

DRAFT

**50-State Survey Results:
Handling Campaign, Lobbying, and Ethics Complaints**

**HJR 1: Study of the Office of Commissioner
of Political Practices**

For the
State Administration and Veterans' Affairs Interim Committee

*Prepared by Sheri Scurr, Research Analyst
Montana Legislative Services Division*

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Study purpose

The State Administration and Veterans' Affairs Interim Committee was tasked under HJR 1 passed by the 2013 Legislature to examine:

"(1) the process for selecting a Commissioner of Political Practices;
(2) the structure, composition, and duties of the Office of Commissioner of Political Practices; and
(3) the enforcement authority of the Office of Commissioner of Political Practices, including options for ensuring more immediate consequences for violating campaign laws." The study resolution also requested "that the examination include a review of practices in other states, analysis of options, consideration of stakeholder concerns, and the development of recommendations to improve confidence in the integrity, objectivity, and capabilities of the Office of Commissioner of Political Practices."

Survey

To fulfill the request to examine practices in other states, staff, under the guidance and direction of the Committee, developed a survey that was sent to legislative research contacts in the other 49 states. The survey was divided into three sections: campaigns, lobbying, and ethics. The questions in each section were aimed at determining:

(1) whether the process used to initially handle the stated type of complaint was binding or non-binding;
(2) the selection process for the commission or official that handled the complaint;
(3) whether the state's statute required the commission or official to have certain qualifications; and
(4) how the salary for the commission or official was set.

In 10 states, further questions were asked concerning caseload, staffing, and budget. The survey was sent November 19, 2013, with instructions to complete as much of the

survey as possible before December 1 with the understanding that more complete responses could be provided later. The survey was conducted using a web-based software program called SurveyMonkey.

Highlights of results

Sixteen states responded as of December 1. Most of the states responding did not complete the entire survey and many provided only basic contact information rather than substantive answers to the survey questions.

The attached tables present the survey findings. It is impossible to draw conclusions about what the majority of other states do because of the limited number of responses so far. However, below are some responses that stand out.

Commission or single official

- Idaho indicated that a single official rather than a commission, board, or panel, handles campaign complaints, which would make Idaho the only other state known so far that may be similar to Montana in this respect.

Campaign complaints

- Only 3 of the states (AK, CO, OH) hold a quasi-judicial hearing (i.e., a contested case hearing) for both campaign and lobbying complaints. Two of these states also use a quasi-judicial hearing for ethics complaints. The other 9 responding states use a process similar to Montana's that results in an administrative decision without a quasi-judicial hearing.
- Responses concerning whether the decision was binding were incomplete, but 3 states (AR, NE, OR) indicate their administrative decisions (i.e., made without a quasi-judicial hearing) are binding. Texas, however, is similar to Montana in that the administrative decision is not binding.
- New Hampshire indicated that they have no process for handling a campaign (or lobbying) complaint other than referring the complaint directly to the county attorney or prosecutor.

Lobbying complaints

- Two states (AK and MD) reported they hold a quasi-judicial hearing for lobbying complaints. The other eight respondents reported a decision is issued without a quasi-judicial hearing.
- Of the four states that responded to the question about whether the decision issued was binding, AR and OR reported their administrative decisions were binding, while NE and TX reported their administrative decisions were not binding.

Ethics complaints

- Six states, AR, CO, CT, OH, OR, and TX issue administrative decisions without a quasi-judicial hearing and the decision is binding in only three of those states (AR, CO, and OR).
- Two states (ME and NE) reported they have no ethics commission or administrative process for handling ethics complaints.

Appointments

- Only 4 states provided details on how the commission or board members are appointed.
- Of the reporting states, three states (MN, NE, and TX) provide that the governor makes the appointments. The other state, AR, allows officials other than the governor to make appointments.
 - In NE and TX, the appointments are from a list of nominees.
 - In MN, the appointments are not from a list of nominations, but must be confirmed by three-fifths of the members of the state senate and state house.

