June 26, 2002

Mr. Jim Nugent
Missoula City Attorney
435 Ryman
Missoula, MT 59802-4297

Dear Mr. Nugent:

You have requested an Opinion of the Attorney General concerning the following issue:

> Whether the Missoula City Council has the authority under the Montana Constitution and pursuant to Mont. Code Ann.§§ 7-1-111 to -114 to enact the Missoula Fair Elections Committee=s proposed campaign finance reform legislation.

The Missoula Fair Elections Ordinance (hereinafter "Ordinance") seeks to impose restrictions and regulations on local elections beyond those established under Montana law. A review of the proposed Ordinance indicates that it raises serious constitutional issues that likely will be decided through litigation. It has long been the policy of the Attorney General to refrain from issuing opinions as to the constitutionality of statutes. Two sound policy reasons support this practice. First, only courts have the power to declare statutes unconstitutional. It would violate the doctrine of separation of powers for the Attorney General to issue an opinion having the force of law until overturned by a court, see Mont. Code Ann. § 2-15-501(7), that declares a statute unconstitutional.

Second, when a party challenges the constitutionality of a statute, it frequently falls to the Attorney General to defend its constitutionality. Performance of this duty might be impaired if the Attorney General previously had issued an opinion on the matter in such a case. As a result, it is more appropriate to respond to your request with a letter of advice, rather than an official Opinion of the Attorney General. Thus, the following analysis should be construed strictly as a letter of advice and does not constitute an official Opinion of the Attorney General.

## SELF-GOVERNMENT POWERS UNDER THE 1972 CONSTITUTION

The 1972 Montana Constitution grants cities the opportunity to adopt charters with self-government powers with power vested in the city, subject only to certain exceptions contained in the constitution, law or charter itself. Billings Firefighters Local 521 v. City of Billings, 214 Mont. 481, 483, 694 P.2d 1335, 1336 (1985). The City of Missoula's self-governing charter went into effect on January 1, 1997.

The City of Missoula assumed self-government powers with the adoption of the charter. As a charter government, the City of Missoula possesses self-government powers granted pursuant to art. XI, § 6 of the Montana Constitution and Mont. Code Ann. § 7-1-101. The City of Missoula may exercise any power, therefore, not expressly prohibited by the Constitution, law or charter. Mont. Const. art. XI, § 6; Mont. Code Ann. § 7-1-102; D & F Sanitation Service v. City of Billings, 219 Mont. 437, 713 P.2d 977 (1986).

Article XI, Section 6 also grants to local government, such as the City of Missoula, the authority to share powers with state government. This "shared powers" concept assumes that a "local government **possesses** the power, unless it has been specifically denied." D & F Sanitation Services, 219 Mont. at 444, citing II Mont. Const. Con. Comm. Notes (1972), 796-97 (emphasis in original). See also Billings Firefighters, 214 Mont. at 483, 694 P.2d at 1336 ("the general rule is that a local government with self-government powers possesses all powers not specifically denied by state constitution, law or charter").

At the outset, it must be determined whether the Montana Constitution, any state statute, or any provision of the self-governing charter for the City of Missoula would deny to the City of Missoula the authority to enact the Ordinance related to campaign finance issues. The Montana Constitution provides initial guidance on the issue.

Several provisions must be analyzed. First, Art. IV covers the issues of "suffrage and elections." Nothing in Art. IV relates to campaign contribution reporting requirements or voluntary campaign expenditure limits. Article XI sets forth the power of local governments. As discussed, § 6 of art. XI provides local governments the opportunity to exercise expansive powers through adoption of a self-governing charter. This provision grants local governments, such as the City of Missoula, the authority to regulate a wide-range of activities, including election campaigns for local government offices and ballot issues in local elections. Finally, § 7 of art. XI expressly permits local governments to cooperate with, and coordinate with, other local governments, the State of Montana, or

the United States, in the performance of various government functions. Nothing in this provision, or any other provision of the Montana Constitution, however, could be construed to limit or prohibit the ability of the City of Missoula to regulate local election campaigns. Any regulations enacted by the City of Missoula, or another other governmental entity, must comport, of course, with constitutional protections related to free speech and the right to participate in the political process.

