

COMMISSIONER OF  
POLITICAL PRACTICES



STATE OF MONTANA

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Date: October 30, 2017  
To: The People of Montana  
From: Jeffrey Mangan,  
The Commissioner of Political Practices  
Re: *Magill v. Reintsma, City of Libby, et al.*, COPP-2014-CFP-037

Dear Fellow Montanans:

The Office of the Commissioner of Political Practices (COPP) has entered into a settlement agreement with the City of Libby for violations of Montana's Campaign Finance and Practice Laws through the then Mayor and City Council members allowing a public employee the use of the City of Libby's public resources to improperly solicit opposition to an identified candidate for office, Mont. Code Ann. § 13-35-226(4). This letter is an explanation of how the COPP arrived at a further determination regarding enforcement of this matter, as set forth below.

**BACKGROUND**

The timeline of events is as follows:

1. October 18, 2013, at 10:01 a.m., Mr. Reintsma sent an email to the Mayor and City Council members, stating that "a fairly lengthy memorandum" was available at the city offices, and that "[t]he contents are time sensitive, so please find your way over and pick them up today".
2. Also on October 18, 2013, at 10:32 am, Glenna Hook notified the members of the city council that the meeting scheduled for October 21, 2013 would be canceled "[d]ue to lack of items on the agenda".
3. On October 24, 2013, City Attorney, Mr. Reintsma, filed a Complaint for Declaratory and Injunctive Relief in the Montana Nineteenth Judicial District Court, Lincoln County, *City of Libby v. Allen Olsen*, Cause No. DV-13-232.
4. On October 25, 2013, the Court entered a temporary restraining order, preventing the counting of ballots cast in the November 5, 2013 mayoral election race.
5. On October 28, 2013, Mr. Olsen requested an emergency meeting "to address our city attorney's illegal action against an elected official, before any more

embarrassment can be brought forth by our city attorney and to save expense to the city and county".

6. On October 30, 2013, Mr. Reintsma notified members of the city council that he had motioned the Court to vacate the election injunction order, and that the court had approved the request, and therefore there would be no hearing on October 31, 2013.
7. On October 31, 2013, Mr. Olsen requested to have the lawsuit discussed as an item on the agenda for the next city council meeting.
8. On November 4, 2013, Mr. Olsen asked the city council to approve payment of his legal fees in defending against the charges raised in the suit against him by the City of Libby. No action was taken on the request.
9. November 5, 2013, election day. Official results: Doug Roll 290 votes, Allen Olsen 277 votes.

The district court complaint was filed in the name of the City of Libby, and with the full knowledge of the Mayor and Council members. Other than Mr. Olsen, the Mayor and Council Members did not object. As Mayor, Doug Roll had the power to call a special meeting of the City Council to discuss the issue, Mont. Code Ann. §7-5-4102(1)(c). Similarly, because Mr. Olsen requested a meeting be held to discuss Mr. Reintsma's actions, only one other council person had to step forward and call for a meeting of the city council to discuss the matter, Libby Municipal Code §2.48.010. Despite multiple opportunities to call a city council meeting regarding the lawsuit, no one chose to publically come forward and call for a meeting.

The lawsuit brought by then Libby City Attorney Reintsma, resulted in the court rejecting the City's challenge to Mr. Olsen's residency holding "[t]he evidence revealed that under pertinent authorities on residency, Plaintiff had no non-frivolous basis to pursue this action against Defendant", *City of Libby v. Allen Olsen*, Nineteenth Judicial District Court, Cause No. DV 13-232, Findings of Fact, Conclusions of Law, and Order dated August 29, 2014 (emphasis added). It is reported that the lawsuit resulted in the MMIA paying \$150,000 of attorney fees and costs for bringing the lawsuit, and paying \$49,500<sup>1</sup> in Mr. Olsen's attorney fees and costs in defending against the action in November of 2014.

