

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Johnson v. Hopkins No. COPP 2018-CFP-056	DISMISSAL
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On November 13, 2018, Bridget Johnson of Missoula filed a campaign practices complaint against Mike Hopkins, also of Missoula. The complaint alleged that candidate Hopkins coordinated a political advertisement promoting his campaign with a citizen who paid for the advertisement, that candidate Hopkins did not report this activity as an in-kind contribution to the campaign, and that he did not provide a copy of the material to his opponent as required by the Clean Campaign Act.

SUBSTANTIVE ISSUES ADDRESSED

Coordination of an election communication.

FINDINGS OF FACT

The foundational facts necessary for this Decision are as follows:

Finding of Fact No. 1: Mike Hopkins filed a C-1 Statement of Candidate as a Republican candidate for House District 92 in Missoula County with the COPP on January 8, 2018. (Commissioner's Records)

Finding of Fact No. 2: Lee Bridges filed a C-1 Statement of Candidate as a Democratic candidate for House District 92 in Missoula County with the COPP on January 11, 2018. (Commissioner's Records)

Finding of Fact No. 3: Mike Davis is an individual who resides in or around Turah, Montana. (Commissioner's Records)

Finding of Fact No. 4: On or around October 22, 2018, Mike Davis, under the profile name of Ekim Sivad, commented on a post on the Chase Reynolds for Senate Facebook page stating he had potential "dirt" on candidate Bridges. Candidate Hopkins responded to the comment by telling Mr. Davis "shot you a message". (Commissioner's Records)

Finding of Fact No. 5: On or about October 29, 2018, Mr. Davis posted a comment on candidate Hopkins' campaign Facebook page stating "I put a paid advertisement in the path finder in favor of you". (Commissioner's Records)

Finding of Fact No. 6: As part of the investigation, the COPP received an email from Nathan Bourne with the Seeley Swan Pathfinder, a news publication serving Seeley Lake, Condon, Ovando, and Potomac. The email explained that on October 26, Mr. Davis inquired about submitting a letter to the editor. Mr. Bourne explained to Mr. Davis that letters to the editor are free up to 500 words. Subsequent inquiries with Mr. Bourne indicated Davis submitted on or before October 29, 2018 a letter to the editor that exceeded the word limit, and Mr. Davis was given an option to cut to 500 words or place as an advertisement. Mr. Davis chose to place as an advertisement. Mr. Davis paid by credit card. (Commissioner's Records)

Finding of Fact No. 7: On November 1, 2018, the Seeley Swan Pathfinder published a paid advertisement in the opinion section of the paper written by Mike Davis that supported candidate Hopkins and opposed candidate Bridges. The advertisement included the attribution "Paid for by Mike Davis, 11455 Crystal Creek Road, Turah, Montana 59825". (Commissioner's Records)

Finding of Fact No. 8: A response to this complaint was received by the COPP from candidate Hopkins via email on November 14, 2018. This response stated that candidate Hopkins "was first made aware of the advertisement when I checked the pathfinder online and saw the electronic version of the advertisement on November 1st," and that "[a]t no point did I coordinate with the person who paid for the ad. I did not know there was going to be an ad. I did not participate in the creation of the ad. I was not asked to look at the ad before it was printed". Of his communications with Mr. Davis, candidate Hopkins' response included that "He commented on a Facebook post that he wanted to get in touch with me", that Hopkins gave

him his number, and that “he called me and it was clear that he really disliked my opponent”, including saying a number of “negative things” Davis was thanked for the call and Hopkins did not use any of the discussion in his campaign. The response also included a statement saying that at “no time did he tell me that he planned to purchase an ad in the paper”. (Commissioner’s Records)

DISCUSSION

The complaint alleges candidate Hopkins coordinated the placement of an election communication in a local newspaper, failed to report the election communication as an in-kind contribution, and failed to provide his opponent a copy of the communication under Montana’s Clean Campaign Act. The Commissioner examines each of these allegations.

1. Coordination involving a campaign advertisement

The complaint first alleges that candidate Hopkins coordinated a campaign ad promoting his candidacy, published in the Seeley Swan Pathfinder on November 1, with an individual named Mike Davis, the credited author of the piece. Mont. Code Ann. § 13-1-101(10), defines: "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”. Further, the COPP Administrative Rules provide the following guidance:

44.11.602, 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.

(2) When determining whether a communication or reportable election activity is coordinated the following may be considered, whether:

(a) it is based on information that is provided by the candidate or agent of the candidate directly or indirectly to the person funding or facilitating the communication or activity, or any person involved in creating, producing, or disseminating it.

(b) it was made by or through any candidate's agent in the course of the agent's involvement in the current campaign.

(c) the person funding or facilitating the communication or reportable election activity retains the paid services of a person or individual who:

(i) currently, or during the six months immediately preceding the election in which the candidate's name will appear on the ballot, received compensation from the candidate or the candidate's agent; and

(ii) the person or individual is involved in creating, producing, or disseminating the communication or reportable election activity.

(d) the communication or reportable election activity replicates, reproduces, republishes or disseminates, in whole or in substantial part, any material designed, produced and paid for, or distributed by the candidate, except as set forth in (3)(e).

(e) the candidate or the candidate's agent has made or participated in any discussion or in making any decision regarding the content, timing, location, media, intended audience, volume of distribution, or frequency of placement of the communication or activity.