## SELF-GOVERNMENT POWERS PURSUANT TO STATUTES

Montana statutes must be examined next. Mont. Code Ann.§ 7-1-111 sets forth those powers expressly denied to local governments. None of the powers expressly denied to local governments through this provision relate to election, campaigns, or regulations on contributions. Similarly, Mont. Code Ann. § 7-1-112 sets forth those powers that local governments are prohibited from exercising absent an express delegation by state law. These powers include the imposition of income taxes, sales taxes, and the exercise of judicial functions. They do not include powers relating to the regulation of elections, campaigns, or contributions.

Mont. Code Ann.§ 7-1-113 prohibits a local government with self-governing powers from exercising any power "in a manner inconsistent with state law or administrative regulation in any area affirmatively subjected by law to state regulation or control." Mont. Code Ann. § 7-1-113(1). An area is affirmatively subjected to state regulation or control "if a state agency or officer is directed to establish administrative rules governing the matter or if enforcement of standards or requirements established by statute is vested in a state officer or agency." Id. at 113(3).

Montana law directs the commissioner of political practices to establish administrative rules governing election campaigns, Mont. Code Ann. § 13-37-114, and further vests the commissioner with the power to enforce these administrative rules. Mont. Code Ann. § 13-37-111. The commissioner's enforcement duties include all alleged violations of the election laws contained in chapters 35 and 37 of Title 13. Mont. Code Ann. § 13-37-111. The proposed Ordinance offered by the City of Missoula touches several of these same areas.

## STATUTORY PREEMPTION OF LOCAL GOVERNMENT ORDINANCES

The mere fact that the proposed Ordinance covers areas affirmatively subject to state regulation or control, however, does not preclude the City of Missoula from adopting its own regulations for local elections. The City of Missoula would be barred from establishing its own regulations for local elections only if its regulations are "inconsistent" with a parallel statute. Mont. Code Ann. § 7-1-113(1). In fact, Mont. Code Ann § 7-1-113(2) defines a local government regulation to be "inconsistent" with a parallel statute only when the local regulation "establishes standards or requirements which are lower or less stringent than those imposed by state law or regulation." See State ex rel. Swart v. Molitor, 190 Mont. 515, 521, 621 P.2d 1100, 1104 (1981) (holding that county ordinance requiring payment of review fee to examining land surveyor was not inconsistent with state law).

Accordingly, Montana law limits "conflict" preemption to cases in which the local government seeks to impose a standard that is lower or less stringent than the state standard. Moreover, it is important to note that Montana abandoned the "field" preemption doctrine recognized by federal courts. Tipco Corp. v. City of Billings, 197 Mont. 339, 344-345, 642 P.2d 1074, 1077 (expressly overruling earlier decisions that had limited a local government's ability to exercise powers not expressly conferred on it by the Constitution or statute). The 1972 Constitution's grant of self-governing powers to local governments includes the power to enact laws in any field that are not inconsistent with parallel state statutes. Town Pump, Inc. v. Bd. of Adjustments of City of Red Lodge, 1998 MT 294, 292 Mont. 6, 971 P.2d 349 (upholding local regulations on the sale of alcohol that were not inconsistent with comprehensive statutory scheme).

The proposed Ordinance poses preemption problems, therefore, only to the extent that it establishes standards that are expressly inconsistent with, contradict, or are more lenient than those established by Montana statute. Town Pump, 1998 MT 294, ¶ 40; Swart, 190 Mont. at 521, 621 P.2d at 1104. Montana law generally requires a local government with self-governing powers, such as the City of Missoula, to comply with "all laws regulating the election of local officials." Mont. Code Ann. § 7-1-114(1)(d). The proposed Ordinance complies with this provision to the extent that none of its provisions establish "standards or requirements which are lower or less stringent than those imposed by state law or regulation." Swart, 190 Mont. at 521, 621 P.2d 1104, quoting Mont. Code Ann. § 7-1-113.

## THE PROPOSED ORDINANCE

The proposed Ordinance seeks to add six new sections to the Missoula Municipal Code (MMC). Each new section must be reviewed in turn.

### MMC 2.40.005 DEFINITIONS

First, the proposed Ordinance adds a series of "definitions" for terms that are contained therein. MMC 2.40.005. With exception of "express advocacy," the proposed definitions follow closely from a corresponding definition in a statute or administrative rule. Those definitions adopted from those used in a statute or administrative rule pose no problem here. Similarly, as Montana law does not define the term "express advocacy," the proposed definitions for "express advocacy" contained in the Ordinance cannot be said to conflict with a statutory definition or establish standards less stringent than those in a statute or regulation. Swart, 190 Mont. at 522, 621 P.2d at 1104 (holding that omission of any survey review fee requirement in statute did not bar county from imposing one).

