

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES

In the Matter of the Complaint)	SUMMARY OF FACTS
Against Bob Rice and the)	AND
Hill County Republican Central Committee)	STATEMENT OF FINDINGS

On November 6, 2001, Debi Friede, Chairperson, Hill County Democratic Central Committee, filed a complaint alleging that Bob Rice, candidate for Havre mayor, and the Hill County Republican Central Committee, a political party committee, violated Montana campaign finance and practices laws.

CLAIM I

The complainant alleges that Bob Rice and/or the Hill County Republican Central Committee failed to include adequate disclaimer information on various printed campaign communications as required by Montana Code Annotated § 13-35-225.

CLAIM II

The complainant alleges that the Hill County Republican Central Committee, in making expenditures on behalf of the Bob Rice campaign, violated contribution limits established in Montana Code Annotated § 13-37-216.

CLAIM III

The complainant alleges that Bob Rice under-reported expenditures for political advertising in violation of Montana Code Annotated § 13-37-230.

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SUMMARY OF FACTS

1. On June 20, 2001, Robert Rice (Rice) filed a Statement of Candidate (form C-1-A) as a Republican candidate for Havre mayor. Rozan Marie Kerr (Kerr) was certified as Campaign Treasurer and Terry Schend (Schend) as Deputy Treasurer.

2. Kerr filed pre- and post-primary and pre-general C-5 Campaign Finance Reports. She filed a campaign closing report on November 28, 2001. The closing report showed a negative primary balance of (\$6.94), and a general balance of \$174.23. On November 28, 2001, a request was sent to Kerr to amend the closing report and correct the negative primary balance; on the same date, a request was sent to Rice to file a C-118 supplement to report the disposition of surplus campaign funds¹.

3. On April 25, 2002, Kerr filed an amended C-5 closing report and on May 9, 2002 she filed a second amended C-5 closing report. The former report listed an additional \$70.00 in "less than \$35" contributions and two additional expenditures totaling \$237.29. The latter report listed an additional primary contribution of \$6.94 from the candidate, correcting the negative primary balance that had been reported on the initial closing report.

4. Rice's C-5 reports did not list any cash/check or in-kind contributions from any political party committee.

5. Rice's C-5 reports included the following expenditures for various advertising purchases:

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¹ Pursuant to Montana Code Annotated § 13-37-240, candidates with surplus campaign funds are required to report the disposition of the funds.

Bear Paw Printing	December 11	Tidbits Ad	\$ 80.00
Havre Daily News	October 12	Thank You Ads	\$ 29.00
	November 1	October Media Ads	\$ 116.00
	December 9	Newspaper Ads	\$ 157.29
Hill County Printing	July 19 & July 24	Envelopes/Posters	\$ 309.85
	October 12	Hand Out Literature	\$ 159.50
	November 1	Truck Sign	\$ 75.00
Griggs Printing	November 1	Buttons/Brochures	\$ 109.00
	November 18	Brochures	\$ 284.00
New Media Broadcasters	October 25	Radio Spots	\$ 247.50
	November 1	Radio Spots	\$ 287.00

6. Vicke Larson (Larson) was paid \$50 on October 22, 2001 by the Rice Campaign for design and layout work for brochures and advertising.

7. The City of Havre general election was held November 6, 2001. Rice was elected Mayor.

8. The Hill County Republican Central Committee (HCRCC²) Statement of Organization (form C-2) lists Schend as Campaign Treasurer and Brad Lotton (Lotton) as Chairman.

9. During the city election campaign, Schend filed C-6 Political Committee Finance Reports that included the following advertising expenditures:

Griggs Printing	October 24	\$ 337.90	Flyers
	October 22	\$ 284.00	Door Hangars
Havre Daily News	October 26	\$ 734.53	Ads - Bob Rice
	October 26	\$ 163.34	Ads - Cam Worstell
	October 26	\$ 163.34	Ads - Jerry Hanson
Hill County Printing	October 22	\$ 200.00	Flyers/Local Ads
Media Broadcasters	October 26	\$1,000.00	Radio Ads Bob Rice

An over-payment of \$337.90 to Griggs Printing was reported as a receipt in the C-6 filed for the period 7/1/01 – 11/20/01.

