

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

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| Montana Democratic Party v. Chase Reynolds, Montana Republican Legislative Campaign Committee, and The Political Company No. COPP 2018-CFP-054A, 054B, 054C | DISMISSAL |
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On October 30, 2018, the Montana Democratic Party filed a campaign practices complaint against Chase Reynolds of Missoula, the Montana Republican Legislative Campaign Committee (MRLCC), and The Political Company. The complaint alleged that campaign mailers supporting candidate Reynolds were coordinated between the campaign and the MRLCC and/or The Political Company through shared use of The Political Company as a vendor and constituted a campaign contribution that candidate Reynolds failed to report. The complaint also alleged that the value of the mailers exceeded Montana's contribution limit for what a State District candidate could accept in contributions.

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: Chase Reynolds filed a C-1 Statement of Candidate as a Republican candidate for Senate District 49 in Missoula County with the COPP on February 1, 2018. Candidate Reynolds timely filed his 2018 C-5 campaign finance reports.¹ (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: For election year 2018, Montana State Senate candidates could accept a maximum of \$1,450.00 per election from Political Party committees. Throughout the 2018 electoral cycle, candidate Reynolds reported receiving \$440.00 from registered Political Party committees. (Commissioner's Records.)

Finding of Fact No. 5: On his Initial C-5 campaign financial report dated February 1, 2018 through May 6, 2018, candidate Reynolds reported owing two (2) debts to The Political Company: one dated May 17 for "1000 Palm Card - 2.5x8.5, 100# Gloss Cover, 4c/4cp - Design & Print," at \$490.00 and one dated March 1 for "Logo design, and Shipping on 500 Contribution Envelopes 6-3/4 Remit Envelope 2 colors blue and red" at \$185.00. Candidate Reynolds also reported receiving two (2) In-Kind contributions from the MRLCC for "Phone conversation about campaign and planning" at \$40.00. This report was most recently Amended and filed on December 17, 2019. (Commissioner's Records.)

Finding of Fact No. 6: On his C-5 campaign financial report dated May 25, 2018 through June 25, 2018, candidate Reynolds reported owing one (1) debt to The Political Company, dated June 25 for "Event Invite 5.5x8.5 100# Accent Cover Design, print, postage Business picture on front and football picture on back with what

¹ Candidate Reynolds did late file one report- the report due on May 29, 2018 was late filed on May 31.

we are against” at \$309.40. This report was most recently Amended and filed on December 17, 2019. (Commissioner’s Records.)

Finding of Fact No. 7: On his C-5 campaign financial report dated July 18, 2018 through October 8, 2018, candidate Reynolds reported owing two (2) debts to The Political Company: one dated October 8 for “re order Palm cards. Blue and white with rams photo – 3.5x8.5, 100# cover, 4cp/4cp 500 pieces” at \$290.00 and one dated August 29 for “#10 Envelope, 4cp/blak 350, Contribution Envelope, 4cp/4cp 350 Letter, 20# Bond, Black/0 350 Mail Prep – NCOA/CASS list, Insert, Inkjet 1 Postage 1” at \$526.73. This report was most recently Amended and filed on December 17, 2018. (Commissioner’s Records.)

Finding of Fact No. 8: On his C-5 campaign financial report dated October 9, 2018 through October 29, 2018, candidate Reynolds reported owing five (5) debts to The Political Company, each dated October 13: one for “Postage – Intro, Postage – GOTV, Postage – Contrast 1, Postage Contrast 2” at \$5,684.80; one for “Contrast #2 Mailer, 6x11, 100# Cover, 4cp/4cp – design, print, mailshop 5,168 pieces” at \$1,447.04; one for “Contrast #1 Mailer, 6x11, 100# Cover, 4cp/4cp – design, print, mailshop 5,168 pieces” at \$1,477.04; one for “GOTV Mailer, 8.5x11, 100# Cover, 4cp/4cp – design, print, mailshop 5,168 pieces” at \$1,550.40; and one for “Intro Mailer, 8.5x11, 100# Cover, 4cp/4cp – design, print, mailshop 5,168 pieces” at \$1,550.40. This report was most recently Amended and filed on December 17, 2018. (Commissioner’s Records.)

