

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Montana Racehorse Owners and Breeders Coalition v. John Hayes, Cascade County Tavern Association and Montana Tavern Association No. COPP 2020-LOB-001A and 1B	DISMISSAL
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On September 11, 2020, Montana Racehorse Owners & Breeders Coalition President Daniel Fuchs filed a lobbying complaint against the Montana Tavern Association, Cascade County Tavern Association¹, and John Hayes. The complaint alleges that both the Montana Tavern Association and Cascade County Tavern Association, through agent John Hayes, engaged in unprofessional conduct as defined under Mont. Code Ann. §5-7-302.

FINDINGS OF FACT

The foundational facts necessary for this Decision are as follows:

Finding of Fact No. 1: The Montana Racehorse Owners and Breeders Coalition is a nonprofit organization “Dedicated to promoting, supporting, and endorsing the tradition, history, economic and agricultural value of the sport of horse racing in Montana”². The Montana Racehorse Owners and Breeders Coalition filed an L-2 Principal Authorization statement with the COPP for the 2019 Montana Legislature on January 11, 2019. (Commissioner’s Records).

¹ Listed as Great Falls Tavern Association in the complaint

² <https://www.facebook.com/RaceHorseMontana> and <https://www.mtracehorse.com/>

Finding of Fact No. 2: The Montana Tavern Association is an organization who lists their mission as “To preserve and enhance the hospitality industry”.³ The Montana Tavern Association filed both an L-2 Principal Authorization Statement and an L-3 Principal Registration Application with the COPP for the 2019 Montana Legislature on January 7, 2019. John Iverson was the only individual authorized to lobby on behalf of the Montana Tavern Association. (Commissioner’s Records).

Finding of Fact No. 3: The Cascade County Tavern Association, Inc. is listed as a local tavern association subsidiary under the larger Montana Tavern Association.⁴ John Hayes is listed as the contact for the Cascade County Tavern Association on the Montana Tavern Association’s website. The Cascade County Tavern Association did not register as a Principal with the COPP by filing an L-2 Principal Authorization Statement or L-3 Principal Registration Application during the 2019 Montana Legislature or at any other time during the 2019-2020 biennium. (Commissioner’s Records).

Finding of Fact No. 4: John Hayes served as the Chairman of the Montana Board of Horseracing, representing District 3 in a term that expired on January 1, 2021. Mr. Hayes was first appointed to the Board by Governor Brian Schweitzer and then reappointed by Governor Steve Bullock.

Mr. Hayes did not register as a lobbyist by filing an L-1 Lobbyist License Application with the COPP during the 2019 Montana Legislature or at any other time during the 2019-2020 biennium. (Commissioner’s Records).

Finding of Fact No. 5: The Montana Board of Horse Racing is a state board organized under the Department of Commerce to regulate the live and simulcast horse racing industry, ensure compliance by licensees with state laws/rules, licensing racing personnel, establishing race dates, and veterinary practices for horse racing meets, and auditing, supervising, and investigating horse racing in Montana.⁵ Tom Tucker serves as Executive Secretary. In 2019, Shawn Real Bird and Barry ‘Spook’ Stang also served as Board members. (Commissioner’s Records).

Finding of Fact No. 6: Senate Bill 183, short title “Authorize the board of horseracing to conduct historical horseracing” was introduced during the 2019 Montana Legislature by Sen. Mark

³ mttaverns.org/?

⁴ <https://mttaverns.org/page/LocalAssns>

⁵ <https://commerce.mt.gov/horseracing>

Blasdel on January 28, 2019. SB 183 was referred to the Senate Business, Labor, and Economic Affairs committee.⁶ Sen. Steve Fitzpatrick served as the Chair of that committee.

On February 13, 2019, a Hearing was held on SB 183 by the Senate Business, Labor, and Economic Affairs committee. According to this complaint, Mr. Hayes allegedly sent a text message to Chair Fitzpatrick prior to this committee hearing opposing SB 183. A copy of the text message was not included with the complaint.

COPP Investigator reviewed the video recording of this committee meeting on November 23, 2020: <http://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20170221/-1/33659?agendaId=161434>. According to the meeting's minutes, the following Proponents testified in support of SB 183: Tom Tucker, representing the Montana Board of Horseracing; Dan Fuchs, Triangle Public Affairs and Exacta Systems; Rep. Sharon Stewart Peregoy; Patrick Neely, Exacta Systems; Scott Boulanger, the Montana Horserace Owners and Breeders Coalition; Mark Baker, Exacta Systems (Mr. Baker also spoke for Joe Unterreiner of the Kalispell Chamber of Commerce); Brenda Wahler; Sidney Fitzpatrick, Big Horn County Commissioner; Shawn Real Bird, Montana Board of Horseracing; and Spook Stang, Montana Board of Horseracing. No spoken testimony by proponents mentioned or discussed any text messages sent by Mr. Hayes, nor did any written testimony or exhibits provided mention such a text message.⁷ The following Opponents testified in opposition to SB 183: John Iverson, Montana Tavern Association; Neil Peterson, Gaming Industry Association of Montana; Ronda Wiggers, Montana Coin Machine Operators; Joe McKenney, Montana Gaming Industry Association; and Angela Nunn, Gambling Control Division of the Montana Department of Justice. No spoken testimony by opponents, including Mr. Iverson's spoken testimony on behalf of the Montana Tavern Association, mentioned or discussed any text messages sent by Mr. Hayes; no written testimony or exhibits provided, including two (2) from The Montana Tavern Association, mention

