

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Buck and Kantorowicz v. Hagan, et al No. COPP 2019-CFP-001	DISMISSAL
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On January 10, 2019, Sheridan Buck and J.C. Kantorowicz, both of Great Falls, MT, filed a campaign practices complaint against a group of individuals (represented by Roger Hagan) from Cascade County, MT “who erroneously portrayed themselves as the Cascade County Republican Central Committee”. The complaint alleged that this group of individuals operated as an active Political Committee without filing a Statement of Organization with the COPP indicating their organization as a Political Committee as required.

DECISION

The Commissioner finds the operation of the Cascade County Republican Central Committee was in dispute as two factions of the organization’s membership were claiming rightful leadership of the Cascade County Republican Central Committee.

It is not the role of the COPP to adjudicate organizational roles in intra-committee disputes such as the situation that unfolded in Cascade County. Ultimate responsibility to settle those disputes falls with the Party committee itself, following processes as laid out by its umbrella (state level) political party

organization. The COPP will not involve itself in these disputes, and certainly is not in a position to serve as an arbiter to settle such matters.

In this case, time and the Cascade County Republican Central Committee political party and Montana Republican Party organizational bylaws and procedures ultimately resolved the dispute (see Exhibit 1, 'April 29, 2019 Determination of 4th Appointed Rules Sub-committee').

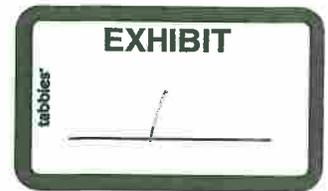
The Commissioner finds the group Roger Hagen represented, self-described as the 'Contested Cascade County Republican Central Committee', did not violate Montana Political Campaign Finance laws as set herein.

The Commissioner hereby dismisses the complaints.

DATED this 17th day of May 2019.



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Commissioner of Political Practices
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April 29, 2019 Determination of 4th Appointed Rules Sub-committee

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I. **Background**

COMMISSIONER OF
POLITICAL PRACTICES

To describe the controversy, in-fighting and public displays of utter contempt that the warring factions of Cascade County Republicans have been engaged in since the 2015 legislative session of the Montana Legislature in any other terms would be an understatement. The full blow by blow of charges and counter charges over the past four years is not worthy of being retold here, but a fair statement is that the warring factions have not been “playing well together” to quote a kindergarten report card.

Matters seem to have taken a notch up in intensity due to the result of the 2018 Montana Primary Election held on June 5, 2018. The Montana Republican Party is an association, not a corporation, organized for the purpose of supporting the election of candidates in state and local elections in Montana. The State Central Committee, according to its rules, is composed of four individuals selected by the Republican County Central Committees in each of Montana’s counties. Those four individuals are elected at county conventions held in accordance with the Rules of the Montana Republican Party in odd numbered years. The people entitled to vote at those county conventions according to State Party Rules are the “duly elected and appointed Precinct Committeeman and committeewomen”. See Montana Republican Party Rules (hereinafter State Rules) C.III.C.

The Montana Republican Party has chosen, but is not obligated, to avail itself of the offer by the State of Montana to conduct elections of precinct committeemen and women for the county committees. Those statutes are found at MCA 13-38-201 et. seq. Since the passage of HB 454 in 2015, the Montana Republican Party has had three options for the purpose of choosing precinct committee people, 1) chosen by election conducted by the state, 2) chosen by election conducted by the party, and 3) chosen by appointment conducted according to the rules of the party. However, the Montana Republican Party has chosen to continue to participate in the elections held by the State of Montana and is thereby bound thereby under the State Rules, “These rules are created for the governance of the Montana Republican Party. They shall govern when not in conflict with state law and the Rules of the Republican Party, the latter authority governing in the case of conflict.” State Rules A. I. Authority. This sub-committee might wish that the deference to state law was not present in our State Rules, but it is there so that is how we must decide if we are to be faithful to our party rules.

