

Guidance on the Legislative Stipend and Reimbursement for Constituent Services

In July, you received your legislative constituent services stipend (less taxes). We have received numerous questions and would like to provide you with some additional guidance and Best Practices. I have worked with the Commissioner of Political Practices and the Legislative Council to bring you this information.

The pamphlet sent to you in June spoke to the statute and how the constituent services stipend was intended to be used. Legislators are seeking more guidance on how to administer the funds and, more specifically, on what the funds should not be used. Materials are posted at:

<http://leg.mt.gov/css/For-Legislators/constituent-services-account.asp>

Here is a basic description of the three different kinds of accounts that you may have and the differences between them and then a suggested list of Best Practices that you may find helpful.

Legislative Stipend and Reimbursement for Constituent Services (5-2-204, MCA)

This stipend is intended to be used for "providing constituent services, which include but are not limited to unreimbursed expenses for mileage, per diem, or lodging as well as communication and information technology, such as expenses for telecommunications or internet, computer hardware and software, postage, and education-related expenses to represent constituents." These funds are best used for attending meetings in your districts and attending other legislative meetings for which you are not already reimbursed. If you are an interim committee member, the committee pays for your travel and those expenses would not be an eligible use of these funds. If you attend an interim committee meeting for which you are not a member, those expenses would be eligible.

The funds you received in July should not be used for anything campaign-related or for any personal benefit for you or your family. These are considered public funds and are subject to public information requests. Retain receipts and keep a log (example of which was provided to you and is on the website for your convenience). Legislative Services is willing to retain these files for you at your request and will be able to provide you with a completed file come tax time or upon request.

Constituent Services Account from Remaining Campaign Funds (13-37-402, MCA), ARM 44.11.701 et seq

Section [13-37-240, MCA](#), allows a successful candidate for legislative office to establish a constituent services account under [13-37-402, MCA](#). The legislator can deposit only surplus campaign funds in this account (following final campaign contributions and/or expenditures). The account may be used only for constituent services and cannot be used for personal benefit. Expenditures cannot be made from the constituent account when there is an open campaign account.

Campaign surplus constituent service account funds can be used for communication with constituents or on behalf of constituents (does not include advertisements, but see [ARM 44.11.707](#) for exceptions); travel, meals, and lodging for constituent services; education and conference participation incurred to represent and serve constituents; and within the specific requirements of [ARM 44.11.707](#), equipment, office space, and compensation to an individual other than elected official or immediate family in order to provide services to constituents.

Campaign surplus constituent service account funds cannot be used for any campaign-related

expenditures; compensation to elected officials or immediate family; polls or opinion surveys; any portion of an event in which any contributions will be solicited; travel-related expenses to an event in which any contributions will be solicited; any direct or indirect expenditure to support or oppose a candidate or committee; or certain travel or expenses (see ARM [44.11.706](#) and [707](#)).

A constituent account created under [13-37-402, MCA](#), must be filed with the COPP and certified reports are required quarterly. A person who creates an account under [13-37-402, MCA](#), may not establish any account related to the public official's office other than a constituent services account (or a campaign account).

Legislative District Campaign Account ([13-37-207, MCA](#))

Once a campaign account is established, any constituent account created under [13-37-402, MCA](#), cannot be used for expenditures (see ARM [44.11.709](#)). Only surplus campaign funds following an election cycle can be deposited into a constituent account created under [13-37-402, MCA](#). Surplus campaign funds cannot be transferred to another campaign, a future campaign, or used for personal benefit.

