

Local Gov't Ethics and Political Practices

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MONTANA COMMISSIONER OF POLITICAL PRACTICE

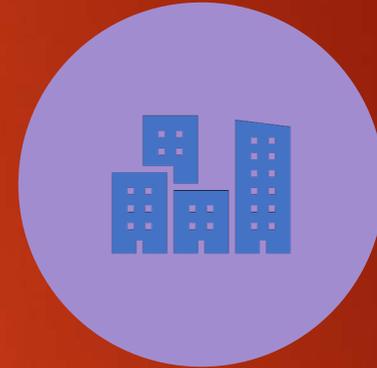
WE'LL COVER THE FOLLOWING:



ETHICS AND
ELECTIONS



CAMPAIGN FINANCE
AND LOCAL GOV'T



CITY OF BOZEMAN V.
CITY OF BOZEMAN

ETHICS – Local Government



Public employee



Elected Official



Rules of Conduct



Enforcement

Public Employee



- ▶ (7) "Public employee" means:
 - ▶ (a) any temporary or permanent employee of the state;
 - ▶ (b) any temporary or permanent employee of a local government;
 - ▶ (c) a member of a quasi-judicial board or commission or of a board, commission, or committee with rulemaking authority; and
 - ▶ (d) a person under contract to the state

Public Officer

▶ (8) (a) "Public officer" includes any state officer and any elected officer of a local government.

▶ (b) For the purposes of [67-11-104](#), the term also includes a commissioner of an airport authority

Rules of conduct for public officers and public employees - MCA 2-2-121

- ▶ (3) (a) Except as provided in subsection (3)(b), a public officer or public employee may not use public time, facilities, equipment, supplies, personnel, or funds to solicit support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue unless the use is:
 - ▶ (i) authorized by law; or
 - ▶ (ii) properly incidental to another activity required or authorized by law, such as the function of an elected public officer, the officer's staff, or the legislative staff in the normal course of duties. (DISCUSSION UPCOMING)

SB 150 - 2019

- ▶ (3) (a) Except as provided in subsection (3)(b), a public officer or public employee may not use or permit the use of public time, facilities, equipment, supplies, personnel, or funds to solicit support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue unless the use is:
 - ▶ (i) authorized by law; or
 - ▶ (ii) properly incidental to another activity required or authorized by law, such as the function of an elected public officer, the officer's staff, or the legislative staff in the normal course of duties

Properly Incidental

- ▶ Let's discuss
- ▶ (b) As used in this subsection (3), "properly incidental to another activity required or authorized by law" does not include any activities related to solicitation of support for or opposition to the nomination or election of a person to public office or political committees organized to support or oppose a candidate or candidates for public office. With respect to ballot issues, properly incidental activities are restricted to:
 - ▶ (i) the activities of a public officer, the public officer's staff, or legislative staff related to determining the impact of passage or failure of a ballot issue on state or local government operations;
 - ▶ (ii) in the case of a school district, as defined in Title 20, chapter 6, compliance with the requirements of law governing public meetings of the local board of trustees, including the resulting dissemination of information by a board of trustees or a school superintendent or a designated employee in a district with no superintendent in support of or opposition to a bond issue or levy submitted to the electors. Public funds may not be expended for any form of commercial advertising in support of or opposition to a bond issue or levy submitted to the electors.

Examples of Activities that are 'Properly Incidental'

- ▶ All prep activity on issue to determine necessity, options, etc
 - ▶ Budget
 - ▶ Planning
 - ▶ Analysis
- ▶ Prep materials for council/committee vote
- ▶ Scheduling action
- ▶ Public hearings
- ▶ Election prep

Rules of conduct for public officers and public employees - MCA 2-2-121

- ▶ (c) This subsection (3) is not intended to restrict the right of a public officer or public employee to express personal political views.
- ▶ (d) (i) If the public officer or public employee is a Montana highway patrol chief or highway patrol officer appointed under Title 44, chapter 1, the term "equipment" as used in this subsection (3) includes the chief's or officer's official highway patrol uniform.
- ▶ (ii) A Montana highway patrol chief's or highway patrol officer's title may not be referred to in the solicitation of support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue.

