

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Montana Democratic Party v. Johnson, Hertz, and O'Neil No. COPP 2018 -CFP-054D, 054E, 054F	DISMISSAL
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On October 30, 2018, the Montana Democratic Party filed a campaign practices complaint against Denise Johnson of Billings, Adam Hertz of Missoula, and Jerry O'Neil of Columbia Falls. The complaint alleged that campaign mailers supporting candidates Johnson, Hertz, and O'Neil were coordinated between their campaigns and either or both the Montana Republican Legislative Campaign Committee and The Political Company and constituted a reportable campaign contribution that each candidate failed to disclose. The complaint also alleged that the value of the mailers exceeded Montana's contribution limit a committee could contribute to a candidate for a State District office.

SUBSTANTIVE ISSUES ADDRESSED

Coordination of election communications between committee and candidate.

FINDINGS OF FACT

The foundational facts necessary for this Decision are as follows:

Finding of Fact No. 1: For election year 2018, Montana State Senate candidates could accept a maximum of \$1,450.00 per election from Political Party committees. (Commissioner's Records.)

Finding of Fact No. 2: The Montana Democratic Party (MDP) filed an Amended C-2 Statement of Organization as a Political Party committee for election year 2018 on January 31, 2018. (Commissioner's Records.)

Finding of Fact No. 3: The Montana Republican Legislative Campaign Committee (MRLCC) filed an original C-2 Statement of Organization as a Political Party committee with the COPP on July 10, 2014. An Amended C-2 Statement of Organization for election year 2018 was filed on May 6, 2018. (Commissioner's Records.)

Finding of Fact No. 4: Denise Johnson filed a C-1 Statement of Candidate as a Republican candidate for House District 48 in Yellowstone County with the COPP on March 13, 2018. Candidate Johnson timely filed all 2018 C-5 campaign finance reports. (Commissioner's Records.)

Finding of Fact No. 5: On her C-5 campaign financial report dated March 15, 2018 through May 1, 2018, candidate Johnson reported receiving two (2) In-Kind contributions from the MRLCC for "Phone conversation about campaign and planning" at \$40.00 (total) for the General election. This report was most recently Amended and filed on November 24, 2018. (Commissioner's Records.)

Finding of Fact No. 6: On her C-5 campaign financial report dated May 2, 2018 through May 24, 2018, candidate Johnson reported receiving one (1) In-Kind contribution from the MRLCC for "Campaign Training and Planning Conference Calls 5/2,5/9,5/16" at \$60.00 for the General election. This report was most recently Amended and filed on November 24, 2018. (Commissioner's Records.)

Finding of Fact No. 7: On her C-5 campaign financial report dated May 25, 2018 through June 20, 2018, filed on June 24, candidate Johnson reported receiving one (1) In-Kind contribution from the MRLCC for "Campaign Training and Planning Conference Call 6/13/2018" at \$20.00 for the General election. (Commissioner's Records.)

Finding of Fact No. 8: Candidate Johnson did not report making any expenditures or owing any debts to The Political Company, for mailers or any other purpose, during the 2018 election cycle. (Commissioner's Records.)

Finding of Fact No. 8A: The Complaint as filed by the MDP included a copy of a mailer supporting candidate Johnson contrasting her candidacy with that of Jessica Karjala, the Democratic candidate for House District 48. The mailer includes an attribution message that states “Paid for by Montana Republican Legislative Campaign Committee, Forrest Mandeville, Treasurer PO Box 6656 Helena, MT 59604”. (Commissioner’s Records.)

Finding of Fact No. 8B: Candidate Johnson provided the COPP with a response to this Complaint via mail on November 16, 2018. The response stated that “I have never seen the brochures that were allegedly printed...To be clear, I had no knowledge of these campaign mailers until I received your letter. Furthermore, none of my campaign materials were printed by Jake Eaton of the Political Company of Billings...Any materials he designed, printed, or mailed were completely without my knowledge”. The response also stated that candidate Johnson had not spoken with Mr. Eaton or sought campaign advice from him since the Primary election. (Commissioner’s Records.)

Finding of Fact No. 9: Adam Hertz filed a C-1 Statement of Candidate as a Republican candidate for House District 96 in Missoula County with the COPP on December 15, 2017. Candidate Hertz timely filed all 2018 C-5 campaign finance reports. (Commissioner’s Records.)

Finding of Fact No. 10: On his C-5 campaign financial report dated December 15, 2017 through May 1, 2018, candidate Hertz reported receiving two (2) In-Kind contributions from the MRLCC for “Campaign Training and Planning Conference Call” at \$40.00 (total). Candidate Hertz also reported making three (3) expenditures to The Political Company: one dated January 24 for “Design and print 500 campaign contribution envelopes” at \$105.00; one dated March 5 for “Design and print 5,000 door hangers” at \$795.00; and one dated April 18 for “Design and print 250 thank you cards and envelopes” at \$151.95. This report was most recently Amended and filed on December 16, 2018. (Commissioner’s Records.)

