

**BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES**

In the Matter of the) **SUMMARY OF FACTS**
Complaint Against) **AND**
John Walsh) **STATEMENT OF FINDINGS**

Mona Neary, treasurer of the Butorovich for Sheriff campaign, filed a complaint against John Walsh alleging that Walsh violated several campaign finance and practices laws.

CLAIM I

Complainant Neary alleges that Walsh violated a local ordinance by placing a campaign advertisement that indicated he was running as a Democrat, when the office for which he is running is nonpartisan.

CLAIM II

Complainant Neary alleges that Walsh failed to report certain contributions or expenditures for political advertisements on bus benches.

CLAIM III

Complainant Neary alleges that Walsh or the Walsh campaign permitted campaign materials to be placed near polling places on election day.

SUMMARY OF FACTS

1. John Walsh is a candidate for the elective office of Sheriff in Butte-Silver Bow. Butte-Silver Bow is a consolidation of the local governments of the City of Butte and Silver Bow County, operating under a charter. Walsh is currently the acting Sheriff of Butte-Silver Bow.

2. Bob Butorovich is also a candidate for Sheriff in Butte-Silver Bow. Mona Neary is treasurer of the Butorovich for Sheriff campaign organized to support the candidacy of Butorovich.

3. The office of Sheriff in Butte-Silver Bow is a nonpartisan elective office. Walsh, Butorovich, and Ben Thielen ran in the primary election, which was held on June

6, 2000. Walsh and Butorovich received sufficient votes to advance to the general election.

4. Prior to the primary election, Pit Printers of Butte was retained to print a program for the Butte Skating Club. The program included a political advertisement paid for by John Walsh for Sheriff. The advertisement includes the following language:

John Walsh
Democrat
For Sheriff

According to Ellen Maroney, Office Manager of Pit Printers, the Butte Skating Club was responsible for selling the ads, composing them, and presenting them to the customer for proofing. Because of time constraints, the Butte Skating Club apparently did not have sufficient time to submit the Walsh for Sheriff ad to Walsh campaign representatives for proofing prior to the ad being printed and distributed in the programs. Maroney stated that the word "Democrat" was inadvertently placed in the ad, and that Walsh and the Walsh campaign were unaware that the word would be included in the ad prior to its publication. Walsh confirmed he was not aware that the ad would include the word "Democrat."

5. Walsh and his wife, Teri, operate a travel agency in Butte called Uniglobe Walsh Travel (Uniglobe). Uniglobe purchases advertising space for the business on bus benches located in Butte. The advertising space is sold by Blair Unlimited of Billings. Uniglobe purchased a one-year block of advertising space on the bus benches, to be used for advertising the travel agency.

6. John and Teri Walsh jointly took out a loan to pay for some anticipated campaign expenses. John Walsh used part of the proceeds of the loan to reimburse Uniglobe for the cost of placing Walsh for Sheriff campaign advertising on the bus benches, in the spaces that would normally have been utilized to advertise Uniglobe. The cost of the political advertising was reported as a \$970 in-kind contribution on

Walsh's candidate campaign finance report for the period of October 13, 1999 to May 20, 2000.

7. The complaint alleges that on the day of the primary election a suburban and a pickup truck, both bearing large "Walsh for Sheriff" signs, were seen parked within 200 feet of several polling places. The complaint does not identify the alleged owner of the pickup truck but alleges that the suburban is owned by Lieutenant Mark Driscoll, an officer in the Butte-Silver Bow Law Enforcement Agency. No complaints regarding these alleged electioneering violations were made to the Commissioner's office on the day of the primary election, nor were any complaints made to Walsh or his campaign workers.

8. Driscoll had, by his estimate, a 12" by 24" Walsh for Sheriff campaign sign on the inside of the window of his suburban. Butorovich estimated that the sign was 28" by 30". On primary election day Driscoll drove his wife and two adult children to Emerson School, their regular polling place, in his suburban. Driscoll parked the suburban, with the "Walsh for Sheriff" sign in the window, in front of the school, and the four of them went into the polling place and cast their votes. According to Driscoll, the vehicle was not parked in front of the school for an extended period of time, and he did not do any campaigning for Walsh while at the polling place. Although witnesses stated that they observed the suburban parked near Emerson School on election day, no one stated that the vehicle was parked in that location for a lengthy period of time.

