

# Lobbying Disclosure History & Issues

JEFF MANGAN, COMMISSIONER

JAIME MACNAUGHTON, CHIEF LEGAL

MONTANA COMMISSIONER OF POLITICAL PRACTICES

SEPTEMBER 3, 2019

# Lobbying Act

- ▶ The Lobbying Act was enacted in 1959.
  - ▶ 43-801, *et seq.* R.C.M., 1947
  - ▶ Provided for license and registration of paid lobbyists and their principals
  - ▶ Did not provide disclosure of the amounts spent, or which legislators or legislation the lobbyists were being paid to influence.
- ▶ Minor Legislative amendments in 1965 (CH. 248) and 1977 (CH. 309).
- ▶ 1979 legislative session major efforts to expand disclosure were killed prior to transmittal.

# I-85, Montana Lobbyist Disclosure Act

- ▶ 1980 a citizen initiative, I-85 The Montana Lobbyist Disclosure Act, placed the issue on the ballot, and passed with 77% of the vote.
  - ▶ Required registration for principals of the money spent lobbying over \$1,000
  - ▶ Periodic reports required when \$5,000 or more was spent in a month
  - ▶ Applied to lobbying of both public officials and elected officials
  - ▶ Disclosure of \$100 or more spent for the benefit for one or more public officials
  - ▶ Business interest disclosures for elected officials (later moved to Code of Ethics)
- ▶ Shortly thereafter, two lawsuits were filed.

# *Montana Auto. Ass'n. v. Greeley,*

193 Mont. 378; 632 P.2d 300 (July 1981)

- ▶ First Judicial District Court held entire act unconstitutional, and permanently enjoined enforcement.
- ▶ Montana Supreme Court held it was partially unconstitutional and void, and carved out those portions, leaving the remainder of the Initiative intact and dissolved the injunction on enforcement.

# Unconstitutional provisions

- ▶ That the lobbying exceptions only applied to **Montana** citizens
- ▶ “Unprofessional conduct” was trimmed down to what exists in the definitions section today and only applies to lobbyists or principals, Mont. Code Ann. 5-7-102(17).
- ▶ The definition of “Principal” was overbroad because it also contained individuals who solicit others to lobby the legislature about an issue.
- ▶ Prohibition on contingent fee compensation for passing legislation, improperly regulates contracts which may not be illegal or improperly motivated
- ▶ Some disclosure was found to be content based, indefinite, and/or interfered with the right to associate.
- ▶ Disclosure of campaign contributions was not embraced in the title of the Initiative.

# *State Bar of Montana v. Krivec*

193 Mont. 477, 484-5; 632 P.2d 707, 711-2 (August 1981)

- ▶ Interprets how the Lobbying disclosure requirements apply to attorneys.
  - ▶ “when an attorney seeks to influence a public official exercising a quasi-judicial function who is acting in a matter or field in which the public official has discretion, such an attorney is not engaged in lobbying under the terms of the Initiative.”
  - ▶ Regulation of attorneys who lobby the legislature, are the same as any other lobbyist.

# 2001 and 2003 Legislature

- ▶ 2001 Legislative Council introduced House Bill 144, which created the State Government Broadcasting Service.
  - ▶ Upped the lobbyist registration fee from \$50 to \$150.
  - ▶ \$50 was still directed to the general fund, the \$100 went into a special revenue account to raise revenue for the broadcasting service.
  - ▶ The fiscal note anticipated raising \$60,000 from lobbyists license fees.
- ▶ 2003 Legislature
  - ▶ House Bill 689, Raised the payment reporting threshold from \$1,000 to \$2,150 and subjected the reporting threshold to biennial adjustment for inflation.
  - ▶ House Bill 38 removed criminal penalties, increased civil penalties
  - ▶ In 2001-2002 there were 919 registered lobbyists. In 2019 there were 389.

# 2004 Rule Revisions

- ▶ Commissioner determined that the rule changes would only be applied to legislative lobbying before the legislature or legislators.
- ▶ “Until the quasi judicial and non-legislative lobbying are clarified, the rules will not be applied to non-legislative lobbying activities.”
  - ▶ Mont. Admin. R. 44.12.101A, 8/20/2004, Commissioner Vaughey

# Other Sessions

- ▶ 2005 Legislature
  - ▶ SB 347 minor revision of lobbying reporting requirements
- ▶ 2006 Citizen Initiative I-153, prohibited lobbying for 2 years by certain former high-level government elected officials or personnel (75%)
- ▶ 2007 Legislature
  - ▶ SB 40 Gender neutralize the laws
  - ▶ SB 172 clarified lobbying laws apply to legislature and legislators
  - ▶ HB 433 required reporting of state and local government disclose expenditures on lobbying federal elected or appointed officials

# Questions the COPP Receives

- ▶ What, if any, grassroots lobbying expenditures are reportable?
- ▶ Lobbying of elected officials
- ▶ Lobbying local governments
- ▶ Interim lobbying of the legislature
- ▶ Education expenses and gift questions – interim
- ▶ Quasi-legislative lobbying (Rulemaking at the Agency Level)
- ▶ Monitoring and enforcement

# Issues

- ▶ The timing of reports combined with the thresholds make the disclosure of money spent during the legislative session occur after the session has concluded.
  - ▶ 2 reports due on Feb 15
    - ▶ One for the lobbying that occurred prior to a session year
    - ▶ One for January 1 through Jan 31, although the report is not required if a principal spent less than \$2,600 in January.
  - ▶ No reports are due in March or April unless a principal spent more than \$5,000 in February or March. Legislature almost always adjourns late April (April 25, 2019).
  - ▶ Session end report due 30 days post session. (May 25, 2019).
  - ▶ Mont. Code Ann. 5-7-208.

# Issues

- ▶ 2019 Session
  - ▶ 389 Lobbyists, 447 Registered Principals
  - ▶ 90 non session year end reports (20%)
  - ▶ February 15 only if over \$2,600 spent in January (registration threshold)
  - ▶ March 15 only if over \$5,000 spent in February
  - ▶ April 15 only if over \$5,000 spent in March
  - ▶ Mandatory Post Session reports for all spent during session (May 28)
- ▶ Necessary: a logical and uniform system of lobbying disclosure covering both in-session and out-of-session funds expended by third parties to influence public officials

# Issues

- ▶ Biennial Audit errors since 2001. The license fee is split into separate accounts over two fiscal years. Mont. Code Ann. 5-7-103
  - ▶ \$50 to General Fund (split \$25/\$25 for each fiscal year)
  - ▶ \$100 to state special revenue account (also split each fiscal year)  
(funds a portion the State Government Broadcasting streaming of the legislature's committee and floor sessions)
- ▶ Current lobbying practices telegraph vs. internet

# Additional Information

- ▶ The reports are not required to be electronically filed. Lack of electronic filing burdens citizens, media and organizations of interest, etc.
- ▶ Is the lobbying reporting threshold too high?
- ▶ Citizen right to participate paramount.
- ▶ Discrimination and harassment training/code of conduct
- ▶ Role of entities' whose purpose is to provide model legislation
- ▶ Disclosure
  - ▶ Conflict
  - ▶ Contractual
  - ▶ Vendor Relationships, etc.