



**MONTANA SECRETARY OF STATE**

**LINDA McCULLOCH**

July 30, 2013

K. Virginia Aldrich, Staff Attorney  
State Administration and Veterans' Affairs Interim Committee  
P.O. Box 201706  
Helena, MT 59620-1706

Dear Ms. Aldrich:

I am in receipt of your letter dated July 15, 2013, objecting to the adoption of New Rule I, Ballot Form and Uniformity, as it is proposed in MAR Notice No. 44-2-181.

The Committee's objection is that the rule "does not appear to fulfill the Montana Administrative Procedure Act requirements under section 2-4-307, MCA, that any omissions from the Administrative Register necessitate certain criteria within the published rule notice, such as specific citations to the material adopted by reference, a statement of the general subject matter of the omitted material, and where the material may be found."

Pursuant to Mont. Code Ann. § 2-4-406(2), the Secretary of State responds by proposing to amend New Rule I as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

New Rule I (44-3- 2407) BALLOT FORM AND UNIFORMITY (1) Guidelines that prescribe the ballot form for each type of ballot used in this state are provided to each election administrator in the prescribed forms and election judge handbook, as applicable. The secretary of state adopts and incorporates by reference the document entitled "Ballot Form and Uniformity Pursuant to 13-12-202 MCA Layout Instructions and Sample Ballots," which is available on the secretary of state's website at the following link: <http://sos.mt.gov/Elections/Officials/Forms/index>, updated March 20, 2012.

(2) The document incorporated by reference is provided to each election administrator and contains guidelines that prescribe the ballot form for each type of ballot used in this state, giving guidelines as to font, spacing, and printed instructions, to conform to the requirements of 13-12-202, MCA.

AUTH: 13-1-202, 13-12-202, MCA  
IMP: 13-1-202, 13-12-202, MCA

As you know, the Secretary of State is authorized under Mont. Code Ann. § 13-1-202 to prescribe forms and rules under her authority as the chief election officer for the state. The forms and rules authorized are specifically for use by the county election administrators. A statement of intent that accompanied the rulemaking authority of Mont. Code Ann. § 13-1-202 clarified that the rulemaking authority as it relates to this section was specifically to provide forms, directives, instructions, and advice to local election administrators. Therefore, it can be argued that the ballot form is prepared for use by public officials in carrying out their official duties with regard to elections. The Secretary of State believes that right is reserved to herself and the local election administrators as the subject matter experts on elections.

I hope that this clarifies the Secretary of State's authority with regard to election forms and that the SAVA committee will agree to allow the objected rule to go forward as quickly as possible with the suggested amendment. If, after this response, you are still proposing placing this item on the SAVA committee agenda for August, our agency would respectfully request an opportunity to be present and testify before the committee on this matter.

Sincerely,

*Linda McCulloch by Kathryn Bran  
Conf. Deputy*

Linda McCulloch  
Secretary of State