Finding of Fact No. 11: On his C-5 campaign financial report dated May 2, 2018 through May 24, 2018, filed on May 26, candidate Hertz reported receiving one (1) In-Kind contribution from the MRLCC for “Campaign Training and Planning Conference Call” at \$20.00. (Commissioner’s Records.)

Finding of Fact No. 12: On his C-5 campaign financial report dated October 2, 2018 through October 24, 2018, candidate Hertz reported making nine (9) expenditures to The Political Company, each dated October 4: one for "Design, print & postage for 2,847 "Issues #3" 8.5"x11" postcards" at \$1,651.26; one for "Design, print & postage for 2,165 "Brittni Letter" 8.5"x11" fold to 5.5"x8.5" brochure" at \$1,483.02; one for "Design, print & postage for 2,847 "GOTV" 6"x11" postcards" at \$1,651.26; one for "Design, print & postage for 2,847 "Contrast #2" 6"x11" postcards" at \$1,580.09; one for "Design, print & postage for 2,847 "Issues #2" 6"x11" postcards" at \$1,580.09; one for "Design, print & postage for 2,847 "Contrast #1" 6"x11" postcards" at \$1,580.09; one for "Design, print & postage for 3,298 "Listening" 6"x11" postcards" at \$2,011.78; one for "Design, print & postage for 2,847 "intro" 8.5"x11" postcards" at \$1,651.26; and one for "Design, print & postage for 2,847 "Issues #1" 8.5"x11" postcards" at \$1,651.26. This report was most recently Amended and filed on December 16, 2018. (Commissioner's Records.)

Finding of Fact No. 12A: Included by the MDP in this complaint was a copy of a mailer supporting candidate Hertz. The mailer included a statement saying the material was "Paid for by Adam for Montana, Republican. 10414 Royal Coachman Drive. Missoula, MT 59808". (Commissioner's Records.)

Finding of Fact No. 12B: Candidate Hertz provided the COPP with a response to this Complaint via email on November 5, 2018. The response stated that "My professional relationship with Jake Eaton is one where his company, The Political Company, designs, prints, targets and mails my campaign postcards... All communication related to my campaign postcards including my initial review, suggestions of edits and final approval of any postcards has been made directly with Jake Eaton at all times and has never included any communication with anyone from the RLCC". (Commissioner's Records.)

Finding of Fact No. 13: Jerry O'Neil filed a C-1 Statement of Candidate as a Republican candidate for House District 03 in Flathead County with the COPP on March 12, 2018. (Commissioner's Records.)

Finding of Fact No. 14: Candidate O'Neil did not report receiving any contributions, either In-Kind or monetary, from the MRLCC during the 2018 election cycle. (Commissioner's Records.)

Finding of Fact No. 15: Candidate O'Neil did not report making any expenditures or owing any debts to The Political Company, for mailers or any other purpose, during the 2018 election cycle. (Commissioner's Records.)

Finding of Fact No. 15A: The Complaint as filed by the MDP included a copy of a mailer supporting candidate O'Neil contrasting his candidacy with that of Zac Perry, the Democratic candidate for House District 03. The mailer includes an attribution message that states "Paid for by Montana Republican Legislative Campaign Committee, Forrest Mandeville, Treasurer PO Box 6656 Helena, MT 59604". (Commissioner's Records.)

Finding of Fact No. 15B: Candidate O'Neil provided the COPP with a response to this Complaint via mail on November 19, 2018 denying any allegations of coordination made against his campaign. (Commissioner's Records.)

DISCUSSION

Candidate Hertz, not the MRLCC, The Political Company, or any other third-party vendor, paid to produce and distribute the mailers referenced by the MDP in their complaint (Finding of Fact No. 12A). Because the candidate paid for the material, it would not be considered a coordinated expenditure, nor a contribution. See the discussion in *MDP v. Reynolds, MRLCC, and The Political Company* COPP-2018-054A, 054B, 054C. Further, Candidates Johnson and O'Neil did not utilize The Political Company as a vendor for their campaign's printing, and the investigation did not produce any evidence that the MRLCC coordinated with either candidate in its independent expenditures supporting the Johnson and O'Neil campaigns.

The allegations against candidates Hertz, Johnson and O'Neil are hereby dismissed.

DECISION

The Commissioner hereby dismisses the complaint against Denise Johnson, Adam Hertz, and Jerry O'Neil.

DATED this 7th day of January 2020.



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