



Commissioner of
Political Practices
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Judy Gudgel
MOR Treasurer

724 Burlington Ave
Missoula, MT 59801
Phone: (406) 728-0560
MOR@missoularealestate.com

August 14, 2023

Via Email Only

Chris J. Gallus
Commissioner of Political Practices
1209 8th Avenue
PO Box 202401
Helena, MT 59620-2401
Christopher.gallus@mt.gov
Scook3@mt.gov
ktrujillo@mt.gov

Re: Missoula Organization of REALTORS Response; *Pearson v. National Association of REALTORS et al.*, COPP-2023-CFP-011

Dear Mr. Gallus:

The Missoula Organization of REALTORS (MOR) received your letter dated August 4, 2023, regarding the July 27, 2023, complaint filed by C.B. Pearson. MOR accessed said complaint on the Montana Commissioner of Political Practice's (COPP) website on August 7, 2023.

The Montana Commissioner of Political Practices (COPP) is tasked to promote confidence, transparency, and accountability in Montana's democratic process. In that vein, MOR urges COPP to ignore the non-factual assumptions and undocumented assertions littering Mr. Pearson's complaint and focus solely on the law and facts. In relevant part to MOR, the complaint alleges that MOR conducted a poll relating to the Missoula Mayoral election in early April, and as a result, MOR 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 MOR is in full compliance with Montana campaign finance laws.



FACTS

The poll referenced in Mr. Pearson's complaint was conducted between April 3-7, 2023, and was paid for by NAR, not MOR. In almost all cases where a state or local association requests an IE grant, the NAR REALTOR Party Trustees for Campaign Services Committee requires a candidate viability poll to be conducted. Therefore, even before the MOR submitted an application for IE grant funding, NAR, in conjunction with its polling vendor, put the candidate viability poll in the field. The poll results were then analyzed by the NAR and MOR in compliance with Montana campaign finance law, where relevant parties determined that supporting Mike Nugent for Mayor served MOR's interests.

Contrary to allegations in the complaint, the poll was run to determine the viability of the candidates anticipated to be in the race, not to persuade voters, support or oppose a particular candidate, or otherwise inform an established IE effort. Looking at the timing of relevant activity helps to understand this fact. The poll was conducted April 3-7. This was weeks before the candidate filing deadline of April 20, 2023; thus, at the time of the viability poll, it was not yet sure which candidates would run. MOR submitted an IE grant application to the NAR REALTOR Party Trustees for Campaign Services roughly an entire month later after the poll, in early May 2023. The grant application was approved on May 10, 2023, and the Missoula Mayor Independent Committee was not established until almost another month after that, on June 1, 2023. IE communications began running in June 2023.

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 Complaint Fails to Establish the Poll Constituted a Contribution

A contribution under Title 13 of the Montana Code states in pertinent part 13-1-101(9)(a)(i):

“Contribution” means: the receipt by a candidate or a political committee of an advance, gift, loan, conveyance, deposit, payment, or distribution of money or anything of value to support or oppose a candidate or ballot issue.

Two components of this definition are lacking in the matter at hand. First, the poll did not have value to the respective IE effort. Second, the poll, substantively, was not in support or opposition to a candidate.



NAR (not MOR) paid for a candidate viability poll to determine the political landscape of the Missoula Mayoral race. The value of the poll, therefore, was to both NAR and MOR, not in relation to any IE effort or other political/candidate support activity. Instead, the poll helped the two REALTOR organizations establish the foundation of knowledge to help identify which candidates to focus on. Put differently, the poll allowed both organizations to identify the candidates most supportive of the issues and concerns relative to their respective organizations. Recall from the facts above, that the poll took place in April, a month in advance of the MOR submitting its IE grant application to NAR.

MOR did not trigger the Montana Code Title 13 contribution definition because there was nothing of value to transfer from MOR to the Missoula Mayor Independent Committee and the poll/expenditure was not supporting or opposing an identified candidate.

Despite the Argument Above, if the Poll is Deemed to Meet the Contribution Definition, any Attributable Value to the Poll 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.



The timing of the poll and that the poll was a candidate viability poll taken before the date for candidate filing had even closed indicates that the value of activity attributable to the poll, if any, is de minimis and therefore not reportable on that basis as well.

CONCLUSION

MOR has been an active community partner for more than a half century throughout the Missoula community and wants nothing more than to ensure it fully complies with Montana's campaign finance laws. MOR is absolutely not in the business of hiding its political activity or evading the law. However, if COPP determines MOR bears a reporting obligation for the candidate viability poll NAR conducted far in advance of any IE activity, MOR will amend its filing and comply with COPP's determination.

Sincerely,

Judy Gudgel
Treasurer
Missoula Organization of REALTORS

Cc: Jim Bachand, CEO, Missoula Organization of REALTORS.