

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Cook v. Educateshepherd.com No. COPP 2019-CFP-005	DISMISSAL
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On September 3, 2019, Joseph Cook of Billings, MT, filed a campaign practices complaint against Educateshepherd.com. The complaint alleges that educateshepherd.com produced mailers and a website opposing a Shepherd Schools bond issue without including the required ‘paid for by’ disclaimer, and that Educateshepherd.com failed to properly register as a political committee with the COPP despite opposing a ballot issue.

SUBSTANTIVE ISSUES ADDRESSED

Attribution of election communications, political committee organization requirements related to certain school districts, and anonymity.

FINDINGS OF FACT

The foundational facts necessary for this Decision are as follows:

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

Finding of Fact No. 1: The Shepherd Elementary and Shepherd High School districts are both classified as second class districts in the State of Montana. (Commissioner’s Records.)

Finding of Fact No. 2: The September 10, 2019 district election includes a 11.9 million dollar bond issue on the ballot. (Shepard School District website.)

Finding of Fact No. 3: As part of this complaint, the COPP was provided with a copy of a mailer received by the complainant opposing the Shepherd Schools bond issue, which stated that “Hard times could be on the horizon, this is not the right time to overextend your finances for 20 years” and “It’s OK to Vote NO, Get It Right!” (Exhibit 1). The mailer did not contain a ‘paid for by’ attribution message disclosing who financed the material, but did include a statement telling recipients to “find out more by visiting educateshepherd.com”. The mailer did not include any further information about who distributed the mailer, including name/s, telephone number, or other contact information for the party responsible for financing the material beyond the website listing. (Commissioner’s Records.)

Finding of Fact No. 4: On September 4, 2019, the COPP reviewed the Educateshepherd.com website and determined it also opposed the Shepherd Schools bond issue by including various letters to the editor or other public comments urging people to vote against the bond by saying things like “Vote No on the New Shepherd School Bond” and “Vote against it, regroup and put a plan together to fix the problems”, while also categorizing aspects of the what the bond would include as “Wants vs. Needs”. This review determined that Educateshepherd.com did not include the ‘paid for by’ attribution disclosing who financed the material. The website did not include any further information about who created the website, including name/s, telephone number, or other contact information for the party or parties responsible for financing it, but did include a Contact function allowing individuals to send a message or leave comments directly through the website. (Commissioner’s Records.)

Finding of Fact No. 5: On September 4, 2019, the COPP contacted the Educateshepherd.com website through the page’s Contact function. The message alerted the website to the complaint and asked them to reach out to the COPP to resolve the potential attribution violations referenced. The COPP did not receive any response to this message. (Commissioner’s Records.)

Finding of Fact No. 6: On September 5, 2019, the COPP again contacted the Educateshepherd.com website through the page’s Contact function. This follow-up message explained attribution requirements in further detail and walked educateshepherd.com through the process of correcting unattributed materials, and requested they reach out to the COPP with questions. (Commissioner’s Records.)

Finding of Fact No. 7: On September 6, 2019, the COPP sent a final follow-up message to Educateshepherd.com through the page's Contact function. This message reiterated the need to provide attribution information for all materials opposing the Shepherd Schools bond issue and again requested they reach out to the COPP to ensure the matter was appropriately resolved. (Commissioner's Records.)

Finding of Fact No. 8: As of September 9, 2019, a 'paid for by' attribution message had not been added to the Educateshepherd.com website, nor had the COPP received written response of what the attribution message would have said for any previously distributed print materials. (Commissioner's Records.)

DISCUSSION

Committee Registration

The first allegation from the complaint to be addressed is the allegation that Educateshepherd.com failed to register with the COPP as a political committee. Both the Shepherd Elementary and Shepherd High School districts are classified as second class districts by the State of Montana (FOF No. 1). Mont. Code Ann. §13-37-206, explicitly states:

Exception for certain school districts and certain special districts

(1) The provisions of this part, except 13-37-216 and 13-37-217, do not apply to a candidate for the office of trustee of a school district, the candidate's political campaign, or a political committee organized to support or oppose a school district issue or a candidate when the school district is:

- (a) a first-class district located in a county having a population of less than 15,000;
- (b) a second- or third-class district; or
- (c) a county high school district having a student enrollment of less than 2,000.

As Shepherd Elementary and Shepherd High School districts are both second class districts, committees organized solely to support or oppose ballot issues in those districts, if indeed Educateshepherd.com was formed by two or more individuals, would be exempt from campaign finance registration and reporting with the Commissioner's office. The allegation is hereby dismissed.

