

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES

In the Matter of the Complaints)	SUMMARY OF FACTS
Regarding the Gardiner)	AND
School Elections)	STATEMENT OF FINDINGS

Jill McAllister and Rod McAllister filed separate complaints against Gardiner School Districts Nos. 4 and 7, alleging that the school districts violated several Montana campaign practices laws. Because the allegations in the two complaints are virtually identical, they will be considered together and referred to herein as “the McAllister complaint.” In addition, Robert Beede and the Gardiner/Park County Taxpayer Alliance filed a complaint against the Gardiner School Board of Education and a number of individuals, alleging violations of several Montana campaign practices laws. This second complaint will be referred to herein as the “Beede complaint.”

Claim 1 – Electioneering

The McAllister complaint alleges that Gardiner School Districts Nos. 4 and 7 violated Montana Code Annotated § 13-35-211 when an anonymous poster was taped to the door of the school building that served as a polling place. The Beede complaint alleges that Jim Burns, members of the Gardiner School Board of Education, and others violated Montana Code Annotated § 13-35-211 when they solicited support for a school levy by displaying and distributing campaign materials within 100 feet of the entrance to a building in which a polling place was located.

Claim 2 – Anonymous Election Materials

The McAllister complaint alleges that the anonymous poster violated Montana Code Annotated § 13-15-225. It is assumed that the intent of the McAllister

complainants was to allege a violation of Montana Code Annotated § 13-35-225. The Beede complaint alleges that Jim Burns, members of the Gardiner School Board of Education, and others violated Montana Code Annotated § 13-35-225 when they made expenditures for the purpose of financing anonymous communications advocating the success of a school levy issue.

Claim 3 – Official Misconduct and Unfair Election

The McAllister complaint alleges the clerk of the school districts and election judges violated Montana Code Annotated § 13-35-204 when they “knowingly allowed illegal electors to be on the polling list and allowed to vote.” The Beede complaint alleges that Debbie Winkle (the school district clerk) and election judges who served in the school levy election violated Montana Code Annotated §§ 13-35-204 and 20-20-411 when they permitted electioneering to occur near the polling place and allowed persons to vote in the school election who were not entitled to vote in the election.

Claim 4

The Beede complaint alleges that Allan Bush, Barbara Bush, Janet Lewis, Duane Martinz, and others violated Montana Code Annotated §§ 13-35-207 and 13-35-209 when they registered to vote and voted in a school levy election in Park County, Montana.

SUMMARY OF FACTS

1. The Gardiner, Montana, public school system consists of Gardiner High School District No. 4 and Gardiner Elementary School District No. 7. The two school districts collectively will be referred to herein as the Gardiner School Districts. The high school and elementary school are both located in the same school building. The

building, which will be referred to herein as the Gardiner School Building, also serves as a polling place for local elections for those registered to vote in Precinct 5-B.

2. On May 7, 2002, a school election was held at the Gardiner School Building. The election consisted of a mill levy election for high school purposes, a mill levy election for elementary school purposes, and an election of several trustees of Gardiner Elementary School District No. 7.

3. Jim Burns has a child registered in the Gardiner School Districts. Some time prior to the election, Burns decided to prepare a poster encouraging people to vote for the school levies. He composed the poster on his home computer. The poster contained the following message:

Our children need your support on May 7th.
A YES vote is a vote supporting your children, your grandchildren and children of this community. Just ask yourself who funded your education. The State of Montana will not fund enough for education so it's up to our community.
So please vote yes on May 7th

Burns printed 50 to 60 copies of the poster on his home computer printer and placed a number of them on car windshields when he knew school board meetings were being conducted. Approximately 30 days prior to the May 7, 2002 election, he also taped a single copy of the poster on the outside of the main entrance door to the Gardiner School Building. Burns did not ask any representatives of the Gardiner School Building

or the Gardiner School Districts for permission prior to taping the poster to the school building door.

4. Burns prepared, printed, and distributed the poster on his own time, using his own money and his own equipment. Burns did not solicit money from anyone to help pay for the posters. Burns acted alone, and he did not receive assistance from anyone. In particular, Burns did not consult with or seek or receive assistance from any officials, representatives, or employees of Gardiner public schools or the Gardiner School Districts. Burns was not associated with Gardiner public schools or the Gardiner School Districts (other than having a child in the school), nor was Burns associated with any committee or group organized to support the school mill levy.

5. When he affixed the poster to the door of the Gardiner School Building, Burns was not aware of the provisions of Montana Code Annotated §§ 13-35-211 or 13-35-225. Burns stated that had he known there was a statute that restricted electioneering in and around polling places, he would not have put the poster on the door of the Gardiner School Building.

6. Aside from taping the single poster to the outside of the main door to the Gardiner School Building, where it remained on election day, there is no evidence that Burns engaged in any other conduct that could be construed as a violation of Montana Code Annotated § 13-35-211, or of any other campaign finance and practices laws or rules.

7. As noted in Fact 1, the high school and elementary school in Gardiner are both located in the Gardiner School Building. The high school and main office are located on one end of the building near the main entrance doors. The elementary school is located on the other end of the building. The polling place is located in the elementary school side of the building. The polling area is set up so that voters typically enter one door and leave by another, but neither door is the main entrance door to the

Gardiner School Building. The doors typically used to enter and leave the polling area are approximately 300 feet from the main entrance door.

8. Complainants Jill and Rod McAllister stated they saw the poster on the main entrance door of the Gardiner School Building several weeks prior to the election. They also noticed that the poster was still on the door at 10:30 p.m. on the night of the election (after the polls had closed). The McAllisters did not notify any school officials or employees that the poster was on the door.

9. Several of the school board members saw the poster on the door, but none of those who saw it mentioned it to anyone else or took any steps to have the poster removed. John Hoak, a school board member, saw the poster on the door but did not consider it unusual or inappropriate. Paula Tobin, another board member, saw the poster but did not consider telling anyone about it. Laurie Smith, a school board member, recalls seeing the poster on the door. While she recalls thinking at the time that it might not be appropriate for the poster to be taped to the school door, she did not mention it to anyone else.

10. Debbie Winkle, the clerk of the Gardiner School Districts, stated she did not see the poster on the door prior to the election or on Election Day while the polls were open, because she does not use the main entrance door. Winkle stated that on election day she walked throughout the school looking for posters or leaflets prior to the opening of the polls, but she did not look at the main entrance door.

