

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Garner v. Montana Citizens Right to Work No. COPP 2018-CFP-003	DISMISSAL OF COMPLAINT
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On March 8, 2018, Representative Frank Garner of Kalispell filed a campaign practices complaint against Al Chan and Montana Citizens for Right to Work (MCRTW). The complaint alleged that Mr. Chan, a representative for MCRTW, was actively recruiting candidates to run against candidate Garner, and that these activities met the definition of an expenditure that were not reported as required by MCRTW. The complaint also alleged that MCRTW did not file a C-2 Statement of Organization as required.

SUBSTANTIVE ISSUES ADDRESSED

This decision addresses candidate recruitment as a reportable election expense.

FINDINGS OF FACT

The foundational facts necessary for this Decision are as follows:

Finding of Fact No. 1: Frank Garner filed a C-1 Statement of Candidate as a 2018 Republican candidate for House District 7 in Flathead County with the COPP on June 7, 2017. (Commissioner's Records.)

Finding of Fact No. 2: Robert Welzel filed a C-1 Statement of Candidate as a 2018 Republican candidate for HD 7 on January 11, 2018. (Commissioner's Records.)

Finding of Fact No. 3: James Cossitt filed a C-1 as a Democratic candidate for HD 7 on March 10, 2018. (Commissioner's Records.)

Finding of Fact No. 4: No Libertarian or Green party candidate filed in House District 7. Montana's Primary Elections were held on June 5, 2018. (Commissioner's Records.)

Finding of Fact No. 5: MCRTW has not filed a C-2 Statement of Organization with the COPP as an active Political Committee for election year 2018. (Commissioner's Records.)

Finding of Fact No. 6: Mr. Chan came to MCRTW in January of 2018 to work as its Assistant Executive Director and for Executive Director Randy Pope. Prior to that time Mr. Chan worked as a Field Representative for the National Right to Work Committee in Spokane, WA from April of 2016 to January 2018. (Commissioner's Records.)

Finding of Fact No. 7: While Mr. Chan was employed by MCRTW from January 2018 to March 2018, his work involved promoting the right to work issue to potential candidates, seeking candidates' position on the issue, and reporting the results to MCRTW's membership. Mr. Chan scheduled as many as 50 community meetings in Montana from January 2018 through March 2018, including one in Kalispell on February 28, 2018. Mr. Chan was paid a bi-weekly stipend, was reimbursed by MCRTW for his expenses including his food, gas and lodging. (Commissioner's Records.)

Finding of Fact No. 8: Mr. Chan left MCRTW in March 2018 and is in New Hampshire working for the North Eastern Citizens for Right to Work as of June 13, 2018. (Commissioner's Records.)

Finding of Fact No. 9: About a week before the meeting in Kalispell, Mr. Chan reached out to the Flathead County Libertarian Party, setting to set up a meeting in Kalispell with potential candidates for office. (Commissioner's Records.)

Finding of Fact No. 10: On February 27, 2018, Dan Nelson received a phone call from someone with the Flathead County Libertarian Party asking him if we would consider filing to run for legislative office in the upcoming primary, and whether he would

like to attend a meeting with a right to work representative the following day. (Commissioner's Records.)

Finding of Fact No. 11: On February 28, 2018, a meeting was held at a restaurant in Kalispell at 2 pm. Four to five potential candidates attended the meeting with MCRTW staff, Mr. Chan. Mr. Chan arrived approximately 20 minutes late, Mr. Nelson left around 3:25 pm, and the meeting concluded shortly thereafter. The meeting was organized to discuss issues important to MCRTW with potential candidates for elected office and interested parties. (Commissioner's Records.)

Finding of Fact No. 12: MCRTW did not provide refreshments, food, or pay for the meeting space.¹ Printed information on the MCRTW organization was not available at the meeting, MCRTW does not maintain a website to communicate with the public, and no candidate surveys were distributed during the meeting. Other issues discussed included legislators and the water compact. (Commissioner's Records.)

Finding of Fact No. 13: Mr. Chan confirmed that MCRTW did engage in collecting candidate's positions on the right to work issue through use of its candidate survey program in the 2018 primary election. Mr. Chan estimated that MCRTW received approximately 60 responses from candidates, and that those results, together with the results of Mr. Chan's field work were communicated to its membership only during the primary. (Commissioner's Records.)

Finding of Fact No. 14: Mr. Chan did not believe that the survey or field work results were sent to any voters outside of the MCRTW membership in the 2018 primary. The Commissioner did not find any evidence that the information was spread further than MCRTW's membership during the primary cycle. (Commissioner's Records.)

DISCUSSION

The question addressed in this matter, is whether candidate recruitment activity is considered a reportable expenditure under Montana's campaign finance reporting laws. Any committee (or individual) can seek and encourage

¹ The meeting was held at Hu-Hut, a local restaurant.

anyone to participate in our democratic process. Does that activity require the reporting of recruitment related expenditures?

The Commissioner begins with an examination of the relevant definitions of “political committee,” “expenditure,” and “support or oppose.”

(31) (a) "Political committee" means a combination of two or more individuals or a person other than an individual who receives a contribution or makes an expenditure:

(i) to support or oppose a candidate or a committee organized to support or oppose a candidate or a petition for nomination...

