

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES

In the Matter of the Complaint)	SUMMARY OF FACTS
Against Citizens for More)	AND
Responsive Government)	STATEMENT OF FINDINGS

On October 17, 2001, Jonathan Motl filed a complaint alleging that Citizens for More Responsive Government (CMRG), a political committee, violated Montana campaign finance and practices laws by failing to timely file a finance disclosure report and failing to report certain expenditures related to the 2001 city election.

CLAIM I

The complaint alleges that CMRG failed to file a post-primary election report of contributions and expenditures.

CLAIM II

The complaint alleges that CMRG failed to report expenditures for a get-out-the-vote telephone effort that “appears to have been conducted by an out-of-state phone bank.”

CLAIM III

The complaint alleges that CMRG failed to report expenditures for the production, copying, and distribution of a campaign flyer.

CLAIM IV

The complaint alleges that CMRG failed to report expenditures for the production, copying, and mailing of a post card urging support for certain candidates.

CLAIM V

The complaint alleges that CMRG failed to report expenditures for an effort involving the conversion of an unorganized list into an organized form that could be used for campaign mailing and telephone purposes.

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SUMMARY OF FACTS

1. A Statement of Organization (form C-2) was filed on September 7, 2001, by a political committee, "Helenaans For More Responsive Government" (HMRG). The C-2 designated Stephen Visocan as the committee treasurer and provided his home address, and Terry Alborn as deputy committee treasurer and provided his business address. The address provided for HMRG was P.O. Box 7032, Helena. The C-2 stated the purpose of the committee was "influencing local Helena area elections and decisions toward more responsive government." The C-2 also stated the committee supported Helena city government candidates Michael Clasby, Elaine Sollie Herman, Jerry Hutch, and "other candidates as decided by the group."

2. The Helena city primary election was held on September 11, 2001.

3. On September 21, 2001, the Commissioner of Political Practices sent a letter to HMRG committee treasurer Stephen Visocan at his home address as provided on the C-2. Enclosed with the letter were blank finance report forms (form C-6), a 2001 reporting calendar, an accounting and reporting manual (a guide to accounting and reporting procedures published by the Commissioner), a supplement to the manual, a booklet of Montana campaign finance and practices laws and regulations, and other materials. The letter stated: "If you became involved in the 2001 city elections, you must file finance reports in accordance with the enclosed calendar." The calendar listed a filing deadline of October 1, 2001, for the filing of a post-primary C-6 finance report, to include all contributions and expenditures from August 26, 2001 through September 26, 2001.

4. On October 16, 2001, an amended C-2 was filed, changing the name of the committee from HMRG to Citizens for More Responsive Government (CMRG). Visocan and Alborn were again designated, respectively, the treasurer and deputy treasurer with the same addresses. The committee address and the purpose of the committee

remained unchanged. The candidates supported by the committee were listed as Michael Clasby, Marc Parriman, and “other candidates as decided by the group.”

5. Jonathan Motl filed his complaint with the Commissioner on October 17, 2001, alleging, among other things, that CMRG had failed to file a post-primary election finance report.

6. CMRG filed a post-primary C-6 finance report with the Commissioner on October 18, 2001 signed by deputy treasurer Alborn, reporting contributions and expenditures for the period August 26, 2001 through September 26, 2001. According to the C-6, CMRG made its first expenditure on September 7, 2001.

7. According to committee treasurer Visocan, he was the treasurer in name only, a “figurehead;” and Ann Tedesco was the “administrator” of CMRG. Tedesco was not listed as an officer of the committee on the C-2 Statement of Organization filed with the Commissioner. While Visocan was aware that a treasurer of a political committee is responsible for preparing and filing finance reports, he assumed that deputy treasurer Alborn would file the reports. Visocan said that he travels a lot, and he did not expect mail for CMRG to be sent to his home mailing address. He assumed that documents would be mailed to the post office box identified as the committee address on the C-2. He does not recall seeing the September 21, 2001 letter from the Commissioner’s office that was mailed to his home address provided on the C-2. Visocan recalls receiving a brown manila envelope from the Commissioner’s office sometime before October 15, 2001; and he gave that envelope to Tedesco.

