

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Earnest v. Mullan No. COPP 2023-CFP-005	DECLARATION OF MERIT OF COMPLAINT RESOLUTION OF COMPLAINT BY PROMPT REMEDIAL ACTION BY THE CANDIDATE DISMISSAL OF COMPLAINT
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On April 28, 2023, Patricia A. Earnest of Stevensville, MT filed a campaign practices complaint against Dan Mullan, also of Stevensville. The complaint alleged that candidate Mullan failed to include the ‘paid for by’ attribution message on a campaign communication as required.

FINDING OF FACTS

The facts necessary for a determination in this matter are as follows:

Finding of Fact No. 1: Daniel Mullan filed a C-1A Statement of Candidate with COPP as a candidate for election to a School Trustee position in Ravalli County with the COPP on March 20, 2023. School elections in

Ravalli County are scheduled to be held on May 2, 2023.¹ (Commissioner's Records).

Finding of Fact No. 2: On April 28, 2023, COPP received a copy of this complaint via U.S. Mail. In reviewing the complaint, Commissioner Gallus determined the attribution complaint was merited, as the campaign communication supporting candidate Mullan- a campaign yard sign material- did not contain any required 'paid for by' attribution messaging (Commissioner's Records).

Finding of Fact No. 3: At approximately 12:15 PM on April 28, 2023, COPP sent email correspondence to candidate Mullan notifying him that this formal attribution complaint had been received. Included with this email message was a letter written by Commissioner Gallus providing notice that the attribution complaint was merited, as the specific campaign communication did not contain the full 'paid for by' attribution message as required, and that:

You will need to add full attribution messaging to all copies of this communication remaining in your possession and email a photo to the COPP showing this addition- distribution of any unattributed copies of the communication must be halted until the full 'paid for by' attribution message is added. For any copies of this communication that have already been publicly distributed without inclusion of the full attribution message, COPP would require you provide a written statement that includes a picture of the communication, the full 'paid for by' attribution message required under Mont. Code Ann. §13-35-225(1), the quantity of unattributed communications distributed, and the date or dates unattributed copies of the communication were distributed.

...

If you did not engage in the activity relating to this complaint, I [Commissioner

¹ <https://ravalli.us/145/Elections>

Gallus] would appreciate having any additional information you can provide as to potential parties involved. It is in everyone's best interest to immediately resolve the situation in the manner described above, and COPP will work with you, or other parties, to get this accomplished.

(Commissioner's Records).

Finding of Fact No. 3A: Also at approximately 12:15 PM on April 28, 2023, COPP spoke with candidate Mullan regarding this attribution complaint via telephone. During this conversation, candidate Mullan indicated that he was responsible for financing the unattributed campaign yard signs referenced in this complaint. COPP was additionally able to explain to candidate Mullan Montana's attribution requirements- specifically that an attribution message stating "paid for by" followed by his name and address was required on each campaign yard sign- and that, in this case, he was provided 24 hours to bring each unattributed campaign yard sign into compliance by adding attribution or else removing from public display. Candidate Mullan indicated he understood this (Commissioner's Records).

Finding of Fact No. 4: At approximately 2:00 PM on April 28, 2023, candidate Mullan sent email correspondence to COPP stating that "signs have been picked up". This email message included two (2) photos where candidate Mullan appeared to be removing unattributed campaign yard signs from public display (Commissioner's Records).

DISCUSSION

Under Montana law "all election communications, electioneering communications, and independent expenditures must clearly and conspicuously include the attribution "paid for by" followed by the name and address of the person who made or financed the expenditure for the

communication”, Mont. Code Ann. §13-35-225(1). This complaint references an election communication supporting Daniel Mullan’s candidacy for election to a school position that failed to include a complete attribution (FOF Nos. 1, 2). As a candidate seeking election to a school office, Montana’s attribution requirements apply in full to any material supporting or opposing candidate Mullan.

Montana law requires an accelerated review (“as soon as practicable”) of a campaign practice complaint alleging an attribution violation. In this matter, COPP staff contacted candidate Mullan via both telephone and email immediately after receipt of this complaint to notify him of the attribution deficiency presented (FOF Nos. 3, 3A). Within 2 hours of receiving this notice, candidate Mullan contacted COPP via email to notify the agency that all unattributed campaign yard signs referenced in the complaint had “been picked up” (FOF No. 4).

The law governing complaints of failure to properly attribute political communications provides precise directions to the Commissioner:

1. The Commissioner is to immediately assess the merits of the attribution complaint, §13-35-225(5), MCA. The Commissioner found merit to the attribution complaint and hereby memorializes that finding.
2. The Commissioner shall notify the candidate of the merit finding, requiring them to bring the material into compliance, §13-35-225(6)(a), MCA. In this matter COPP was able to notify candidate Mullan of the attribution deficiency via email and telephone conversations held on April 28, 2023.
3. The candidate financing the material is provided 24 hours to bring the material into attribution compliance, §13-35-225(6)(a)(ii), MCA.

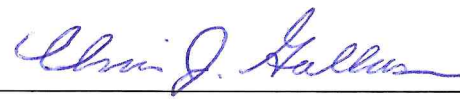
In this matter, candidate Mullan removed all unattributed communications from public display within 2 hours.

Under Montana law the candidate with an attribution deficiency is relieved of a campaign practice violation, provided they promptly carry out the attribution correction. Candidate Mullan has met these duties by accepting responsibility for the unattributed material and removing unattributed copies from public display (FOF No. 4). Candidate Mullan is therefore relieved of a campaign practice violation under Mont. Code Ann. §13-35-225(6). The complaint is dismissed.

As candidate Mullan is now fully aware of the requirement for attribution of election communications, no further leniency will be provided regarding further communications. Any subsequent violations will be referred to the Ravalli County Attorney pursuant to Mont. Code Ann. §13-37-124, and subject to penalty as provided under Mont. Code Ann. §13-37-128.

Normally the Commissioner first provides Decisions to the parties and then the public on the following day. The Legislature, however, has set very tight timelines on this sort of attribution complaint. Accordingly, the Commissioner provides this Decision to the parties and public on the day issued.

DATED this 1st day of May, 2023.



Chris J. Gallus
Commissioner of Political Practices
Of the State of Montana
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