11. Joe Sperano, a Gardiner area resident, saw the poster on the door some time prior to the election and on the day of the election. Sperano brought the poster to Winkle's attention around midnight on the night of Election Day, after the polls had closed. He advised Winkle that the poster was on the door. At around 2 a.m. on May 8, 2002, Winkle checked the main entrance door of the school building. Upon seeing the poster on the outside of the door, she removed it and threw it in the trash. She then decided she should probably keep it, so she retrieved it from the trash. The next

morning Winkle showed the poster to Mr. Lynn Mavencamp, the Gardiner School Districts' superintendent. Winkle advised Mavencamp of Sperano's conversation with her the night before and her subsequent removal of the poster from the door.

12. Mavencamp stated he also normally does not use the main entrance door to the school building; therefore, he did not see the poster until Winkle brought it to his attention the day after the election.

13. Attached as Exhibit B to the Beede complaint is a poster or leaflet that states: "The Students of Gardiner School Urge You to Vote YES on May 7th, Noon -- 8 p.m.," followed by a number of paragraphs explaining various aspects of the school levy. The investigation of this matter has not disclosed who prepared and distributed this poster or leaflet or whether it was available at or near the polling place on Election Day. There is no evidence, however, that any employees or representatives of the Gardiner School Building or the Gardiner School Districts were involved in creating, displaying, or distributing the poster.

14. Denise Nelson is the Park County, Montana, Clerk and Recorder and serves as the county election administrator. Some time prior to May 7, 2002, Nelson provided a list of registered electors to Debbie Winkle. Winkle then provided copies of the list to the election judges for the Gardiner school election. Winkle did not review the list provided by the election administrator to determine whether those on the list were eligible to vote.

15. Debbie Winkle stated she has no authority to remove an elector's name from the list provided by the election administrator. She also stated that the election judges, while they may verify voters' names and addresses when the voters come to vote, cannot remove an elector's name from the list or prohibit an elector whose name is on the list from voting.

16. None of the complainants took any steps to challenge the right of any electors whose names appeared on the list of registered electors to vote in the May 7, 2002, school election.

17. Beginning in early 2000, in an effort to comply with the National Voter Registration Act of 1993 and state law and to update the Park County voter registration list, Denise Nelson and her staff reviewed the list and wrote letters to all residents who listed their address as a post office box, asking that they provide an actual physical address. Nelson stated that she believed Montana Code Annotated § 13-2-208, which became effective October 1, 2001, also required her to obtain actual physical addresses of registered voters.

18. The Beede complaint alleges that Allan Bush, Barbara Bush, Janet Lewis, and Duane Martinz registered to vote in the Gardiner school election district knowing that they were not eligible to be registered as voters in that district and then illegally voted in the Gardiner school election. The Beede complaint alleges that the Bushes, Lewis, and Martinz “falsely represented information and caused registration . . . , signed a registry card knowingly witnessing false misleading statements, knowingly caused a false statement or certificate, or made a false oath or affidavit where an oath or affidavit is required by law.”

Allan and Barbara Bush Voter Registration Information

19. Allan and Barbara Bush attended the University of Montana in Missoula and resided in Missoula until 1990. In 1990 Allan Bush accepted a permanent communications position with the National Park Service in Yellowstone National Park. The Bushes moved to 110 5th Street, in Gardiner, Montana, in 1990, and lived at that address for approximately one year. Then, as a requirement of Allan Bush’s employment in Yellowstone National Park, the Bushes moved to Mammoth, Wyoming, in 1991. Mammoth is located in Yellowstone National Park and is within the exterior boundaries of Park County, Wyoming. The Bushes have resided in Mammoth since

moving there in 1991. They have two children who attend school in Mammoth—one in fifth grade and one in second grade.

20. The National Park Service has established a “required occupancy” requirement as a condition of employment for certain positions. A National Park Service employee who is subject to this condition must occupy assigned housing within Yellowstone National Park as his or her primary residence. Such an employee remains subject to this residency requirement for as long as he or she is employed in the position that is subject to the required occupancy condition. Allan Bush’s position with the National Park Service is a “required occupancy” position of employment. Pursuant to this condition, he is required to live in assigned housing in Mammoth.

21. The Bushes state that they lived in Montana for many years prior to moving to Mammoth in 1991. They have filed Montana income tax returns since 1984. They own property in Bozeman and register their vehicles in Park County, Montana. Both Allan and Barbara Bush have Montana driver’s licenses. Although they live in Mammoth, the Bushes maintain a post office box in Gardiner. Barbara Bush is employed in Gardiner. They have not registered to vote in Wyoming and have not voted in Wyoming elections. The Bushes believe they are entitled to vote in Montana. They contend they are only living in Mammoth temporarily, because it is a requirement of Allan Bush’s job in Yellowstone National Park. They intend to return to live in Montana following the termination of Allan Bush’s employment in Yellowstone National Park.

22. On June 26, 1991, prior to moving to Mammoth, Allan Bush filled out a voter registration card in Park County, Montana. He listed his mailing address as Box 856, Gardiner, Montana. Bush listed his residence address as “in town.” Bush indicated on the card that the last place he was registered to vote was in Missoula, Montana. After filling out this card, Allan Bush was registered to vote in Precinct 5-B in Park County, Montana.

23. On November 20, 2000, Allan Bush signed a Change of Residence or Mailing Address card and returned it to the election administrator in Park County, Montana. On the card Bush listed his residence address as “375 Mammoth, Mammoth, WY 82190.” Bush listed his mailing address as “P.O. Box 856, Gardiner, MT 59030.”

24. On December 15, 2000 Denise Nelson’s office sent a Change of Residence or Mailing Address card and a letter to Allan Bush stating that he was required to provide a physical address in Park County, Montana. Nelson’s office did not receive a response. Allan Bush recalls receiving the card and, seeing that the address information was correct (listing his address in Mammoth), he did not send it back.

25. On February 26, 2002, Nelson’s office sent a Change of Residence or Mailing Address card and a letter to Allan Bush, again requesting that he provide an actual physical address in Park County, Montana. On March 5, 2002, Nelson’s office received a card from Allan Bush providing the following information:

Residence address:	375 Mammoth
Mailing address:	P.O. Box 856, Gardiner 59030
County:	Park

26. On March 6, 2002, Nelson’s office sent a letter to Allan Bush stating:

We did receive your voter card with your physical address, but as the letter stated you will need to provide an actual physical address within Park County for you to continue to be a registered voter in Park County. If you do not have a residences address [sic] within Park County your voter registration will be canceled. (Emphasis in original.)