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[http://laws.leg.mt.gov/legprd/LAW0203W\\$BSRV.ActionQuery?P_SESS=20191&P_BLTP_BILL_TYP_CD=SB&P_BILL_NO=183&P_BILL_DFT_NO=&P_CHPT_NO=&Z_ACTION=Find&P_ENTY_ID_SEQ2=&P_SBJT_SBJ_CD=&P_ENTY_ID_SEQ=](http://laws.leg.mt.gov/legprd/LAW0203W$BSRV.ActionQuery?P_SESS=20191&P_BLTP_BILL_TYP_CD=SB&P_BILL_NO=183&P_BILL_DFT_NO=&P_CHPT_NO=&Z_ACTION=Find&P_ENTY_ID_SEQ2=&P_SBJT_SBJ_CD=&P_ENTY_ID_SEQ=)

⁷ [http://sg001-](http://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20170221/-1/33659?agendaId=161434#handoutFile)

[harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20170221/-1/33659?agendaId=161434#handoutFile](http://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20170221/-1/33659?agendaId=161434#handoutFile)

such a message.⁸ Brad Longcake of the Montana Council on Problem Gaming spoke as the only Informational witness.

On February 21, 2019, SB 183 Passed as Amended out of committee on a 7-3 vote.

SB 183 was passed by the full Montana Senate on March 19, 2019 on a 29-20 vote.

(Commissioner's Records).

Finding of Fact No. 7: On April 2, 2019, a hearing was held on SB 183 by the House Business and Labor committee.

COPP Investigator reviewed the video recording of this April 2, 2019 committee meeting on December 7, 2020: http://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20170221/-1/34575?agendaId=147084#info_. According to the committee meeting's minutes, the following Proponents testified in support of SB 183: Tom Tucker, Montana Board of Horseracing; Spook Stang; John Iverson, Montana Tavern Association; Scott Boulanger, Montana Racehorse Owners and Breeders Coalition; Dan Fuchs, Exacta Systems; and Shane Scanlon, Kalispell Chamber of Commerce. No spoken testimony by proponents mentioned or discussed any text messages sent by Mr. Hayes, nor did any written testimony or exhibits provided mention such a text message. The following Opponents testified in opposition to SB 183: Neil Peterson, Gaming Industry Association. No spoken testimony by opponents mentioned or discussed any text messages sent by Mr. Hayes, nor did any written testimony or exhibits provided mention such a message. Angela Nunn from the Montana Department of Justice was the only informational witness.

On April 3, 2020, SB 183 was concurred out of the House committee on a 19-0 vote.

SB 183 was passed the Montana House of Representatives on April 8, 2019 by an 89-8 vote.

(Commissioner's Records).

⁸ <https://leg.mt.gov/bills/2019/Minutes/Senate/Exhibits/bus30a03.pdf>;
<https://leg.mt.gov/bills/2019/Minutes/Senate/Exhibits/bus30a04.pdf>

Finding of Fact No. 8: SB 183 was signed into law by Governor Steve Bullock on May 1, 2019. (Commissioner's Records).

Finding of Fact No. 9: On October 2, 2020, the Montana Tavern Association provided its response to this complaint to the COPP. The response stated that "John Hayes is not an agent of the Montana Tavern Association, any more than any other individual member. John Hayes is not even a voting member" of the Association. The response also denied that Mr. Hayes served as the chair of the Montana Tavern Association's Legislative Committee, stating "Tom Heisler III, is. Prior to Tom Heisler III, the Chair was Dax Centaro". The response also argued that the Montana Tavern Association does not compensate Mr. Hayes for lobbying, instead the MTA contracts with John Iverson to engage in lobbying activity for the Association. The response finally argued that all lobbying activities were properly reported to the COPP. (Commissioner's Records).

