

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES

In the Matter of the Complaint)
Against Angelo Bianco, Donna)
J. Owen, Donald J. Cyphers,)
The Lockwood Crier News,)
and DJC, Inc.)

**SUMMARY OF FACTS
AND
STATEMENT OF FINDINGS**

Melodee Hanes filed a complaint against Angelo Bianco, a candidate in the 2002 election for House District 16. The complaint alleges that Bianco accepted illegal corporate contributions and accepted contributions in excess of contribution limits established in Montana Code Annotated § 13-37-216. While the complaint was filed only against Bianco, it alleges that Donna J. Owen, Donald J. Cyphers, the Lockwood Crier News, and DJC, Inc. also committed violations.

SUMMARY OF FACTS

1. In 2002 Angelo Bianco was an unsuccessful candidate for the House District 16 seat in the Montana House of Representatives.

2. The Lockwood Crier News was a weekly newspaper published in the Billings, Montana area during the early part of 2002. The newspaper operated as a sole proprietorship under the assumed business name "Lockwood Crier." According to information printed in the newspaper, the publisher of the Lockwood Crier News was DJC, Inc., a Montana corporation. Information provided by the Secretary of State's Office establishes that Donna J. Owen was listed as the registered agent of the Lockwood Crier News, and Donald J. Cyphers is the president and sole officer of DJC, Inc.

3. In a written response to the complaint, Donald J. Cyphers stated that he is the sole owner of the Lockwood Crier News, and he is solely responsible for the contents of the newspaper. He stated that DJC, Inc. is “merely a pass through entity that facilitates the publication process of the newspaper,” and that each month he reimburses DJC, Inc. for the cost of publication of the Lockwood Crier News.

4. Ads supporting the candidacy of Angelo Bianco appear in issues of the Lockwood Crier News published on the following dates in 2002: February 13, February 20, February 27, March 6, and March 13. Each issue contains six or seven ads supporting the candidacy of Bianco. Each ad states: “Vote for Angelo Bianco;” and each ad contains a photograph of the candidate. Each ad contains the following statement at the bottom of the ad:

Paid for by The Lockwood Crier News
P.O. Box 1876, Billings MT 59103

5. Angelo Bianco stated that he sent a press packet to all news media in the Billings area, including the Lockwood Crier News. The press packet included three or four photographs of Bianco and a campaign brochure with Bianco’s photograph in it. The press packet also included a biography and a letter of intent describing why Bianco was running for the Montana Legislature. Bianco did not retain any of the press packets.

6. After receiving the press packet, Donald J. Cyphers requested an opportunity to interview Bianco, and Bianco agreed to the interview. Bianco stated that he first met Cyphers at the time of the interview.

7. After the interview Cyphers composed and placed the ads supporting the candidacy of Bianco in the various issues of the Lockwood Crier News. Bianco did not

request that Cyphers place the ads, and Bianco had no involvement in the preparation of or placement of the ads in the newspaper. Bianco stated that, in the beginning, he did not mind the advertisements, but at some point he questioned whether the ads were good for his candidacy. Bianco then contacted Cyphers and requested that he stop publication of the ads, and Cyphers eventually agreed to do so.

8. The whereabouts of Donna J. Owen are unknown. Although Owens' name was listed as the registered agent for the Lockwood Crier, no evidence has been disclosed that would support a conclusion that Owens had any involvement in the design of the Bianco ads, the placement of the ads in the Lockwood Crier News, or payment for the ads.

9. Gary Forrester was the successful candidate for the House District 16 seat in the Montana House of Representatives, defeating Bianco in the 2002 election. Representative Forrester stated that, after seeing the Bianco ads, he contacted the Lockwood Crier News to inquire about the cost of advertising in the newspaper. He stated he was told that a 2" by 5" advertisement would cost \$40 per month, and a 3" by 5" advertisement would cost \$50 per month. Based on the numbers and sizes of the Bianco ads published in the Lockwood Crier News, Melodee Hanes, the complainant, calculated the value of the ads at \$330.