The letter cited Montana Code Annotated § 13-2-208, noting an effective date of October 1, 2001. When Allan Bush received this card, he and his wife consulted their attorney. (See Fact 33).

27. On June 26, 1991, prior to moving to Mammoth, Barbara Bush filled out a voter registration card in Park County, Montana. She listed her mailing address as Box 856, Gardiner, Montana. Bush listed her residence address as “in town.” Bush indicated on the card that the last place she was registered to vote was in Missoula,

Montana. After filling out this card, Barbara Bush was registered to vote in Precinct 5-B in Park County, Montana.

28. On December 6, 1999, Barbara Bush filled out a voter registration card in Park County, Montana, stating that her residence address was "P.O. Box 856, Gardiner, MT 59030" and leaving the mailing address blank.

29. On November 7, 2000, Barbara Bush signed a Change of Residence or Mailing Address card for Park County, Montana, listing her residence address as "#375 Lower Mammoth." Bush listed her mailing address as "P.O. Box 856, Gardiner, MT."

30. On December 15, 2000, Denise Nelson's office sent a Change of Residence or Mailing Address card and a letter to Barbara Bush stating that she was required to provide a physical address in Park County, Montana. Nelson's office did not receive a response. Barbara Bush recalls receiving the card and, seeing that the address information was correct (listing her address in Mammoth), she did not send it back.

31. On February 26, 2002, Nelson's office sent a Change of Residence or Mailing Address card and a letter to Barbara Bush, again requesting that she provide an actual physical address in Park County, Montana. On March 5, 2002, Nelson's office received a card from Barbara Bush providing the following information:

Residence address:	375 Mammoth
Mailing address:	P.O. Box 856, Gardiner 59030
County:	Park

32. On March 6, 2002, Nelson's office sent a letter to Barbara Bush stating:

We did receive your voter card with your physical address, but as the letter stated you will need to provide an actual physical address within Park County for you to continue to be a registered voter in Park County. If you do not have a residences address [sic] within Park County your voter registration will be canceled. (Emphasis in original.)

The letter cited Montana Code Annotated § 13-2-208, noting an effective date of October 1, 2001.

33. When Allan and Barbara Bush received the March 6, 2002, letter from Denise Nelson's office, they consulted an attorney, David Weaver of Bozeman, Montana. Mr. Weaver sent a letter dated April 15, 2002, to Denise Nelson. Weaver's letter, citing Montana Code Annotated § 13-1-111, stated that the Bushes are residents of Park County, Montana, and have been residents since 1990. The letter explained the circumstances surrounding the Bushes' move from Missoula to Gardiner in 1990. The letter noted that Allan Bush's employment in Yellowstone National Park in 1991 required him, as a condition of his employment, to live within the boundaries of Yellowstone National Park. The letter noted, however, that the Bushes have not sought residency in Wyoming, that they are living in Wyoming on a temporary basis, and that they intend to resume living in Park County upon the termination of Allan Bush's employment in Yellowstone National Park. The letter concluded by requesting that the Clerk and Recorder's office maintain the Bushes as registered electors in Park County, Montana.

34. The Park County Clerk and Recorder's office did not respond to David Weaver's April 15, 2002, letter. Upon advice of their attorney, Mr. Weaver, the Bushes went to the polls to vote in the May 7, 2002, school election in Gardiner. Their names were on the voter registration list, and they were not informed that they were ineligible to vote. They voted in the election.

35. On May 13, 2002, based on the advice of the Park County Attorney and the Montana Secretary of State's office, Denise Nelson deleted Allan Bush and Barbara Bush from the voter registration list because they both failed to provide an actual physical address located in Park County, Montana.

Janet Lewis Voter Registration Information

36. Janet Lewis moved to Montana in 1980 to attend the University of Montana in Missoula. After graduating she lived in Billings and Kalispell for some time. Lewis moved to the Gardiner/Mammoth area in June, 1986, after accepting a job with the National Park Service in Yellowstone National Park. Housing in the Mammoth area

was not immediately available, so Lewis lived in Gardiner for several months and then moved to Mammoth in 1987. Her position with the National Park Service is not a “required occupancy” position of employment. In 1990 Lewis married Dan Mahoney, a fisheries biologist for the National Park Service in Yellowstone National Park. Mahoney’s position is a “required occupancy” position of employment, requiring him to live in assigned housing in Yellowstone National Park. The Lewises have a daughter who is an eighth grade student at the elementary school in Gardiner.

37. Janet Lewis has filed Montana income tax returns since 1986. She owns two vehicles registered and licensed in Park County, Montana. Lewis has a Montana driver’s license. Although she lives in Mammoth because of her husband’s required occupancy position of employment, Lewis considers herself a resident of Montana. She has voted in various elections in Park County, Montana, since 1986. Lewis has not registered to vote in Wyoming. She believes she is entitled to vote in Montana.

38. On October 19, 1987, Janet Lewis filled out a voter registration card in Park County, Montana. She listed her mailing address as “P.O. Box 636, Yellowstone Park 82190” and her residence address as “Mammoth [sic].” After filling out this card, Janet Lewis was registered to vote in Precinct 5-B in Park County, Montana.

39. On June 4, 1996, Lewis filled out a Change of Current Registration card in Park County, Montana, listing her residence address as “564 Res. Mamm [sic]” and her mailing address as “636 Mammoth WY 82190.”

40. On February 26, 2002, Denise Nelson’s office sent a letter to Janet Lewis requesting that she provide an actual physical address. Lewis did not respond to the letter. Lewis recalls receiving the letter, with a Change of Residence or Address Card that listed her current Mammoth address. Since the card contained her correct address, she did not respond to the Nelson letter.

41. Janet Lewis went to the polls to vote in the May 7, 2002, school election in Gardiner. Her name was on the voter registration list, and she was not informed that she was ineligible to vote. Lewis voted in the election.

42. On May 15, 2002, Lewis received a letter from Denise Nelson's office advising her that her name had been removed from the list of Park County registered voters on May 13, 2002. Nelson removed Lewis' name from the list for the same reason she removed the Bushes' names—Lewis' failure to provide an actual physical address in Park County. (See Fact 35.)

43. After she was notified that her name had been removed from the list of registered voters in Park County, Montana, Lewis retained the services of attorney Candace Payne of Helena, Montana.