² The HCRCC will also occasionally be referred to herein as “the Committee”.

10. In several advertisements submitted as evidentiary material with the complaint, the candidate's party affiliation was not included. In addition, some of the advertisements did not include the address of the person who financed the communication. Rice admitted that his campaign violated the provisions of Montana Code Annotated § 13-35-225 through the omission of a complete disclaimer on various campaign materials, primarily the failure to provide a complete mailing address. Rice stated, with regard to the legal requirements for disclaimers on campaign materials, he placed the responsibility upon the newspaper and printers to do what was legally correct, but "we should have proofed all ads and researched the law better."

11. Schend stated that several members of the HCRCC were aware of the necessity for disclaimers, but the specific requirements of the disclaimer statute applicable to campaign communications were not researched. Several campaign communications paid for by the HCRCC failed to include the name of the Committee treasurer and complete mailing address.

12. Larson contracted with the Rice campaign for design and layout work for brochures and advertising (see Fact Summary 6) and was responsible for design and layout work for candidate-related advertising for the HCRCC. Lotton stated that Larson was given budgeted amounts for HCRCC advertising and the latitude to make placement adjustments. Minutes of the HCRCC meeting of October 11, 2001 reflect that Larson was designated "Media Director" to help each candidate.

13. During a meeting of the HCRCC, the Committee voted to run ads in support of Rice's candidacy. By the candidate's own admission and that of Schend and Lotton, Rice was made aware at this meeting of HCRCC's plans to run ads on his

behalf. Rice stated Lotton told him the Committee would place ads on his behalf in lieu of making a cash contribution to his campaign. While he was advised by Lotton that he could not have input on the ads, Rice stated that he made a request that the ads be “constructive.” He reported that other candidates attending the meeting declined assistance from the HCRCC. Larson stated that Rice later contacted her about one of the HCRCC advertisements placed on his behalf and stated he was displeased with the content of that particular ad.

14. Given the inter-related activities of the participants and the lack of specificity in various receipt documents and advertising contracts, it was in some instances not readily apparent if an advertising receipt or agreement was with the Rice campaign or with the HCRCC; and some attributions were misleading. In one example, an advertisement attributed to the HCRCC and placed on behalf of the candidate by the HCRCC used first person language: “...I want to thank the people of Havre who support my candidacy....I love this community....I believe that I can make a difference....” In another example, a KRYK³ Agreement Form for Political Broadcasts dated October 26, 2001 states the contract for advertisements is to be used by Bob Rice for Mayor and provides that “....payment for the above-described broadcast time has been furnished by Hill County Republican Central Committee;” however, the names and offices of the chief executive officers of the entity are listed as “Rice for Mayor, Rozan Kerr, Treasurer,” and the form is signed by candidate Rice. A third example is a photocopy of a Rice brochure submitted with the complaint (and subsequently provided by Griggs Printing) that is attributed to “Rice for Mayor Campaign, Terry Schend,

³ A Havre radio station.

Campaign Manager, Rozan Kerr, Treasurer,” and what appears to be an identical brochure submitted by Hill County Printing attributed to “Rice for Mayor, Rozan Kerr, Campaign Manager.”

15. A substantive review of records submitted by Rice, the HCRCC, Griggs Printing, Havre Daily News, Hill County Printing, and Media Broadcasters, reflects that the HCRCC made the following advertising expenditures on behalf of Rice’s candidacy:

Griggs Printing	October 24	\$ 337.90*	
Havre Daily News	October 26	\$ 734.53	
Hill County Printing	October 22	\$ 200.00	
Media Broadcasters	October 26	<u>\$ 1,000.00</u>	
Subtotal		\$ 2,272.43	
Less (1/2 \$337.90)**			<u>\$ 168.95</u>
Total			<u>\$ 2,103.48</u>

*Records submitted by Griggs Printing disclosed a reporting discrepancy: Griggs reported a refund of \$284.00 (rather than \$337.90) to the HCRCC for Rice brochures inadvertently paid for by the HCRCC.