10. In his written response to the complaint, Cyphers stated that, as owner of the Lockwood Crier News, he implemented a "special consideration category" for certain advertisements, including political advertisements. According to Cyphers, the price charged by the Lockwood Crier News for these types of ads would be \$10 per month for an unlimited number of either 2" by 5" political ads or 3" by 5" political ads in

each issue of the newspaper; therefore, based on Cyphers' calculations, the total value of the Bianco ads was \$40 computed as follows:

Unlimited 2" by 5" ads in February, 2002 -- \$10

Unlimited 3" by 5" ads in February, 2002 -- \$10

Unlimited 2" by 5" ads in March, 2002 -- \$10

Unlimited 3" by 5" ads in March, 2002 -- \$10

11. After submitting a written response to the complaint allegations, Cyphers refused to be interviewed as part of the investigation of this matter and refused to provide additional written documentation to support the contentions in his written response. He stated that he has filed a written response to the complaint, and that is all he intends to provide. In his written response, portions of which have been summarized herein, Cyphers stated that DJC, Inc. has not made any contributions to the campaign of Angelo Bianco, since it is only, as he describes it, a "pass-through entity" for publication of the Lockwood Crier News. (See Fact 3). Cyphers contends that the cost of each Bianco ad was a contribution made individually by Cyphers, doing business as the Lockwood Crier News. His written response also takes issue with the value attributed to the Bianco ads by Melodee Hanes. (See Facts 9 and 10).

12. Neither Cyphers nor the Lockwood Crier News filed any campaign finance reports with the Commissioner's office.

STATEMENT OF FINDINGS

Contributions in Excess of Statutory Limits

For each election in a campaign, Montana Code Annotated § 13-37-216(1)(a)(iii) limits aggregate contributions by an individual to a candidate for the Montana

Legislature to \$100. There is no evidence that Donald J. Cyphers or the Lockwood Crier News made any direct contributions to the campaign of Angelo Bianco. Administrative Rules of Montana (ARM) 44.10.323(4) provides:

“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 shown in Fact 7, there is no evidence that the expenditures for the ads placed in the Lockwood Crier News were made in cooperation with, consultation with, at the request or suggestion of, or with the prior consent of candidate Bianco; therefore, they were not coordinated expenditures that would have had to be reported as in-kind contributions to the candidate.

The expenditures for the ads qualified as independent expenditures, as defined in ARM 44.10.323(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.

Independent expenditures must be reported in accordance with the procedure for reporting other expenditures. ARM 44.10.323(3) and ARM 44.10.531(4). In addition, the name of the candidate for whom the independent expenditure was intended to benefit and the fact that the expenditure was independent must also be reported. ARM 44.10.531(4). Since Cyphers did not file any campaign finance reports, he violated the aforementioned rules.

Corporate Contributions

The complaint alleges that since the Lockwood Crier News is published by DJC, Inc., a Montana corporation, the expenditures for the ads were prohibited corporate contributions to a candidate. Montana Code Annotated § 13-35-227 prohibits a

corporation from making direct contributions or expenditures in connection with a candidate.¹ As set forth in Facts 3 and 11, Donald J. Cyphers contends that the corporation known as DJC, Inc. serves as a “pass through entity” for the publication of the Lockwood Crier News. Cyphers contends he reimburses the corporation each month for the cost of publishing the newspaper. If those contentions are true, then Cyphers is correct since nothing of value from the corporation was expended to produce the advertisements in support of Bianco. Unfortunately, Cyphers has refused to be interviewed or to provide additional documentary evidence in support of his contentions. Whether or not anything of value from DJC, Inc. was utilized for the purpose of publishing the ads in support of Bianco cannot be determined at this time. Should this matter ultimately be filed in District Court, discovery requests and, if necessary, subpoenas will be used to obtain all information that bears on this issue.

CONCLUSION

Based on the preceding Summary of Facts and Statement of Findings, there is substantial evidence to conclude that Donald J. Cyphers, the Lockwood Crier News, and/or DJC, Inc. violated Montana’s campaign finance and practices laws and rules and that a civil penalty action under Montana Code Annotated § 13-37-128 is warranted.

Dated this _____ day of March, 2003.

Linda L. Vaughey
Commissioner

¹ The issue of which version of Montana Code Annotated § 13-35-227 has been in effect and enforceable since Initiative 125 was declared unconstitutional on October 22, 1998 is discussed in several recent decisions issued by this office. See Summary of Facts and Statement of Findings in *Matter of the Complaint Against Citizens for an Informed Public* (Decided February 10, 2003) and *Matter of the Complaint Against People for Responsible Government and Gallatin Valley Licensed Beverage Association* (Decided October 7, 2002).