AG Opinion - McGrath, January 2005

- ▶ A public officer or public employee may engage in political speech so long as his or her speech does not involve the use of public time, facilities, equipment, supplies, personnel, or funds.

Common ?'s Can I ...

- ▶ Elected Official
Can I ... ?
- ▶ Public Employee
Can I ... ?



Enforcement - MCA 2-2-144

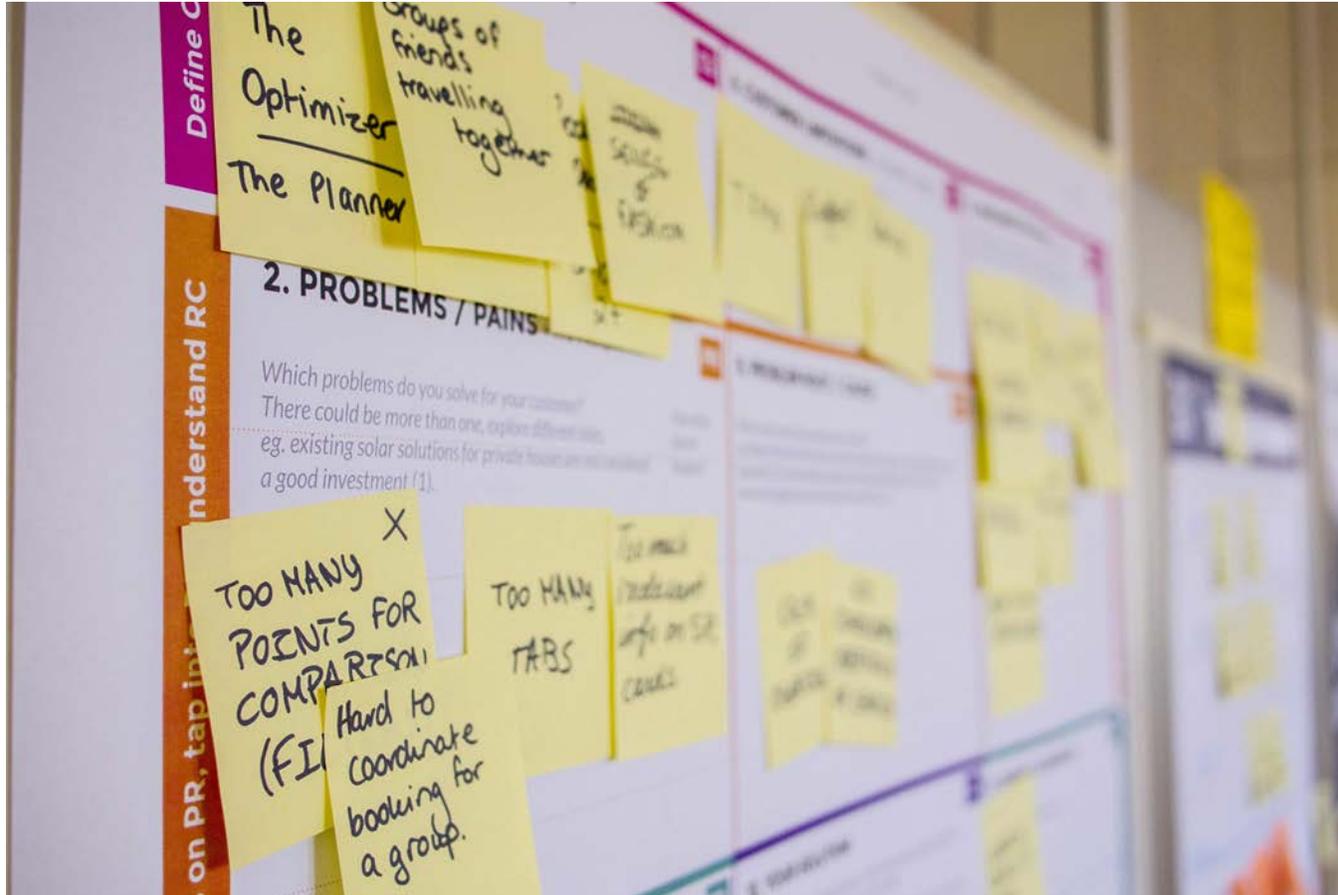
- ▶ 2-2-144. **Enforcement for local government.** (1) Except as provided in subsections (5) and (6), a person alleging a violation of this part by a local government officer or local government employee shall notify the county attorney of the county where the local government is located. The county attorney shall request from the complainant or the person who is the subject of the complaint any information necessary to make a determination concerning the validity of the complaint.
- ▶ (2) If the county attorney determines that the complaint is justified, the county attorney may bring an action in district court seeking a civil fine of not less than \$50 or more than \$1,000. If the county attorney determines that the complaint alleges a criminal violation, the county attorney shall bring criminal charges against the officer or employee.
- ▶ (3) **If the county attorney declines to bring an action under this section, the person alleging a violation of this part may file a civil action in district court seeking a civil fine of not less than \$50 or more than \$1,000.** In an action filed under this subsection, the court may assess the costs and attorney fees against the person bringing the charges if the court determines that a violation did not occur or against the officer or employee if the court determines that a violation did occur. The court may impose sanctions if the court determines that the action was frivolous or intended for harassment.
- ▶ (4) The employing entity of a local government employee may take disciplinary action against an employee for a violation of this part

