 13-37-240 and 13-37-402, MCA, and ARM 44.10.541(1)(b), (1)(d), (1)(f)], ARM 44.10.335, and 44.10.336 apply to:

(a) a pre-existing account in which surplus campaign funds have been deposited;

(b) an account related to an elected official's office if the elected official has been elected to any public office other than the public offices listed in ARM 44.10.538 and surplus campaign funds have been deposited in the account; or

(c) the expenditure of surplus campaign funds by a candidate or an elected official.

(3) The following provisions of Montana law may also apply to the use or expenditure of surplus campaign funds, constituent account funds, or other funds deposited in or expended from accounts related to an elected official's public office:

(a) the Montana Code of Ethics, 2-2-101, et seq., MCA, including the provisions governing the receipt of gifts of substantial value and the receipt of fees or compensation other than the official compensation provided by law;

(b) the provisions of Title 13, chapter 35, part 2, MCA, concerning the improper influence of voters before and after an election and the prohibition against corporate contributions to candidates;

(c) the provisions of Title 13, chapter 37, part 2, MCA; and

(d) the provisions of Title 5, chapter 7, MCA.

History: SEC. 13-37-114, MCA, IMP SEC. 13-37-401, 13-37-402, MCA, NEW 2008 MAR p. 474, Eff. 9/12/08

44.10.538 ELIGIBLE ELECTED OFFICIALS (1) An individual elected to any of the following public offices may transfer surplus campaign funds to a constituent services account created under Title 13, chapter 37, part 4, MCA, 13-37-240, MCA, and the rules in this chapter:

(a) Governor;

(b) Lieutenant Governor;

(c) Attorney General;

(d) Secretary of State;

(e) State Auditor;

(f) Superintendent of Public Instruction;

(g) Chief Justice or Justice of the Supreme Court;

(h) Clerk of the Supreme Court;

(i) Public Service Commission; or

(j) The Montana House of Representatives or Senate.

History: SEC. 13-37-114, MCA, IMP SEC. 13-37-401, 13-37-402, MCA, NEW 2008 MAR p. 474, Eff. 9/12/08

44.10.539 PROHIBITIONS (1) The following prohibitions apply to a constituent services account established under Title 13, chapter 37, part 4, MCA, 13-37-240, MCA, ARM 44.10.335 and 44.10.336, and the rules in this chapter:

(a) An eligible elected official may not establish any other account related to the eligible elected official's public office after May 14, 2007, except for a campaign account.

(b) Only surplus campaign funds as defined in ARM 44.10.335(2) may be deposited in a constituent services account established under Title 13, chapter 37, part 4, MCA, and the rules in this chapter, except for the payment of interest as provided in ARM, 44.10.543. An eligible elected official may not:

(i) deposit funds from a pre-existing account or any other account related to the eligible elected official's public office, including funds in a leadership political committee account, into a constituent services account established under Title 13, chapter 37, part 4, MCA;

(ii) solicit or receive cash or anything of monetary value for deposit in a constituent services account or to provide constituent services; or

(iii) solicit or receive an in-kind donation to provide constituent services.

(c) A constituent services account established under Title 13, chapter 37, part 4, MCA, may only be used to provide constituent services.

(d) Constituent services account funds may not be used for personal benefit as specified in 13-37-240 and 13-37-402, MCA, ARM 44.10.335, ARM 44.10.336, and the rules in this chapter. Constituent services account funds may not be used to pay compensation to an eligible elected official or a member of an eligible elected official's immediate family except as expressly provided in the rules in this chapter.

(e) Expenditures cannot be made from a constituent services account if the eligible elected official has an open campaign account for any elective office, including an elective office other than the office currently held. However, constituent services account funds may be used to pay for constituent services provided or expenses incurred to provide constituent services before the date upon which a campaign account was opened if payments for such services or expenses are supported by written documentation as provided in ARM 44.10.542.

(f) Constituent services account funds may not be contributed to another ballot issue or candidate campaign, including the eligible elected official's own future campaign.

(2) Subsections (1)(d) and (1)(f) apply to:

(a) a pre-existing account in which surplus campaign funds have been deposited; or

(b) the expenditure of surplus campaign funds by any elected official described in 44.10.537(2)(b). History: SEC. 13-37-114, MCA, IMP SEC. 13-37-401, 13-37-402, MCA, NEW 2008 MAR p. 474, Eff. 9/12/08

44.10.540 AUTHORIZED EXPENDITURES (1) A constituent services account established under Title 13, chapter 37, part 4, MCA, 13-37-240, MCA, and the rules in this chapter, may be used to pay for the following expenses incurred to provide constituent services:

(a) communications with constituents or on behalf of constituents, including but not limited to, printing, postage, paper, internet, facsimile, delivery, or other costs incurred to communicate with or on behalf of constituents. Communication costs do not include payment for public advertisements or public announcements of any kind unless such public advertisements or announcements are limited to publicly announcing the date, time, place, and general purpose of a meeting in an eligible elected official's district at which the public will be allowed to participate in a public discussion of matters of interest to an eligible elected official's constituents;

(b) travel, meal, and lodging expenses as provided in (2);

(c) equipment and supplies as provided in (3) and (4);

(d) office expenses related to the lease or purchase of office space as provided in (3) and (4);

(e) utility costs associated with the use of equipment, supplies, and office space to provide constituent services;

(f) compensation paid to an individual, other than an eligible elected official or a member of an eligible elected official's immediate family; and

(g) expenses related to education, workshops, and conference participation that are incurred to represent and serve constituents;

(h) any other expenses incurred to provide constituent services subject to the requirements and prohibitions of the rules in this chapter.