Duane Martinz Voter Registration Information

44. Duane Martinz was born in Big Timber, Montana, and has lived in Montana most of his life. His wife, Janet, is a law enforcement officer with the National Park Service in Yellowstone National Park. Her position is a "required occupancy" position of employment. Janet Martinz has worked for the National Park Service since 1986. She and Duane were married in 1991. Until the summer of 2001, Martinz worked in Bozeman, Montana, and commuted to and from work. In the summer of 2001, Duane Martinz became a seasonal maintenance employee in Yellowstone National Park. His position is not a "required occupancy" position of employment. Both Duane and Janet Martinz reside in Mammoth, Wyoming.

45. Duane and Janet Martinz file Montana income tax returns. They register their vehicles in Gallatin County, Montana. They both have Montana driver's licenses. They both have Montana hunting and fishing licenses. Duane Martinz has not registered to vote in Wyoming. He believes he is entitled to vote in Montana.

46. On October 1, 1996, Duane Martinz filled out a voter registration card in Park County, Montana. Martinz listed his mailing address as "#88 Lower Mammoth Rd,

YNP,” and his residence address as “P.O. Box 13 Yell. NP WY 82190.” He indicated on the card that the last place he was registered to vote was in Bozeman, Montana. After filling out this card, Duane Martinz was registered to vote in Precinct 5-B in Park County, Montana.

47. On June 6, 2000, Martinz filled out a Change of Residence or Mailing Address card in Park County, Montana, listing his residence address as “558 Lower Mammoth,” and his mailing address as “Box 13 - Yellowstone Park, WY 82190.”

48. On November 7, 2000, Martinz filled out a Change of Residence or Mailing Address card, listing his residence address as “558 Lower Mammoth,” and his mailing address as “P.O. Box 13, Y.N.P., WY 82190.”

49. On December 14, 2000, Denise Nelson’s office sent a Change of Residence or Mailing Address card to Martinz, accompanied by a letter requesting that Martinz provide an actual physical address in Park County, Montana.

50. On January 1, 2001, Martinz filled out a Change of Residence or Mailing Address card, listing his residence address as “558 Lower Mammoth,” and his mailing address as “P.O. Box 13, YNP, WY 82190.”

51. On February 26, 2002, Nelson’s office sent a letter to Martinz requesting that he provide an actual physical address in Park County, Montana. Martinz did not respond to the letter and, in fact, does not recall receiving the letter.

52. Duane Martinz went to the polls to vote in the May 7, 2002, school election in Gardiner. His name was on the voter registration list, and he was not informed that he was ineligible to vote. Martinz voted in the election.

53. On May 15, 2002, Martinz received a letter from Denise Nelson’s office advising him that his name had been removed from the list of Park County registered voters on May 13, 2002.

54. Martinz did not hire an attorney after he was advised that his name had been removed from the list of registered voters in Park County, Montana. On Election

Day in November, 2002, Martinz went to the Gardiner School Building, thinking that if his name was on the list of registered voters he would vote in the election. His name was not on the list, so he did not vote in that election.

55. On October 17, 2002 Allan Bush, Barbara Bush, and Janet Lewis filed a Petition for Declaratory Judgment and Writ of Mandamus in the Montana Sixth Judicial District Court, Park County. The action, designated as Cause No. DV 02-180, was filed through their attorneys, David Weaver (for the Bushes) and Candace Payne (for Lewis). The defendants named in the lawsuit are Park County, Montana, and Denise Nelson, as the Park County election administrator. The court action seeks a judgment declaring that Park County illegally deleted the names of Allan Bush, Barbara Bush, and Janet Lewis from the list of registered voters in Park County. The action also seeks an order and injunctive relief requiring that the plaintiffs' names be reinstated on the list of registered voters in Park County.

56. On November 1, 2002, the parties in the lawsuit appeared at a hearing scheduled by the Court. At that hearing the parties represented to the Court that they had reached a preliminary agreement regarding the voting rights of the plaintiffs. Park County Attorney Tara DePuy summarized the substance of the agreement, and the participants in the hearing then had a discussion regarding implementation of the terms of the agreement:

MS. DEPUY: Your Honor, the parties have agreed that we are going to stipulate that the plaintiffs in this case have the right to vote in Precinct 5-B in Park County until June 1 of 2003, and procedurally we'll be addressing the process for them to vote pursuant to statute, section 13-2-603. The parties have also agreed that during the time period between now and January 1 of 2003 that we will go back to the legislature and ask them to clarify the statute that is at issue in this case, and that is section 13-2-402.

MR. WEAVER: I believe it's 208, Tara.

MS. PAYNE: I believe it is 208.

MS. DEPUY: 208. I'm sorry. The parties also are requesting of the court that if the legislature does not address this issue that on June 1 of 2003 we will come back to the court and ask the court to set an expedited scheduling order in this case. . . .

. . .

MR. WEAVER: Just, I guess to make sure we're clear on it, the statute is section 13-2-208, the statute which is in question, Your Honor. The parties have been discussing it this afternoon, and we have come to agreement that this statute is less than clear when it applies to the plaintiffs before you, and we need some assistance in clarifying that.

THE COURT: I would have to agree with that. They shouldn't be disenfranchised I believe after all these years. I don't know if the legislature intended that or if they even thought about it.

MR. WEAVER: Probably the latter.

THE COURT: All right. Does somebody have an order? I guess Denise might need an order for me to sign. Just fax one over to allow these people to vote.

MS. DEPUY: Your Honor, as I said before, I think we can handle that through the statutory process that is set forth in section 13-2-603.

MR. WEAVER: Your Honor, that statute allows for the election administrator to issue a certificate of error, it's called, which would in essence allow them to vote.

THE COURT: Good.

MR. WEAVER: We're going to do that, as the stipulation states, through June 1 of 2003.

THE COURT: Well, thank you. I appreciate you working this out. Have a good weekend. Court's adjourned.

57. On November 1, 2002, Allan Bush, Barbara Bush, and Janet Lewis each signed a "Certificate of Error" pursuant to Montana Code Annotated § 13-2-603. Each Certificate of Error states:

The undersigned, being of lawful age and being first duly sworn, deposes and says:

That my name was omitted from the official register and pursuant to the oral stipulation of the parties in DV 02-180, Sixth Judicial District Court, Park County, Montana, I am entitled to vote in Park County, Precinct 5B until June 1, 2003, further court order, or statutory change.

Allan Bush, Barbara Bush, and Janet Lewis each voted by absentee ballot in the November, 2002 election in Gardiner, Park County.