8. Alborn was asked by Tedesco to serve as deputy treasurer of the committee. Alborn is a certified public accountant with the firm Junkmier, Clark, Campanella, Stevens, P.C. (JCCS). He said that Tedesco also requested that JCCS perform bookkeeping services for CMRG. Alborn said he was in contact with Tedesco on a weekly basis regarding committee business. He believed that Tedesco would take care

of any mail related to the committee, and he assumed that mail would be sent to the committee post office box.

9. Irrespective of the fact that her name did not appear on any of the statements or reports filed with the Commissioner's office by the committee, Tedesco agreed that she was the "administrator" of CMRG. She also contends she assumed that information related to reporting requirements would be mailed to CMRG at the post office box shown on the C-2. Tedesco contends she believed that Alborn or JCCS would handle the preparation and filing of the reports. After Visocan gave Tedesco the brown manila envelope from the Commissioner's office, Tedesco apparently got together with Alborn to prepare the committee's C-6 finance report.

10. The complaint alleges that CMRG failed to report expenditures related to a get-out-the-vote telephone effort that "appears to have been conducted by an out of state phone bank." The complaint includes the affidavit of Doug Mitchell, that stated Mitchell received a voice mail message on September 8 or 9, 2001, from a group urging his support for candidates Mike Clasby, Elaine Sollie Herman, and Jerry Hutch. According to the affidavit, Mitchell believes the call originated from out of state, because the caller had an accent and mispronounced "Helena."

11. CMRG hired several people from the Helena area to make telephone calls urging people to vote for the CMRG-endorsed candidates. The calls were made on September 8, 9, and 10, just prior to the primary. Tedesco provided records disclosing that the calls were made by persons referred to on the records as: "Jennifer," "Randy," "Joe," "Chi," and "John Moe." The records show that "Jennifer" placed a telephone call to Doug Mitchell's number on September 8, 2001.

12. The C-6 finance report filed by the committee on October 18, 2001, reports "contract labor" expenditures totaling more than \$800 made to Randy McDonough, Jennifer McDonough, John Moe, Chi Flores, and Joseph Kellogg. The report states the payments were made on September 7, 2001 and September 11, 2001. According to

Tedesco, these were the people hired by CMRG to make telephone calls and to place labels on campaign mailers.

13. Tedesco stated that Jennifer McDonough, who made the call to Doug Mitchell on September 8, 2001, has an accent. McDonough has reportedly moved to Colorado and was unavailable for an interview.

14. The complaint alleges that CMRG failed to report expenditures for copying and delivery costs related to a campaign flyer. Elizabeth Andrews submitted an affidavit in which she contends she saw Tedesco copying documents at Insty-Prints some time prior to the primary election. The Andrews' affidavit states that, after Tedesco left Insty-Prints, Andrews found a master copy of a campaign flyer urging votes for Mike Clasby, Elaine Sollie Herman, and Jerry Hutch.

15. Tedesco recalls she was at Insty-Prints on September 5, 2001. While there she made 300 copies of a campaign flyer supporting the candidacies of Mike Clasby, Elaine Sollie Herman, and Jerry Hutch. She recalls seeing Elizabeth Andrews at Insty-Prints on that day. Tedesco stated that the contract laborers referenced in Fact 12 placed labels on the flyers in addition to making the telephone calls described in Facts 11 and 12.

16. CMRG's post-primary election C-6 finance report filed on October 18, 2001, lists on page 6, Schedule C, Debts Not Yet Paid, a balance of \$823.88 owed to Insty-Prints. In addition records obtained from Insty-Prints include invoices for flyers copied on September 5, 2001. The C-6 also lists, as an expenditure, a payment to the U.S. Postmaster on September 7, 2001. As noted previously, payments to contract laborers were reported on the C-6 as well.