Nevertheless, the Ordinance's definition of "express advocacy" raises significant constitutional issues. As defined in the Ordinance, "express advocacy" is communication that advocates the election or defeat of a candidate by:

a. referring to one or more clearly identified candidates or group of candidates in a paid advertisement that is distributed by an individual or by mail in the City of Missoula, printed in a newspaper distributed in the City of Missoula, or broadcast by a radio broadcast station or a television broadcast station that can be received in the City of Missoula, within 60 calendar days preceding the date of the election in which the candidate is running; and either

b. containing a phrase such as "vote for" "re-elect", "support", "cast your ballot for", "(name of candidate) for City Council", "(name of candidate in 1997)", "vote against", "defeat", "reject", or a campaign slogan or words that in context can have no reasonable meaning other than to advocate the election or defeat of one or more clearly identified candidates or group of candidates; or

c. expressing unmistakable and unambiguous support for or opposition to one or more clearly identified candidates or group or candidates when taken as a whole and with limited reference to external events, such as proximity to an election.

MMC 2.40.005.E.1.

Subsection 2.40.005.E.1.b falls well within the "express advocacy" standards of Buckley v. Valeo, 424 U.S. 1 (1976), in that any communication containing these calls to action "unambiguously" relate to the campaign of a particular candidate. Subsection E.1.c raises concerns, however, as it seeks to include within "express advocacy" those communications that may be more nuanced and difficult to categorize. In fact, subsection E.1.c suggests that the communication must be "taken as whole" when determining whether it constitutes "express advocacy." In order to avoid constitutional problems, it is necessary to interpret subsections E.1.a and E.1.c of the proposed Ordinance as classifying as "express advocacy" only those communications that when read as a whole, and with limited reference to external events, include a clear plea for action. Fed. Elec. Comm'n v. Furgatch, 807 F.2d 857, 864 (9th Cir. 1987).

**MMC 2.40.030 VOLUNTARY SPENDING LIMITS**

Next, the proposed Ordinance imposes voluntary spending limits on candidates. MMC 2.4.030. This provision substantially mirrors a statutory provision set forth at Mont. Code Ann. § 13-37-250. The proposed Ordinance requires candidates seeking to abide by the voluntary spending limits to file a sworn statement of the candidate=s intention to do so within 7 days of the filing deadline for candidates in the primary election or within seven days of the primary election for those candidates running in the general election. MMC 2.40.030(A)(2)(a). The statute allows such a sworn statement to be filed within thirty days of the certification of a political committee. Mont. Code Ann. ' 13-37-250 (1)(b). Although it cannot be said definitely which imposes a stricter time line--within seven days of the filing deadline under the proposed Ordinance compared to within thirty days of the certification of a political committee under the state statute--the ordinance does not categorically create a standard "inconsistent" with the state law under the Swart standard. Swart, 190 Mont. at 521, 621 P.2d at 1104.

This same provision sets voluntary spending limits of the following amounts:

(1) $2,000 per primary election for any office representing a single Missoula City election ward;

(2) $8,000 per primary election for any office elected city-wide;

(3) $4,000 per general election for any office representing a single Missoula City election ward; and

(4) $16,000 per general election for any office elected city-wide.

MMC 2.40.030(C). The corresponding statutory maximum is set at $150,000 during the calendar year. Mont. Code Ann. § 13-37-250(3). The stricter spending limits under the proposed Ordinance would not be "inconsistent" with state law. *Swart*, 190 Mont. at 521, 621 P.2d at 1104.

The proposed Ordinance also releases a candidate or political committee that has filed a sworn statement to abide by the voluntary spending limits from these voluntary limits when an opposing candidate fails to file a sworn statement, or had filed a sworn statement, but fails to abide by the voluntary spending limits. MMC 2.40.030(E). No similar statutory release exists; instead, a political committee that violates its pledge to adhere to voluntary spending limits faces a fine of $5,000 by the commissioner. Mont. Code Ann. § 13-37-250(4). The City of Missoula possesses the authority to enact these specific provisions in the absence of a state statute on the issue. Billings Firefighters, 214 Mont. at 483, 694 P.2d at 1336.

In return for abiding by the voluntary expenditure limits, the candidates will receive the benefit of being identified in the City of Missoula's newspaper of record in the weeks and days leading up to the election as complying with the voluntary expenditure limits. MMC 2.40.030.D. The companion state statute allows complying candidates to use the following statement in printed matter and broadcast advertisements and voter information pamphlets prepared by the secretary of state: "According to the Office of the Commissioner of Political Practices, . . . is in compliance with the voluntary expenditure limits established under Montana law." Mont. Code Ann. § 13-37-250(a).

