

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES

In the Matter of)	SUMMARY OF FACTS, STATEMENT OF FINDINGS AND CONCLUSION
Cleve J. Loney's Complaint Against)	
Rina Fontana Moore, Anders Blewett,)	
Tom Jacobson and Carlie Boland)	

Great Falls resident Cleve J. Loney ("Loney") submitted a complaint on December 13, 2012, alleging various campaign violations arising from conduct at the polling place at Expo Park, Great Falls, during the General Election on November 7, 2012. The complaint was filed against Cascade County Clerk and Recorder Rina Fontana Moore, Montana State Senator Anders Blewett, Montana State Representative Tom Jacobson, and Montana State Representative Carlie Boland. Loney, a former State Senator, was defeated by Jacobson in the election in question. Following investigation and review of responses from the individuals named in the complaint, the Commissioner finds no violation of any statutory provision over which the Commissioner has jurisdiction.

SUMMARY OF FACTS

The first violation alleged by Loney does not fall within the enforcement authority of the Commissioner, so will not be considered. This allegation asserts that Carrie Boland violated §13-4-107, MCA, by serving as an election judge while she was a candidate for office. As stated in §13-37-111, MCA, the Commissioner's enforcement

authority is limited to chapters 35 and 37 of the Title 13, the Elections Code. Section 13-4-107, MCA, is not within these chapters.

The second, third, fourth and sixth statutory violations alleged by Loney concern conduct by Anders Blewett and Tom Jacobson on election day. As acknowledged by Blewett and Jacobson, they were at the polling center on Election Day and handed out bottles of water, chips, and candy to people waiting in line to register and vote, as well as to others in the building. In his response to the complaint, Blewett stated that after 6:30 p.m., the voter registration line was long, there were many children in line with parents, and people appeared uncomfortable. He walked to Sam's Club and purchased water, candy, and chips and distributed those items to everyone in the center, including those waiting in line, election judges, and officials from the Cascade County Elections Office. Jacobson acknowledges assisting in the distribution of the chips, candy and water.

According to an article in the Great Falls Tribune included with Loney's complaint:

State Sen. Anders Blewett walked along the late-registration line Tuesday evening passing out bags of chips, candy and water bottles he personally purchased at Sam's Club. The cart he pushed was even borrowed from Sam's Club.

"I'm here today to make sure the folks who want to vote stick it out to fulfill their civic duty," Blewett said. "It's really inspiring to see this. People don't have water. They don't have food, so we got them some chips and some candy."

Investigation indicated that Blewett wore a name tag at the polling center, but the tag did not mention any political party, issue, or candidate for office. Blewett was not running for office and not on the ballot. There is no evidence or allegation that Blewett

had any conversations about political matters or voting. There is no evidence or allegation that Blewett solicited or received any promise from any potential voter on any matter.

While Jacobson was on the ballot as a candidate, there is no evidence or allegation that Jacobson wore a name tag or identified himself in any way. There is no evidence or allegation he conversed with anyone about political matters or voting or solicited or received any promise from any potential voter on any matter.

STATEMENT OF FINDINGS

While Loney alleges violation of several statutes by Blewett and Jacobson, the crux of his complaint arises from speculation that if Blewett and Jacobson had not distributed water, chips, and candy, potential voters may have left the polling place due to hunger, thirst, boredom, frustration, or lack of will, and therefore would not have voted. Thus, the essence of the allegation seems to be that Blewett and Jacobson's distribution of water, chips, and candy induced voting by preventing potential voters from giving up an existing intention to vote.

Alleged Violation Two is based on §13-35-214, MCA, which prohibits "Illegal influence of voters." In relevant part, the statute provides:

A person may not, directly or indirectly, individually or through any other person, for any election, in order to induce any elector to vote or refrain from voting or to vote for or against any particular candidate, political party ticket, or ballot issue: (1) give, lend, agree to give or lend, offer, or promise any money, liquor, or valuable consideration or promise or endeavor to procure any money, liquor, or valuable consideration. . . .

In his response to the complaint, Jacobson contended the value of the food and water was de minimus and not provided as valuable consideration in exchange for voting. Both Jacobson and Blewett note that potential voters already standing in line

had already indicated an intention to vote by being in line at the polling place.

As applied in this circumstance, finding a violation of §13-35-214, MCA would require the Commissioner to conclude two things: (1) that Blewett and Jacobson "induced" people to vote; and (2) that inducement occurred through "giving" people "money, liquor or valuable consideration." There is no allegation of giving money or liquor. I conclude that neither "inducement" nor "valuable consideration" is present in the circumstances of this matter.

Handing out water, chips and candy to anyone interested in receiving those items cannot be considered "inducing" people to vote. There is no suggestion Blewett or Jacobson, even impliedly, asked for a promise to remain in line and vote in exchange for providing these items. There is no allegation that Blewett or Jacobson targeted people who showed an indication that they may leave without voting. Blewett was quoted in the Great Falls Tribune as stating he was there "to make sure the folks who want to vote stick it out to fulfill their civic duty." While this statement suggests Blewett wanted people to remain and vote, and that he may himself have intended the water, chips, and candy to support their intention to vote, this does not lead to a conclusion that he induced them to vote. As noted, the potential voters had already indicated their intention to vote by being present in line, there was no solicitation of a promise to vote, and there was no targeting of people indicating an intention to leave.

The second element of "valuable consideration" is also missing from this circumstance. In their response to the complaint, both Blewett and Jacobson contended the water, chips and candy were not "valuable consideration" within the meaning of the statute. The term "valuable consideration" derives from contract law,

suggesting something of value given in exchange for a promise or some other thing of value. See, §28-2-801, MCA.