Tables Attached

Overview

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Table 1.5 - Qualifications of commissioner members

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OVERVIEW OF SURVEY RESULTS

State:	Campaign			Lobbying			Ethics		
	Agency or board/commission decision	Hearing	Binding? Yes or No	Agency or board/commission decision	Hearing	Binding? Yes or No	Agency or board/commission decision	Hearing	Binding? Yes or No
AK		x			x			x	
AR	x		Yes	x		Yes	x		Yes
CO		x	Yes				x		Yes
CT	x			x			x		
DE						Yes			Yes
ID	x								
MD					x	Yes		x	Yes
ME	x			x			No Board of Ethics		
MN	x			x					
NE	x		Yes	x		No	No Board of Ethics		
NH	x			x					
OH		x					x		
OR	x		Yes	x		Yes	x		Yes
TX	x		No	x		No	x		No
Total: 14	9	3	4 yes, 1 no	8	2	4 yes, 2 no	6	2	5 yes, 1 no
MT	x		No	x		No		x	No

NOTES

Campaign:

AR, NE, and OR have boards that issue a binding decision without a quasi-judicial hearing.

Lobbying:

AR and OR have boards that issue a binding decision without a quasi-judicial hearing.

Ethics:

AR, CO, and OR have boards that issue a binding decision without a quasi-judicial hearing.

SECTION 1 - CAMPAIGN PRACTICES - PAGE 1

TABLE 1.1: Process for Handling Campaign Practices Complaints

State:	Restrictions on who may initiate complaint?	Is complaint confidential?	Administrative investigation and finding	Quasi-Judicial Hearing	Referred directly to prosecutor	Other	Comments
							Once a complaint is received the respondent has 15 days to respond to the complaint. Agency staff conducts an investigation and produces a staff report within 30 days of the complaint's acceptance. The respondent has 15 days to respond to the staff report. A quasi-judicial hearing is held by the commission. There are provisions for potential expedited complaints where the process is much accelerated.
AK	No	No		x			
AL	No						
AR	Yes	Yes	x				
CO	Yes	No		x			Quasi-judicial hearing is held before an administrative law judge
CT	No		x				
DE	No						
ID	Yes	Yes	x				
MD	No						
							The Commission on Governmental Ethics and Election Practices investigates a claim made by a person, if there is sufficient grounds for an investigation or an investigation may be initiated by the Commission itself. The Commission may seek the assistance of the Attorney General. Apparent violations are referred to the AG.
ME	No	No				x	
MN	No	Yes	x				
ND	No						
NE	No	Yes	x				
NH	No	No				x	
							The Ohio Elections Commission holds a hearing, at which the Commission imposes a fine, refers the matter to the appropriate prosecutor, or enters a finding of good cause not to impose a fine or refer the matter for prosecution.
OH	No	No		x			
OR	Yes	No			x		
TX	Yes	Yes	x				
Total: 16	5 yes, 11 no	5 yes, 6 no	6	3	2	1	
MT	No	No	x				