Enforcement – Ethics Panel

- ▶ (5) (a) A local government may establish a three-member panel to review complaints alleging violations of this part by officers or employees of the local government. The local government shall establish procedures and rules for the panel. The members of the panel may not be officers or employees of the local government. The panel shall review complaints and may refer to the county attorney complaints that appear to be substantiated. If the complaint is against the county attorney, the panel shall refer the matter to the commissioner of political practices and the complaint must then be processed by the commissioner pursuant to [2-2-136](#).
- ▶ (b) In a local government that establishes a panel under this subsection (5), a complaint must be referred to the panel prior to making a complaint to the county attorney.
- ▶ (6) If a local government review panel has not been established pursuant to subsection (5), a person alleging a violation of this part by a county attorney shall file the complaint with the commissioner of political practices pursuant to [2-2-136](#).

Unlawful Acts Of Employers And Employees – MCA 13-35-226

- ▶ (4) A public employee may not solicit support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue while on the job or at the place of employment. However, subject to [2-2-121](#), this section does not restrict the right of a public employee to perform activities properly incidental to another activity required or authorized by law or to express personal political views.



REVIEW

Campaign Finance

Incidental Committee

Statement of Organization

Electioneering Communication

Election Communication

Campaign Finance Reporting

What is an 'Incidental Committee'?

- ▶ 13-1-101(23) (a) "Incidental committee" means a political committee that is not specifically organized or operating for the primary purpose of supporting or opposing candidates or ballot issues but that may incidentally become a political committee by receiving a contribution or making an expenditure.
- ▶ (b) For the purpose of this subsection (23), the primary purpose is determined by the commissioner by rule and includes criteria such as the allocation of budget, staff, or members' activity or the statement of purpose or goal of the person or individuals that form the committee

Incidental Committees - MCA13-37-232

- ▶ (4) An incidental committee that does not receive contributions for a specified candidate, ballot issue, or petition for nomination and that does not solicit contributions for incidental committee election activity, including in-kind expenditures, independent expenditures, election communications, or electioneering communications, is required to report only its expenditures

MCA 13-37-206 - Exceptions

- ▶ (2) The provisions of this part, except [13-37-216](#) and [13-37-217](#), do not apply to a candidate, the candidate's political campaign, or a political committee organized to support or oppose an issue or a candidate if the candidate is running for or the committee's issue involves a unit of local government authorized by law to perform a single function or a limited number of functions, including but not limited to a conservation district, a weed management district, a fire district, a community college district, a hospital district, an irrigation district, a sewer district, a transportation district, a water district, any other special purpose district, or any entity formed by interlocal agreement