Finding of Fact No. 8B: For the 2018 electoral cycle, candidate Reynolds reported paying off all debts owed by the campaign, including all ten (10) owed to The Political Company. (Commissioner’s Records.)

Finding of Fact No. 8C: Included by the MDP in this complaint was a copy of a mailer supporting candidate Reynolds. The mailer included a statement saying the material was “Paid for by Chase Reynolds for Montana (R), PO Box 17996, Missoula, MT 59808”. (Commissioner’s Records.)

Finding of Fact No. 9: On its C-6 committee financial report dated January 1, 2018 through May 1, 2018, filed on May 6, the MRLCC reported making five (5) expenditures to The Political Company: one dated March 5 for “Ret fee for strategizing, PR, talent, fundraising plans. Travel Blgs to Hel for training. Food, beverages,

room rent, handouts and signage. Lodging.” at \$2,797.17; one dated April 9 for “May digital media production and placement. Airfare Billings to Washington DC. Lodging and registration” at \$1,938.47; one dated January 17 for “Retainer fee for strategizing, PR, creative talent and fundraising plans. Filing date press conference, travel round trip Billings to Helena” at \$2,254.66; one dated February 12 for “Retainer fee for strategizing, PR, creative talent and fundraising plans. Prep and postage thank you letters” at \$2,080.19; and one dated January 2 for “Ret fee for strategizing, PR, creative talent and fund raising plans. Prep and post for reply form/envelope/mail prep/creative design campaign letters” at \$5,564.43. The MRLCC also included two (2) Independent Expenditures meant to disclose In-Kind contributions made to the Reynolds campaign for “Candidate Training and Conference Call (\$20 in-kind exp)” valued at \$40.00 total. (Commissioner’s Records.)

Finding of Fact No. 10: On its C-6 committee financial report dated May 2, 2018 through May 24, 2018, filed on May 29, the MRLCC reported making two (2) expenditures to The Political Company: one dated May 23 for “Ret fee for strategizing, PR, talent, and fundraising plans” at \$2,000.00, and one dated May 2 for “Ret fee for strategizing, PR, talent, and fundraising plans” at \$2,000.00. (Commissioner’s Records.)

Finding of Fact No. 11: On its C-6 committee financial report dated May 25, 2018 through June 20, 2018, the MRLCC reported making nine (9) expenditures to The Political Company: one dated June 15 for “Ret fee for strategizing, PR, creative talent and fundraising plans” at \$1,840.00, and eight (8) given various dates for “Camp trng/planning conf call” for candidates Brad Lotton, Doug Kary, Colton Zaugg, Denise Johnson, Frank Fleming, and Steven Galloway, at \$20.00 each. This report was most recently Amended and filed on November 28, 2018. (Commissioner’s Records.)

Finding of Fact No. 12: On its C-6 committee financial report dated June 21, 2018 through October 1, 2018, the MRLCC reported making six (6) expenditures to The Political Company: one dated September 5 for “Expenses for golf fundraising tournament, Helena Green Meadow Country Club, signs, programs, trophies and mileage” at \$908.65; one dated July 3 for “7500 Senator Daines fundraising letters, reply envelopes, prep, create and design and postage” at \$5,962.75; and four (4), dated July 9, August 13, September 5, and October 1, for “Retainer fee for strategizing, PR, creative talent and fund raising plans” at \$2,000.00 each. This

report was most recently Amended and filed on November 28, 2018. (Commissioner's Records.)

Finding of Fact No. 13: On its C-6 committee financial report dated October 2, 2018 through October 24, 2018, the MRLCC reported making one (1) Independent Expenditure through TJS Strategic LLC dated October 18 for "3201 Contrast Mail piece 6x11 re: taxes" meant to support candidate Reynolds at \$2,080.65. (Commissioner's Records.)