(2) Constituent services account funds may be used to pay travel, meal, and lodging expenses subject to the following:

(a) An eligible elected official may be reimbursed for travel, meal, and lodging expenses incurred to provide constituent services at the rates and reimbursement levels specified in Title 2, chapter 18, part 5, MCA, and applicable rules adopted by the Department of Administration.

(b) An individual, other than a member of an eligible elected official's immediate family, may be reimbursed for travel, meal, and lodging expenses incurred under a written agreement with an eligible elected official to provide constituent services if such reimbursement does not exceed the rates and reimbursement levels specified in Title 2, chapter 18, part 5, MCA, and applicable rules adopted by the Department of Administration.

(c) A member of an eligible elected official's immediate family may not be reimbursed for travel, meal, and lodging expenses incurred to provide constituent services.

(3) If constituent services account funds are used to purchase office space, equipment, or supplies, the office space, equipment, or supplies purchased with constituent account funds must be used exclusively to provide constituent services. When an eligible elected official leaves public office, any office space, equipment, or unused supplies purchased with constituent account funds must be disbursed as provided in ARM 44.10.335(6)(c).

(4) If constituent services account funds are used to reimburse an eligible elected official or a person, other than a member of an eligible elected official's immediate family, for office space, equipment, or supplies used, in whole or in part, to provide constituent services, all reimbursement payments and the basis for such payments must be documented in writing as provided in ARM 44.10.541 reimbursement for office space, equipment, or supplies must be based on the fair market value of the office space, equipment, and supplies used to provide constituent services.

(5) Nothing in this rule authorizes constituent services account funds to be used or expended in violation of the prohibitions in 44.10.539, ARM 44.10.335 and 44.10.336, 13-37-240, MCA, or Title 13, chapter 37, part 4, MCA.

(6) Constituent services account funds may not be used to pay:

(a) compensation to an eligible elected official for time spent or services rendered to provide constituent services, except as expressly provided in the rules in this chapter;

(b) compensation or any other payment to a member of an eligible elected official's immediate family for time spent or services rendered to provide constituent services;

(c) the cost of polls or public opinion surveys designed or intended to determine the attitudes and opinions of constituents or the public. However, nothing in this subsection prohibits an eligible elected official from encouraging a constituent to express an opinion about matters of interest to the constituent or matters that may be the subject of official action by the eligible elected official;

(d) the cost of all or any portion of an event, meeting, fundraiser, or gathering at which contributions as defined in 13-1-101(7), MCA, will be solicited or received by any person, including but not limited to, a political party, political party committee, candidate, or person or political committee supporting or opposing a candidate or ballot issue;

(e) any direct or indirect travel, lodging, meals, entertainment, or other expenses related to the sponsorship of, attendance at, or participation in an event, meeting, fundraiser, or gathering at which contributions as defined in 13-1-101(7), MCA, will be solicited or received by any person, including but not limited to, a political party, political party committee, candidate, or a person or political committee supporting or opposing a candidate or ballot issue;

(f) any direct or indirect expenditure to support or oppose a candidate or ballot issue;

(g) the cost of entertaining constituents or any other individual or person. However, nothing in this subsection prohibits an eligible elected official from using constituent services account funds to pay for food or drink provided at a publicly announced or publicly advertised meeting held for the general purpose of allowing constituents to participate in a public discussion of matters of interest to the constituents or an eligible elected official. The expenditures for food and drink at such a meeting must not be lavish or extravagant; and

(h) travel, meals, or lodging expenses incurred by a constituent or any individual other than an individual who has a written agreement to provide constituent services on behalf of an eligible elected official.

History: SEC. 13-37-114, MCA, IMP SEC. 13-37-401, 13-37-402, MCA, NEW 2008 MAR p. 1130, Eff. 9/12/08

44.10.541 OPENING AN ACCOUNT (1) An eligible elected official may establish a constituent services account under Title 13, chapter 37, part 4, MCA, 13-37-240, MCA, and the rules in this chapter, by filing a completed constituent services account form provided by the commissioner. The form shall require an eligible elected official to disclose and provide, as a minimum, the following:

(a) the name and elective office held by the eligible elected official establishing the constituent services account;

(b) the district or geographic area represented by the eligible elected official;

(c) the full name, mailing address, and telephone number that appears on the constituent services account;

(d) the full name and mailing address of any individual other than the eligible elected official who is authorized to make expenditures from the account (the eligible elected official establishing the account must be one of the signatories on the account);

