

**BEFORE THE COMMISSIONER OF POLITICAL PRACTICES (COPP)**

<b>JEFFREY PETERSON JR.</b>	<b>COPP-2023-CFP-014</b>
<b>v.</b>	<b>DISMISSAL</b>
<b>GPS ADVOCATES and JAMIE MCMILLAN</b>	

**COMPLAINT**

On September 6, 2023, Charles Jeffrey Peterson Jr. of Glendive, MT filed the above-named Campaign Finance and Practices complaint against GPS Advocates and Jamie McMillan (GPS). The complaint alleged that GPS was required to register and report as a political committee with COPP but failed to do so, failed to include “paid for by” attribution messaging as required on a communication supporting a school bond issue, and engaged in “bribery for a recipients vote” in violation of Montana law.

**ISSUES**

The complaint concerns political committee registration and reporting requirements mandated by Montana Code Annotated (MCA) § 13-37-201 (2023); “Paid for by” attribution messaging, MCA §13-35-225; and Improper influence of voters, MCA §§ 13-35-214, 215, 218, and 220.

**BACKGROUND**

GPS is a self-described “grassroots community organization primarily composed of three local women who support the local education system in Dawson County. *See Response*, August 16, 2023. Admittedly, GPS includes as members Jamie McMillan and at least one other person. *Id.* On August 8, 2023, voters in Dawson County voted on a High School District Building Reserve Levy, as well as a High School District Bond Election.

Under Montana law a ballot issue means a proposal submitted to the people at an election

and includes school levy and bond issue questions. MCA § 13-1-101(6)(a). A political committee is two or more individuals or a person other than an individual who receives a contribution or makes an expenditure. MCA § 13-1-101(34)(a). This definition includes ballot issue committees, as well as incidental or independent committees. MCA § 13-1-101(34)(b). A political committee is not formed when an election communication or independent expenditure is \$250 or less. MCA § 13-1-101(d).

Pursuant to MCA § 13-1-101(47) a school election has the meaning provided in MCA § 20-1-101, and MCA § 20-1-101(23) defines a school election to include an election authorizing the issuance of bonds or any proposition submitted to the electorate. Generally, all political committees register their organization and report their activity to COPP, unless an exemption applies. Montana law provides a fundamental legal distinction based on the size of the school district or the county where the activity occurs. MCA § 13-37-206. Dawson County has a population of 8,830, which is less than 15,000 set in code. MCA § 13-37-206(1)(a). While other provisions of Title 13, chapters 35 and 37 may apply, the reporting provisions contained in MCA §§ 13-37-201-205 and 225-241 do not.

## **DISCUSSION**

### **1. Committee registration and reporting**

The first alleged violation addressed against GPS is that the group failed to register as a political committee with COPP pursuant to MCA § 13-37-201(2)(b). The complaint includes additional alleged violations directly related to this claim, specifically that GPS failed to properly state a primary purpose and the name and address of their designated treasurer on any Statement of Organization filed with COPP, and that the group failed to file campaign finance reports disclosing the source of contributions received and expenditures made. I must dismiss each, for the reasons outlined below.

Two or more people that receive contributions or make expenditures to support or oppose a ballot issue are a political committee under Montana election law. MCA § 13-1-101 34(a)(i). GPS printed and distributed postcards and flyers to support the two school ballot issues related to Dawson County High School, creating a political committee under Montana election law, which would generally subject it to COPP reporting regulations, assuming their expenditures exceeded \$250.

However, as previously indicated, Montana law provides an exception for a political committee organized to support or oppose a school district issue when the school district is “a first-class district located in a county having a population of less than 15,000.” MCA § 13-37-206(1)(a). The U.S. Census Bureau estimates Dawson County has a population of 8,830.<sup>1</sup> For Fiscal Year 2023, the Dawson County High School District is designated a first-class district by Montana’s Office of Public Instruction.<sup>2</sup> GPS indicated in a September 25, 2023, response to this complaint, that the group solely supported the two Dawson County school issues up for election on August 8, 2023, and did not engage in any actions or activities supporting or opposing additional candidates or ballot issues. *See Response*. p. 1.

Therefore, GPS is a political committee organized to support or oppose school district issues in a first-class district, located in Dawson County, a county with a population of less than 15,000. Consequently, GPS is by law exempted from registering as a political committee with COPP, as well as from filing finance reports disclosing contributions received and expenditures made. Because of this statutory exemption, I must dismiss all claims that GPS failed to properly register or report with COPP.

## **2. Attribution**

The next alleged violation presented in this complaint concerns the lack of “paid for by” attribution messaging on a flyer supporting a school issue in Glendive. Upon receipt of this complaint, I reviewed the material at issue and determined this allegation was merited as the material did not appear to include attribution messaging as required under MCA § 13-35-225. For this reason, I contacted GPS and requested a response to this allegation.