9. Walsh was not aware that Driscoll drove to the polls in his suburban with the "Walsh for Sheriff" sign in the window.

STATEMENT OF FINDINGS

CLAIM I

The complaint alleges that the use of the word "Democrat" in a campaign ad paid for by the Walsh campaign violates a local ordinance. This office has no jurisdiction to enforce local ordinances. There is a state statute that governs this alleged conduct. Montana Code Annotated § 13-10-602 provides:

Use of party name. . . . (2) An independent or nonpartisan candidate shall not use any word of the name of any existing political party or organization in his candidacy.

Montana law provides the Commissioner with authority to investigate alleged violations of the election laws contained in chapters 35, 36, and 37 of title 13. In cooperation with county attorneys, the Commissioner is required to enforce the election laws set forth in these three chapters of title 13. See Montana Code Annotated §§ 13-37-111, 13-37-113, 13-37-124, and 13-37-125. Since Montana Code Annotated § 13-10-602 is codified in chapter 10 of title 13, the Commissioner has no jurisdiction over this alleged violation.

CLAIM II

Montana Code Annotated § 13-37-225(1) requires candidates to file periodic reports of contributions and expenditures. The records on file in the Commissioner's office establish that Walsh properly reported the \$970 in-kind contribution for the cost of the campaign advertisements placed on the bus benches.

CLAIM III

The complaint alleges illegal electioneering on the day of the primary election. Montana Code Annotated § 13-35-211(1) provides:

No person may do any electioneering on election day within any polling place or any building in which an election is being held or within 200 feet thereof, which aids or promotes the success or defeat of any candidate or ballot issue to be voted upon at the election.

Violation of Montana Code Annotated § 13-35-211 is a misdemeanor. See Montana Code Annotated § 13-35-103.

Since the term "electioneering" is not defined in the statute Administrative Rules of Montana 44.10.311, a rule adopted by the Commissioner, clarifies the application of the statute:

As used in 13-35-211, MCA, "electioneering" means the solicitation of support or opposition to a candidate or issue to be voted upon at the election or polling place in question, by means of:

(a) Personal persuasion, electronic amplification of the human voice, or the display or distribution of campaign materials.

(b) Offering or distribution of food, drink, or any other material benefit in a manner calculated to encourage recognition, support, or opposition to a candidate or issue.

(c) "Electioneering" does not include the display of ordinary bumper stickers on automobiles.

While the display of ordinary bumper stickers on automobiles does not amount to electioneering, the statute, as implemented by the above rule, prohibits the display of other campaign materials within 200 feet of a polling place with the intent of soliciting support for a candidate.

There was only one verifiable incident that warrants discussion. Driscoll parked his suburban, with the "Walsh for Sheriff" sign in the window, near the Emerson School polling place while he and his family cast their votes.¹ There is no evidence, however, that in doing so Driscoll intended to actively solicit support for Walsh's candidacy. There is also no evidence that Driscoll made any verbal attempts to solicit support for Walsh's candidacy while in the polling place, or while his vehicle was parked near the school.

To establish a violation of Montana Code Annotated § 13-35-211 it would be necessary to prove that Driscoll displayed the Walsh window sign in his suburban with the intent of soliciting support for Walsh's candidacy. Under the specific factual circumstances in this case I find insufficient evidence to establish that Driscoll acted with the requisite purpose.

Voters, however, should be aware that the statute does not permit the display of campaign materials, including campaign signs in vehicle windows, to solicit support for or opposition to candidates or issues at or around the polls on election day. The

¹ This is a complaint against Walsh, and there is no basis upon which to conclude that Driscoll's conduct should be imputed to Walsh. According to Walsh he had no prior knowledge that Driscoll was planning to drive his suburban, with the Walsh sign in the window, to the polls. It is nevertheless important to examine Driscoll's conduct to determine whether the law was violated.

Legislature, in enacting Montana Code Annotated § 13-35-211, intended to create a “campaign-free zone” around the polls to permit voters to cast their ballots free from interference and undue influence. Voters and supporters and opponents of candidates and issues should be aware that campaigning in the immediate vicinity of the polls is prohibited.

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CONCLUSION

Based on the preceding Summary of Facts and Statement of Findings:

1. The Commissioner does not have jurisdiction to determine whether John Walsh violated either a local ordinance or Montana Code Annotated § 13-10-602 by including the word "Democrat" in a campaign advertisement.

2. John Walsh did not fail to report a contribution or expenditure related to advertising on bus benches.

3. John Walsh did not violate Montana law prohibiting electioneering within 200 feet of a polling place on election day.

Dated this _____ day of November, 2000.

Linda L. Vaughey
Commissioner