II. **Round One**

The June 5, 2018 primary election in Cascade County resulted in the election of 36 precinct representatives in the county. It appears that 16 of those elected were supporters of the then chair Sheridan Buck and the Executive Board of the County Committee (Buck Faction). 18 others were supporters of her lead antagonist Roger Hagan (hereinafter Hagan Faction), and the other two appear to have been caught in between. In any event, the Hagan faction, operating under the CCRCC Rules and the State Rules, called a special meeting on June 26, 2018 for the purpose of removing the then elected officers of the CCRCC. That meeting resulted in a fracas, and an appeal to the State Chair requesting the

slate of officers elected by the Hagan faction in a hallway meeting, occurring after the adjournment of the special meeting, be recognized as the duly elected officers of the County Committee.

The State Chair operating under State Rules appointed a Rules Sub-committee to investigate and make a determination. That determination, rendered on November 28, 2018, attached hereto as Determination One, found that State Rules called for the recognition of the then current slate of officers of the CCRCC until such time as the CCRCC held a duly noticed convention of the CCRCC between February 1 and May 1, 2019. Among other rulings, the Sub-committee determined that any appointments to vacant positions in the CCRCC made prior to the June 5, 2018 election terminated on that date under the State Rules. No appeals were taken from that determination and the parties are now bound thereby.

III. Round Two

With the time for the County Convention rapidly approaching, the CCRCC had an Executive Board meeting on February 5, 2019 at which time it attempted to change the bylaws of the CCRCC in order to limit nominations of officers from the floor of the convention. The Hagan Faction found out about this attempted change of bylaws and again appealed to the State Chair. Another Rules Sub-committee was appointed.

That Sub-committee determined on March 12, 2019 that the State Rules require a properly noticed meeting of the County Central Committee be held in order to adopt County Rules or bylaws. That task could not be done by the Executive Board in the absence of a quorum. Therefore, it found the attempted bylaw revisions to be null and void. The result of that determination was that the effective bylaws for the conduct of the CCRCC County Convention would be those adopted prior to the June primary election, i.e. those adopted on September 5, 2017. See Determination Two attached hereto. No appeal from that determination was made and the parties are now bound thereby.

IV. Round Three

With a properly noticed County Convention having been called under MCA 13-38-205 and our State Rules to occur on April 16, 2019, Roger Hagan requested on April 4, 2019 a determination from the Chair as to whom was entitled to vote at the next Convention of the CCRCC. The State Rules specify, "Only duly elected and appointed Precinct committeemen and committeewoman will be allowed to vote." This rule conforms to state law. The question boiled down to who exactly were the "duly elected and appointed" precinct representatives. The Chair appointed yet another Rules Sub-committee which received extensive documentation from both parties with respect to purported appointments made at meetings of the CCRCC in August and October of 2018.

The third Sub-committee after review of documentation provided by both parties found that under both the State Rules and County Rules reference to Robert's Rules of Order was necessary to determine what constituted a proper quorum in order for "the appointments to have been effective." Roberts Rules provides that, unless otherwise stated, a quorum would be a majority of the committee. With 36

persons being elected on June 5, 2018, the minimum quorum would be 19. Discounting for proxies that were issued in violation of Robert's Rules, only 13 elected members were present in August and 12 in October. So the attempted appointments were then declared to be null and void. The sub-committee rendered its determination on April 12, 2019 and the CCRCC appealed to the full Rules Committee which held a meeting by teleconference on April 15, 2019 in order to address the appeal prior to the County Convention. After review and discussion the Rules Committee confirmed the sub-committee determination by a unanimous vote. See Subcommittee Determination Three and Rules Committee Decision attached hereto. The net result of the decision is that the attempt of the Buck Executive Board to appoint enough members to vacancies on the CCRCC to obtain a majority of members on the CCRCC was prevented. However, the CCRCC had called the convention for April 16, 2019.

V. Round Four

On April 16, 2019 at the noticed time and place for the County Convention of the CCRCC, 20 of the 36 duly elected precinct representatives of the CCRCC appeared to organize themselves into a committee and to elect new officers. Also in attendance at the convention as observers at the request of the State Chair were the State Party Vice Chair Terry Nelson and a member of the Rules Committee Anita Milanovich. Not in attendance were Sheridan Buck or any other member of the previously duly elected Executive Board or 16 duly elected members of the CCRCC (Buck Faction). No communication from the previous officers and precinct representatives not in attendance was offered to explain their absence. A video of the meeting was recorded in order to preserve a record of the meeting as a supplement to minutes of the meeting. Those in attendance acted to elect a presiding officer to conduct the meeting and proceeded to elect a slate of officers.