Finding of Fact No. 14: On its C-6 committee financial report dated October 25, 2018 through November 21, 2018, filed on November 28, the MRLCC reported making one (1) expenditure to The Political Company dated November 14 for "Retainer fee for strategizing, PR, creative talent and fund raising plans" at \$2,000.00. Additionally, the MRLCC reported making two (2) Independent Expenditures meant to support candidate Reynolds: one through Rocky Mountain Strategies, LLC dated October 30 for "Facebook ads" at \$850.00, and one through TJS Strategic LLC dated October 26 for "3201 Contrast mail piece 6x11 re: taxes and spending" at \$2,080.65. (Commissioner's Records.)

Finding of Fact No. 15: The Political Company is "a full service public affairs and political consulting firm" based out of Billings, Montana that states it can help campaigns "with everything from issue education and fundraising to securing key endorsements". (Commissioner's Records.)

Finding of Fact No. 16: Candidate Reynolds provided the COPP with a response to this Complaint via email on November 6, 2018. The response stated that "I work with Jake Eaton and the Political Company solely to help me design, print, and mail my product for the 2018 Senate Election. Every piece of mail that was designed was sent to me for verification of wording and design. I have never spoken to anyone in regards to my literature other than Jake. I have never spoke with anyone on the RLCC about my mailings or "coordinated" with anyone. I have no intentions or knowledge of ever coordinating with any candidate or committee through my election period". (Commissioner's Records.)

Finding of Fact No. 17: The MRLCC provided the COPP with a response to this complaint via email on November 28, 2018. The response, a letter written by the Jones Law Firm, denied MRLCC coordination with the Reynolds campaign, stating that the committee "made no unreported coordinated expenditures" and "did not participate in the design layout of the referenced mailers".

While the MRLCC acknowledged using The Political Company for consulting work, it stated it had “no knowledge of what political consultant the Reynolds campaign retained” and that it “lacks sufficient knowledge or information to admit or deny whether the Reynolds campaign retained The Political Company”. (Commissioner’s Records.)

Finding of Fact No. 18: Candidate Reynolds provided the COPP with copies of six (6) invoices received by his campaign from The Political Company via email on January 28, 2019. According to the invoices, The Political Company billed the Reynolds campaign \$13,480.81 in total for services provided. The invoices correctly corresponded to the Reynolds campaign’s previously reported debts/expenditures to The Political Company (i.e. all descriptions and amounts reported by the campaign matched what was invoiced by The Political Company). The invoices provided were all marked as ‘Paid’, indicating The Political Company had received all required payment/s from the Reynolds campaign. The invoices also showed that a Design fee was included for each unique mailer. (Commissioner’s Records.)

Finding of Fact No. 19: The Political Company provided the COPP with copies of six (6) invoices it sent to the Reynolds campaign via email on March 1, 2019. According to the invoices, The Political Company charged the Reynolds campaign \$13,480.81 in total for services provided. The invoices provided were all marked as ‘Paid’, indicating The Political Company had received all required payment/s from the Reynolds campaign. The invoices also showed that a Design fee was included for each unique mailer. (Commissioner’s Records.)

DISCUSSION

In its Complaint, the MDP appears to level three main allegations: that candidate Reynolds coordinated mailers supporting his candidacy with the MRLCC through shared use of The Political Company, that these mailers qualified as a contribution received by the campaign that candidate Reynolds failed to report, and candidate Reynolds exceeded Montana’s established contribution limits by accepting this contribution.

Candidate Reynolds and The Political Company

On his C-5 campaign financial reports filed with the COPP, candidate Reynolds originally disclosed owing ten (10) debts to The Political Company,

totaling \$13,480.81 (FOF Nos. 5-8). Candidate Reynolds later reported paying off each of these obligations in full (FOF No. 8A). Both candidate Reynolds and The Political Company provided copies of invoices received by the campaign from The Political Company showing that candidate Reynolds properly reported this information (FOF Nos. 18, 19).