### **CAMPAIGN FINANCE COMPLAINT**

On September 22, 2014, Mr. Arlen Magill of Libby filed a campaign finance complaint with the Office of the Commissioner of Political Practices regarding the use of public funds and resources to interfere with the November 2013 City of Libby mayoral election. The COPP conducted an investigation, and at that time had access to the sworn

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<sup>1</sup> Reduced from \$67,000 in order to settle the matter without further litigation.

testimony of then Mayor Doug Roll's (5/13/14) and City Attorney Reintsma's (5/28/14) depositions taken in the *City of Libby v. Olsen* matter.

On May 12, 2015 Commissioner Motl issued a Sufficiency Decision which held "[t]he City of Libby, Mayor Roll and 5 members of the 2013 Libby City Council (Robin Benson, Barbara Desch, Vicky Lawrence, Peggy Williams and Bill Bischoff) are also responsible for the campaign practice violation stemming from the complaint". "The City of Libby is recited as the plaintiff in the first paragraph of the pleading..." "At no time did the City of Libby, Mayor Roll or any of the 5 certain City Council members...state or indicate that they did not support the Complaint<sup>2</sup>."

### **SETTLEMENT EFFORTS**

Since the Sufficiency Decision was issued, the COPP paid for and received all the pleadings and depositions taken in the *City of Libby v. Olsen* matter. Mr. Bischoff was identified by the City of Libby as the person who was responsible for testifying to the court "about information known or reasonably available" to the City of Libby in the City's lawsuit, Mont. R. Civ. P. 30(b)(6).

In his sworn deposition, Mr. Bischoff confirmed that the City Council failed to stop Mr. Reintsma in filing the lawsuit by holding a city council meeting prior to the election to discuss the matter, or to dismiss the lawsuit once it was filed. Further, Mr. Bischoff confirmed that the city council members were aware that the plan was to file the lawsuit shortly before the election, and that the majority of the city council members felt no need to vote publically on the matter because they all supported the lawsuit being brought prior to the election.

In September of 2015, the COPP made a settlement offer to each of the named individuals, and to date has been unable to reach resolution. In January of 2016, the Vicky Lawrence, Bill Bischoff, Barbara Desch, Doug Roll, Peggy Williams and Robin Bensen filed a Verified Petition for Judicial Review and Request for Declaratory Relief in the Nineteenth Judicial District Court against the COPP, Cause No. DV-16-16. In February 2016, the members publicized the lawsuit, which had not been served on the COPP, stating that they were never "asked or allowed to give a statement in our defense to the COPP prior to his decision<sup>3</sup>." This assertion is contradicted by the fact that they had each given sworn testimony in May of 2014 in the *City of Libby v. Olsen* matter, well before Mr. Magill's complaint was ever filed with the COPP.

### **DETERMINATION**

At the Sufficiency Decision's base, the issue is the use of the City of Libby's name, personnel time, and tax dollars spent by the Mayor and named Council Members to

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<sup>2</sup> [http://www.politicalpractices.mt.gov/content/2recentdecisions/MagillvReintsma Decision](http://www.politicalpractices.mt.gov/content/2recentdecisions/MagillvReintsmaDecision) , pg. 16.

<sup>3</sup> [http://missoulian.com/news/opinion/columnists/libby-leaders-deny-copp-allegations/article\\_31fa9706-a8b1-52d9-880c-fee7945c2139.html](http://missoulian.com/news/opinion/columnists/libby-leaders-deny-copp-allegations/article_31fa9706-a8b1-52d9-880c-fee7945c2139.html)

affect the outcome of an election. Through action or deliberate inaction, the City of Libby should have registered as a political committee, and reported and disclosed its expenditures to the COPP in the fall of 2013.

Faced with the discretionary determination of either having to initiate litigation, or attempt settlement one last time, the COPP, through Commissioner Mangan, reached out to the current Libby City Council and Mayor, seeking a time when our office could hold a public meeting with the people of Libby to advise the Commissioner on their position for resolution of this matter.

In response to that outreach, the identified parties (other than the City of Libby), through counsel, rebuffed the attempt by the COPP to listen and engage the people of Libby. Rather than settle the matter in a creative and cooperative manner with citizen involvement, the COPP was moved to issue a determination without such a public listening session.