58. Park County election administrator Denise Nelson has deleted the names of all Mammoth, Wyoming residents from the list of registered voters in Park County, with the exception of Allan Bush, Barbara Bush, and Janet Lewis, who are subject to the court approved stipulation in Cause No. DV 02-180.

59. House Bill 469 was introduced in the 2003 Montana Legislature. The bill would have amended Montana Code Annotated § 13-1-111 with the addition of a new subsection providing as follows:

(4) A person who resides in Yellowstone national park as a condition of employment and whose nearest polling place is in Park County or Gallatin County may register in Park County or Gallatin County and may vote in state and local elections. The person may not vote in both Montana and Wyoming.

House Bill 469 missed the deadline for general bill transmittal and, therefore, was not enacted into law.

60. Yellowstone National Park provides a school for children through the sixth grade in Mammoth, Wyoming. The Yellowstone Park School Board administers the school in Mammoth. The school is not administered by Park County, Wyoming, or by the State of Wyoming. Permanent employees or spouses of permanent employees of Yellowstone National Park who are 18 years of age or older and reside in the park are entitled to vote in school elections in Mammoth. Allan Bush, Barbara Bush, and Duane Martinz voted in the 2002 school board election for the Yellowstone Park School Board. Elections for the Yellowstone Park School Board are not connected with or administered by the Park County, Wyoming, election administrator.

61. Those who are registered to vote in the Yellowstone Park School Board elections are not entitled to vote in Park County, Wyoming, elections. Allan Bush, Barbara Bush, Janet Lewis, and Duane Martinz are not registered to vote in Park County, Wyoming, or anywhere else in Wyoming.

62. Since the school in Mammoth only serves children through the Sixth Grade, those who live in Mammoth typically send their children to attend school in Gardiner for grades 7 through 12.

STATEMENT OF FINDINGS

Claim 1

The McAllister complaint alleges that the Gardiner School Districts violated Montana Code Annotated § 13-35-211 when an anonymous handbill urging a yes vote on the mill levies was posted on the outside of the main entrance door of the Gardiner School Building. The Beede complaint alleges that Jim Burns, members of the Gardiner School Board, and “others” violated the statute. Montana Code Annotated § 13-35-211(1) provides:

A person may not do any electioneering on election day within any polling place or any building in which an election is being held or within 100 feet of any entrance to the building in which the polling place is located, 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, a rule adopted by the Commissioner clarifies the application of the statute:

ELECTIONEERING - INTERPRETIVE RULE (1) 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. (Emphasis added).

Administrative Rules of Montana (ARM) 44.10.311. Thus, prohibited "electioneering" under the statute includes the display of campaign materials within 100 feet of any entrance to a building in which a polling place is located on election day for the purpose of soliciting support or opposition to an issue to be voted upon at the election. Under this interpretation, the display by Jim Burns of the poster urging a "yes" vote on the school mill levy could be construed as a violation of the statute. The evidence establishes that Burns was not aware of the prohibition on electioneering near a polling place. Aside from putting up the single poster, there is no evidence that Burns engaged in any other conduct at or near the polling place on Election Day that could be construed as a violation of the statute.

Although some school officials saw the poster on the door, the evidence establishes that no one connected with the Gardiner School Districts had any involvement with creating the poster or taping it to the door of the Gardiner School Building. While it is unfortunate that the poster was permitted to remain on the door leading into the Gardiner School Building on the day of the election, there is no evidence that any employees or officials of the Gardiner School Districts engaged in any conduct that could be construed as solicitation of support for passage of the mill levy within or around the polling place; therefore, there is no evidence that the Gardiner School Districts or anyone associated with the Gardiner School Districts violated Montana Code Annotated § 13-35-211. There is also no evidence that anyone other than Jim Burns was involved in creating the poster and affixing it to the door of the Gardiner School Building.

The constitutionality of Montana Code Annotated § 13-35-211 has not been tested in any court. In Burson v. Freeman, 504 U.S. 191 (1992) the United States Supreme Court, in a plurality opinion, determined that a Tennessee statute prohibiting the solicitation of votes and the display of campaign literature within 100 feet of the entrance to a polling place did not violate the First and Fourteenth Amendments. Finding that Tennessee could constitutionally decide that citizens were entitled to approach polling places “as free from interference as possible,” the Court was nevertheless cautious in its approval of the 100-foot restriction:

At some measurable distance from the polls, of course, governmental regulation of vote solicitation could effectively become an impermissible burden akin to the statute struck down in Mills v. Alabama, [384 U.S. 214 (1966)]. See also Meyer v. Grant, [486 U.S. 414 (1988)] (invalidating absolute bar against the use of paid circulators). In reviewing challenges to specific provisions of a State’s election laws, however, this Court has not employed any “litmus-paper test’ that will separate valid from invalid restrictions.” [Citations omitted]. Accordingly, it is sufficient to say that in establishing a 100-foot boundary, Tennessee is on the constitutional side of the line.

Burson v. Freeman, 504 U.S. at 510-11.

Montana Code Annotated § 13-35-211 may be viewed as a restriction similar to the Tennessee statute upheld in Burson. In fact the statute was amended in 2001 to reduce the restricted distance from 200 feet to 100 feet and to clarify that the distance was to be measured from any entrance to a building in which a polling place is located, rather than simply from the edge or corner of any building in which a polling place is

located. While the intent of the amendment was to make Montana's statute similar to the Tennessee statute that was narrowly approved by the Supreme Court, it is noteworthy that the actual polling area in the Gardiner School Building was located some 300 feet from the main entrance door to the school where the poster was placed. What is clear is that any Montana court considering the constitutionality of Montana Code Annotated § 13-35-211 would obviously closely examine these distinctions and weigh them against First Amendment rights in determining whether Montana's statute falls "on the constitutional side of the line" or whether it amounts to an "impermissible burden" on First Amendment rights.

Montana Code Annotated § 13-35-124(1) requires the Commissioner to notify the county attorney whenever she has determined that "there appears to be sufficient evidence to justify a civil or criminal prosecution" under chapters 35 or 37 of Title 13. The determination of whether a prosecution is justified must take into account the law and the particular factual circumstances of each case. A prosecutor has broad discretion when it comes to enforcing the state's criminal laws. A prosecutor can decide not to prosecute whenever he or she in good faith believes that a prosecution would not be in the best interests of the state or that, under the circumstances, the case cannot easily be proven in court.

