

BEFORE THE COMMISSIONER OF  
POLITICAL PRACTICES

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In the Matter of the Complaint    )  
Against Ivan Andrick            )  
  )    SUMMARY OF FACTS  
  )    AND  
  )    STATEMENT OF FINDINGS

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James and Mana Seward filed a complaint alleging that Ivan Andrick violated Montana campaign finance and practices laws when he published a newsletter containing certain representations related to a sewer bond election.

SUMMARY OF FACTS

1. Ivan Andrick is the owner of Emerald View Park, a mobile home court in Lockwood, an unincorporated community east of Billings.

2. In 1996, the people of Lockwood created a water and sewer district (“the District”) and elected a board of directors (“the Board”). In the years since creation of the District, the Board has attempted to obtain approval from the residents of a sewer system project through a number of bond issue elections.

3. If approved, the first phase of the sewer system project would build the main trunk line for the sewer system and connect the line to the Billings sewer system. Although grants from the state and federal governments would pay for more than half of the cost, the Lockwood residents would be required to pay the balance, approximately \$6.6 million, through a general obligation bond resulting in increased taxes.

4. Prior to 2004, there were three unsuccessful attempts to pass a bond issue to pay for construction of the sewer system project. Under state law a “super majority” of 60% is required for approval. Although a majority voted in favor of the bond issue in

each of the three elections, the requisite 60% margin was never achieved.

5. The Board decided to hold a fourth election in early 2004. Ballots were mailed to Lockwood residents during the week of January 11-17, 2004, and had to be returned to the county elections office by February 4, 2004. The voters rejected the bond issue for the fourth time, this time with a majority voting against the measure.

6. Emerald View Park holds 106 spaces for mobile homes, and normally they are all full. David Riley is the manager of the mobile home court, and he estimates that on average there are four residents per space in the park. Based on Mr. Riley's estimate, there may be as much as several hundred persons who are eligible to vote living in the mobile home park.

7. A monthly newsletter called "The View" is published and available to the residents of Emerald View Park. Mr. Andrick, who resides in Texas, provides the information for the newsletter to Mr. Riley, and Mr. Riley actually creates and distributes the newsletter. Copies of the newsletter are placed in a pick up box in the main office of the mobile home park, and residents can obtain a copy when they visit the office to pay their rent.

8. The January, 2004 issue of The View contained the following statements:

A MESSAGE FROM IVAN ANDRICK

TO ALL RESIDENTS OF EMERALD VIEW PARK

On, or about January 16<sup>th</sup>, you will receive a ballot in the mail, asking for your vote on PHASE ONE of a new sewer system for Lockwood. This ballot will have to be filled out and postmarked by February 3<sup>rd</sup>.

If this bond issue passes, your monthly rent will be reduced by \$10.00 per month, effective March 1, 2004. This was the same amount the rent was increased on January 1, 2004. The \$10 savings on your rent will more than cover the annual bond cost assessed on your mobile home by Phase

One of the new system. In addition, there will be no increase in rent for the remainder of 2004 if the bond issue passes.

PLEASE VOTE ON THE BOND ISSUE AND BE SURE TO VOTE YES.

Mr. and Mrs. Seward allege that these statements by Mr. Andrick constitute an offer of financial incentives to the tenants of Emerald View Park to encourage them to vote in favor of the bond issue. They contend that this violates Montana Code Annotated § 13-35-214.

9. Neither Mr. Riley nor Mr. Andrick is associated with the District or the Board; however, Mr. Andrick stated that he tried to attend all the Board's meetings while he was in Montana.

10. Mr. Andrick stated his proposal to reduce the rents of the residents of Emerald View Park was based on his desire to help his tenants cover the cost of the bond issue. If the bond issue had passed, tax assessments on his tenants' mobile homes would have increased. Mr. Andrick stated he knows many of his tenants are on tight budgets, and his motivation was to provide some financial assistance to them in the form of a reduction in their rent to offset the increased assessments that would have resulted had the bond issue passed. Mr. Andrick stated it never occurred to him that his actions might be construed as an attempt to buy votes. He does not believe he did anything wrong.