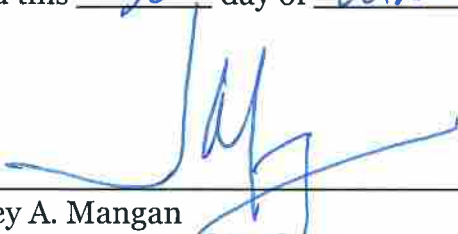
It is the COPP's position that to further engage the resources of the state to pursue enforcement of an issue which the citizens of Libby appear to have moved on from, would be disruptive to the City of Libby's current governance and citizenry, and a further waste of state taxpayer's resources.

In doing so, the COPP also takes into consideration the settlement resolution for a "Transparency in Government" week for each of the next four years to be provided by the City of Libby for interested citizens. The Commissioner appreciates the current City Council's positive efforts to resolve this matter for the people of Libby. The educational value of such an endeavor will serve the City of Libby for years to come, while instilling the benefits of open and transparent governance for all to see.

Therefore, the Commissioner hereby exercises his discretion and determines that expending further public funds to bring a settlement or civil enforcement action in this matter against the City of Libby, Doug Roll, Robin Benson, Barbara Desch, Vicky Lawrence, Peggy Williams and Bill Bischoff, would be an unwise use of taxpayers resources, Mont. Code Ann. § 13-37-124(1).

For these reasons, this matter ends with this determination.

Dated this 30 day of October, 2017.

  
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Jeffrey A. Mangan  
Commissioner of Political Practices of the State of Montana  
P.O. Box 202401  
Helena, MT 59620-2401  
406-444-2942



## SETTLEMENT AGREEMENT

This settlement agreement is entered into by Jeffrey A. Mangan, in his official capacity as the current Montana Commissioner of Political Practices (hereinafter “the Commissioner”) and the following party: The City of Libby, Montana (hereinafter “the Respondent”).

Montana law authorizes the Commissioner to file an action in district court in order to seek a civil penalty for violation of Montana’s campaign finance and practices laws and rules, §§13-37-124 and 13-37-128 Mont. Code Ann. In order to avoid litigation, the Commissioner and the Respondent enter into this agreement to resolve this matter.

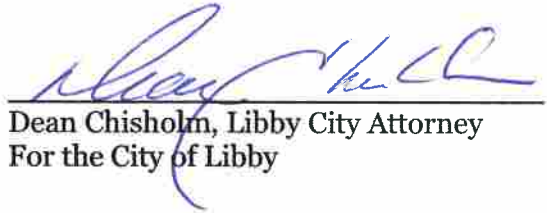
1. The Commissioner acknowledges that Mr. Magill filed Campaign Finance and Practices Complaint against James D. Reintsma, City Attorney for Libby, for violation of Montana’s campaign finance and practices laws on September 22, 2014.
2. On May 12, 2015, Commissioner Motl issued a Summary of Facts and Finding of Sufficient Evidence to Show a Violation of Montana’s Campaign Practices Act, the Commissioner’s cause number COPP-2014-CFP-037 (hereinafter “the Decision”). The Decision determined that the City of Libby, James Reintsma, Doug Roll, Bill Bischoff, Vicki Lawrence, Robin Benson, Peggy Williams and Barbara Desch failed to comply with certain campaign finance and practices laws and administrative regulations.
3. The Respondent acknowledges that it has read and understand the Commissioner’s decision issued in the above referenced cause.
4. The Respondent acknowledges the findings of fact contained in the Decision and violations of Montana’s Campaign Finance and Practice Laws specifically through the then Mayor and City Council members allowing a public employee the use of the City of Libby’s public resources to improperly solicit opposition to an identified candidate for office, Mont. Code Ann. § 13-35-226(4).
5. This matter is settled under the following terms:
  - a. The Respondent acknowledges that the Commissioner has attempted to settle this matter with the individual persons named in the Decision. The Commissioner acknowledges that the City of Libby would like to resolve this matter without resorting to litigation.