While there is no dispute that Jim Burns taped the poster to the door of the school, there is no evidence that Jim Burns intentionally violated Montana Code Annotated § 13-35-211. He was not aware of the prohibition against display of campaign materials at the polls. It is also important to note that the display of the single poster urging support of the mill levy was the only potential violation under the statute.

Moreover, considering that the main entrance door to the Gardiner School Building was not the door that was typically used by those who entered the area of the building that served as the polling place and that it was, in fact, 300 feet from the actual polling area, it is unlikely that many voters saw the poster on election day prior to casting their votes.

Montana Code Annotated § 13-35-102 states: “It is not the intent of the election laws of this state to criminalize activities involving trivial benefits incidental to the campaign process which involve no substantial risk of undermining the election process.” While this statute does not change the language of Montana Code Annotated § 13-35-211, it reflects the Montana Legislature’s acknowledgment that each incident of alleged criminal violation of the campaign practices laws must be carefully examined. Under the specific circumstances of this case and considering that Montana Code Annotated § 13-35-211 places a restriction on First Amendment rights that would be closely scrutinized by a court, I have determined that it would not be in the best interests of the state of Montana to pursue prosecution against Jim Burns for the single poster that he taped to the door of the Gardiner School Building. Voters, however, should be aware that Montana Code Annotated § 13-35-211 was intended to create a “campaign-free zone” at polling areas and in the immediate vicinity of the polls. Electioneering, including the display or distribution of campaign materials, is not permitted near the polls. This office reserves the option of prosecuting future violations of the statute, depending on the specific facts.

Claim 2

The McAllister complaint alleges that the anonymous poster created by Jim Burns violated Montana Code Annotated § 13-35-225, which provides in relevant part:

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.

The Beede complaint alleges that the statute was violated by Burns, the Gardiner School Board, and others, in essence because the poster taped to the door by Jim Burns did not include the name and address of the person who financed the expenditure for the poster.

Broadly construed, Montana Code Annotated § 13-35-225 could be interpreted as applying to the activities of Jim Burns; however, whenever possible statutes should be construed in a manner that avoids an unconstitutional interpretation. State v. Nye, 283 Mont. 505, 510, 943 P.2d 96, 99 (1997). In terms of First Amendment analysis, political speech has been given the highest level of scrutiny by the courts. In McIntyre v. Ohio Elections Commission, 514 U.S. 334, 347 (1995), the United States Supreme Court stated that “[w]hen a law burdens core political speech, we apply ‘exacting scrutiny,’ and we uphold the restriction only if it is narrowly tailored to serve an overriding state interest.” Because Montana Code Annotated § 13-35-225 requires that information be included on political campaign materials identifying who paid for the materials, it obviously regulates the content of political speech. The courts, therefore, would subject the law to exacting scrutiny.

In McIntyre the petitioner, Margaret McIntyre, had distributed anonymous leaflets to persons attending a public meeting at a town middle school. The leaflets expressed McIntyre’s opposition to a proposed tax levy that was up for discussion on the meeting

agenda. McIntyre had composed and printed the leaflets on her home computer and paid a professional printer to make additional copies. A school official filed a complaint against McIntyre, alleging that the anonymous leaflets violated an Ohio election law that prohibited anonymous political communications. The Supreme Court held that Ohio could not, under the particular circumstances of that case, justify its infringement of McIntyre's First Amendment right to engage in anonymous political speech. The Supreme Court emphasized that McIntyre acted independently of any candidate or committee and used her own "modest resources." McIntyre, 514 U.S. at 351. The Court was careful to limit its holding, stating, "[o]ur opinion . . . discusses only written communications and particularly, leaflets of the kind Mrs. McIntyre distributed." McIntyre, 514 U.S. at 338, note 3.

The poster attached to the Gardiner School Building by Jim Burns was prepared by Burns using his own resources and acting independently of any candidate or committee. To that extent the poster is indistinguishable from the leaflets prepared and distributed by McIntyre, and Burns's conduct is also indistinguishable. The Supreme Court's holding in McIntyre prohibits applying the provisions of Montana Code Annotated § 13-35-225, a statute with provisions that are similar to the Ohio statute at issue in McIntyre, in a manner that would infringe on Burns's right to engage in anonymous political speech. Consistent with the Supreme Court's ruling in McIntyre, however, it must be emphasized that this construction of Montana Code Annotated § 13-35-225 is limited to written communications and particularly the type of poster created by Burns.

As noted in the Fact 13, the author of the handbill or poster attached as Exhibit B to the Beede complaint is unknown. In addition, the investigation did not disclose sufficient evidence to determine whether the handbill or poster was available at or near the polling area on Election Day. There is no evidence, however, that any employees or

representatives of the Gardiner School Building or the Gardiner School Districts were involved in creating, displaying, or distributing the handbill or poster.

Claim 3

Both complaints allege that the Gardiner School Districts' clerk and the election judges violated Montana Code Annotated § 13-35-204 by knowingly permitting persons to vote who were ineligible to participate in the election. According to the complaint, persons who did not live in the district were permitted to vote, and the clerk of the Gardiner School Districts and the election judges were aware that these voters were ineligible. The Beede complaint also alleges that Winkle and the election judges permitted electioneering to occur. The Beede complaint alleges that the conduct of Winkle and the election judges also violated Montana Code Annotated § 20-20-411.

Montana Code Annotated § 13-35-204 provides:

Official misconduct. A person charged with performance of any duty under the provisions of the election laws of this state is guilty of official misconduct and is punishable as provided in 45-7-401 whenever the person:

- (1) knowingly neglects or refuses to perform that duty; or
- (2) knowingly and fraudulently acts, in his official capacity, in contravention or violation of any provision of the election laws.

Montana Code Annotated § 20-20-411 provides that school elections must be conducted "in a manner that ensures a fair and unbiased determination of the matters put before the electorate," and ensuring that each elector has an opportunity to vote.

Montana law requires the county election administrator to prepare a list of registered electors for each polling place established by the school district trustees. Montana Code Annotated § 20-20-312. Election administrators are required to prepare lists of all registered electors in each precinct. Montana Code Annotated § 13-2-115. Before each election, an election administrator must prepare a precinct register for each precinct for use by the election judges, containing an alphabetical list of the

names and addresses of registered electors, with a corresponding space for their signatures. Montana Code Annotated § 13-2-116. Prior to the day of a school election, the election administrator must deliver to the school district a certified copy of the lists of registered electors for each polling place. The school district must deliver the lists to the election judges prior to the opening of the polls. Montana Code Annotated § 20-20-313. Neither the school district clerk nor the election judges (absent an elector challenge) have any responsibility or, for that matter, any authority to ensure that those registered electors on the list provided by the county election administrator are legally entitled to vote in the election. Montana Code Annotated § 13-2-601 provides:

Name on Precinct register is prima facie evidence of right to vote. (1)
An elector may not vote at an election mentioned in this title unless his name appears on election day in the copy of the official precinct register furnished by the election administrator to the election judges. *The fact that his name appears in the copy of the precinct register is prima facie evidence of his right to vote.* (Emphasis added).