Those Missoula candidates who choose not to participate, or fail to comply with the Ordinance's voluntary expenditure limits, would be identified in the City of Missoula's newspaper of record in the weeks and days leading up to the election as not complying with the voluntary expenditure limits. MMC 2.40.030.D. Such an enforcement mechanism lacks the coercive element that could deem it to represent an impermissible state endorsement. See, e.g., Daggett v. Comm'n on Governmental Ethics and Elec. Practices, 205 F.3d 445 (1st Cir. 2000) (rejecting notion that commission's certification of a candidate as participant or non-participant in state public financing scheme did not represent impermissible state endorsement of participants). Likewise, the possibility of being identified as not complying with the voluntary spending limits does not rise to the level of coercion that would render the provision unconstitutional. Gable v. Patton, 142 F.3d 940 (6th Cir. 1998) (finding that a two-for-one match for private contributions did not coerce candidates into participating in state public financing scheme); cf. Cook v. Gralike, 531 U.S. 510 (2001) (holding that ballot notation that candidate failed to support constitutional amendment of Congressional term limits improperly attempted to dictate electoral outcome).

**MMC 2.40.040 COORDINATED AND INDEPENDENT EXPENDITURES**

MMC 2.40.040 provides that any express advocacy expenditure by a political committee, other than that of a candidate or a candidate's principal campaign political committee, shall be classified either as a "coordinated expenditure" or an "independent expenditure." The term "coordinated expenditure," as defined in the proposed Ordinance, substantially mirrors the definition contained in Mont. Admin. R. 44.10.323(4). This section of the proposed Ordinance deems that any contribution to the political committee making a "coordinated expenditure" shall be considered, in fact, to be a direct contribution to the candidate's principal campaign political committee. MMC 2.40.040.A. As such, any contributions to the political committee making the coordinated expenditure would be subject to the same contribution limits imposed on the candidate's principal political committee. Id.

Mont. Code Ann. § 13-37-216(1)(a)(iii) limits aggregate contributions to candidates for local office to $100, regardless of whether the contribution comes from an individual or a political committee. The proposed Ordinance seeks to apply the same $100 limit to contributions to political committees that make "coordinated expenditures" on "express advocacy" communications on behalf of a candidate.

Under state law, a "coordinated expenditure" must be reported as an "in-kind" contribution. Mont. Admin. R. 44.10.323(10). "In-kind" contributions to candidates for local office remain subject to the $100 contribution limit. Mont. Code Ann. § 13-37-216(1)(a)(iii). Thus, the proposed Ordinance would be consistent with state law to the extent that the political committee making the "coordinated expenditure" would be subject to the $100 contribution limit set forth in Mont. Code Ann. § 13-37-216(1)(a)(iii). The proposed Ordinance goes further, however, and seeks to extend the $100 contribution limit to contributions to the political committee.

Nothing in Mont. Code Ann. § 13-37-216(1)(a)(iii) applies to contributions to "independent" and "incidental" political committees, as those terms are defined in Mont. Admin. R. 44.10.327. The $100 limit applies only once a political committee makes a contribution to a candidate or makes a coordinated expenditure of express advocacy on the candidate's behalf. The proposed Ordinance, thus, seeks to extend its reach to contributions to political committees that may operate beyond local elections conducted by the City of Missoula. The proposed Ordinance would apply to contributions to a political committee that the political committee may use for educational or informational purposes in other parts of Montana, or even in other parts of the nation. The City of Missoula lacks the authority to impose regulations on political committees and contributors to those political committees that operate beyond local elections. See Mont. Code Ann. § 7-1-112(2) (prohibiting local government with self-government powers from regulating private activity beyond its geographic limits absent specific delegation).

The proposed Ordinance adopts the term "independent expenditure" as it is defined in Mont. Admin. R. 44.10.323(3). MMC 2.40.005.F. The proposed Ordinance seeks to limit contributions to the political committee making the "independent expenditure" for express advocacy to five times the contribution limits that apply to the candidate to whose benefit or detriment the express advocacy expenditure accrued. MMC 2.40.040.B. Once again, the proposed Ordinance seeks to extend its reach to contributions to political committees that operate beyond local elections conducted by the City of Missoula. The City of Missoula lacks the authority to impose regulations, whether they are contributions limits of five times the amount permitted under Mont. Code Ann. § 13-37-216(1)(a)(iii) or any other, on "independent" and "incidental" political committees and contributors to those political committees that operate beyond local elections. See Mont. Code Ann. § 7-1-112(2) (prohibiting local government with self-government powers from regulating private activity beyond its geographic limits absent specific delegation).