- b. The Commissioner has determined to exercise his discretion in this matter, and applies the principals of mitigation to offset the monetary civil fines that could have been applied based on an agreement by the City of Libby to provide in-kind public education activities for the public good. (See attached letter of dismissal).
  - c. The Commissioner and City of Libby agree that for a period of four years, in the first week of June (prior to local and municipal candidate filing deadline for office), that the City of Libby will host a “Transparency in Government” week of informational and educational events. The purpose of the events should be to provide information on how local and municipal government works, such as: how to access public information, how to run for office, how to properly report and disclose campaign contributions and expenditures, voter registration, ethics in public service, and other such activities as will benefit the Citizens of Libby.
6. The Commissioner and the Respondent agree that execution of this settlement agreement by both parties, and the passage of a City of Libby Resolution placing into policy the “Transparency in Government” week for the next four years, fully and finally resolves all of the issues as set forth in the Decision.
7. Simultaneously with the return of the executed settlement agreement the Respondent will remit to the Commissioner the adopted resolution, and mail it to the Office of the Commissioner of Political Practices, 1209 8<sup>th</sup> Avenue, P.O. Box 202401, Helena, Montana, 59620.
8. In consideration of the settlement agreement, the Commissioner agrees not to pursue any further administrative or court proceedings against the Respondent or other persons, including the City of Libby, James Reintsma, Doug Roll, Bill Bischoff, Vicki Lawrence, Robin Benson, Peggy Williams and Barbara Desch, that may be named or unnamed in the Decision, based on the matters discussed in the Decision and in this Settlement Agreement.
9. The Respondent enters into this agreement to avoid litigation and to resolve and settle this dispute with the Commissioner. It is understood and agreed that the City of Libby Resolution referenced above, and execution of this settlement agreement by the Respondent is accepted as the sole consideration for full satisfaction and compromise of what may be disputed claims.

10. The Commissioner and the Respondent fully and forever release and discharge each other and their respective officials, officers, members, employees, successors, assigns, agents, ostensible agents, attorneys, and representatives from any and all actions, claims, causes of action, demands, expenses, damages or injuries, whether asserted or unasserted, known or unknown, foreseen or unforeseen, arising out of the matters investigated by the Commissioner and summarized in the Decision and in this Settlement Agreement.
11. The Commissioner and the Respondent agree that the executed Settlement Agreement is a public document and will be made available to members of the public.
12. This settlement agreement, consisting of 3 pages, sets forth the entire agreement that has been reached between the Commissioner and the Respondent. No modification or amendment of this agreement will be effective unless both parties complete a subsequent written statement that is signed by both parties.

  
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Jeffrey A. Mangan  
Commissioner of Political Practices

  
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Dated

  
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Dean Chisholm, Libby City Attorney  
For the City of Libby

  
\_\_\_\_\_  
Dated

RESOLUTION NO 1909 OF THE CITY OF LIBBY, MONTANA

A RESOLUTION OF THE CITY OF LIBBY, A MUNICIPAL CORPORATION OF MONTANA, ESTABLISHING "TRANSPARENCY IN GOVERNMENT" WEEK.

WHEREAS, the City Council of Libby wishes to establish "Transparency in Government" week, during which the City shall make available information on topics such as how local and municipal government works, how to access public information, how to run for office, how to properly report and disclose campaign contributions and expenditures, voter registration, ethics in public service, and other such topics and activities as will benefit the Citizens of Libby; and,


WHEREAS, The City Council of Libby has determined that such is in the best interests of the City and its citizens,

NOW THEREFORE, BE IT RESOLVED by the City Council of Libby that commencing 2018 and continuing for a period of four years, the first week of June the City of Libby will host "Transparency in Government" week.

PASSED AND AGREED TO BY THE COUNCIL OF THE CITY OF LIBBY, MONTANA THIS 2<sup>ND</sup> DAY OF October, 2017.

  
BRENT TESKE, MAYOR

ATTEST:

  
Audray McCollum, City Clerk