Montana Code Annotated § 20-20-303(1) provides that an elector in a school election may challenge the qualifications of another elector under the provisions of Montana Code Annotated §§ 13-2-404 and 13-13-301(1). Montana Code Annotated § 13-13-301(1) provides that an elector's right to vote may be challenged on election day by any registered elector by orally stating to the election judges the grounds of the challenge. Montana Code Annotated § 13-13-301(2) lists the grounds upon which an election day challenge may be based, including subsection (b), that the challenged elector does not reside at the residence listed on the registered elector list.

Montana Code Annotated § 20-20-301 provides that a person is entitled to vote in a school election if he or she has the qualifications set forth in Montana Code Annotated § 13-1-111 and is a resident of the school district or trustee district. Montana Code Annotated § 13-2-404(1) states that if an elector believes another elector fails to meet the qualifications set forth in Montana Code Annotated § 13-1-111, he or she may

challenge the right of that other elector to vote no later than 20 days prior to the election. Montana Code Annotated § 13-1-111(1)(c) provides qualifications of voters, including subsection (c), that the voter must be a resident of the state of Montana and of the county in which he or she offers to vote for at least 30 days. As noted in Fact 16, the complainants did not utilize either of the above procedures to challenge the right of any electors on the registered electors list to vote in the May 7, 2002 election.

Debbie Winkle and the election judges performed their statutory duties in connection with the Gardiner school election held on May 7, 2002. They had neither responsibility nor, indeed, any authority to determine whether those whose names appeared on the voter registration list provided by the county election administrator were legally entitled to vote. According to Montana Code Annotated § 13-2-601, the fact that the names of Allan Bush, Barbara Bush, Janet Lewis, and Duane Martinz appeared on the precinct register maintained by the election administrator was *prima facie* evidence that those persons had the right to vote in the election. There is no evidence that the clerk of the Gardiner School Districts or the election judges neglected or refused to perform any duty under the election laws, or fraudulently acted in contravention of the election laws; thus, there was no violation of Montana Code Annotated § 13-35-204.

For the same reasons discussed herein, there is no evidence that the election judges permitted the election to be conducted in a manner that violated Montana Code Annotated § 20-20-411. There is also no substance to the allegation that Debbie Winkle and the election judges permitted electioneering to occur in the polling area. As noted in Facts 10 and 11, Debbie Winkle was not aware that the Burns poster was on the main door to the school building until after the polls had closed. There is no evidence that any of the election judges were aware that the poster was attached to the door; and there is no evidence that any other activities that could be construed as electioneering occurred in the polling place.

Claim 4

The Beede complaint alleges that Allan Bush, Barbara Bush, Janet Lewis, Duane Martinz and others violated Montana Code Annotated §§ 13-35-207 and 13-35-209 when they registered to vote and voted in the school election in Park County, Montana. Montana Code Annotated § 13-35-207 provides:

Deceptive election practices. A person is guilty of false swearing, unsworn falsification, or tampering with public records or information, as appropriate, and is punishable as provided in 45-7-202, 45-7-203, or 45-7-208, as applicable, whenever the person:

- (1) falsely represents his name or other information required upon his registry card and causes registration with the card;
- (2) signs a registry card knowingly witnessing any false or misleading statement;
- (3) knowingly causes a false statement, certificate, or return of any kind to be signed;
- (4) falsely makes a declaration or certificate of nomination;
- (5) files or receives for filing a declaration or certificate of nomination knowing that all or part of the declaration or certificate is false;
- (6) forges or falsely makes the official endorsement of a ballot;
- (7) forges or counterfeits returns of an election purporting to have been held at a precinct, municipality, or ward where no election was in fact held;
- (8) knowingly substitutes forged or counterfeit returns of election in place of the true returns for a precinct, municipality, or ward where an election was held;
- (9) signs a name other than his own to a petition, signs more than once for the same measure, or signs a petition while not being a qualified elector of the state; or
- (10) makes a false oath or affidavit where an oath or affidavit is required by law.

The complaint alleges that the Bushes, Lewis, and Martinz violated subsections (1), (2), (3), and (10) of the statute. Montana Code Annotated § 13-35-209 provides:

Fraudulent registration. (1) No person may knowingly cause, procure, or allow himself to be registered in the official register of any election district of any county knowing himself not to be entitled to such registration.

(2) No person may falsely personate another and cause the person so personated to be registered.

(3) When, on the trial of the person charged with any offense under the provisions of this section, it appears in evidence that the accused stands registered in the register of any county without being qualified for such registration, the court shall order such registration canceled.

The complaint alleges that the Bushes, Lewis, and Martinz violated subsection (1) of the statute.

Montana Code Annotated § 20-20-301 states:

Qualifications of elector. An individual is entitled to vote at school elections if he has the qualifications set forth in 13-1-111 and is a resident of the school district or, in a school district that has been apportioned into single-member trustee districts according to 20-3-337, a resident of the trustee district.

Neither Allan Bush, Barbara Bush, Janet Lewis, or Duane Martinz currently live in the Gardiner School Districts. Montana Code Annotated § 13-1-111 establishes general voter qualifications:

Qualifications of voter. (1) No person may be entitled to vote at elections unless he has the following qualifications:

(a) He must be registered as required by law.

(b) He must be 18 years of age or older.

(c) He must be a resident of the state of Montana and of the county in which he offers to vote for at least 30 days.

(d) He must be a citizen of the United States.

Subsection (1)(c) of the statute sets forth a residency requirement for voting. Residence for voting purposes is determined by application of a number of specific rules:

Rules for determining residence. For registration, voting, or seeking election to the legislature, the residence of an individual must be determined by the following rules as far as they are applicable:

(1) The residence of an individual is where the individual's habitation is fixed and to which, whenever the individual is absent, the individual has the intention of returning.