Based on the facts in this matter, citizen Mike Davis placed and paid for an advertisement in the Seeley Swan Pathfinder supporting candidate Hopkins with an attribution "Paid for by Mike Davis, 11455 Crystal Creek Road, Turah, Montana 59825" that was published on November 1, 2018. (FOF No. 7). Prior to placement of the advertisement, Mr. Davis commented on a post on the social network platform Facebook as early as October 22, 2018 that he had information on candidate Hopkins opponent, Lee Bridges, to which candidate Hopkins responded (FOF No. 4). Candidate Hopkins was unequivocal in his

denial that he or his campaign coordinated the paid advertisement. Candidate Hopkins stated he messaged Davis his phone number and subsequently spoke. The conversation was about the Hopkins campaign and Mr. Davis's feelings about his opponent (FOF No. 8).

While candidate Hopkins openly acknowledged he had spoken with Mr. Davis prior to the advertisement, he stated that "At no point did I coordinate with the person who paid for the ad. I did not know there was going to be an ad. I did not participate in the creation of the ad. I was not asked to look at the ad before it was printed". While Mr. Davis did in fact comment on candidate Hopkin's October 29 Facebook post that he had put a paid advertisement in the Pathfinder (FOF No. 5), that in itself is not evidence of coordination. According to the Seely Swan Pathfinder, Davis contacted the newspaper on October 26 regarding the submission of editorials, and subsequently submitted an editorial in excess of the word limit on or before the deadline of October 29, 2018. When provided the option of cutting the letter to 500 words and publishing for free or paying for the additional space the letter would require in the newspaper, the expanded editorial was printed as a paid advertisement at the direction of Mr. Davis (FOF Nos. 6, 7).

Citizen's volunteer, write letters of support, place yard signs on their property, and, on occasion, pay for a communication independent of the candidate. These supporters also routinely contact candidates and their campaigns to share views and offer support, now more visibly through social media platforms on their own accounts, candidate pages, or like-minded

groups, as comments or shares. In this matter, a Hopkin's supporter frequently publicly reached out to and communicated his views with both Hopkins and his opponent on social media, later paid for an expanded letter to the editor to be published, and subsequently publicly notified the candidate that he had done so. Mr. Davis's comment on social media that he "would go to bat for [Hopkins]" then notify him that he did in the form of a paid advertisement does not rise to the level of coordination. Applying 44.11.602 ARM, there is insufficient evidence that: candidate Hopkins or his campaign provided information to Davis; that the campaign was involved in the creation of the advertisement; that the advertisement was made by or through an agent of the campaign; that Mr. Davis was involved in any way with the campaign at the time of the advertisement or the months prior to the advertisement; that the campaign provided compensation to Mr. Davis in exchange for the advertisement; or the candidate or campaign had participated in decision-making regarding the placement of the advertisement. 44.11.602(3)(d) ARM clarifies that a coordinated expenditure does not mean any election communication or "activity by an individual acting solely on his or her behalf independently of any candidate or the candidate's agent".

Essentially, to be considered a coordinated expenditure, candidate Hopkins or his campaign would have had to discussed, planned, or otherwise approved the publication of this specific advertisement beforehand with Mr. Davis. No sufficient evidence can be found that candidate Hopkins coordinated the Pathfinder advertisement with Davis. The Commissioner finds that Mr.

Davis solely, independent of the Hopkins campaign, created, submitted, and paid for an expanded letter to the editor to be published as an advertisement in the Seely Swan Pathfinder. The allegation of coordination is hereby dismissed.

2. Failure to report advertisement as an in-kind contribution received

The complaint also alleges that candidate Hopkins failed to properly report this advertisement as an in-kind contribution received by the campaign. Mont. Code Ann. § 13-1-101(9)(a)(ii), includes within the definition of a contribution “an expenditure, including an in-kind expenditure, that is made in coordination with a candidate or ballot issue committee and is reportable by the candidate or ballot issue committee as a contribution”. To clarify, if any coordinated activity paid for by supporters of the Hopkins campaign, but not the campaign itself, candidate Hopkins would be required to report the activity as an in-kind contribution received. However, as the election communication in question was not coordinated with the campaign but was carried out by a private individual independent of the campaign (see 1 above), the election communication does not qualify as a campaign contribution and would not be required to be reported by the Hopkins campaign. The allegation is hereby dismissed.

3. Failure to provide a copy of new material to an opponent

Finally, the complaint alleges that candidate Hopkins failed to comply with Montana’s Clean Campaign Act by failing to provide a copy of the advertisement to his opponent. As the election communication was not created

or published the candidate (see 1 above), Mont. Code Ann. §13-35-402 does not apply. The allegation is hereby dismissed.

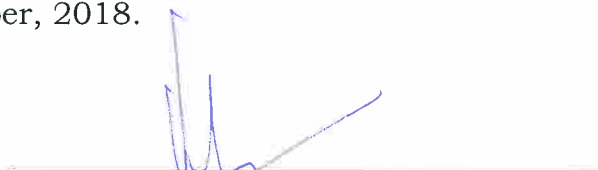
FINDINGS

The Commissioner finds candidate Hopkins did not violate Montana Political Campaign Finance laws as set herein.

DECISION

The Commissioner hereby dismisses this complaint.

DATED this 17th day of December, 2018.



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