Disclosure Requirements For Incidental Committees - 13-37-232

- ▶ Disclosure requirements for incidental committees. (1) The reports required under [13-37-225](#) through [13-37-227](#) from incidental committees must disclose the following information concerning contributions to the committee that are designated by the contributor for a specified candidate, ballot issue, or petition for nomination or that are made by the contributor in response to an appeal by the incidental committee for contributions to support incidental committee election activity, including in-kind expenditures, independent expenditures, election communications, or electioneering communications:
 - ▶ (a) the full name, mailing address, occupation, and employer, if any, of each person who has made aggregate contributions during the reporting period for a specified candidate, ballot issue, or petition for nomination of \$35 or more;
 - ▶ (b) for each person identified under subsection (1)(a), the aggregate amount of contributions made by that person for all reporting periods;
 - ▶ (c) each loan received from any person during the reporting period for a specified candidate, ballot issue, or petition for nomination, together with the full names, mailing addresses, occupations, and employers, if any, of the lender and endorsers, if any, and the date and amount of each loan;
 - ▶ (d) the amount and nature of debts and obligations owed to an incidental committee for a specified candidate, ballot issue, or petition for nomination in the form prescribed by the commissioner;
 - ▶ (e) an account of proceeds that total less than \$35 per person from mass collections made at fundraising events sponsored by the incidental committee for a specified candidate, ballot issue, or petition for nomination; and
 - ▶ (f) the total sum of all contributions received by or designated for the incidental committee for a specified candidate, ballot issue, or petition for nomination during the reporting period.

Incidental Committees 13-37-232

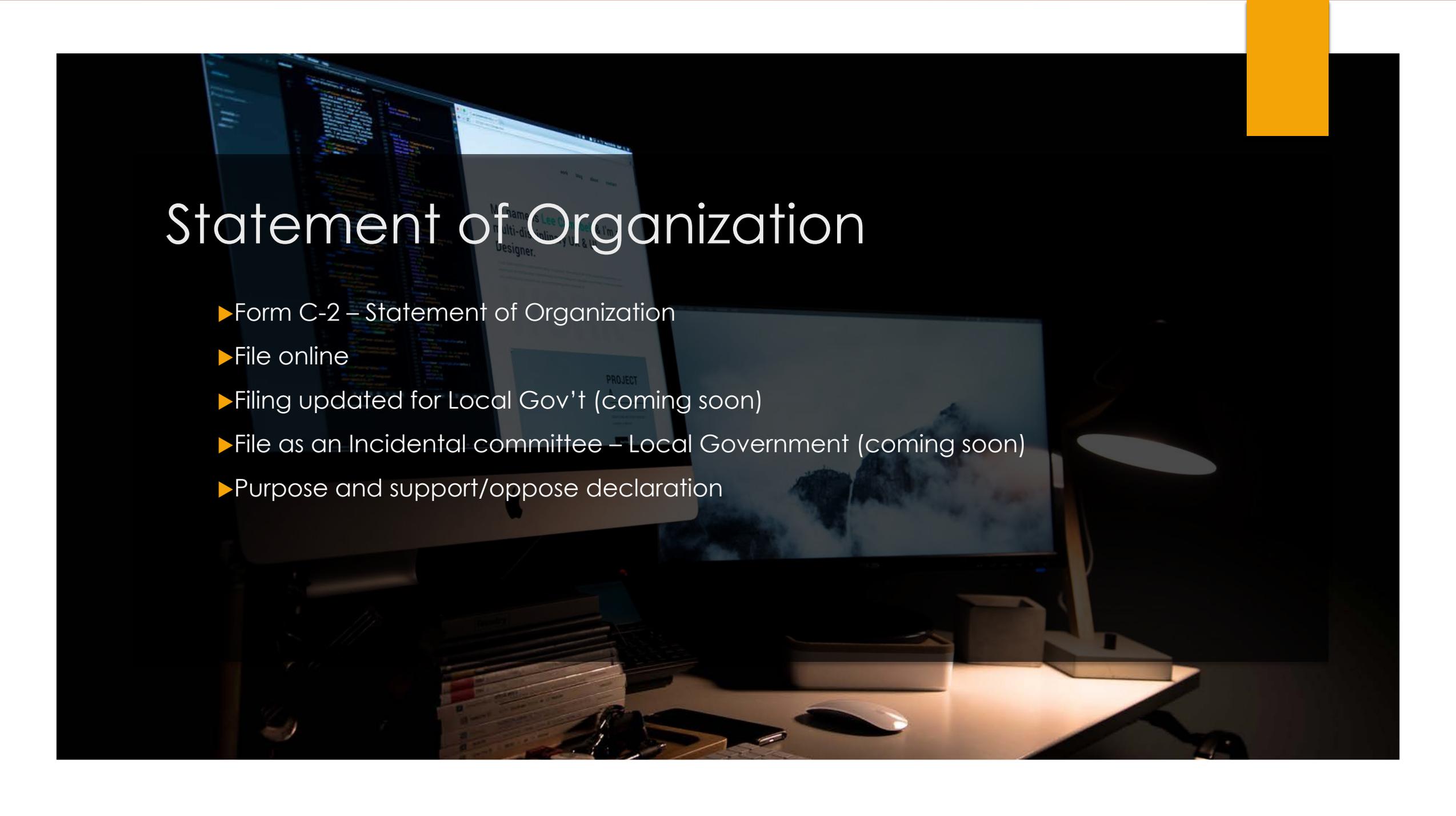
- ▶ (2) The reports required under [13-37-225](#) through [13-37-227](#) from incidental committees must disclose the following information concerning expenditures made:
 - ▶ (a) the full name, mailing address, occupation, and principal place of business, if any, of each person to whom **expenditures** have been made during the reporting period, including the amount, date, and purpose of each expenditure and the total amount of expenditures made to each person;
 - ▶ (b) the full name, mailing address, occupation, and principal place of business, if any, of each person to whom **an expenditure for personal services, salaries, and reimbursed expenses** has been made during the reporting period, including the amount, date, and purpose of that expenditure and the total amount of expenditures made to each person;
 - ▶ (c) the total sum of expenditures made during the reporting period;