**\$337.90 was total cost of door hangars: one side was in support of Rice candidacy and the other side was in support of candidacies of Hanson and Wortsell.

16. The amended C-5 closing report filed on April 25, 2002 listed two additional expenditures: Havre Daily News - \$157.29 paid December 9; Bear Paw Printing - \$80.00 paid December 11. The Havre Daily News confirmed that the invoice for \$157.29 was in payment for advertisements that were published prior to the November 6, 2001 election with the exception of one “thank you” ad published in the November 9, 2001 edition, the cost of which was \$101.50. A “thank you” ad is not considered political advertising in that it does not expressly advocate the success or defeat of a candidate; however, this particular advertisement is considered a campaign expenditure as it was paid for out of the campaign account. Bear Paw Printing

confirmed that \$60.00 of the invoice paid on December 11 was in payment of advertisements that appeared in the Tidbits issues of October 17, October 24, and October 31. The \$20.00 difference was the amount of a “thank you” ad published after the election.

STATEMENT OF FINDINGS

CLAIM I

The complainant alleges that Rice and/or the HCRCC failed to include adequate disclaimer information on various printed advertisements. Montana Code Annotated § 13-35-225 provides:

Election materials not to be anonymous. (1) Whenever a person makes an expenditure for the purpose of financing communications advocating the success or defeat of a candidate, political party, or ballot issue through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, poster, handbill, bumper sticker, or other form of general political advertising, the communication must clearly and conspicuously state the name and address of the person who made or financed the expenditure for the communication, including in the case of a political committee, the name and address of the treasurer. Communications in a partisan election financed by a candidate or a political committee organized on the candidate's behalf must state the candidate's party affiliation or include the party symbol.

(2) If a document or other article of advertising is too small for the requirements of subsection (1) to be conveniently included, the person financing the communication shall file a copy of the article with the commissioner, together with the required information, prior to its public distribution.

(3) If information required in subsection (1) is inadvertently omitted or not printed, upon discovering the omission, the person financing the communication shall file notification of the omission with the commissioner within 5 days and make every reasonable effort to bring the material into compliance with subsection (1).

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As noted in Fact Summary 10, a number of Rice's campaign ads did not include all the information required by Montana Code Annotated § 13-35-225. There is no evidence to conclude that Rice's failure to comply with the disclaimer requirements was anything other than unintentional error and, perhaps, a disregard for the importance of campaign filing requirements and his compliance responsibilities. There is no evidence to support the contention that he purposefully misled the public through his omission of all or parts of the required disclaimer information.

In the conduct of a campaign a candidate is responsible for compliance with Montana's campaign finance and practices laws. To facilitate that compliance, immediately following registration with this office the Commissioner provides each candidate with a copy of the laws and rules and an accounting manual. The Commissioner also provides a brochure identified: *DISCLAIMERS REQUIRED ON ELECTION MATERIALS*. The brochure details the requirements of the disclaimer law, providing, in fact, actual clear examples of the information that a disclaimer must contain. It is a candidate's responsibility to ensure that all campaign materials clearly and conspicuously display the required disclaimer information.

A number of the advertisements financed by the HCRCC also did not include all the disclaimer information required by the statute. There is no evidence that leads the Commissioner to conclude the required information was omitted by the HCRCC in an effort to mislead or hide the source of the funding of campaign materials paid for by the Committee; however, a political party committee that has as its very premise for existence the goal of effecting the outcomes of elections must be cognizant of campaign finance and practices statutes and diligently adhere to disclosure requirements. As with

candidates, the Commissioner provides political party committees with adequate written information and staff consultation to facilitate compliance with Montana campaign finance and practices laws.

CLAIM II

The complainant alleges that the HCRCC violated contribution limits in its contributions to the Rice campaign.

The expenditures made by the HCRCC on behalf of the Rice campaign were not “independent expenditures.” Administrative Rules of Montana (ARM) 44.10.323 provides the following definitions:

(3) “Independent expenditure” means an expenditure for communications expressly advocating the success or defeat of a candidate or ballot issue which is not made with the cooperation or prior consent of or in consultation with, or at the request or suggestion of, a candidate or political committee or an agent of a candidate or political committee. An independent expenditure shall be reported as provided in ARM 44.10.531.