(e) the full name, mailing address, and telephone number that appears on the campaign account from which surplus campaign funds are being transferred for deposit in the constituent services account;

(f) the full name, mailing address, and telephone number of the financial institution at which the constituent services account has been established;

(g) a copy of the closing report for the campaign account from which surplus campaign funds are being transferred for deposit in the constituent services account;

(h) the amount of surplus campaign funds being deposited in the constituent services account;

(i) if all of the surplus campaign funds in the closed campaign account will not be deposited in the eligible elected official's constituent services account, the full name and mailing address of each contributor or entity receiving any portion of the surplus campaign funds pursuant to ARM 44.10.335(6)(c)(ii); and

(j) for each payment of surplus campaign funds to a contributor or entity under the preceding subsection, the date on which the payment was made.

(2) The form must be signed by the eligible elected official and verified as required by 13-37-231(1), MCA.

History: SEC. 13-37-114, MCA, IMP SEC. 13-37-401, 13-37-402, MCA, NEW 2008 MAR p. 474, Eff. 9/12/08

44.10.542 RECORDS AND REPORTING (1) An eligible elected official who establishes a constituent services account under Title 13, chapter 37, part 4, MCA, 13-37-240, MCA, and the rules in this chapter, must file quarterly reports with the commissioner's office after an account is opened. Reports must be filed on or before April 10, July 10, October 10, and January 10 in each calendar year until the account is closed as provided in ARM 44.10.544. A report must be filed even if no expenditures have been made during the reporting period. The reports must include all expenditures made and interest accrued through the end of the calendar quarter on which the quarterly report is due.

(2) Each report must contain, as a minimum, the following:

(a) the amount of money in the account at the beginning of the reporting period;

(b) the amount and rate of interest paid on money in the account during the reporting period pursuant to ARM 44.10.543;

(c) the full name, mailing address, occupation, and principal place of business (if any) of each person to whom expenditures have been made during the reporting period, including the amount, date, and general statement describing the constituent services that were the basis for the expenditure, and the total amount of expenditures made to each person; and

(d) the amount of money in the account at the end of the reporting period.

(3) Each report must be signed by the eligible elected official and verified as required by 13-37-231(1), MCA.

(4) An eligible elected official must maintain the following additional written documentation for each expenditure from a constituent services account:

(a) The basis for any fair market value determination to be made under the rules in this chapter.

(b) A written log or other documents identifying the date on which constituent services were provided, the street address, city, and county at which the constituent services were provided, a statement describing the constituent services provided, and the full name and mailing address of at least one constituent on whose behalf the constituent services were provided.

(c) If the expenditure involves payments to a person other than the eligible elected official, a written receipt or invoice from the payee.

(d) If the expenditure involves reimbursement for travel, meal, or lodging expenses, such reimbursement must be based on receipts or other written documentation that satisfies applicable requirements of Title 2, chapter 18, part 5, MCA, and rules adopted by the Montana Department of Administration.

(e) If the expenditure involves costs incurred to communicate with constituents, such expenditures must be based on receipts or other written documentation itemizing the basis for the communication expenditure.

(5) An eligible elected official may establish only one constituent services account and no secondary depositories or subaccounts may be established.

(6) All records and reports that must be filed or maintained under the rules in this chapter must be retained by the eligible elected official for a period of four years after the constituent services account is closed. History: SEC. 13-37-114, MCA, IMP SEC. 13-37-401, 13-37-402, MCA, NEW 2008 MAR p. 1130, Eff. 9/12/08

44.10.543 INTEREST PAID ON ACCOUNTS (1) Interest paid on a constituent services account established under Title 13, chapter 37, part 4, MCA, 13-37-240, MCA, and the rules in this chapter, may be received and used to provide constituent services if:

(a) the interest is deposited directly into the constituent services account;

(b) the interest is paid by a bank, savings and loan, credit union, brokerage firm, or other financial or investment entity subject to regulation by the state of Montana or an agency of the United States government; and

(c) the interest paid is the entity's prevailing money market, savings, or certificate of deposit rate paid to other investors or depositors with similar interest bearing accounts.

History: SEC. 13-37-114, MCA, IMP SEC. 13-37-401, 13-37-402, MCA, NEW 2008 MAR p. 474, Eff. 9/12/08

44.10.544 CLOSING AN ACCOUNT – DISBURSEMENT OF SURPLUS ACCOUNT FUNDS (1) An eligible elected official must close a constituent services account within 120 days after leaving public office as defined in ARM 44.10.536(7). The closing report must be filed on a form to be provided by the commissioner.

(2) A closing report must disclose the full name and mailing address of each contributor or entity receiving all or any portion of the funds in a constituent services account pursuant to ARM 44.10.335(6)(c)(ii). The closing report must also disclose the date on which the payment was made to each contributor or entity.

History: SEC. 13-37-114, MCA, IMP SEC. 13-37-401, 13-37-402, MCA, NEW 2008 MAR p. 474, Eff. 9/12/08