Source: Montana Legislative Services Division Survey Results, Dec. 6, 2013

SECTION 1 - CAMPAIGN PRACTICES - PAGE 2

TABLE 1.2: How is the official, commission, board, or panel appointed?	
State:	Comments
AR	<p>Commission: The Arkansas Ethics Commission is a board of 5 members, appointed 1 each by the following elected officials in Arkansas: Governor, Attorney General, Lieutenant Governor, Speaker of the House of Representatives, President Pro Tempore of the Senate.</p>
MN	<p>Board: The Campaign Finance and Public Disclosure Board is made up of 6 members. The governor appoints the members, with advice and consent of three-fifths of the members of both the house and senate. The board elects a chair and vice-chair from among the members. The board also appoints an executive director (not a member of the board). Minnesota Statutes section 10A.02.</p>
NE	<p>Commission: Nebraska Political Accountability and Disclosure Commission is composed of 9 members, including the Secretary of State. 4 members appointed by the Governor as follows: 1 member from each of two lists submitted by the Legislature. Each list must have 5 names on it 4 members are appointed by the Secretary of State as follows: 1 member from a 5-person list of Democrats 1 member from a 5-person list of Republicans 2 members from the citizenry of the state at large. See Neb. Rev. Stat. sec. 49-14,105.</p>
TX	<p>Commission: The Texas Ethics Commission consists of the following eight members: - two members of different political parties appointed by the governor from a list of at least 10 names submitted by the members of the house of representatives from each political party required by law to hold a primary - two members of different political parties appointed by the governor from a list of at least 10 names submitted by the members of the senate from each political party required by law to hold a primary - two members of different political parties appointed by the speaker of the house of representatives from a list of at least 10 names submitted by the members of the house of representatives from each political party required by law to hold a primary - two members of different political parties appointed by the lieutenant governor from a list of at least 10 names submitted by the members of the senate from each political party required by law to hold a primary</p>
Total: 4	
MT	<p>Commissioner: appointed by the governor, subject to confirmation by a majority of the senate. A four-member selection committee composed of the speaker of the house, the president of the senate, and the minority leaders of both houses of the legislature shall submit to the governor a list of not less than two or more than five names of individuals for the governor's consideration. A majority of the members of the selection committee shall agree upon each nomination.</p>

Source: Montana Legislative Services Division Survey Results, Dec. 6, 2013

SECTION 1 - CAMPAIGN PRACTICES - PAGE 3

TABLE 1.3: Administrative decisions without a quasi-judicial hearing					
State	Is Finding Binding?	Single official	Board/ Commission	Who sets salary?	Certain Qualifications Required?
AR	Yes		x	Other	Yes
CT			x	Statute	
ID	Yes	x		Statute	No
MN			x	Statute	Yes
NE	No		x	Appointing authority	Yes
TX	No		x	Other	Yes
Total: 6	3 yes, 2 no	1	5		4 yes, 1 no
MT	No	x		Appointing authority	Yes

TABLE 1.4: Quasi-judicial hearings					
State	Is Finding Binding?	Single official	Board/ Commission	Who sets salary?	Certain Qualifications Required?
AK			x		
CO	Yes		x		
Total: 2	1 yes		2		

Source: Montana Legislative Services Division Survey Results, Dec. 6, 2013

SECTION 1 - CAMPAIGN PRACTICES - PAGE 4

Table 1.5: Qualifications - What qualifications are required by statute for official or board/commission member?	
State	Comments
AR	Board: The membership of the board must include 1 minority, 1 woman, and 1 member of the minority political party. A member may not be a federal state, or local government employee, public official, candidate for public office, lobbyist, or officer or paid employee of an organized political party.
MN	Board: Two members must be former members of the legislature who support different political parties; two members must be persons who have not been public officials, held any political party office other than precinct delegate, or been elected to public office for which party designation is required by statute in the three years preceding the date of their appointment; and the other two members must support different political parties. No more than three of the members of the board may support the same political party. No member of the board may currently serve as a lobbyist. Minnesota Statutes section 10A.02.
NE	Board: No more than 4 of the 8 appointed members can be from the same political party. Neb. Rev. Stat, secs, 49-14,105 to 49-14,140 govern the commission.
TX	Board: A person may not be a member of the commission if the person is required to register as a lobbyist.
MT	Commissioner: Must be U. S. citizen, Montana resident, registered to vote. During term of office, may not work in other occupation during business hours, may not participate in political activity, must recuse self if conflict of interest.

