

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Hansen v Billings Elementary School District #2 No. COPP 2013-CFP-030	Summary of Facts and Finding of Insufficient Evidence to Show a Violation of Montana's Campaign Practices Act DISMISSAL OF COMPLAINT
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On November 5, 2013 the Billings Elementary School District No. 2 Bond was approved by voters through a vote of 17,890 "Yes" and 15,467 "No." On November 14, 2013, Big Timber resident Jerry Hansen filed a complaint with the COPP against Billings Elementary School District #2 alleging that the School District improperly used public facilities and personnel to "solicit support for the issuance of bonds."

SUBSTANTIVE ISSUES ADDRESSED

The substantive area of campaign finance law addressed by this decision is allowed activity of a public entity in regard to a ballot issue.

FINDING OF FACTS

The facts necessary for this Decision are as follows:

1. The 2013 municipal government general election date in Montana was November 5, 2013. Secretary of State (SOS) website.
2. The November 5, 2013 municipal election in Yellowstone County,

Montana included a mail-in vote on the Billings Elementary School District No. 2 Bond. (Yellowstone County Website).

3. The Billings Elementary School District No. 2 Bond was approved by voters through a vote of 17,890 “Yes” and 15,467 “No.” *Id.*

DISCUSSION

The Commissioner opens discussion in this Matter with an explanation of how and why jurisdiction of this Matter is properly before the Commissioner. This discussion is necessary because complaints involving bond related ballot issues necessarily trigger both ethics (Title 2) and campaign practices (Title 13) review.¹

Title 13 Jurisdiction

Proposals for issuance of bonds, such as the Billings Elementary School District No. 2 Bond (hereafter “Bond”) involved in this matter, originate from a government entity and from the work of public employees and officials. School district bonds, such as the Bond involved in this matter, may not be issued unless authorized by electors in an appropriate school district election. *See* § 20-9-421 MCA. Accordingly, a complaint involving bond issues may address the ethical implications of the actions of the public officers or public officials involved in the bond issue election, or the complaint may address the election itself, based on the effect of the alleged improper actions. The former type of complaint is an ethics complaint against a public official made under Title 2 of Montana Code. The latter type of complaint is a campaign practice

¹ Billings School District No. 2 does not fall within the Title 13 jurisdictional exceptions for certain school district exceptions set out at § 13-37-206 MCA.

complaint made against the beneficiary of the election under Title 13 of the Montana Code.

Mr. Hansen has demonstrated a long time interest in monitoring and challenging the bond issue activities of Billings School District #2. Mr. Hansen filed a 2004 complaint with this Office (Commissioner Vaughey) that was interpreted to “allege irregularities in certain activities conducted by personnel of School District #2” in regard to a mill levy vote. (Paxinos letter dated March 30, 2004). Because the complaint was interpreted to focus on conduct of School District personnel it fell under the jurisdiction of the Yellowstone County Attorney’s office as it has jurisdiction over matters of ethical compliance by local governmental officials. *Id. See* § 2-2-144 MCA. On June 12, 2006 (by letter) and September 16, 2010 (by e-mail) the Yellowstone County attorney issued responses to further Hansen ethics complaints regarding mill levy actions of School District #2 employees. Again, these responses were focused on the actions of individual employees and therefore fell under the Yellowstone County Attorney’s jurisdiction.

The Commissioner determined that the complaint in this matter was of different tenor. Mr. Hansen’s complaint in this Matter again references Title 2 and § 2-2-121, MCA, the section of Montana code establishing rules of conduct for public officers and public employees. However, Mr. Hansen’s complaint in this Matter was focused on the School District, rather than an employee or officer of the District. Further, the complaint was made after passage of the Bond issue and adds the request that “the results of the bond election be

voided.” The statute allowing for voiding of an election is § 13-35-107 MCA and it is based on violations of Title 13, not Title 2. Section 13-35-107 specifically allows review of improprieties in a bond election as it specifies that “[a]n action to void a bond election must be commenced within 60 days of the date of the election in question.”

