

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Healthy Montana for I-185 v. Decision Point Marketing and Research, Inc. No. COPP 2018-CFP-016B	DISMISSAL
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On June 4, 2018, Tara Veazey, Treasurer for Healthy Montana for I-185, filed a campaign practices complaint against Decision Point Marketing and Research, Inc. (DPMR) of Ohio.¹ The complaint alleges DPMR engaged in expenditure activity meant to oppose a Montana ballot issue without registering as a Political Committee and did not file financial reports disclosing this expenditure activity. Additionally, the complaint alleges DPMR violated Montana's prohibition on robocalls.

SUBSTANTIVE ISSUES ADDRESSED

Filing as a political committee and reporting of expenditures.

FINDINGS OF FACT

The foundational facts necessary for this Decision are as follows:

Finding of Fact No. 1: I-185 is an initiative petition that would raise tobacco taxes to fund health care programs; it was submitted to Montana's Secretary of State on February 22, 2018, was approved for signature collection on April 16, 2018, and qualified for the ballot July 27, 2018. No other initiatives concerning

¹ The original complaint named Decision Point Consulting. The legal name of the firm is Decision Point Marketing and Research, Inc.

tobacco were submitted to the Secretary of State for the 2018 election. (Montana Secretary of State.)

Finding of Fact No. 2: Healthy Montana filed a C-2 Statement of Organization as a ballot issue committee in support of I-185 on April 8, 2018. The committee purpose provided was “Healthy Montana/Tobacco Tax support.” An amended Statement of Organization filed on April 18 changed the name of the committee to Healthy Montana for I-185. (Commissioner’s Records.)

Finding of Fact No. 3: Decision Point Marketing and Research (DPMR) is an Ohio-based “digital marketing research consulting company” that assists clients with “focus group recruiting, moderating and online survey development.” DPMR did not file a C-2 Statement of Organization as a political committee with the COPP for election year 2018, nor has it filed a C-2 Statement of Organization in Montana for any previous election year. (Commissioner’s Records.)

Finding of Fact No. 4: A related complaint was filed against Montanans Against Tax Hikes (MATH), and included with MATH’s response of June 22, 2018 was an affidavit from Amy Boren, President of DPMR. Ms. Boren states that DPMR “was engaged by Q&A Research to assist with on-the-ground, field recruiting, for a confidential focus group in Montana,” but was not “engaged to advocate or communicate a position concerning I-185.” She also states that all call activity took place between the dates of April 23, 2018 and April 30, 2018, and only recruited participants to participate in a focus group. Complete transcripts of the DPMR phone calls were provided (see Attachment 1 hereto). The focus group was held on May 3, 2018. (Commissioner’s Records.)

Finding of Fact No. 5: DPMR provided services for Q&A Research. (Commissioner’s Records.)

Finding of Fact No. 6: Q&A Research provided services for and was paid by Altria Client Services and RAI Services Company. (Commissioner’s Records.)

Finding of Fact No. 7: Altria Client Services LLC² filed a C-2 Statement of Organization as an incidental committee on June 20,

² Altria Client Services operates as a subsidiary of Altria Group Inc, the parent company for Philip Morris USA, John Middleton, U.S. Smokeless Tobacco Company, Ste. Michele Wine Estates and Philip Morris Capital Corporation. See www.altria.com.

2018. The committee purpose provided was “I-185- Oppose.” (Commissioner’s Records.)

Finding of Fact No. 8: RAI Services Company³ filed a C-2 Statement of Organization as an incidental committee also on June 20, 2018. The committee purpose provided was “I-185- Oppose.” (Commissioner’s Records.)

DISCUSSION

The Complaint alleges DPMR engaged in political spending in opposition to a ballot issue, failed to file as a political committee, and failed to report expenditures. The Commissioner examines the allegations in turn below.

1. Failure to report expenditure activity

In determining whether DPMR failed to register as a political committee and report, the first determination must be whether it engaged in any reportable expenditure activity. An “expenditure” is defined by Montana law as

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(18)(a).

The affidavit of DPMR’s President stated that, to the best of Ms. Boren’s knowledge, DPMR did not advocate for or against any specific candidates or ballot issues, including I-185, and that DPMR was only engaged to recruit participants to attend a Montana focus group (FOF No. 4). Ms. Boren’s affidavit was supported by the two call-scripts used by DPMR. While call-script

³ RAI Services Company operates as a subsidiary of Reynolds American Inc., British American Tobacco. See www.reynoldsamerican.com.