Table 1.6: Caseload and Staffing					
State	Other complaints?	Number of decisions in last 4 yrs	Full-time staff	FY 2013 Budget	Comments
AK					
DE					
ID					
ND					
NM		No Responses Provided At This Time			
NV					
RI					
SD					
VT					
WY					

Source: Montana Legislative Services Division Survey Results, Dec. 6, 2013

SECTION 2 - LOBBYING - PAGE 1

TABLE 2.1: Process for Handling Lobbying Complaints							
State:	Restrictions on who may initiate complaint?	Is complaint confidential?	Administrative investigation and finding	Quasi-Judicial Hearing	Referred directly to prosecutor	Other	Comments
AK	No	No	x				The Commission on Governmental Ethics and Election Practices investigates a claim made by any person, if there is sufficient grounds for an investigation or an investigation may be initiated by the Commission itself. The Commission may seek the assistance of the Attorney General. Apparent violations are referred to the AG.
AR	Yes	Yes	x				
CT	No		x				
MD	No	Yes		x			
ME	No	No				x	The Commission on Governmental Ethics and Election Practices conducts an investigations and may apply penalties as specifically prescribed by law. The Commission may request a matter be referred to the Attorney General.
MN	No	Yes	x				
NE	No	Yes	x				
NH	No	No			x		
OH	Yes	Yes				x	The Joint Legislative Ethics Committee may received and investigate complaints and disputes under the Lobbying Law. The Attorney General also may investigate compliance with the law and report applicable findings to the prosecuting attorney, who must institute appropriate proceedings.
OR	No	No				x	
TX	Yes	Yes	x				Oregon Government Ethics Commission receives, investigates, and adjudicates all lobbyists complaints.
Total: 11	3 yes, 8 no	6 yes, 4 no	6	1	1	3	
MT	No	No	x				

Source: Montana Legislative Services Division Survey Results, Dec. 6, 2013

SECTION 2 - LOBBYING - PAGE 2

TABLE 2.2: Administrative decisions					
State	Is Finding Binding?	Single official	Board/ Commission	Who sets salary?	Certain Qualifications Required?
AK			x		
AR	Yes		x	Other	Yes
CT			x	Statute	
*DE	Yes		x	Statute	No
MN			x	Statute	
NE	No		x	Appointing authority	
TX	No		x	Other	Yes
Total: 7	2 yes, 2 no		7		2 yes, 1 no
MT	No	x		Appointing authority	Yes

* Note: Delaware did not answer previous questions on lobbying, so was not included in Table 2.1.

TABLE 2.3: Quasi-judicial hearings					
State	Is Finding Binding?	Single official	Board/ Commission	Who sets salary?	Certain Qualifications Required?
MD	Yes	x		Other	No

Source: Montana Legislative Services Division Survey Results, Dec. 6, 2013

SECTION 2 - LOBBYING - PAGE 3

Table 2.4: Qualifications - What qualifications are required by statute for official or board/commission member?

State	Comments
AR	Board: The membership of the board must include 1 minority, 1 woman, and 1 member of the minority political party. A member may not be a federal state, or local government employee, public official, candidate for public office, lobbyist, or officer or paid employee of an organized political party.
*DE	Board: 7 citizens appointed by the Governor for 7 year terms
TX	Board: A person may not be a member of the commission if the person is required to register as a lobbyist.
MT	Commissioner: Must be U. S. citizen, Montana resident, registered to vote. During term of office, may not work in other occupation during business hours, may not participate in political activity, must recuse self if conflict of interest.

*Note: Delaware answered "No" to qualifications, but then filled in the comment block on what qualifications, so is included in this table.

Table 2.5: Caseload and Staffing

State	Other complaints?	Number of decisions in last 4 yrs	Full-time staff	FY 2013 Budget	Comments
DE	Ethics	0	2	\$ 188,500	