#### STATEMENT OF FINDINGS

Mr. and Mrs. Seward claim that Mr. Andrick's newsletter violates Montana Code Annotated § 13-35-214, which provides in relevant part:

**Illegal influence of voters.** No person, directly or indirectly, by himself or by any other person on his behalf, for any election, to or for any person on

behalf of any elector or to or for any person, in order to induce any elector to vote or refrain from voting or to vote for or against any particular candidate, political party ticket, or ballot issue, may:

(1) give, lend, agree to give or lend, offer, or promise any money, liquor, or valuable consideration or promise or endeavor to procure any money, liquor, or valuable consideration;

Violation of the statute is a misdemeanor. Montana Code Annotated § 13-35-103.

Montana Code Annotated § 13-35-101 states that the "penalty provisions of the election laws of this state are intended to supplement and not to supersede the provisions of the Montana Criminal Code." Although Montana Code Annotated § 13-35-214 does not list a specific mental state, pursuant to Montana Code Annotated § 45-2-103(1) a person must act either knowingly or purposely to violate the statute. Montana Code Annotated § 45-2-101(34) defines "knowingly" as follows:

. . . [A] person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when the person is aware of the person's own conduct or that the circumstance exists. A person acts knowingly with respect to the result of conduct described by a statute defining an offense when the person is aware that it is highly probable that the result will be caused by the person's conduct. When knowledge of the existence of a particular fact is an element of an offense, knowledge is established if a person is aware of a high probability of its existence. Equivalent terms, such as "knowing" or "with knowledge", have the same meaning.

Montana Code Annotated § 45-2-101(64) defines "purposely" as:

. . . [A] person acts purposely with respect to a result or to conduct described by a statute defining an offense if it is the person's conscious object to engage in that conduct or to cause that result. When a particular purpose is an element of an offense, the element is established although the purpose is conditional, unless the condition negatives the harm or evil sought to be prevented by the law defining the offense. Equivalent terms, such as "purpose" and "with the purpose", have the same meaning.

To establish that Mr. Andrick violated Montana Code Annotated § 13-35-214, it would

be necessary to prove that, acting with one of the above mental states, and also with the intent to induce an elector to vote in favor of the bond issue, he offered or promised money or other valuable consideration.

The evidence disclosed during this investigation does not support that conclusion. Mr. Andrick represented to his tenants that if the bond issue passed their rents would be reduced by \$10 per month, but he stated his motivation was not to induce them to vote for the bond issue. Rather, he was sympathetic to their financial circumstances, and he wanted to provide some financial assistance to compensate for the increased assessments on their mobile homes if the bond issue passed. Although the statements contained in Mr. Andrick's newsletter may reflect an exercise of poor judgment on his part, I have concluded that, considering all the circumstances, it would be difficult to prove beyond a reasonable doubt that Mr. Andrick acted with the criminal intent necessary to establish a violation of Montana Code Annotated § 13-35-214.

#### CONCLUSION

Based on the preceding Summary of Facts and Statement of Findings, there is insufficient evidence to conclude that Ivan Andrick violated Montana campaign finance and practices laws.

Dated this 13<sup>th</sup> day of December, 2004.

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Linda L. Vaughey  
Commissioner

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 13<sup>th</sup> day of December, 2004, the foregoing Decision of the Commissioner was served on the parties hereto, addressed to the parties as follows:

Certified U.S. Mail, Postage Prepaid  
James H. and Mana L. Seward  
18 Maier Lane  
Billings, MT 59101

Certified U.S. Mail, Postage Prepaid  
Ivan Andrick  
Emerald View Park  
555 Kallen Drive  
Billings, MT 59101

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Dulcy L. Hubbert  
Program Supervisor  
Commissioner of Political Practices