Here, I am unable to conclude that any reasonable person standing in line to vote would have felt induced or obligated to vote through receipt of water, chips, or candy offered to anyone in the building desiring to receive those items. Those waiting to vote may have felt their wait was made more palatable or even that their intention to vote was supported. But I am unable to conclude that potential voters already at the polling place and standing in line were induced to vote through receiving water, candy or chips. Under these circumstances, water, chips, and candy cannot themselves be considered “valuable consideration” inducing an obligation to vote.

Alleged Violation Three involves §13-35-211, MCA, which prohibits “Electioneering – soliciting information from electors.” In pertinent part, the statute provides:

(1) 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.

Montana Administrative Rule 44.10.311 is an “interpretive rule” relating to electioneering. The rule provides:

(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.

In the Matter of the Complaint Against Jim Walseth and Debra DeBode involved an allegation that §13-35-211, MCA was violated through distribution of sandwiches and bottles of water in a polling place. There, as here, there was no evidence that the individuals distributing food and water "identified themselves as Democrats or engaged in any verbal or nonverbal conduct that could be construed as solicitation of votes." Commissioner Unsworth found no violation of the electioneering statute, pointing out there was no evidence of personal persuasion, display or distribution of campaign materials to voters, or offering or distribution of food or drink "in a manner calculated to encourage recognition, support, or opposition to a candidate or issue." Here, those elements are also lacking and no violation of §13-35-211, MCA, may be found.

Alleged Violation Four involves §13-35-218, MCA, relating to "coercion or undue influence of voters." Loney alleged:

Tom Jacobson and Sen. Anders Blewett conduct violates §13-35-218 by soliciting voters in a polling place. Blewett wearing his Senate name badge, and Tom Jacobson acted knowingly to induce voters to recognize them by passing out food and drink in the election lines to compel voters to vote for candidate Tom Jacobson who confirms he helped pass out items within the room where votes were being cast.

The statute in question provides:

13-35-218. Coercion or undue influence of voters. (1) A person, directly or indirectly, individually or through any other person, in order to induce or compel a person to vote or refrain from voting for any candidate, the ticket of any political party, or any ballot issue before the people, may not:

(a) use or threaten to use any force, coercion, violence, restraint, or undue influence against any person; or

(b) inflict or threaten to inflict, individually or with any other person, any temporal or spiritual injury, damage, harm, or loss upon or against any person.

(2) A person who is a minister, preacher, priest, or other church officer or who is an officer of any corporation or organization, religious or otherwise, may not, other than by public speech or print, urge, persuade,

or command any voter to vote or refrain from voting for or against any candidate, political party ticket, or ballot issue submitted to the people because of the person's religious duty or the interest of any corporation, church, or other organization.

(3) A person may not, by abduction, duress, or any fraudulent contrivance, impede or prevent the free exercise of the franchise by any voter at any election or compel, induce, or prevail upon any elector to give or to refrain from giving the elector's vote at any election.

(4) A person may not, in any manner, interfere with a voter lawfully exercising the right to vote at an election in order to prevent the election from being fairly held and lawfully conducted.

(5) A person on election day may not obstruct the doors or entries of any polling place or engage in any solicitation of a voter within the room where votes are being cast or elsewhere in any manner that in any way interferes with the election process or obstructs the access of voters to or from the polling place.

Loney's allegations do not directly parallel the statutory prohibitions, but the following may be noted:

1. Blewett wearing a name tag not identifying his party or recommending any particular voting position cannot be considered solicitation to vote or to vote in any particular way.

2. Whether or not voters recognized Jacobson, who was not wearing anything to identify himself or to identify himself as a candidate, the combination of his identity and distribution of food and drink cannot alone be considered solicitation to vote or to vote in any particular way.

3. Nothing in the conduct of either Blewett or Jacobson rose to the level of "force, coercion, violence, restraint, or undue influence." For the same reasons as noted above, under these circumstances, the conduct cannot be considered "inducement" to vote.

The final violation concerning Blewett and Jacobson, Alleged Violation Six, accuses Blewett of "Aiding and Abetting" Jacobson in violation of §13-35-105, MCA,

which provides:

13-35-105. Aiding and abetting. A person who is legally accountable, as provided in 45-2-302, for the conduct of another which violates a provision of the election laws of this state is also guilty of a violation of that provision.

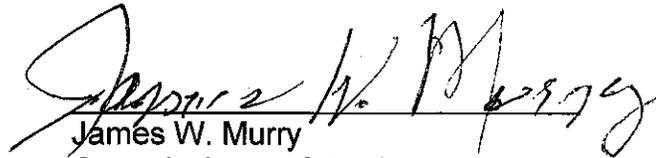
Where no conduct of Jacobson violated election laws, Blewett cannot be guilty of aiding and abetting violation of said laws.

Alleged Violation Five charges Cascade County Clerk and Recorder Rina Fontana Moore with aiding and abetting the conduct of Boland, Blewett, and Jacobson. As noted above, the Commissioner does not have jurisdiction over §13-4-107, MCA, meaning the Commissioner has no jurisdiction over an assertion of aiding and abetting a violation of that statute. Where Blewett and Jacobson violated no statutes, Moore cannot be found to have unlawfully aided or abetted election law violations.

CONCLUSION

There is insufficient evidence to conclude that Rina Fontana Moore, Anders Blewett, Tom Jacobson, or Carlie Boland violated any election law over which the Commissioner has jurisdiction.

DATED this 25th day of March, 2013.


James W. Murry
Commissioner of Political Practices