



Montana Legislative Services Division
Legal Services Office

TO: State Administration and Veterans' Affairs Interim Committee

FROM: K. Virginia Aldrich

DATE: March 28, 2014

RE: Legislative Administrative Rule Review Report

Pursuant to 5-5-228, MCA, the State Administration and Veterans' Affairs Interim Committee is responsible for reviewing administrative rules within its jurisdiction. Staff for the State Administration and Veterans' Affairs Interim Committee has prepared this report for informational purposes only. This report does not represent any action or opinion of the State Administration and Veterans' Affairs Interim Committee and does not preclude additional action that may be taken by the State Administration and Veterans' Affairs Interim Committee pursuant to its authority under the Montana Administrative Procedure Act (Title 2, chapter 4, MCA).

MAR NOTICE NUMBER: N/A

AGENCY/BOARD: Commissioner of Political Practices

SUBJECT: Refusal to Issue a Declaratory Ruling

NOTICE DESCRIPTION: (e.g., proposal notice/adoption notice):

Notice of Refusal to Issue a Declaratory Ruling

SUMMARY OF RULE(S):

The Commissioner of Political Practices issued a Notice of Refusal to Issue a Declaratory Ruling concerning a request for a declaratory ruling by Montanans for Community Development (MCD). Pursuant to section 2-4-501, MCA, a notice of the ruling is required to be published in the Montana Administrative Register. This summary is prepared for your information only.

MCD requested an advisory opinion concerning planned activities and mailers that it did not consider "express advocacy." MCD was concerned the Commissioner's office might consider its activities as "express advocacy." MCD sought clarification from the Commissioner's office concerning the Commissioner's standard that "anything of value" to a candidate would constitute an "election expense." The Commissioner's office responded to MCD, twice declining to provide an administrative advisory opinion because the facts were inadequate for determination. The Commissioner further rejected a petition for a declaratory ruling because it was procedurally inadequate and improperly pled. MCD filed a petition in federal court, requesting a declaratory judgment finding that Title 13 of the MCA and Chapter 44.10 of the Administrative Rules of Montana do not apply to MCD's planned grassroots lobbying efforts. The federal District Court

declined to take jurisdiction over the case and dismissed the petition.

Following the Court's dismissal, the Commissioner of Political Practices issued the Notice of Refusal to Issue a Declaratory Ruling, published in the Montana Administrative Register on March 27, 2014. The refusal is subject to judicial review, and MCD may now appeal the decision in state court.

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