17. The complaint alleges that CMRG failed to report expenditures for a postcard mailed prior to the city primary election urging support for CMRG-supported candidates. According to Jonathan Motl, the complainant, an attorney in his office received in the mail prior to the primary a teal-colored campaign postcard produced by

CMRG; but she did not retain a copy. A review of records at Insty-Prints and a discussion with the manager at Insty-Prints did not reveal any evidence that CMRG paid Insty-Prints for production or copying of a teal-colored postcard.

18. Neither Visocan nor Alborn knew any details regarding a postcard prepared and mailed by CMRG. They both suggested that Tedesco might have more information. Tedesco stated that CMRG did not prepare or produce a teal-colored campaign postcard, and, in fact, no postcards were produced or mailed prior to the primary election. Tedesco stated that CMRG prepared a campaign postcard for mailing prior to the general election. She produced a copy of a red, white, and blue postcard that urged votes for Mike Clasby for mayor and Marc Parriman for city commissioner.

19. Records obtained from Insty-Prints show an October 30, 2001 postcard printing purchase by CMRG. This expense was properly reported in the post-general C-6 finance report filed by CMRG on November 23, 2001, on Schedule C (Debts Not Yet Paid), reflecting \$311.62 owed to Insty-Prints. No other Insty-Prints' invoices or billing records reveal any other expense related to printing of campaign postcards by CMRG.

20. The complaint alleges that CMRG failed to account for expenditures related to "an effort involved in taking an unorganized list (such as petition signatures) and translating that list into an organized form" that could be used for mailing and telephoning purposes.

21. Tedesco stated she obtained a list of registered voters from the County Clerk and Recorder's Office. Tedesco paid \$24.00 for the list, using her own money. She has not yet submitted a bill to CMRG for reimbursement of that payment. After she obtained the list, Tedesco instructed the contract laborers identified in Fact 12 to look up telephone numbers and make calls to registered voters. Tedesco provided a copy of the list that shows hand-written telephone numbers. Most of the pages of the list contain notations indicating the first name of one of the people identified in Fact 12 who made telephone calls. The same list was used by the contract laborers to prepare and

affix labels on mailers. The C-6 finance reports filed by CMRG report various expenditures for “contract labor” paid to Randy McDonough, Jennifer McDonough, John Moe, Chi Flores, and Joseph Kellogg.

STATEMENT OF FINDINGS

CLAIM I

According to the C-2 Statement of Organization, CMRG was formed for the purpose of “influencing local Helena area elections and decisions toward more responsive government.” According to Montana statutes and rules, CMRG is an independent political committee. Montana Code Annotated (MCA) § 13-37-226(5); Administrative Rules of Montana (ARM) 44.10.327(2)(b). An independent political committee is required to file a report “not more than 20 days after the date of an election in which it participates by making an expenditure.” MCA § 13-37-226(5)(b). The city primary election was held on September 11, 2001; therefore, CMRG was required to file a post-primary election C-6 finance report no later than October 1, 2001.

CMRG filed a post-primary election C-6 finance report on October 18, 2001, 17 days after the due date. Representatives of CMRG explained that the late filing resulted from their confusion regarding where documents from the Commissioner would be sent. On the C-2 Statement of Organization, the mailing address for the committee differs from the mailing address for Stephen Visocan, the committee treasurer. Visocan stated he travels a lot, and he did not expect documents related to committee business to be mailed to his home address. He further stated he did not receive the September 21, 2001 mailing from the Commissioner’s office until some time just prior to October 15, 2001.