(2) An individual may not gain or lose a residence while kept involuntarily at any public institution, not necessarily at public expense; as a result of being confined in any prison; or solely as a result of residing on a military reservation.

(3) An individual in the armed forces of the United States may not become a resident solely as a result of being stationed at a military facility in the state. An individual may not acquire a residence solely as a result of being employed or stationed at a training or other transient camp maintained by the United States within the state.

(4) An individual does not lose residence if the individual goes into another state or other district of this state for temporary purposes with the intention of returning, unless the individual exercises the election franchise in the other state or district.

(5) An individual may not gain a residence in a county if the individual comes in for temporary purposes without the intention of making that county the individual's home.

(6) If an individual moves to another state with the intention of making it the individual's residence, the individual loses residence in this state.

(7) The place where an individual's family resides is presumed to be that individual's place of residence. However, an individual who takes up or continues a residence at a place other than where the individual's family resides with the intention of remaining is a resident of the place where the individual resides.

(8) A change of residence may be made only by the act of removal joined with intent to remain in another place.

Montana Code Annotated § 13-1-112.

These statutes demonstrate that the legal requirements for establishing residency are complex and fact-specific and require an examination of the intent of the voter. As noted in Facts 55 through 57, the issue of whether Allan Bush, Barbara Bush, and Janet Lewis are legally entitled to vote in Park County, Montana is currently before a Montana District Court Judge in Park County. The court action seeks a judgment declaring that Park County illegally deleted the names of Allan Bush, Barbara Bush, and Janet Lewis from the list of registered voters in Park County. The action also seeks an order and injunctive relief requiring that the plaintiffs' names be reinstated on the list of registered voters in Park County. Relying on Montana Code Annotated § 13-2-208, Denise Nelson, the county election administrator, removed the plaintiffs' names from the voter registration list in Park County. That statute states:

Elector to furnish residential address -- prohibiting registration for failure to provide address. (1) An elector shall provide the election administrator with the elector's current street address, rural address, or, if neither of those addresses is available, other specific geographic location information from which the location of the elector's residence may be easily determined by the election administrator.

(2) The election administrator may not register an elector who fails to provide the information required by subsection (1).

As the transcript of the November 1, 2002 court hearing discloses, however, the attorneys and the Court expressed uncertainty regarding the proper interpretation of Montana Code Annotated § 13-2-208. (See Fact 56).

As described in Facts 56 and 57, the parties in the litigation, with the judge's concurrence, came to a preliminary agreement permitting Allan Bush, Barbara Bush, and Jane Lewis to retain their right to vote pending an attempt to obtain some clarification by the Montana Legislature of the voting rights of those who, like the plaintiffs, live and work in Mammoth but consider themselves residents of Montana. As noted in Fact 58, the Montana Legislature failed to clarify the statute; therefore,

pursuant to the agreement recited in open court, the litigation will become active again on June 1, 2003.

It is appropriate that the issue of the residence, for voting purposes, of Allan Bush, Barbara Bush, Janet Lewis, and by extension Duane Martinz and others similarly situated, should be resolved in the ongoing court proceedings. The parties will present their respective positions to the judge through testimony and exhibits, and the judge will make factual findings and apply the law to the facts to arrive at a decision. It would not be an appropriate function of this office to make factual findings and a legal determination on precisely the same issue, involving most of the same parties, as part of the consideration of this complaint. In fact, as will be shown, it is not necessary to resolve the issue of whether or not the Bushes, Janet Lewis, and Duane Martinz are legally residents of Park County, Montana for voting purposes in order to determine whether Claim 4 of this complaint has any basis.

Montana Code Annotated § 13-35-207 sets forth a number of acts that, depending on the circumstances, may constitute a violation of Montana Code Annotated §§ 45-7-202 (false swearing), 45-7-203 (unsworn falsification to authorities), or 45-7-208 (tampering with public records or information). Each of those statutes requires proof that a person acted "knowingly" or "purposely." Montana Code Annotated § 13-35-209 also requires proof that a person acted "knowingly."

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." Montana Code Annotated § 45-2-101(34), in the Montana Criminal Code of 1973, 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 the Bushes, Janet Lewis, or Duane Martinz violated Montana Code Annotated §§ 13-35-207 or 13-35-209, it would be necessary to prove that, acting with one of the above mental states, one or more of them:

- 1) falsely provided information for the purpose of registering to vote (13-35-207(1));
- 2) signed a voter registry card containing false or misleading information (13-35-207(2));
- 3) caused a false statement or certificate to be signed (13-35-207(3));
- 4) made a false oath or affidavit where one is required by law (13-35-207(10)); or
- 5) caused themselves to be registered in an election district knowing themselves not be to entitled to registration (13-35-209(1)).

There is no evidence that the Bushes, Janet Lewis, or Duane Martinz acted with the requisite mental state in a manner that violated any of the above statutory provisions. They all registered to vote in Park County, Montana, while they were living in Gardiner. They all filled out Change of Residence or Mailing Address cards after moving to Mammoth, providing their correct mailing and physical addresses in Mammoth. They all believe they are entitled to vote in Montana based on numerous connections and activities in Montana, including Montana driver's licenses, hunting and fishing licenses,

vehicle registration in Montana, and filing Montana income tax returns. Perhaps most importantly, they all voted in Gardiner, Montana, for many years and were never told that they were not eligible to vote in any elections up until the time that their names were removed from the voter registration list following the May 7, 2002, school election. Allan Bush, Barbara Bush, and Janet Lewis pursued a court action to restore their right to vote in Montana. Uncertainty about the interpretation of the existing statutes led the parties in the litigation to agree to a temporary arrangement whereby the plaintiffs will retain their voting rights pending a decision by the court. In light of these facts, there is simply no evidence that Allan Bush, Barbara Bush, Janet Lewis, or Duane Martinz violated any of the provisions of Montana Code Annotated §§ 13-35-207 or 13-35-209.

CONCLUSION

Based on the preceding Summary of Facts and Statement of Findings, there is insufficient evidence to justify prosecution based on allegations that the Gardiner School Districts, the Gardiner School Board of Education, Allan Bush, Barbara Bush, Janet Lewis, Duane Martinz, Debbie Winkle, or any election judges violated any Montana campaign finance or campaign practices laws or regulations. With respect to the allegation that Jim Burns violated Montana Code Annotated § 13-35-211, I have determined that in the exercise of my prosecutorial discretion I will decline to pursue prosecution.

Dated this _____ day of April, 2003.

Linda L. Vaughey
Commissioner of Political Practices