Incidental Committees 13-37-232

- ▶ d) the name and address of each political committee or candidate to which the reporting committee made any transfer of funds together with the amount and dates of all transfers;
- ▶ (e) the name of any person to whom a loan was made during the reporting period, including the full name, mailing address, occupation, and principal place of business, if any, of that person, and the full names, mailing addresses, occupations, and principal places of business, if any, of the endorsers, if any, and the date and amount of each loan;
- ▶ (f) the amount and nature of debts and obligations owed by a political committee in the form prescribed by the commissioner; and
- ▶ (g) other information that may be required by the commissioner to fully disclose the disposition of funds used to make expenditures.
- ▶ (3) Reports of expenditures made to a consultant, advertising agency, polling firm, or other person that performs services for or on behalf of an incidental committee must be itemized and described in sufficient detail to disclose the specific services performed by the entity to which payment or reimbursement was made.

File regardless of tax status

- ▶ **Reports To Be Filed Regardless Of Tax Status**
- ▶ 13-37-233. Reports to be filed regardless of tax status. A person that makes an election communication, an electioneering communication, or an independent expenditure shall file reports required by this chapter regardless of the person's tax status under state or federal law



Statement of Organization

- ▶ Form C-2 – Statement of Organization
- ▶ File online
- ▶ Filing updated for Local Gov't (coming soon)
- ▶ File as an Incidental committee – Local Government (coming soon)
- ▶ Purpose and support/oppose declaration

Electioneering Communication

MCA 13-1-101 (16)

- ▶ (16) (a) "Electioneering communication" means a paid communication that is publicly distributed by radio, television, cable, satellite, internet website, newspaper, periodical, billboard, mail, or any other distribution of printed materials, that is made within 60 days of the initiation of voting in an election, that does not support or oppose a candidate or ballot issue, that can be received by more than 100 recipients in the district voting on the candidate or ballot issue, and that:
 - ▶ (i) refers to one or more clearly identified candidates in that election;
 - ▶ (ii) depicts the name, image, likeness, or voice of one or more clearly identified candidates in that election; or
 - ▶ (iii) refers to a political party, ballot issue, or other question submitted to the voters in that election.

Electioneering Communication

MCA 13-1-101 (16)

- ▶ (b) The term does not mean:
 - ▶ (i) a bona fide news story, commentary, blog, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, internet website, or other periodical publication of general circulation unless the facilities are owned or controlled by a candidate or political committee;
 - ▶ (ii) a communication by any membership organization or corporation to its members, stockholders, or employees;
 - ▶ (iii) a commercial communication that depicts a candidate's name, image, likeness, or voice only in the candidate's capacity as owner, operator, or employee of a business that existed prior to the candidacy;
 - ▶ (iv) a communication that constitutes a candidate debate or forum or that solely promotes a candidate debate or forum and is made by or on behalf of the person sponsoring the debate or forum; or
 - ▶ (v) a communication that the commissioner determines by rule is not an electioneering communication.

