

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Brastrup v. Ravndal No. COPP 2014-CFP-040	<u>Dismissal of Complaint By</u> <u>Application of <i>De Minimis</i> Principle</u>
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On October 7, 2014, Robert Brastrup, a resident of Townsend, Montana, filed a complaint against Tim Ravndal, a 2014 candidate for County Commissioner District #1, Broadwater County. Mr. Ravndal is also a resident of Townsend, Montana. Mr. Brastrup alleged in his complaint that Mr. Ravndal violated campaign practice laws by failing to properly attribute required information in a campaign letter Mr. Ravndal mailed to Broadwater County residents.

SUBSTANTIVE ISSUES ADDRESSED

The substantive area of campaign finance law addressed by this decision is that of attribution of campaign materials, with enforcement measured by application of *de minimis* principle.

FINDING OF FACT

The foundational fact necessary for this Decision is as follows:

Finding of Fact No. 1: On June 3, 2014, a primary election was held. Five candidates were on the ballot for Broadwater County Commissioner, District #1. Candidates Laura Obert and Tim Ravndal received the most votes and are on the general election ballot. (Montana Secretary of State's Office).

DISCUSSION

The complaint alleges that Candidate Ravndal distributed campaign literature in the 2014 Broadwater County Commissioner general election that lacked the appropriate party designation. Under Montana law all election materials prepared by Candidate Ravndal: "must clearly and conspicuously include the attribution 'paid for by' followed by the name and address of the person who made or financed the expenditure for the communication." §13-35-225(1) MCA.

The Commissioner makes the following further Findings related to this Complaint:

Finding of Fact No. 2: On October 2, 2014, Candidate Ravndal sent a campaign mailer to about 400 people within Broadwater County. (Investigator's Interview with Mr. Ravndal).

Finding of Fact No. 3: On October 7, 2014, Robert Brastrup filed a complaint with the COPP against Candidate Ravndal for sending a campaign letter without proper attribution information. (Commissioner's records).

Finding of Fact No. 4: The campaign mailer included a one page letter signed by Candidate Ravndal attacking Candidate Obert. (Copy of letter provided by Complainant and Mr. Ravndal).

Finding of Fact No. 5: The Commissioner’s investigator was provided a unopened envelope containing the October 2, 2014 campaign mailer sent by Candidate Ravndal. The envelope contained a one page letter signed by Candidate Ravndal that was folded three times. Within the folded letter (but unattached to it) was Candidate Ravndal’s campaign brochure. The one page letter did not have an attribution statement other than Candidate Ravndal’s signature. The tri-folded campaign brochure did contain an attribution that read, “Paid for by Tim Ravndal, PO Box 287, Townsend, Montana 59644.” (Investigative notes).

Finding of Fact No. 6: Mr. Ravndal apologized to the public for any oversight and agreed to place a stand-alone attribution on the one page letter described in FOF No. 5, should that letter be used again in the future. (Investigative notes).

Candidate Ravndal failed to comply with Montana’s attribution law by failing to properly attribute the one-page letter. (FOF No. 4). Candidate Ravndal explained that he thought the attribution on the brochure enclosed with the letter (*see* FOF No. 5) would also serve as an attribution for the letter. A shared disclosure based on two separate and independent documents, however, is not sufficient as Montana law requires that “[a]ll communications” [§13-35-225(1) MCA] must be attributed.¹ The Commissioner, however, accepts that the error was unintentional (FOF No. 6) and likely of minor harm to the public. The Commissioner further notes that Candidate Ravndal, through the investigator, apologized to the people of Montana for his error. *Id.*

Having decided that this a matter of oversight, not intention, the issue the Commissioner next addresses is whether Candidate Ravndal’s oversight can be excused as *de minimis*. *De minimis* is an established concept of law meaning

¹ The COPP staff notes that it has required correction, as it must, of a missing attribution on a single campaign sign. The statute says “all” communications, not “some” communications.

that “the law does not care for, or take notice of, very small or trifling matters.”
Black’s Law Dictionary 4th Edition.

The COPP began to regularly apply a *de minimis* exception to civil enforcement of a technical or minor violation of Montana’s campaign practice, when directed to do so law by the 9th circuit court of appeals in that Matter of *Canyon Ferry Rd. Baptist Church of E. Helena, Inc. v. Unsworth* 556 F. 3d 1021, 1028-29 (9th Cir. 2009). The *de minimis* actions in *Canyon Ferry* were the limited use of staff and copying expenditures by a party involved in a ballot issue campaign.

While not always identifying it as *de minimis*, Commissioners have long used the concept to dismiss prosecution of technical violations: no prosecution for lack of address, *Shannon v. Andrews*, COPP-2012-CFP-035 (Commissioner Murry); no prosecution for failure to list party affiliation or funding source on a candidate website display, *Fitzpatrick v. Zook*, COPP-2011-CFP-014 (Commissioner Gallik); and no prosecution when full name of committee treasurer omitted, *Ellis v. Yes on CI-97*, April 15, 2008 (Commissioner Unsworth). This Commissioner has applied *de minimis* to excuse technical violations for: omitting a ‘paid for by’ attribution, *Ulvestad v. Brown*, COPP-2013-CFR-025; accepting a contribution of \$40 over the allowed amount, *Rodda v. Bennett*, COPP-2014-CFR-013; failing to register/attribute as a political committee, *Royston v. Crosby*, COPP-2012-CFP-041; failure to fully attribute on a candidate letter, *Ponte v. Buttrey*, COPP-2014-CFP-007; failure to properly apportion total allowed amount of contribution between husband and

wife, *Kenat v. Van Dyk*, No. COPP-2014-CFP-004, and failure to list political party *Strizich v. Loney*, COPP 2014-CFP-034.

Further, this Commissioner, in a January 31, 2014 advisory opinion to Emilie Boyles, generally placed the *de minimis* principle in Montana campaign practice law as follows:

Second, there is a *de minimis* exception to Montana's definition of campaign contribution. This means that costs, fees or charges associated with a minor amount of campaign speech need not be reported. The *de minimis* principle holds that robust election speech is favored such that minimal election speech actions cannot be burdened with any requirements. This principle would apply to except small cost amounts (such as one time electronic campaigning costs) from disclosure or reporting requirements.

COPP-2014-AO-003, Boyles. The constitutional considerations inherent in the "robust election speech issue" raised in the advisory opinion are discussed in *Landsgaard v. Peterson*, COPP-2014-CFP-008.

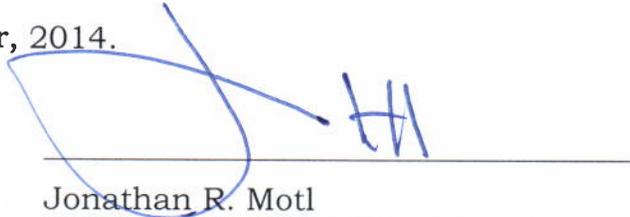
Turning now to the Candidate Ravndal's activity, the Commissioner notes that a substantial number of (400) letters were distributed without the required attribution. On the other hand, a fully attributed brochure was also enclosed in the same envelope. With these (and the above) considerations in mind, the Commissioner finds that the technical violation in this Matter is dismissed under the *de minimis* principle.

DECISION

This Commissioner, having duly considered the matters raised in the Complaint, and having completed his review and investigation, hereby holds

and determines, under the above stated reasoning, that the above described violation of attribution standards is dismissed as *de minimis* . The Commissioner hereby dismisses this complaint.

DATED this 21st day of October, 2014.



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