Attribution

However, committees are still subject to Title 13, Chapter 35, specifically attribution requirements. Montana law requires an accelerated review ("as soon as practicable") of a campaign practice complaint alleging an attribution violation. Mont. Code Ann. §13-35-225(1) states "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". Accordingly, Educateshepherd.com was notified by the Commissioner's office that its political advertisements required an attribution. Educateshepherd.com did not respond to the COPP outreach. (FOF Nos. 5-7).

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

1. The Commissioner is to immediately assess the merits of the Complaint, Mont. Code Ann. §13-35-225(7)(a). The Commissioner found merit to the Complaint (FOF Nos. 3, 4) and hereby memorializes that finding.

2. The Commissioner shall notify the complainant of the merit finding, requiring the Candidate or Committee to bring the ad/s into compliance, Mont. Code Ann. 13-35-225(7)(a).

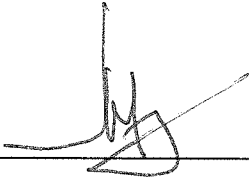
The Commissioner attempted to contact the individual or individuals involved and provide instruction to add an appropriate attribution to its website, provide an attribution for the identified mailer to the COPP, and utilize the attribution in any future election communication. We are unable to determine if a committee was involved, and the matter likely involves a citizen/s practicing their First Amendment rights.

Additionally, the COPP has long held that enforcement of §13-35-225, MCA is limited by the measure of the first amendment speech principles applicable to anonymous leaflets, as defined in the case of *McIntyre v. Ohio Elections Commission*, 514 U.S. 334, 347 (1995): “[u]nder our Constitution, anonymous pamphleteering is not a pernicious fraudulent practice, but an honorable tradition of advocacy and dissent.” There being no surrender of anonymity, the *McIntyre* principles must be applied to measure whether attribution is required under §13-35-225, MCA because, whenever possible, statutes should be construed narrowly to avoid constitutional difficulties. (*State v. Nye*, 283 Mont. 505, 510, 943 P.2d 96, 99 (1997); *State v. Lilburn*, 265 Mont. 258, 266, 875 P.2d 1036, 1041 (1994), *cert. denied*, 513 U.S. 1078 (1995).)

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The Complaint is hereby dismissed.

DATED this 11th day of September, 2019.



Jeffrey A. Mangan
Commissioner of Political Practices
Of the State of Montana
P. O. Box 202401
1209 8th Avenue
Helena, MT 59620

Shepherd School District #37

School Bond Requests \$11.9 Million

Approximate Estimated Tax Impact for a Residential Taxpayer in

Shepherd Elementary and High School Districts

For a \$200,000 Property = \$312.57 Annual Increase

Calculate the estimated increase, take your "Taxable Value" X 0.1191 = Amount of Increase

Pioneer Elementary & Shepherd High School Districts

For a \$200,000 Property = \$107.18 Annual Increase

Calculate the estimated increase, take your "Taxable Value" X 0.0397 = Amount of Increase

Make it Safe, Fair & Get It Right!

It's OK to Vote **NO** on a Bad Plan!

100 Out 800 Kids (1:8) Who Go to Shepherd Schools are From Out of District - They Get a Free Ride by the Shepherd Taxpayers! (Shepherd Doesn't Charge Tuition to Out of District Students)

Hard times could be on the horizon, this is not the right time to overextend your finances for 20 years.

PRSR STD
ECRWSS
U.S. POSTAGE
PAID
EDDM RETAIL

Local
Postal Customer

EXHIBIT
1

It's OK to Vote NO, Get it Right!

Wants vs. Needs

- ✓ Need – New Elementary Classroom Space
- ✓ Need - Science Rooms and Labs
- ✓ Need - Updates Secure Entry Points
- ✓ Need - Kitchen and Lunchroom without 24 foot ceilings
- ✓ Need – Fire Sprinkler Protection in Entire School
 - (The Safety of the Children is More Important than Athletics)
- Want - ~~Lunchroom / gym \$406,320.00~~
- Want - ~~New Weight and Cardio \$557,000.00~~
- Want - ~~Second Floor over \$2,000,000.00~~
 - (A Fancy Second Floor Won't Educate Our Children)

Find out more by visiting

www.educateshepherd.com

Shepherd School District #37
School Bond Request is

\$11,900,000

- The current plan fails to address Critical Fire Protection, while adding Unnecessary Space.
- The Pioneer District is only being assessed 1/3 of the cost of the bond.
- Demand That They Make Education And Safety A Priority