(18) (a) "Expenditure" means a purchase, payment, distribution, loan, advance, promise, pledge, or gift of money or anything of value:

(i) made by a candidate or political committee to support or oppose a candidate or a ballot issue; or

(ii) used or intended for use in making independent expenditures or in producing electioneering communications.

Mont. Code Ann. § 13-1-101.

Are candidate recruitment expenditures considered support for or opposition to a candidate? While the terms “support or oppose” are defined, activity such as recruitment is not specifically referenced or defined in statute.

(50) "Support or oppose", including any variations of the term, means:

(a) using express words, including but not limited to "vote", "oppose", "support", "elect", "defeat", or "reject", that call for the nomination, election, or defeat of one or more clearly identified candidates, the election or defeat of one or more political parties, or the passage or defeat of one or more ballot issues submitted to voters in an election; or

(b) otherwise referring to or depicting one or more clearly identified candidates, political parties, or ballot issues in a manner that is susceptible of no reasonable interpretation other than as a call for the nomination, election, or defeat of the candidate in an election, the election or defeat of the political party, or the passage or defeat of the ballot issue or other question submitted to the voters in an election.

Id. At a minimum, for an activity to be considered a reportable election expenditure it requires that the expenditure to support or oppose a candidate with “no reasonable interpretation other than as a call for the nomination, election, defeat of the candidate in an election[.]” *Id.*

Why do committees (or organizations, individuals, etc.) recruit candidates? The most obvious answer is to find a like-minded individual/s that share belief/s on an issue or set of issues that mirror those of the committee. Another would be to promote the issues and ideas of the committee regardless of election outcome. There may be more than one candidate recruited in a specific race.

“You should run for office, you would make a great candidate,” is a phrase most candidates have heard from loved ones, interested parties, colleagues, and so forth. The major parties recruit candidates, and it is likely many current political committees have also organized activities and materials to assist in the recruitment of candidates that share the committee’s goals regardless of party affiliation. One would not be surprised if non-political committees such as business groups or special interest organizations, large and small, have engaged in an activity one could consider recruitment. Are they required to file as a political committee and report related recruitment expenses?

The Commissioner notes the Montana legislature has not addressed “recruitment” specifically in Montana Campaign Finance law, and previous Commissioners have not addressed the issue.

ANALYSIS

Applying the law to the facts, the Commissioner finds that MCRTW reached out to the Flathead County Libertarian party requesting to meet with potential candidates for office to discuss the right to work issue, to find out the candidates' position on that and other issues, offered support for candidates who agreed with the issue, and proposed legislation to the candidates should they be elected to the legislature (FOF Nos. 7, 9-12). Both Mr. Nelson and Mr. Chan agree that a candidate who supports 'Right to Work' was discussed for many districts, including Representative Garner's House District. (FOF No. 11.) Both also agree specific financial support was not discussed or offered to the potential candidates at the meeting. (FOF No. 11.) There is no evidence financial support was offered or provided after the meeting. Further, no Libertarian or Republican candidate filed for election in House District 7 after February 28, and a Democratic challenger filed on March 10, 2018 (FOF Nos. 1-4).

The best that can be said about the information gathered from the Commissioner's investigation is that there has not yet been any violation of the reporting and disclosure laws. So far, MCRTW's communications have not been made beyond its own membership (FOF Nos. 13-14), and communications "by any membership organization ... to its members" is exempt from reporting requirements. Mont. Code Ann. § 13-1-101(14)(b)(iv) and (16)(b)(ii). Should the information gathered by Mr. Chan in his few months working for MCRTW be used in an election or electioneering communication which extends beyond

MCRTW's membership, the same would have to be reported and disclosed to Montanans as an expenditure made to "support or oppose" a candidate for office. This would include costs of the initial surveys sent to candidates for office, along with costs of the "up to 50" meetings with candidates around Montana, to determine their support for or opposition to MCRTW's issue.

As to whether recruitment of candidates for office is an expenditure under Montana Campaign Finance laws, the statutes are silent. Recruiting a person to run for elected office plainly implies that person has not yet declared an intention to be a candidate for office, Mont. Code Ann. § 13-1-101(8). The Commissioner declines to extend the definition of a contribution or expenditure to include the costs of recruiting a candidate for office on facts such as occurred in this case; in fact, many committees and entities would be without the proper notice of that interpretation, and it would be a first for this office. With the statutes and rules being silent on this issue, if the legislature or the citizenry would like the committees to report recruitment expenditures or contributions for similar efforts, then the cure is through citizen initiative or legislative action.

At this time, the Commissioner determines there is insufficient evidence that the efforts of MCRTW and Mr. Chan have been used to fund a reportable election activity in support of or opposition to a candidate that exceeds the membership communication exception in Mont. Code Ann. § 13-1-101(14)(b)(iv) and (16)(b)(ii).

As MCRTW has committed in Court filings to abide by Montana law in its future campaign activity,² and finding no evidence it has not done so in this case, the Commissioner expects MCRTW will live up to its commitments and report and disclose these identified expenditures at such future time as they engage the public beyond their membership.

The Complaint is hereby dismissed with a finding of insufficient evidence to support a violation of campaign finance and practices law.

DATED this 28th day of June 2018.



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 Montana First Judicial District Court, Lewis and Clark County, Cause No. DDV-2014-351.