(4) “Coordinated expenditure” means an expenditure made in cooperation with, consultation with, at the request or suggestion of, or the prior consent of a candidate or political committee or an agent of a candidate or political committee. ***A coordinated expenditure shall be reported as an in-kind contribution as provided in ARM 44.10.511 and 44.10.513.*** (Emphasis added).

The foregoing definition of an “independent expenditure” contains precise language specifying that an expenditure, in order to be considered “independent” of a candidate, must not involve consultation with a candidate or an agent of a candidate. In the instant case, during the investigation the HCRCC officers and the candidate were forthcoming and candid regarding the content of their discussions with one another; and

the Commissioner is satisfied that no willful intent to circumvent the campaign contributions limits existed.

Nevertheless, the boundary that was necessary between the political committee and the candidate or any agent of the candidate was never drawn. The directive of the HCRCC chairman to the candidate that he could not have input on the ads was insufficient. The candidate was advised that advertisements on his behalf would be provided by the HCRCC. The candidate expressed an opinion about the content of the ads prior to publication and following publication of one of the ads. The treasurer of the HCRCC was also the deputy treasurer for the candidate. The design and layout of ads for both the candidate and the HCRCC endorsing the candidate was provided by the same individual. Under the circumstances there was clearly a degree of cooperation and consultation regarding the ads; thus they were coordinated expenditures.

MCA § 13-37-216(3) establishes aggregate contributions limits for contributions from political party committees; and, in the instant case, the aggregate contribution limit (including monetary and in-kind contributions) from all political party committees to mayoral candidate Rice was \$500. The HCRCC expended \$ 2,103.48 on behalf of the Rice campaign, exceeding the aggregate contribution limit by \$1,603.48.

CLAIM III

The complainant alleges that Rice under-reported expenditures for political advertising. Montana Code Annotated § 13-37-230 provides:

Disclosure of expenditures made. Each report required by this chapter shall disclose the following information, except that a candidate shall only be required to report the information specified in this section if the transactions involved were undertaken for the purpose of influencing an election:

...

(6) the amount and nature of debts and obligations owed by a political committee or candidate in the form prescribed by the commissioner.

ARM 44.10.535 provides:

(1) Pursuant to section 13-37-230(6), MCA, each report required by section 13-37-226, MCA, shall disclose all debts and obligations owed by a candidate or political committee. Debts and obligations shall continue to be reported so long as they remain outstanding.

(2) A reporting candidate or political committee shall report the full name and mailing address (occupation and principal place of business, if any) of each person to whom a debt or obligation is owed at the end of a reporting period, including the amount, date contracted, and nature of each debt and obligations owed to each person. If the exact amount of a debt or obligation is not known, the estimated amount owed shall be reported.

Rice under-reported expenditures for campaign advertising to the extent of outstanding obligations to the Havre Daily News in the amount of \$157.29 and Bear Paw Publishing in the amount of \$80.00. (See Fact Summary 16). These obligations should have been included in Rice's post-general campaign finance report filed November 28, 2001. If the exact amounts were not known at the time of filing the report, estimated amounts should have been reported. These unpaid obligations should have been listed in Schedule C of the report as debts unpaid. Rice did not disclose these obligations until six months following the filing of his post-general finance report. This late disclosure circumvented the full disclosure intent of the campaign finance laws.

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CONCLUSION

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

There is sufficient evidence to conclude that Bob Rice failed to comply with the requirements of Montana Code Annotated §§ 13-35-225, 13-37-216, and 13-37-230, and Administrative Rules of Montana 44.10.535.

There is also sufficient evidence to conclude that the Hill County Republican Central Committee failed to comply with the requirements of Montana Code Annotated §§ 13-35-225 and 13-35-216.

Therefore these matters will be referred to the Hill County attorney for his review and possible exercise of prosecutorial discretion pursuant to Montana Code Annotated § 13-37-124.

Dated this _____ day of May, 2002.

Linda L. Vaughey, Commissioner