Candidate Reynolds used The Political Company as a vendor to print and distribute six unique mail pieces meant to support his campaign: a palm card, an event invite, an intro mailer, a contrast #1 mailer, a contrast #2 mailer, and a GOTV mailer. For each unique mail piece, the invoices state candidate Reynolds was charged for design, print, and mail services by The Political Company. The Reynolds campaign properly disclosed the expenditures and the communications contained the proper attribution.

Candidate Reynolds and the MRLCC

On his C-5 campaign financial reports, candidate Reynolds reported receiving two in-kind contributions from the MRLCC, at a total value of \$40.00 (FOF No. 5). His response also stated that he had not spoken with the MRLCC regarding his campaign mailers or any other materials (FOF No. 16). The MRLCC stated it did not coordinate campaign mailers with candidate Reynolds (FOF No. 17).

On committee financial reports, the MRLCC disclosed making three (3) Independent Expenditures meant to benefit candidate Reynolds: “3201 Contrast Mail piece 6x11 re: taxes”, “Facebook ads”, and “3201 Contrast Mail piece 6x11 re: taxes and spending” (FOF Nos. 13,14). The Political Company was not utilized as the vendor for these expenditures. Campaign finance reports indicate TJS Strategic LLC and Rocky Mountain Strategies, LLC were the vendors. These expenditures were referenced or included in the complaint by the MDP. Both Candidate Reynolds and the MRLCC disclosed both in-kind contributions and independent expenditures as required.

Did candidate Reynolds coordinate mailers supporting his candidacy with either the MRLCC or The Political Company?

Coordination is defined by §13-1-101(10), MCA, as “Coordinated”, including any variations of the term, means made in cooperation with, in consultation with, at the request of, or with the express prior consent of a candidate or political committee or an agent of a candidate or political committee”. In the complaint, the MDP asserts that candidate Reynolds coordinated mailers supporting his candidacy with the MRLCC through The Political Company, as each entity utilized it “for printing services as reported in their campaign finance filings”. The MDP concedes that while the “use of the same printing establishment alone” by a candidate and third party does not necessarily constitute coordination (further outlined under 44.11.602(4), ARM), “the similarity between the candidates’ literature and the RLCC pieces are so strikingly similar it is difficult to believe they were not coordinated”.

Several candidates and the MRLCC utilized the services of The Political Company during the 2018 election. Mailers reviewed by the COPP and printed by The Political Company used the same or similarly featured templates and copy. An expenditure must be made by a third party in conjunction with the candidate or the candidate’s representatives to be considered coordinated.

44.11.602(1), ARM

(1) A "coordinated expenditure" means any election communication, electioneering communication, or reportable election activity that is made by a person in cooperation with, in consultation with, under the control of, or at the direction of, in concert with, at the request or suggestion of, or with the express prior consent of a candidate or an agent of the candidate. The coordination of an expenditure need not require agreement, cooperation, consultation, request, or consent on every term necessary for the particular coordinated expenditure, but only requires proof of one element, such as content, price, or timing, to be met as a fact of a coordinated expenditure.

No evidence was produced during the COPP investigation that indicated candidate Reynolds and the MRLCC coordinated in the production or distribution of candidate Reynolds campaign mailers (reported by the candidate) or the independent expenditure mailers (reported by the committee). Further, the MRLCC utilized two different vendors for its independent

expenditures supporting Reynolds, neither of which was The Political Company. Candidate Reynolds specifically stated that “Every piece of mail that was designed was sent to me for verification of wording and design. I have never spoken to anyone in regards to my literature other than Jake” (Jake being Jake Eaton, owner of The Political Company). Candidate Reynolds claimed sole responsibility for financing the mailers in question, and he reported them as campaign expenditures on financial reports filed with the COPP. The attribution statement included on the mailers stated “Paid for by Chase Reynolds for Montana (R), PO Box 17996, Missoula, MT 59808”. While the MRLCC stated it too used The Political Company for services such as mail pieces, it claimed to have “no knowledge of what political consultant” or vendors the Reynolds campaign used and did not use for the Reynolds mailings.