Finding of Fact No. 10: On October 5, 2020, John Hayes provided a response to this complaint (presented on behalf of both himself and the Cascade County Tavern Association) to the COPP. In the response, Mr. Hayes argues that he has never been President of the Cascade County Tavern Association as alleged in the complaint. He also states that he has never served as the Chair of the Montana Tavern Association's Legislative Committee. He goes on to explain that "My association with the Cascade County Tavern Association goes back to 1990. I have never been paid as a lobbyist nor have I registered as a lobbyist" for the Cascade County Tavern Association. While an associate member of the Montana Tavern Association through Hayes Insurance Agency, LLC, Mr. Hayes states that "I have NEVER been paid by the Montana Tavern Association to be, or act as a paid lobbyist for the industry". The response finally notes that "I am an individual with independent opinion on matters".

This response did not mention the alleged text message sent by Mr. Hayes opposing SB 183 to Sen. Fitzpatrick prior to its February 13, 2019 committee hearing. (Commissioner's Records).

DISCUSSION

This complaint alleges that both the Montana Tavern Association and the Cascade County Tavern Association, through agent John Hayes, engaged in

“unprofessional conduct” in violation of Mont. Code Ann. §5-7-302. Specifically, the complaint alleges that, while acting on behalf of both the Montana Tavern Association (MTA) and Cascade County Tavern Association (CCTA) Mr. John Hayes texted the chair of the Senate committee set to hear Senate Bill 183 to oppose the bill.

Background

The Montana Tavern Association (MTA) is an organization who lists their mission as “To preserve and enhance the hospitality industry” (FOF No. 2). The Cascade County Tavern Association (CCTA) is a local organization operating under the larger MTA umbrella (FOF No. 3). Mr. John Hayes has affiliations with the MTA and CCTA: he is an associate member of the MTA, and a member of the CCTA (FOF Nos. 4, 9).

Montana Tavern Association

The MTA registered as a Principal with the COPP for the 2019 Montana Legislature. The MTA authorized only one individual, John Iverson, to lobby on their behalf (FOF No. 2, 9). John Hayes was not listed as an individual authorized to lobby on behalf of the MTA on any documentation filed by that organization with the COPP. Mr. Hayes did not register as a lobbyist with the COPP or otherwise file documentation indicating that he intended to lobby on the MTA’s behalf or would be compensated by the MTA to do so (FOF No. 4).

Cascade County Tavern Association

Although this complaint names the next respondent as the Great Falls Tavern Association, no organization of that name exists. The Cascade County Tavern Association (CCTA), which functions as a local affiliate of the larger MTA organization, is the intended respondent.

John Hayes is a member of the CCTA, currently listed as its contact person (FOF No. 3, 9). The CCTA did not register as a Principal with the COPP at any point during the 2019 Montana Legislature or otherwise indicate it had authorized individuals to lobby on its behalf (FOF No. 3). Mr. Hayes did not register as a lobbyist with the COPP or otherwise file documentation indicating that he intended to lobby on the CCTA's behalf or would be compensated by the organization to do so, and the CCTA's response stated Mr. Hayes has never acted as a paid lobbyist on behalf of the organization, including during the 2019 Montana Legislature (FOF No. 4, 10).

John Hayes

John Hayes did not register as a lobbyist with the COPP in conjunction with the 2019 Montana Legislature (FOF No. 4). Both the MTA and CCTA (through John Hayes) denied paying John Hayes to lobby on their behalf, and no evidence provided by the complainant in this matter or obtained through the COPP's investigation refutes this assertion (FOF No. 9, 10). As no evidence indicates Mr. Hayes was paid \$2,600.00 or more to lobby during the 2019-2020 biennium, he would not have been required to register as a lobbyist with the

COPP, Mont. Code Ann. §5-7-103(5). Mr. Hayes also served as the Chair of the Montana Board of Horseracing (FOF No. 4).

FINDINGS

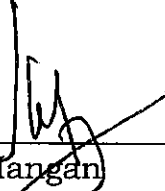
Mont. Code Ann. §5-7-302 states that “No lobbyist or principal shall engage in or directly or indirectly authorize any unprofessional conduct” (emphasis added). The Complaint alleged Mr. Hayes engaged in a single direct text to a legislator, expressing an opposition position on a bill before the Committee. No evidence suggests Mr. Hayes was paid for his time in sending the text, and therefore he was not required to register as a lobbyist pursuant to Mont. Code Ann. § 5-7-102(b)(i). The Commissioner notes that additional Board of Horse Racing members, Shawn Real Bird and Spook Strang, testified to the Committee as to their position on the bill.

The Commissioner finds John Hayes did not act as a lobbyist as defined in Mont. Code Ann. §5-7-102 on behalf of the MTA, CCTA, or any other registered principal. As Mr. Hayes did not qualify as a lobbyist under Montana lobbying law, he cannot be found to have engaged in unprofessional lobbyist conduct, Mont. Code Ann. § 5-7-302. The Commissioner finds neither the MTA nor CCTA engaged in unprofessional conduct in this matter. The Complaint against the MTA, CCTA, and John Hayes is hereby dismissed.

DECISION

The Complaint is hereby dismissed.

DATED this 8th day of January 2021.



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