A duly noticed convention with a quorum in attendance acting to organize itself and elect new officers having occurred, one would think that the fight would be over, but that was not to happen. Disregarding her notice and publication of the April 16, 2019 Convention and with absolutely no explanation of her or the rest of her Executive Board's failure to attend, Sheridan Buck now appeals to the Chair of the State Party for a determination that her personal attendance or that of another member of her Executive Board elected in 2017 was needed at the County Convention in order for it to be a valid meeting. She offers no challenge to either the notice or publication of the meeting held on April 16, 2019 in accordance with the original call and, indeed, stated in her own complaint that the County Convention was properly noticed, thereby giving up her ability to make that challenge. So we will only address her challenge to the Convention based on her failure to attend and preside.

In our analysis we will first review State Rules and state statutes. State Rules III. County Central Committee C) Election of County Officers, after recounting when the county conventions shall be held and the duty of the State Chair to notify the County committees of the same, states:

“Such conventions shall be called and notice of the call must be given as provided by state law. The County Chairman shall preside at the county convention and no person other than a duly elected and appointed committeeman, committeewoman or officer of the committee is entitled

to participate in the convention. Only duly elected and appointed precinct committeemen and committeewomen will be allowed to vote.”

MCA 13-38-205 contains a number of pertinent provisions neither of which use the term “chairman.”:

13-38-205(1) The committee shall meet prior to the state convention of its political party and organize by electing a presiding officer and one or more vice presiding officers. The gender of the presiding officer and the vice presiding officer may not be the same. The committee shall elect a secretary and other officers as necessary. It is not necessary for the officers to be precinct committee representatives.

(4) The county presiding officer of the party shall preside at the county convention. No person other than a duly elected or appointed committee representative or officer of the committee is entitled to participate in the proceedings of the committee.

In the normal course of affairs, the distinction is not normally noted as the custom in the meetings of the Montana Republican Party and its County Committees is for the duly elected Chairman from the prior reorganization of the committee to perform their duty, show up and preside over the meeting and accept the outcome of a duly noticed and attended convention. Indeed, as noted in Robert's Rules at RONR (11th ed.) p. 448 II 26-29, “The term *the chair* refers to **the person in a meeting who is actually presiding at the time, whether that person is the regular presiding officer or not.**” (emphasis added).

What does Robert's Rules have to say about the duty of a chairman or presiding officer? RONR (11th ed.) p. 449 II 21-26 states:

“It is the duty of the presiding officer of an assembly: 1) To open the meeting at the appointed time by taking the chair and calling the meeting to order, having ascertained that a quorum is present.”

So it is the opinion of this sub-committee that Chairman Buck forfeited her right to raise an issue concerning the conduct of the Convention. She in effect alleges in her letter of complaint that a Suspension of the Rules would need a two-thirds vote in order to suspend the rules and remove her temporarily from office. However, Suspension of the Rules would only be in order under Robert's Rules of Order in order to remove a presiding officer from their duties during their term of office. RONR (11th ed.) p. 650-654.

But we go back to the State Rules to determine what the term of office of the presiding officer or Chairman is. The term of office of elected members of the Executive Board of a County Committee is clearly set forth in C. Committees III. County Central Committee G) County Executive Committee at page 11:

“The Executive Committee is charged with the execution of the county party's policies and programs between meetings of the Central Committee, and **the members thereof shall hold office until the next organizational convention.**” (emphasis added)

Therefore, once the organizational convention commenced at the time and place noted in the convention call, all the offices of the Executive Board were vacant. No removal from office requiring a suspension of the rules was necessary. That decision might be different had the State Rules stated that the Executive Board Members would hold their office **through** the next organizational convention, but they don't.