Source: Montana Legislative Services Division Survey Results, Dec. 6, 2013

TABLE 3.1: Process for Handling Lobbying Complaints

State:	Restrictions on who may initiate complaint?	Is complaint confidential?	Administrative investigation and finding	Quasi-Judicial Hearing	Referred directly to prosecutor	Other	Comments
AK	No	No		x			Once a complaint is received the respondent has 15 days to respond to the complaint. Agency staff conducts an investigation and produces a staff report within 30 days of the complaint's acceptance. The respondent has 15 days to respond to the staff report. A quasi-judicial hearing is held by the commission. There are provisions for potential expedited complaints where the process is much accelerated.
AR	Yes	Yes	x				
CO	No	Yes				x	Article XXIX of the Colorado constitution, entitled "Ethics in Government", creates the Independent Ethics Commission ("IEC") as an independent agency. The mission of the IEC is to hear complaints, issue findings, and assess penalties, and also to issue advisory opinions on ethics issues arising under Article XXIX and under any other standards of conduct and reporting requirements provided by law. The IEC may dismiss complaints deemed frivolous without conducting a public hearing. The IEC is required to maintain the confidentiality of complaints dismissed as frivolous.
CT	No	Yes	x				
DE	No	Yes	x				
MD	No	Yes		x			
ME					x		Maine does not have specific statutory provisions governing ethics or code of conduct violations by members of the Executive Branch.
MN	No					x	Minnesota has a general conflict of interest provision (Minn. Stat. 43A.38) that applies to all executive branch employees. It does not provide a complaint or investigation procedure. It is just very general and provides for work to be assigned to others when a conflict exists. There are, in statute, additional conflict of interest provisions that apply to specific agencies. Some of these provide additional details about a process. Further, some agencies have promulgated rules to deal with conflicts. I did not research all of those statutes and rules to answer this survey.
NE						x	We do not have any Ethics Board/Commission.
NH	No	No				x	A complaint can be submitted to the Executive Branch Ethics Committee.
OH	No	Yes				x	The appropriate ethics commission investigates complaints received, and, if it finds the complaint is not frivolous, must hold a hearing on the complaint. The commission may refer matters to a prosecutor, dismiss the complaint, or compromise or settle the complaint.
OR	No	No				x	Oregon Government Ethics Commission is responsible for investigating and adjudicating the complaint
TX	Yes	Yes	x				
Totals:13	2 yes, 9 no	7 yes, 3 no	4	2	1	6	
MT	No	No		x			

Source: Montana Legislative Services Division Survey Results, Dec. 6, 2013

SECTION 3 -ETHICS - PAGE 2

TABLE 3.2: Administrative decisions					
State	Is Finding Binding?	Single official	Board/ Commission	Who sets salary?	Certain Qualifications Required?
AR	Yes		x	Other	Yes
CT			x	Statute	
DE	Yes		x	Statute	No
TX	No		x	Other	Yes
Totals: 4	2 yes, 1 no	0	4		2 yes, 1 no
MT	No	x		Appointing authority	Yes

TABLE 3.3: Quasi-judicial hearings					
State	Is Finding Binding?	Single official	Board/ Commission	Who sets salary?	Certain Qualifications Required?
MD	Yes		x	Not compensated	
* The State Ethics Commission, appointed by the Governor, conducts the hearing and issues rulings.					

Source: Montana Legislative Services Division Survey Results, Dec. 6, 2013

SECTION 3 - ETHICS - PAGE 3

Table 3.4: Qualifications - What qualifications are required by statute for official or board/commission member?

State	Comments
AR	Board: The membership of the board must include 1 minority, 1 woman, and 1 member of the minority political party. A member may not be a federal state, or local government employee, public official, candidate for public office, lobbyist, or officer or paid employee of an organized political party.
*DE	Board: 7 citizens appointed by the Governor for 7 year terms
TX	Board: A person may not be a member of the commission if the person is required to register as a lobbyist.
MT	Commissioner: Must be U. S. citizen, Montana resident, registered to vote. During term of office, may not work in other occupation during business hours, may not participate in political activity, must recuse self if conflict of interest.
<p><u>Notes:</u></p> <p>*Deleware did not answer the previous question, so was not included in Table 3.2.</p> <p>**Connecticut answered "Yes" to qualifications required by statute but did not fill out the comment on what qualifications.</p>	

Table 3.5: Caseload and Staffing

State	Other complaints?	Number of decisions in last 4 yrs	Full-time staff	FY 2013 Budget	Comments
DE	Lobbying	26	2	\$ 188,500	Not all decisions are based upon complaints. The Commission also issues advisory opinions at the request of an employee or employer.

Source: Montana Legislative Services Division Survey Results, Dec. 6, 2013