MCA § 13-37-201 requires that a political committee appoint a treasurer and certify the full name and complete address of the treasurer. A committee treasurer (or a deputy treasurer, if any) performs important functions for a political committee, including depositing and disbursing funds, maintaining accurate records and accounts, and

generally administering the financial affairs of the committee. See MCA §§ 13-37-201 to 13-37-205, 13-37-207 to 13-37-209, and 13-37-215; ARM 44.10.501, 44.10.503, 44.10.505, and 44.10.507. Thus, the treasurer (and deputy treasurer, if any) are officers of a political committee and have the legal obligation to account for the financial activities of the committee. Unless directed to send mail to a different address, the Commissioner's office mails a letter, a reporting calendar, and other reporting materials to each committee treasurer to his/her mailing address provided on the Statement of Organization (form C-2).

The Form C-2 Statement of Organization filed by CMRG designated Stephen Visocan as the committee treasurer and Terry Alborn as the committee deputy treasurer. Either Mr. Visocan or Mr. Alborn, as the only two individuals identified as officers of CMRG, should have reviewed the legal reporting requirements and clarified between themselves and others associated with CMRG the reporting obligations of the committee. Reporting deadlines are readily discernable from a review of the applicable statutes and rules.

CLAIMS II THROUGH V

As noted in Facts 10 through 21, an investigation into the allegations designated Claims II through V, including a review of the records maintained by CMRG, did not disclose any evidence of violations of the relevant statutes and rules administered by the Commissioner. If Ann Tedesco obtains reimbursement from CMRG for the \$24 she paid to the Clerk and Recorder for the lists of registered voters, CMRG will be obligated to report that expenditure. If no reimbursement is requested, CMRG will be obligated to report the \$24 as an in-kind contribution from Tedesco.

CONCLUSION

Based on the preceding Summary of Facts and Statement of Findings, there is substantial evidence to conclude that CMRG failed to file on a timely basis a post-primary election report of contributions and expenditures as required by Montana law,

as alleged in Claim I. There is insufficient evidence to conclude that CMRG violated any other Montana campaign finance reporting and disclosure laws, as alleged in Claims II through V.

Montana Code Annotated § 13-35-124(1) requires the Commissioner to notify the county attorney “[w]henver the Commissioner determines that there appears to be sufficient evidence to justify a civil or criminal prosecution...” The determination of whether a prosecution is justified must take into account the law and the particular factual circumstances of each case. A prosecutor can decide not to prosecute whenever (s)he in good faith believes that a prosecution would not be in the best interests of the state. Despite the finding that CMRG failed to file a post-primary election finance report in a timely manner, I have concluded that a civil prosecution is not justified for the following reasons.

The law establishes deadlines for filing of campaign finance reports. The Commissioner of Political Practices strives to ensure compliance with all filing deadlines. If a particular candidate or political committee has failed to file a report by the applicable deadline, the standard practice of the Commissioner is to contact the campaign treasurer and request the treasurer file the report as soon as possible. If such an informal effort to ensure compliance is not successful, the Commissioner may employ more formal measures, including issuance of orders of noncompliance or a court action seeking a civil penalty.

In the instant case, CMRG unquestionably failed to file the post-primary election finance report by the statutory deadline; but I found no evidence that the committee intended to evade disclosure of reportable contributions and expenditures. Rather, CMRG’s transgression appears to have resulted from miscommunication between the treasurer, deputy treasurer, and “administrator” of the committee regarding who would prepare and file reports together with failure to become familiar with applicable reporting

deadlines. The post-primary election finance report was filed shortly after committee members became aware that a complaint had been filed.

Under the circumstances, I have determined that it would not be in the best interests of the State of Montana to pursue a civil prosecution. Political committees should be aware, however, that the Legislature has established specific deadlines for filing campaign finance reports. While the Commissioner will continue, when appropriate, to employ informal means to ensure compliance with the deadlines established in statute, the Commissioner also reserves the right to take more formal action when circumstances warrant.

Dated this 21st day of February, 2002.

Linda L. Vaughey
Commissioner