While it has been the custom in the Montana Republican Party to grant respect to the prior presiding officer by allowing them to conduct the reorganization meeting after the termination of their term, that custom need not be honored where the office is clearly vacant by the automatic operation of the State Rules and state statute; especially, as here, where the prior occupant of the office has not respected either the call of the convention or the customary duties of the chair.

It should also be noted that the Rules of the Cascade County Republican Central Committee. Article VIII. Duties of Board and Committee Members, states:

"The County Chairman shall be the recognized leader of the Republican Party in Cascade County; shall represent the County in the State Central Committee; **shall preside at all meetings of the CCRCC Executive Board**; may sit on all committees; shall appoint all committees except as otherwise herein provided; shall have the responsibility for the hiring and termination of employees with the direction of the CCRCC; shall represent the Committee in an official capacity; and shall exercise such other powers and authority, not inconsistent with these rules, as shall be appropriate and necessary to the office of chairman. The Chairman may only vote in the case of a tied vote." (emphasis added)

Therefore it could be argued that by refusing to attend a the April 16, 2019 convention, the Chair was in violation on the CCRCC's own rules.

There is no reason to void the action of the April 16, 2019 Cascade County Convention. It was "duly noticed." The record displays that a quorum was present. The record displays that the convention organized itself, as it had the power to do, selected a presiding officer in accordance with MCA 38-13-205 (1), in the absence of the customary presiding officer, and proceeded to elect new officers to the Executive Board in accordance with the Rules of the CCRCC as of September 5, 2017, the State Party Rules as of June 23, 2018, and MCA 13-38-205.

This Sub-Committee declines to reward a previously elected County Chair with a decision extending her term of office beyond that stated in the State Rules and- nullify a convention which she herself notes was "properly noticed", but which she and her previous Executive Board chose to boycott.

VI. Further Determinations

In the request for a determination that the April 16, 2019 convention was illegal, determinations were also requested on the following:

- Roger Hagan claimed he was the chair of the CCRCC and ran a separate parallel organization
- January 10, 2019 MtCOPP Complaint is still outstanding
- HB318 is a retaliatory bill

- Teleconference meetings are not addressed in State GOP bylaws and the members of the State Rules Committee did not have ample time to review materials and make a reasonable decision.

Taking these point-by-point, it is the opinion of this Sub-Committee the question Mr. Hagan claiming he was chair of the CCRCC and running a separate organization was settled in the Rules Sub-Committee determination on November 28, 2018 (see II. Round One). Furthermore, this is the subject of the referenced January 10, 2019 complaint with the Montana Commissioner of Political Practices. This Sub-Committee sees it as a statement of fact that the COPP has not yet ruled on this complaint, and it is not something that is under the purview of this Sub-Committee.

Regarding HB 318, this Sub-Committee did not address this item as this is not an issue the Rules of the Montana Republican Party address.

Finally, while it is true teleconference meetings for the rules committee are not mentioned in the rules, this has been common practice. Also, the appeal in question was only made on the morning of April 15th, with a decision being necessary in time for the noticed convention on the 16th, so the rules committee members had as much time as reasonable under the circumstances.

Having addressed the issues raised by the Buck request, the sub-committee finds it does not need to address the issues raised in the Hagan request as they are not required to be resolved in the resolution of the dispute.

While actions of both of the parties to this ongoing battle have been unclean at times, the deliberate attempts on the part of the previous CCRCC Executive Board to maintain control by attempts to amend its bylaws in violation of State Rules, appoint precinct representatives in violation of State Rules, appoint proxies in violation of Robert's Rules, and now extend their term in office beyond the date specified in State Rules, should not, in the opinion of this Sub-committee, be rewarded. It is now time for both factions of the CCRCC to move forward and fulfill the mission of the Republican party as stated in our Rules: "Those elected to represent the Montana Republican Party as officers or delegates should be only those persons **who will actively support and campaign for the platform and nominees of the Republican Party, and will work in harmony and cooperation with all Republican organizations.**" (emphasis added)

It is time for this fight to end and for the real work to begin.

Respectfully submitted,

Jeff Essmann
Forrest Mandeville
Derek Skees