2 clearly references the subject of I-185 (call-script 1 does not name or reference any specific ballot issue), neither script could reasonably be interpreted as supporting or opposing I-185. The stated purpose of the calls was solely to recruit individuals to attend a focus group. The Commissioner determines that, as no candidate or ballot issue was directly supported or opposed, this activity would not fall within the statute's definition of an expenditure.

The Commissioner finds DPMR did not engage in activity that required reporting under Montana campaign finance law. The allegation is hereby dismissed.

2. Is DPMR a political committee?

The Commissioner now examines if DPMR qualifies as a political committee in Montana. Montana law defines a "political committee" as

a combination of two or more individuals or a person other than an individual who receives a contribution or makes an expenditure:

...

(ii) to support or oppose a ballot issue or a committee organized to support or oppose a ballot issue; or

(iii) to prepare or disseminate an election communication, an electioneering communication, or an independent expenditure.

Mont. Code Ann. § 13-1-101(31)(a).

DPMR was an entity contracted, paid, or otherwise used as a vendor⁴ to provide specific goods or services by two properly registered Montana incidental committees, Altria Client Services, LLC and RAI Services Company (FOF Nos.

⁴ Expenditures to DPMR as discussed in this decision were reported by Altria Client Services, Inc. and RAI Services Company

5-8). DPMR did not advocate for or against any specific Montana candidates or ballot issues (*see* discussion, *supra*, at 1) and thus was not a political committee under subsection (ii). For the same reasons, DPMR also did not prepare or disseminate an election communication or make an independent expenditure (*id.*) and thus was not a political committee under those portions of subsection (iii).

This leaves the question of whether DPMR fell under subsection (iii) because it prepared or disseminated an electioneering communication. The activity would not qualify as an electioneering communication as I-185 did not appear on Primary election ballots in Montana (and will not do so until the General election in November 2018). DPMR placed calls between the dates of April 23 and April 30, 2018. (FOF No. 4.⁵) These dates are not 60 days before the “initiation of voting” in an election where I-185 will be on the ballot (Mont. Code Ann. § 13-1-101(16)(a)(iii)) and are therefore not considered an electioneering communication.

DPMR was a hired vendor and engaged to help organize and recruit participants for a focus group, held on May 3, 2018. (FOF No. 4.) The Commissioner finds DPMR is not considered a political committee and would not have been required to register as such. The allegation is hereby dismissed.

Finally, while automated calls, aka “robocalls,” are illegal in Montana, Mont. Code Ann. § 45-8-216(e), the statute is not specific to political campaigning and is not under the jurisdiction of the Commissioner.

⁵ Aff. Boren (June 21, 2018), ¶6.

CONCLUSION

Having applied the law to the facts in this case, the Commissioner concludes DPMR is merely a vendor that provided research services through focus groups to its clients, which clients (Altria Client Services and RAI Services Company)⁶ are registered political committees. There is no evidence DPMR made an expenditure that qualified as a reportable election expenditure or as an independent expenditure. DPMR's activities in this matter would not require it to file as a political committee. The Complaint against DPMR is hereby dismissed with a finding of insufficient evidence to support a violation of campaign finance and practices law.

DATED this 5th day of September 2018.



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⁶ Issues surrounding Altria Client Services and RAI Services Company are more thoroughly examined in the companion decision at *Healthy Montana for I-185 v. Montanans Against Tax Hikes*, COPP-CFP-016A.

Attachment 1

First recruitment call script: "Hi this is Amy calling from Decision Point Consulting regarding a marketing research focus group opportunity in your area, we are looking for concerned citizens to provide their opinion in a meeting at a local hotel- we will pay you \$100 in cash for two hours of your time on May 3 in the evening. Please call us back at XXX-XXX-XXXX."

Second recruitment call script: "Attention Montana voters this is Amy calling from Decision Point Consulting. This November a hot topic tax may be on your ballot. This 83% tax impacts Montana tobacco and electronic smoking products and could raise 73 million dollars earmarked for social programs in Montana. I am looking to connect with Montana voters interested in sharing their opinions in a focus group next Thursday, May 3. If you qualify to participate, you will be paid \$100 in cash for two hours of your time. Please call us back at XXX-XXX-XXXX. That was XXX-XXX-XXXX. Thank you."