Given that specific avoidance demand by Mr. Hansen’s complaint, the Commissioner determined that the complaint triggered Title 13 review, with the review taking place under the authority of § 13-35-226(4) MCA: “[a] public employee may not solicit support for or opposition to ...the passage of a ballot issue while on the job or at the place of employment.” This statute incorporates the standards of § 2-2-121 MCA. This Office (Commissioner Unsworth) has applied § 13-35-226(4) to measure the propriety of mill levy related activity engaged in by Lewis and Clark County personnel. *Roberts v. Griffin*, decided November 19, 2009.

Given the specific reference to voiding an election and the *Roberts v. Griffin* decision, this Commissioner accepted the Hansen complaint as sufficiently stating a complaint under Title 13. Given the 60 day time limit in which to initiate such a bond based legal challenge, the Commissioner has issued this Decision on a priority basis.

Analysis of School District’s Actions

School District No. 2, (District) as an entity and as a group of people, is unquestionably responsible for the general maintenance, management, and progress of the School District. There is no allegation as to impropriety in the

actions that the District, including its Trustees and staff, took in regard to studying and proposing the new school construction, school renovations, and existing school maintenance that form the basis for the Bond. Instead, the complaint claims improper actions of the District, as an entity and through its people, once the Bond became a ballot issue subject to authorization by a vote of electors.

Under Montana law once the Bond became a ballot issue, the District could not use public resources, (including personnel, facilities or equipment) to advocate for passage of the Bond. Mr. Hansen's complaint alleged that after the Bond became a ballot issue and before the vote occurred, the District held meetings involving both School District facilities and personnel, and distributed literature concerning the Bond.

School District No. 2 acknowledges that Bond related public meetings occurred, including 8 such meetings in the District's Board room as well as others in individual schools. (December 18, 2013, Superintendent Bouck response to Complaint). Likewise, the District acknowledges that literature was distributed. The District provided copies of the Bond related brochures and other documents used in the Bond election. *Id.*

While acknowledging that Bond related election activity occurred, the District insists that the activity "was informational and not promotional." *Id.* The District points out that Montana law only restricts use of public funds "in support of or opposition to a bond issue." § 2-2-121(3)(b)(ii) MCA. The District further points out that it can provide neutral facts and information to electors

related to the Bond issue. *Roberts v. Griffin*, decided November 19, 2009.

The Commissioner reviewed the Bond related election material provided it by the District. Specifically, the Commissioner reviewed the District's: 2013 Bond brochure; 59 page Bond information packet; Billings *Gazette* newspaper ad on the Bond; and, Guidelines for 2013 Bond election activity. The Commissioner's investigator contacted Mr. Hansen to ask for contrary information he wished to submit showing advocacy. Mr. Hansen declined, saying he only had what information was submitted with the complaint.

Based on review of the above information, the Commissioner determines that the District's Bond related election information was diligently educational in content. Further the Commissioner determines, looking to the 2013 Bond guidelines, that the District's information was deliberately designed to be educational in content with the District studiously striving to educate and avoid advocacy. Because the District's Bond actions were educational and not advocacy the Commissioner finds that the District did not engage in ballot issue activity that triggered direct Title 13 responsibility (including political committee formation, attribution or reporting) or indirect Title 13 responsibility through incorporation of Title 2 standards under §13-35-226(4) MCA. See, *Roberts v. Griffin*.

OVERALL DECISION

The Commissioner has limited discretion when making the determination as to an unlawful campaign practice. First, the Commissioner cannot avoid, but must make, a decision as the law mandates that the Commissioner ("shall

investigate,” See, § 13-37-111(2)(a) MCA) investigate any alleged violation of campaign practices law . The mandate to investigate is followed by a mandate to take action as the law requires that if there is “sufficient evidence” of a violation the Commissioner must (“shall notify”, See § 13-37-124 MCA) initiate consideration for prosecution.

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 there is insufficient evidence to justify a civil or criminal prosecution under § 13-35-226(4) MCA and § 13-37-124(1) MCA. Accordingly, the Commissioner determines that there is no basis for an action to void a bond issue under § 13-35-107(2) MCA.

The Commissioner hereby dismisses this complaint in full.

DATED this 24th day of December, 2013.



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