In a written response provided in the related matter of *Peterson Jr. v. Glendive Unified Schools via Rhett Coon, Facilities Director*, COPP-2023-CFP-012, GPS accepted responsibility for the unattributed material, claiming that the attribution omission was an oversight. In a formal written response to this complaint received by COPP on September 25, 2023, GPS further explained that the unattributed material was actually financed by a local business, Boss Office Products, and then contributed in-kind to GPS. The response further clarified that two (2) separate materials were produced by Boss Office Products for GPS: a flyer of which 500 copies

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<sup>1</sup><https://www.census.gov/quickfacts/fact/table/dawsoncountymontana/PST045222>, last visited February 8, 2024.

<sup>2</sup><https://opi.mt.gov/Portals/182/Page%20Files/School%20Finance/Elections/Guidance/FY2023/District%20Classification%20Report%202023.pdf?ver=2022-12-13-140013-957>, last visited February 8, 2024.

were distributed on July 4 and 26, 2023; and a postcard of which approximately 500 copies were distributed on July 4, 2023. An attribution message of “paid for by Boss Office Products, 123 W. Towne Street, Glendive, MT 59330” relevant to each material was also provided in the response.

Ordinarily, when COPP concludes an attribution complaint has merit, we request that the responsible party add the full attribution statement to all unattributed materials and provide evidence of this remedial action to COPP. This action must be taken within 24 hours if the notification is received within seven (7) days of an election, or within two (2) days if the notification occurs more than seven (7) days prior to an election. MCA § 13-35-225(6)(a). Here, the relevant election had occurred prior to COPP’s receipt of any complaint alleging an attribution violation. Nevertheless, GPS provided me relevant attribution information for the flyer and postcard materials in the time and manner requested. Prosecution of this matter would involve the dedication of significant taxpayer resources to pursue an outcome that has already been achieved and perhaps a small monetary award. Consequently, in accordance with MCA § 13-37-124, I find that prosecution is not justified, and this allegation is fully dismissed.

It is relevant to note that Boss Office Products, as two or more people making a contribution to a political committee, would generally be required to file as an incidental political committee. MCA § 13-1-101(26)(a). However, as noted above, MCA § 13-37-206(1)(a) specifically exempts Boss Office Products from the requirement to register and report as a political committee in this matter. This exemption does not apply to their obligations under MCA § 13-35-225 to include an attribution statement on the contributed materials. I will not consider this potential violation as this matter was promptly corrected and both GPS and Boss Office Products were cooperative and diligent in responding to COPP requests. Prosecution is not justified. *MFC v. Zephyr*, COPP-2023-CFP-010, p. 23-26.

### **3. Campaign practices**

Finally, the complaint against GPS presents allegations of bribery and corrupt influence under MCA § 45-7-101. As I noted in the letter accepting your complaint, I am not provided proper jurisdiction over that statute. However, the activity upon which you base your claims may be properly considered and addressed under Montana election law found in Title 13, Chapter 35, notably MCA §§ 13-35-214, 215, 218, and 220, which do fall under my jurisdiction. Accordingly, I requested a response to this general allegation from GPS.

The allegations of bribery or corrupt influence center on a ‘Vote & Float’ event held on August 8, 2023. In their response, GPS explains that the city swimming pool was already scheduled to host a night swim event on election day for the Dawson County school issues, and the group “thought it would be a fun time and place for people to gather and come together as a community.” *See Response*, p. 1. The response also included a statement from individual Codi Smith claiming that permission was sought by GPS from the City of Glendive to hold the event, and it was allowed “on the same terms as other sponsored events.” *Id.*, p. 7. The statement additionally asserts that the “Vote & Float” event was open “to everyone regardless of if they voted, or how they voted, no questions asked.” *Id.*, p. 1. Of note, the “Vote & Float” event was held at a public pool owned and operated by the City of Glendive’s Recreation Department, not a private facility owned and operated by GPS or its members. It was also held on a night where, per a social media post made by the City of Glendive’s Recreation Department, the pool was open for “free” use by any interested member of the public between 7:00 PM and 9:00 PM. *See Exhibit “D” Response*, p. 6.

While the four statutes discussed below fall under my jurisdiction, they are “intended to supplement and not to supersede the provisions of the Montana Criminal Code.” MCA § 13-35-101. Given the criminal nature of the violation it is essential to establish intent and determine whether or not I can prove or convince an independent factfinder, such as a judge or jury that this intent is established beyond a reasonable doubt. Put another way, I should be convinced that I can establish that GPS acted with the requisite mental state of purposely or knowingly.<sup>3</sup> MCA § 45-2-103, *See also Scott v. Doyle*, COPP-May 31, 2011. Therefore, even if an action or activity appears to be a violation, if knowledge or purposeful intent is absent, I cannot conclude the action or activity rises to a level where criminal prosecution is warranted. *See Seward v. Andrick*, COPP-December 13, 2004.