A review of all available evidence in this matter fails to determine that candidate Reynolds made the expenditures “in cooperation with, in consultation with, at the request of, or with the express prior consent” of either The Political Company or the MRLCC. Candidate Reynolds paid The Political Company to design, print, and distribute the mailers in question. As paid activities meant to support candidate Reynolds carried out by his campaign, these mailers would qualify as expenditures of the Reynolds campaign under Mont. Code Ann. §13-1-101(18)(a)(i). Candidate Reynolds properly reported them (first as debts owed by the campaign, with subsequent payments made) on his C-5 campaign financial reports. The Reynolds campaign was the party responsible for providing payment to The Political Company in exchange for the printing and distribution of the mailers. The mailers were not paid for by the MRLCC, The Political Company, or any other third party.

Because the mailers in question cannot be classified as an expenditure activity of a third party working “in cooperation with, in consultation with, at the request of, or with the express prior consent of” candidate Reynolds, they cannot be considered coordinated activity under either Mont. Code Ann. §13-1-101(10), or 44.11.602(1), ARM. This allegation is hereby dismissed.

Was the Reynolds campaign required to report these campaign mailers as in-kind contributions received?

With the determination that candidate Reynold's mailers were not coordinated between Reynolds and The Political Company or the MRLCC, the MDP's allegation that they can be considered contributions made by one or both entities to the campaign that were not properly reported by candidate Reynolds is hereby dismissed.

The complaint also alleges that candidate Reynolds violated Montana's established contribution limits in accepting the mailers as contributions to his campaign. As previously determined, the campaign mailers would not qualify as contributions under Mont. Code Ann. §13-1-101(9), and therefore not exceed the committee contribution limit. The allegation is hereby dismissed.

Summary

While the Reynolds campaign utilized templates that are remarkably similar to templates utilized by other candidates and committees, there was no available evidence the Reynolds campaign coordinated with either his vendor, The Political Company, or the MRLCC on election communications. The Reynolds campaign paid for the design and distribution of six election communications with its vendor, The Political Company. The MRLCC provided three independent expenditures supporting candidate Reynolds using vendors other than The Political Company.

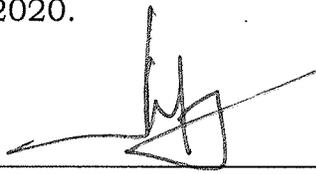
The Political Company did provide political training, fundraising, talent, etc. consultation to the MRLCC, and the candidates the MRLCC supported, including Reynolds. The conference calls that included candidate Reynolds was properly reported by both the candidate and committee. The Political Company provided election communication printing and media services to a variety of other candidates and to the MRLCC. No evidence suggested The Political Company acted as an agent of the candidate when working with the MRLCC, or the MRLCC utilized The Political Company in the MRLCC's decision making in regard to the Reynolds independent expenditures.

It is problematic, however, that neither the MRLCC or The Political Company appeared to establish a written firewall policy² in an effort to ensure a process was in place to avoid coordination between shared vendors and consultants. With the large number of candidates and communications both entities worked with directly or indirectly, it would be prudent to establish such a policy, one that included specific language as to the procedure and steps to be taken when working with the same candidate, vendor, entity or committee. The policy should be shared and signed by all involved prior to the development of any election activity and filed with the COPP.

DECISION

The Commissioner hereby dismisses the complaint against Chase Reynolds, the Montana Republican Leadership Campaign Committee, and The Political Company.

DATED this 7th day of January 2020.



Jeffrey A. Mangan
Commissioner of Political Practices
Of the State of Montana
P.O. Box 202401
1209 8th Avenue
Helena, MT 59620
Phone: (406)-444-3919

² 44.11.602, ARM (2)(f) the person funding or facilitating the communication or reportable election activity has: (i) established a written firewall policy designed to prevent the flow of information about the candidate's campaign plans, projects, activities, or needs from the persons providing services to the candidate to persons involved in the creation, production, or dissemination of the communication or activity; and

(ii) prior to the preparation or distribution of any communication or reportable election activity has distributed the firewall policy to all relevant employees, consultants, and clients affected by the policy; and

(iii) filed the firewall policy with the COPP.