**MMC 2.40.050 DISCLOSURE**

The proposed Ordinance requires candidates and political committees to file reports of all contributions and expenditures whenever the total amount of contributions or expenditures exceeds $500. MMC 2.40.050.A. This provision substantially mirrors the requirements of Mont. Code Ann. § 13-37-226(4). The proposed Ordinance requires that these contributions and expenditures reports be filed on the twenty-eighth day, the twelfth day, and the fifth day preceding the date of the election and within forty-eight hours of receiving a contribution of $100 or more if received between the seventeenth day before the election and the day of the elections. MMC 2.40.050.B. The similar state statute requires the first report to be filed on the twelfth day before the day of the election. Mont. Code Ann. § 13-37-226(3). The proposed Ordinance requires, similar to state law, that all reports be completed as of the fifth day before the filing. MMC 2.40.050.C; cf. Mont. Code Ann. § 13-37-226(7). Finally, the proposed Ordinance directs that the time periods covered by the reports be related to the reporting dates.

All of these requirements either match state law or impose more stringent reporting requirements than state law. For example, the report to be filed on the twenty-eighth day preceding the date of the election covers all contributions and expenditures from prior to the time that a person became a candidate or a political action committee until the fifth day before filing the report. MMC 2.40.050.D. The report filed on the twelfth day preceding the date of the election is to be identical to the twelfth day report required under Mont. Code Ann. § 13-37-226. And the report filed on the fifth day before the date of the election is to cover the period from the closing of the twelfth day report to five days before the date of filing of the fifth day report. MMC 2.40.050.D.

The remaining proposed provisions of MMC 2.40.050 are taken, nearly verbatim, from state statutes. First, MMC 2.40.050.F covers the reporting of contributions in a nearly identical manner to that found in Mont. Code Ann. § 13-37-229. Similarly, proposed provision MMC 2.40.050.G, relating to disclosure requirements, mirrors the requirements found in Mont. Code Ann. § 13-37-230. Finally, the proposed provision, MMC 2.40.050.H, regarding certification of reports, comes directly from Mont. Code Ann. § 13-37-231. As a result, these provisions cannot be said to conflict with a statutory definition or establish standards less stringent than those contained in a statute or regulation. Swart, 190 Mont. at 522, 621 P.2d at 1104.

**MMC 2.40.060 CAUSE OF ACTION**

The proposed Ordinance also creates a civil cause of action against a political committee or candidate who makes or receives a contribution or expenditure in violation of its provisions. MMC 2.40.060. Under the terms of the proposed Ordinance, the City Attorney may bring such a civil cause of action and the political committee or candidate faces potential liability of the greater of $500 or three times the amount of the unlawful contribution or expenditure. MMC 2.40.060(A). A political committee or candidate found intentionally or negligently to have violated the Ordinance's reporting requirements faces similar liability in an action brought by the City Attorney. MMC 2.40.060(B).

This provision raises several concerns. First, Mont. Code Ann. § 7-5-109 permits a local government to fix penalties for violation of an ordinance up to a maximum of a $500 fine. Similarly, Mont. Code Ann. § 7-5-4207, sets the maximum fine for violation of a local government ordinance at $500. Neither of these statutes distinguishes between civil and criminal penalties. The Ordinance, of course, potentially sets fines in excess of $500 as a civil penalty. MMC 2.40.060 (B). The Ordinance specifically calls for fines of $500 "or three times the amount of the unlawful contribution or expenditure, whichever is greater" as penalties in a civil action. Id. Thus, this provision setting a civil penalty in excess of $500 potentially conflicts with the maximum penalty of $500 for violations of municipal ordinances. Similarly, the Ordinance cannot create a cause of action against an "independent" or "incidental" political committee that receives a contribution in excess of the limits set forth in MMC 2.40.040.A and 2.40.040.B or makes independent expenditures, as defined in 2.40.040B, if the political committee uses funds for activities outside of the City of Missoula, without running afoul of state law. Mont. Code Ann. § 7-1-112(2).