MCA § 13-35-214, Illegal influence of voters, holds that:

A person may not knowingly or purposely, directly or indirectly, individually or through any other person, for any election, in order to induce

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<sup>3</sup> MCA 45-2-101(35) ““Knowingly”--a person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when the person is aware of the person's own conduct or that the circumstance exists. A person acts knowingly with respect to the result of conduct described by a statute defining an offense when the person is aware that it is highly probable that the result will be caused by the person's conduct. . .” (65) ”“Purposely”--a person acts purposely with respect to a result or to conduct described by a statute defining an offense if it is the person's conscious object to engage in that conduct or to cause that result. . .”

any elector to vote or refrain from voting or to vote for or against any particular candidate, political party ticket, or ballot issue:

(1) give, lend, agree to give or lend, offer, or promise any money, liquor, or valuable consideration or promise or endeavor to procure any money, liquor, or valuable consideration. . .

Similarly, MCA § 13-35-215, Illegal consideration for voting, holds that:

A person, directly or indirectly, individually or through any other person, may not: (2) after an election, for having voted or refrained from voting or having induced any other person to vote or refrain from voting at the election: (a) receive any money, gift, loan, valuable consideration, office, place, or employment. . .

In order to find that GPS violated either of the above statutes, I need evidence that organizing the ‘Vote and Float’ event was done specifically with the purpose of inducing electors to vote for the Glendive School bond issues in exchange for attending an open swim at a public pool. *See Parrent v. Ames*, COPP-July 25, 1990, and *Scott v. Doyle*, COPP-May 31, 2011. If “the requisite purpose essential to establishment of a violation”- the inducement of votes for a particular candidate or issue - “is absent,” I do not have sufficient evidence to consider or enforce a violation. *Parrent*, p. 6

While the fliers in question include reminders to ‘vote yes,’ they do not include any indication that voting is a prerequisite to participation. A flyer provided by complainant includes a ribbon across the top that states, “vote yes on August 8<sup>th</sup>” but the central message simply states, “Vote & Float, August 8<sup>th</sup> from 7-9 PM, Free, Open Swim to the Public.” *See Complaint*, p. 7. All evidence indicates that the “inducement” – free admission to the city pool – was open and available to all. The decision to hold the ‘Vote and Float’ event at that time does not impute value to a free event. There is no indication that attendees must present evidence that they voted for the school bond issues, or that they voted at all, in order to gain free admission. This event remained a free community gathering regardless of the ‘Vote and Float’ activity. No evidence exists which causes me to question the veracity of GPS’ assertion that they held the event because they “thought it would be a fun time and place for people to gather and come together as a community.” Therefore, I cannot consider or enforce any violation of MCA §§ 35-214 or 215.

The next statute I may consider the “Vote & Float” event under is MCA § 13-35-218, Coercion or undue influence of voters.

(1) A person, directly or indirectly, individually or through any other person, in order to induce or compel a person to vote or refrain from voting for any candidate, the ticket of any political party, or any ballot issue before the people, may not: (a) use or threaten to use any force, coercion, violence, restraint, or undue influence against any person;

To constitute a violation under the above statute, the action or activity must rise “to the level of “force, coercion, violence, restraint, or undue influence.” *Loney v. Moore*, COPP-2013-004, p. 7. There is no evidence presented by the complainant, nor any information in the GPS response, to suggest GPS or its members threatened or engaged in any type of force to cause any elector to vote for the Dawson County school issues, nor to otherwise prevent an elector from casting a ballot against them. Likewise, there is no evidence of an imbalance of power that might indicate GPS exerted undue influence.<sup>4</sup> Therefore, I cannot consider or enforce any violation of MCA § 13-35-218.

The final statute under which I could potentially consider the ‘Vote & Float’ event is MCA § 13-35-220, Bribing members of political gatherings. The above discussion indicates that free admission to an already free event does not constitute bribery, but additionally, this statute is specific to “the purpose of nominating candidates for offices. . .” and is not applicable to ballot issues. *Id.* Therefore, even if free admission to the ‘Vote & Float’ event was offered with the intent to influence voters, it cannot be considered under this statute if it was not exclusively offered to the members or officers of a political gathering, caucus, or convention, for the purpose of nominating candidates. Therefore, I cannot consider or enforce any violation of MCA § 13-35-220.

## CONCLUSION

The only violation of Montana law suggested by the facts presented is the lack of “paid for by” attribution messaging in accordance with MCA § 13-35-225. This matter has been resolved in accordance with COPP procedures and will not be pursued further. Prosecution is not justified and therefore this matter will not be referred to the County Attorney. All other

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<sup>4</sup> MCA, § 28-2-407. Undue influence consists of:(1) the use by one in whom a confidence is reposed by another person or who holds a real or apparent authority over the other person of the confidence or authority for the purpose of obtaining an unfair advantage over the other person;(2) taking an unfair advantage of another person's weakness of mind; or (3) taking a grossly oppressive and unfair advantage of another person's necessities or distress.

allegations made by the complainant have been considered as described above and are dismissed for a lack of sufficient evidence. This Complaint is hereby dismissed in full.

Dated this 16th day of February, 2024.



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