Campaign Finance Reporting

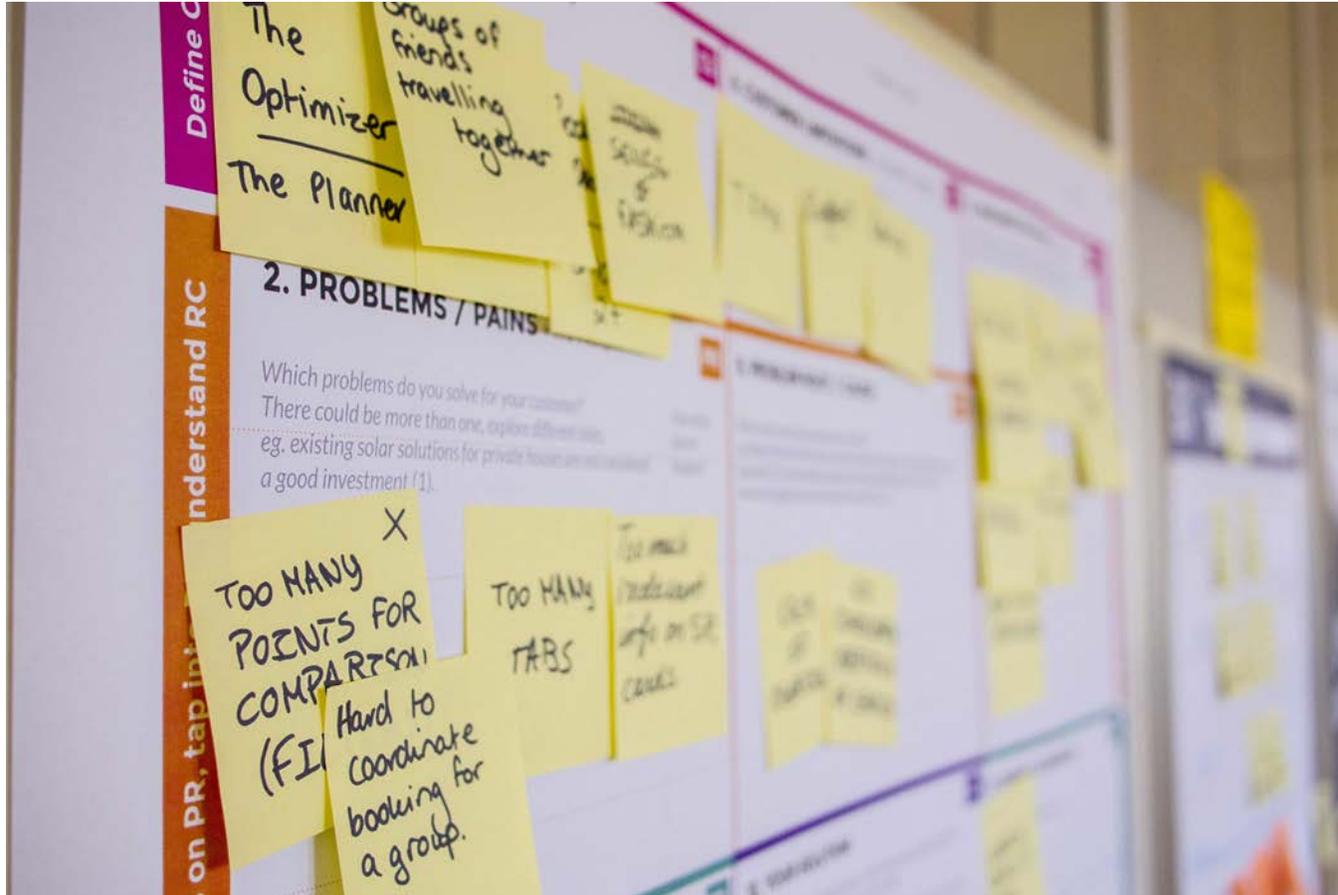
- ▶ Report election related expenses per reporting calendar (update pending)

Coordination

- ▶ Discuss/implement firewall with all vendors
 - ▶ Related committees & work product



City of Bozeman v City of
Bozeman



REVIEW