Failure by the City Attorney to act on a complaint by an individual alleging that a political committee or candidate has violated the proposed Ordinance entitles the complaining party to file an action in the name of the City of Missoula. MMC 2.40.060(C). Any effort to allow a private party to bring a **criminal** action in the name of the City of Missoula surely would impinge on the prosecutorial discretion of the City Attorney's office. In this case, however, the private party would be bringing a **civil** action, more in the nature of a federal qui tam civil suit. See, e.g., Vermont Agency of Natural Resources v. United States ex rel. Stevens, 529 U.S. 765 (2000) (holding that False Claims Act allows private party to bring qui tam civil action in the name of the

federal government against party who knowingly submits to the federal government a false or fraudulent claim for payment). Montana law never has expressly recognized a qui tam civil action under state law. The Montana Supreme Court has recognized, however, the right of a private party to recover attorney's fees when acting in the capacity of a private attorney general. See Montanans for the Responsible Use of the School Trust v. State of Montana, ex rel. Board of Land Commissioners and Department of Natural Resources and Conservation, 1999 MT 263, 296 Mont. 402, 989 P.2d 800.

The Ordinance further provides that a prevailing party in a private action may force the City of Missoula to reimburse it for costs and attorney's fees incurred. MMC 2.40.060(C)(3). The complaining party also runs the risk of being liable for the prevailing defendant's costs and reasonable attorney's fees. Id. All of these provisions operate directly against candidates or political committees that are involved in local elections and none of them appear to conflict with any statute or regulation. Moreover, the City of Missoula appears to have the authority to enact such provisions to the extent that the requirements do not seek to regulate private activity beyond the City of Missoula's geographic boundaries.

**MMC 2.40.070 SEVERABILITY**

Finally, the proposed reform package contains a severability clause that provides that if any provision of the proposed Ordinance is found to be unconstitutional or otherwise invalid, such holding will not affect the validity of the remaining sections. MMC 2.40.070. In Montana Auto. Ass'n v. Greely, 193 Mont. 378, 399, 632 P.2d 300, 311, (1981), the court held that if an invalid part of a statute is severable from the rest, the portion which is constitutional may stand while the part which is unconstitutional is stricken and rejected. Montana Auto. Ass'n further emphasized that an improper provision does not totally destroy a statute unless the provision is necessary to the integrity of the statute, or was an inducement to its enactment. When an unconstitutional portion of the act is eliminated, the act must be sustained if the remainder is complete in itself and capable of being executed in accordance with apparent legislative intent. Montana Auto. Ass'n, 632 P.2d at 311.

The City of Missoula lacks the authority to impose the contribution limits on contributions to political committees that make "coordinated expenditures" or "independent expenditures" on behalf of candidates in local elections, as set forth in

MMC 2.40.040, if the committee uses funds for activities outside the City of Missoula. Similarly, the City of Missoula would not be able to create a cause of action, under MMC 2.40.60, against such a political committee. These provisions must be severed if the proposed Ordinance is to survive. It is my further opinion, that the proposed limits on contributions to these political committees that undertake "coordinated expenditures" and "independent expenditures" on behalf of candidates, and the accompanying cause of action against them, although important to the Ordinance's overall purpose, are not necessary to its integrity. The remaining provisions, relating to the voluntary expenditure limits, the disclosure requirements, and the creation of a cause of action, are complete in themselves and capable of being executed in accordance with apparent intent of the proposed Ordinance. Montana Auto. Ass'n, 632 P.2d at 311.

## CONCLUSION

In conclusion, no provision of Montana law prohibits a local government, such as the City of Missoula, from enacting an ordinance relating to the regulation of local elections. These regulations rightly may cover contribution limits made to candidates in local elections, voluntary expenditure limits, disclosure requirements, and the creation of a cause of action to enforce the provisions. The proposed Ordinance overreaches, however, when it seeks to impose limits on contributions to political committees that make "coordinated expenditures" and "independent expenditures" on behalf of candidates in local elections and to establish a cause of action against such political committee. The Ordinance also goes too far when it attempts to impose fines in excess of $500 for violations. These provisions must be severed in order for the remaining sections of the proposed Ordinance to survive.

To reiterate, the foregoing analysis constitutes a letter of advice only and should not be construed as a formal Opinion of the Attorney General. The proposed Ordinance raises significant constitutional questions that likely would be decided through litigation, and, as a result, it would not be appropriate for the Attorney General to render a formal opinion regarding the statutory interpretation issues.

Sincerely,

CIVIL SERVICES BUREAU

BRIAN M. MORRIS
Solicitor

bmm/jym