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Commissioner of
Political Practices
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August 14, 2023

Via Email Only

Chris J. Gallus
Commissioner of Political Practices
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Re: Missoula Mayor Independent Committee Response; *Pearson v. National Association of REALTORS et al., COPP-2023-CFP-011*

Dear Mr. Gallus,

The Missoula Mayor Independent Committee (Missoula Mayor IC) received your letter dated August 4, 2023, regarding the complaint filed by C.B. Pearson and MISSOULA MAYOR IC accessed said complaint on the Montana Commissioner of Political Practice's (COPP) website.

The complaint alleges that NAR and MOR conducted a poll relating to the Missoula Mayoral election in early April and as a result, MISSOULA MAYOR IC was required to disclose the value of the poll as well as related staff time on its filed reports with the COPP. For the reasons stated herein, COPP should dismiss the complaint and find that MISSOULA MAYOR IC is in full compliance with Montana campaign finance laws.

FACTS

Contrary to allegations in the complaint, Missoula Mayor Independent Committee was not established until June 1. IE communications began running in June with two billboards (as reported).

No in-kind contribution was provided by either NAR or MOR to Missoula Mayor Independent Committee.

DISCUSSION

The Commissioner of Political Practices should dismiss the complaint because there are insufficient facts to show that a campaign practice violation occurred. As is the case with campaign finance complaints generally, unwarranted legal conclusions from asserted facts or mere speculation are not to be accepted as true and should not provide the basis for further investigation.

The purpose of polls like the one at hand is to allow organizations like NAR and MOR to choose a candidate to support, not to directly support or oppose any candidate.

Despite any arguments made by NAR or MOR, if the Poll is Deemed to Meet the Contribution Definition, any Attributable Value to the Poll in the form of an In-kind contribution to Missoula Mayor IC Is De Minimis and Therefore, Not Reportable

A de minimis act under Title 13 of the Montana Code states in pertinent part 13-1-101(11):

“De minimis act” means an action, contribution, or expenditure that is so small that it does not trigger registration, reporting, disclaimer, or disclosure obligations under Title 13, chapter 35 or 37, or warrant enforcement as a campaign practices violation under Title 13, chapter 37.

Under Title 44 of the Administrative Rules of the State of Montana, de minimis is further defined in relevant part in 44.11.603(1)(a)-(e):

“A de minimis act” is defined in 13-2-101 MCA. The Commissioner may consider the following factors in determining whether specific acts, contributions, or expenditures are de minimis and therefore do not trigger registration, reporting, attribution, or disclosure requirements, or warrant enforcement as a campaign practices violation:

- (a) Whether the act, contribution, or expenditure has an ascertainable fair market value, and if so the amount of that value
- (b) In the case of an act that results in the provision of
- (c) Whether the act, contribution, or expenditure at issue is a single, one-time event or occurrence or multiple events or occurrences
- (d) The extent to which a particular campaign practices violation deprives the public of disclosure
- (e) Other factors and circumstances similarly showing limited value or minimal harm.

As noted above, political polls produce time-sensitive information that lose substantial value over short periods of time. It is well known within the political polling industry that days, weeks and months have incredible impacts on the usefulness of underlying polling data. Furthermore, applying a fair market value to polls, especially polls like the one at hand, can be very difficult and requires an assessment of not just the poll in its entirety, but an assessment of aspects of the poll that actually have value to the perceived recipient. In other words, because

the poll at hand is a candidate viability poll it is unfathomable that the entirety of the poll would be valuable to Missoula Mayor IC. If COPP deems there is value, it would need to identify the individual questions that would be valuable to the Missoula Mayor IE and then reduce that value even more due to the lapse in time between when the poll was run and when the Incident Committee actual begins using the poll, which happens to be today, August 14th, 2023.

The timing of the poll in relation to the IE activity, coupled with the fact that only a small portion of the poll is even relatable to the IE suggest any value that could be attributable to the poll is de minimis and therefore not reportable.

CONCLUSION

MISSOULA MAYOR IC wants nothing more than to ensure that it is in full compliance with Montana's campaign finance laws. MISSOULA MAYOR IC is absolutely not in the business of hiding its political activity or evading the law. And no one knows this better than Mr. Pearson who has worked with MOR on several local ballot issues over the last several years. The most notable was the local option gas tax. The complaint makes allegations and assertions that are misleading and without merit. However, if COPP determines MISSOULA MAYOR IC bears a reporting obligation for the candidate viability poll NAR conducted far in advance of any IE activity (August 14, 2023), MISSOULA MAYOR IC will amend its filing and comply with COPP's determination.

Sincerely,



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Co-Treasurer
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