

BEFORE THE COMMISSIONER OF  
POLITICAL PRACTICES

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In the Matter of the Complaint )  
Against the Steve Bullock for Attorney )  
General Campaign Committee and )  
Montana Democratic Party and )  
Chairman Dennis McDonald

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**SUMMARY OF FACTS,  
STATEMENT OF FINDINGS  
AND CONCLUSION**

Will Deschamps, in his capacity as chairman of the Montana Republican Party (MRP), filed complaints with the Commissioner of Political Practices (COPP) alleging the Steve Bullock for Attorney General Campaign Committee (Bullock Campaign), and Montana Democratic Party and then party chairman Dennis McDonald (collectively MDP), violated campaign finance and reporting laws. The complaints arise from work performed by MDP employees Anthony Jackson (Jackson) and Kevin Downs (Downs) for the Bullock Campaign not reported as in-kind contributions pursuant to § 13-37-225-226, MCA, the value of which would have made contributions by the MDC to the Bullock Campaign in excess of the amount allowed under § 13-37-216(3)(b), (4) and (5), MCA. The basic allegation is that the work of Jackson and Downs, as paid employees of the MDP, constituted a "contribution" subject to the limits and reporting requirements of Montana law.

Commissioner James W. Murry recused himself pursuant to § 13-37-111, MCA, and appointed the undersigned as Deputy Commissioner for purposes of resolving these complaints. The undersigned notes there was significant delay in resolution of these complaints due to COPP staff turnover, multiple Commissioner turnovers, recusal of Commissioners, the need to contract with counsel outside of the Attorney General's office given that Steve Bullock has served as Attorney General, and the need to appoint a Deputy Commissioner for purposes of this matter. Having been duly appointed, the undersigned reviewed the extensive investigation file of the COPP, which includes factual investigation by COPP staff, legal research by contract counsel, the complaints and allegations of the MRP, and the arguments of counsel for the Bullock Campaign and MDC for dismissal.

For the reasons noted below, the Deputy Commissioner concludes that the Bullock Campaign and the MDP did not violate campaign finance and reporting laws. In the context of employment

of Jackson and Downs by the MDP, the Deputy Commissioner concludes § 13-1-101(7)(a)(iii), MCA, excludes from the definition of "contribution" payments by a political committee in the form of compensation for the personal services of another person that are rendered to a candidate.

### SUMMARY OF FACTS

In their Memorandum in Support of Motion to Dismiss, the Bullock Campaign and MDC admit the following facts:

1. Steve Bullock for Attorney General (Bullock campaign) is a candidate committee formed under the laws of Montana.
2. The Montana Democratic Party (hereafter MDP) is a political party committee formed under the laws of Montana.
3. The Bullock campaign received a cash contribution of \$3,750 from the MDP on 9/4/2008 and received a second cash contribution from the MDP [of \$3,962.08 on 9/5/08 and received an in-kind contribution from the MDP]<sup>1</sup> worth \$437.92 on 9/5/2008 – a total contribution amount of \$8,150.
4. Anthony Jackson, an employee of the Montana Democratic Party worked on the Bullock Campaign.
5. Between August 4, 2008 and December 30, 2008, Mr. Jackson received nine reimbursements payments from the Bullock campaign totaling \$982.61. Mr. Jackson was not paid a salary from the Bullock campaign.
6. Mr. Jackson was on the payroll of MDP from August 5, 2008 to November 18, 2008. Payments from MDP to Mr. Jackson, including expense reimbursement payments, totaled \$10,596.35.
7. Kevin Downs worked on the Bullock campaign.
8. Between April 24, 2008 and March 2, 2009 Mr. Downs received eighteen reimbursement payments from the Bullock campaign totaling \$1,500.00.
9. Mr. Downs was on the payroll of MDP from July 16, 2008 to November 18, 2008. Payments made from MDP to Mr. Downs totaled \$7,004.41. Mr. Downs was not paid a salary by the Bullock campaign for any services rendered while he was in the employ of the MDP.

<sup>1</sup> The bracketed phrase is omitted from Respondent's Memorandum in Support of Motion to Dismiss, apparently a transcription error as the paragraph otherwise parallels allegations of the complaint. Respondents' admission that the maximum contribution was made is indicated by agreement that a total of \$8,150 was contributed.

10. MDP likely also paid an undetermined amount of payroll taxes and health insurance premiums for Mr. Jackson and Mr. Downs as employees.

Interviews of Jackson and Downs conducted by an investigator for the COPP confirm that they worked on the Bullock Campaign. Jackson stated that he was hired by the MDP to coordinate local and state races, primarily four statewide races including the Bullock race. Downs stated he was hired by the MDP as a campaign staffer, primarily working on four statewide elections, including that for Attorney General. Both were "on the clock" when they performed campaign work. Neither were volunteers as they were paid by MDC for their work.