Best Practices for all types of constituent services accounts

1. **Keep receipts and a log of expenses**, including a brief note about the meeting attended; e.g., a Kiwanis luncheon in Wolf Point 11/12/17, NCSL Summit in Boston Aug 6-9, 2017, Coal Council meeting in Billings 2/3/18, etc. There is a draft form on the website that you can use for this purpose. This will enable you to quickly identify the use of the funds and also to be able to deduct your expenses at tax time. We will offer to maintain a file on your account for you if you wish to forward your log and receipts on a quarterly basis to keep all records together. This file would be accessible to you at any time and, if a request for information is received, you would be informed prior to any information being released. Any secondary reimbursements records would also be maintained in this same file.
2. **Consider not using any constituent services funds from any account during an active campaign season.** You should be extra careful during that period and either use the funds prior to active campaign season or use the funds for expenses that are obviously not related to campaigning, such as an out-of-state training or an educational opportunity or a meeting related to the Legislature's current business. Be aware that a legislator cannot make expenditures from a constituent services account established under [13-37-402, MCA](#), while a campaign account is open.

Types of Inquiries re: Constituent Services Stipend

1. **Tax Ramifications--why is the tax so high?** *Legislative Services Division, in consultation with the Legislative Council, chose the single payment at the flat rate as the midpoint and the most efficient to administer. IRS: The employer may elect to treat taxable fringe benefits as paid in a pay period, or on a quarterly, semiannual, or annual basis, but no less frequently than annually. IRS Ann. 85-113. The employer may elect to add taxable fringe benefits to employee regular wages and withhold on the total, or may withhold on the benefit at the supplemental wage flat rate of 25%. Reg. §31.3402(g)-1; Reg. §31.3501(a)-1T.*
2. **Record Keeping--should I keep a record of what the primary stipend is spent on?** *Yes, the expense log form that was supplied to you was intended for that use and has spaces for you to indicate destination, name of person, organization, and description of event. A draft form for your use is provided on the legislative website. You must document how you spend the primary stipend funds (\$3,000).*
3. **Is the Legislative Services Division able to retain copies of records for the purpose of information requests?** *Yes, Legislative Services is willing to keep your forms on file for information requests and to assist you.*
4. **Can I invest a portion of my constituent services into a deferred comp account?** *No, use of funds for that purpose would treat them as personal funds for the individual's benefit and would not directly relate to constituent services.*

5. **How does this stipend differentiate from my campaign finance account?** *These funds are intended strictly for constituent and related services and, because it is public money, may not be spent for campaign purposes. These funds should also be kept separate from any constituent services accounts created from leftover campaign funds as that account is not permitted to have additional deposits made.*
6. **Can we put this payment into our campaign finance account?** *Do not deposit these funds into a campaign account. They should be kept and accounted for separately.*
7. **Existing Legislators who are also state employees--can they receive their constituent services check separate from their regular biweekly paycheck?** *This is considered taxable income and the state requires these payments to go through payroll.*
8. **How to decline/repay stipend when a legislator does not wish to be paid?** *In the future, Legislative Services will provide that information in the letter that will be sent to all legislators prior to the payment being made and provide a contact or form so that a legislator may decline the payment.*
9. **What can the funds be used for?** *Please see description of Legislative Stipend and Reimbursement for Constituent Services (5-2-204, MCA) above or access the brochure on the website.*
10. **If we do not spend all the funds during the biennium, do we have to repay the remainder?** *If you do not spend or encumber the funds by the end of your term and you are not reelected, you must remit the balance back to Legislative Services where it will revert to the general fund. Your term does not end until December 31, 2018, or, for some senators, December 31, 2020. Also, if you leave or resign your office before the end of your term, you must remit the balance to Legislative Services.*

As long as you do not use these funds for campaign or personal reasons, the funds are available for you to use for educational and training purposes or information technology that relate to representation of your constituents in your legislative capacity, in addition to direct constituent services. If you do not need the funds to serve your constituents directly, you may consider going to one of the legislative organizational meetings which are held in the summer or fall (i.e., NCSL, CSG-West, PNWER, ALEC, etc.) to learn more about policy, budget, or related issues, or you may want to pay for a tablet or laptop for your interim committee work or for the next session. Secondary reimbursements will not be available for expenses incurred or encumbered after December 31, 2018. Expenses must be filed within three months of incurring the expense.

For further assistance:

- Website: <http://leg.mt.gov/css/For-Legislators/constituent-services-account.asp>

- Contact: *Legislative Services Division*
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(406) 444-3066

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