Interview of Dave Hunter (Hunter), Director of the MDP Coordinated Campaign in 2008, indicated that Hunter directly supervised Jackson and Downs during the 2008 election cycle. Hunter said Jackson and Downs were assigned to work on Bullock's campaign.

The cash and in-kind contributions of MDP to the Bullock Campaign on September 4 and 5, 2008, reached the total contribution amount of \$8,150 permitted by applicable law with respect to the campaign for the office of Attorney General. In the absence of some other defense not considered herein, if the work by Jackson and Downs on the Bullock Campaign represented an "in kind" contribution from MDP to the Bullock Campaign subject to campaign finance and reporting laws, the financial limits on contributions from MDP to the Bullock Campaign would have been exceeded and the work of Jackson and Downs would have been subject to reporting requirements of the relevant statutory provisions.

### STATEMENT OF FINDINGS

The campaign finance and reporting provisions at issue are invoked by "contributions." Section 13-37-216, MCA, limits the "aggregate contributions for each election in a campaign by a political committee or by an individual. . . ." Section 13-37-215, MCA, requires that "each candidate and political committee shall file periodic reports of contributions and expenditures made by or on the behalf of a candidate or political committee."

"Contribution" is defined in § 13-1-101(7)(a), MCA, which provides:

- (7) (a) "Contribution" means:
- (i) an advance, gift, loan, conveyance, deposit, payment, or distribution of money or anything of value to influence an election;
  - (ii) a transfer of funds between political committees;
  - (iii) the payment by a person **other than a candidate or political committee** of compensation for the personal services of another person that are rendered to a candidate or political committee. (Emphasis added).

Pursuant to § 13-1-101(11)(b), MCA, services are not "expenditures" for purposes of the election laws if excluded from the definition of "contribution." The subsection provides: "'Expenditure' does not mean: (i) services, food, or lodging provided in a manner that they are not contributions under subsection (7)."

Administrative Rules of the COPP indicate the terms "contribution" and "expenditure" include in-kind expenditures and contributions, but subject to the exception of what is now § 13-1-101(7)(a), MCA. Mont. Admin. R. 44.10.321(2), Mont. Admin. R. 44.10.323(2).<sup>2</sup> Accordingly, the Administrative Rules of the COPP provide no assistance in resolving this matter.

When interpreting statutes, the Montana Supreme Court has instructed, the decision maker's role "is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted." *Montana Socy. of Anesthesiologists v. Montana Bd. of Nursing*, 2007 MT 290, ¶ 36, 339 Mont. 472, 171 P.3d 704 (citing §1-2-101, MCA).

In the context of the present complaints, Jackson and Downs were staff employees of MDP, a political committee, assigned by MDP to work on various specific campaigns, including the Bullock Campaign. Subsection (iii) of § 13-1-101(7)(a) addresses "compensation for the personal services of another person that are rendered to a candidate" such as Bullock. Payment for personal services "by a person other than a candidate or political committee" are defined as contributions under the section, but carved out from the definition of contribution is payment by a candidate or political committee of compensation for the personal services of another person that are rendered to a candidate or political committee. Under the statute, the compensation of Jackson and Downs by MDP for work done on the Bullock campaign was not a contribution.

The investigation of this matter has included extensive review of past positions taken by the office of the COPP, as well as numerous communications from various parties on issues that arguably involve, at some level, the question of statutory interpretation herein. It is difficult if not impossible to reconcile some of the various past positions with the statutory language, but none of the past positions taken by the COPP are binding on determination of the present issue. To the extent particular constituencies have found the language of § 13-1-101(7)(a), MCA, inconsistent with their understanding of the intent of the campaign finance and reporting laws generally, the remedy for any such inconsistency lies with the Montana legislature.

The investigation has also included review of the legislative history regarding relevant statutory provisions. The legislative history provides no compelling argument for interpretation on the present issue. Moreover, when interpreting statutes, the decision maker "will not resort to legislative history or other means of interpretation unless the legislative intent cannot be determined from the plain words of the statute." *Clarke v. Massey* (1995) 271 Mont. 412, 416.

The Deputy Commissioner concludes that, in the context of staffers paid by a political committee, § 13-1-101(7)(a), MCA, excludes from the definition of contribution payment for the personal services of such staffers for work on a campaign. Where the work was not a contribution, the campaign finance limits and reporting requirements are not invoked and referral for prosecution of the Respondents is not appropriate.

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<sup>2</sup> The administrative rules reference prior § 13-1-101(6)(a)(iii) and (6)(b)(i), which are now (7)(a)(iii) and 7(b)(i).

## CONCLUSION

In accordance with the foregoing, the complaints against the Bullock Campaign and MDC do not state violations of Montana campaign finance and reporting laws. The complaints are dismissed.

DATED this 15<sup>th</sup> day of May, 2012.



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Jay P. Dufrechou  
Deputy Commissioner of Political Practices