

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Madin v. Burnett No. COPP 2012-CFP-052	Summary of Facts and Finding of Insufficient Evidence to Show a Violation of Montana's Campaign Practices Act DISMISSAL OF COMPLAINT
---	--

Tom Burnett is a resident of Bozeman, Montana. In 2010 Mr. Burnett was a candidate for election to the Montana legislature, House District No. 63 (HD 63). Kent Madin is a resident of Bozeman, Montana. On December 24, 2012, Mr. Madin filed a complaint with the COPP alleging that Mr. Burnett's 2010 HD 63 campaign had engaged in illegal campaign expense coordination with Western Tradition Partnership, a corporation.

SUBSTANTIVE ISSUES ADDRESSED

The substantive area of campaign finance law addressed by this decision is that of campaign expense coordination between a candidate and a third party entity.

FINDING OF FACTS

The foundation facts necessary for this Decision are as follows:

Finding of Fact No. 1: In the 2010 general election, Tom Burnett was a candidate for elected office. Candidate Burnett defeated the incumbent,

Decision re: *Madin v. Burnett*

JD Pomnichowski, and was elected as a Representative for HD 63. (Montana Secretary of State's Office, SOS website).

Finding of Fact No. 2: Candidate Burnett filed campaign finance reports applicable to his 2010 campaign. (Commissioner's records).

DISCUSSION

Candidate Burnett, by Montana standards, engaged in a vigorous 2010 campaign for election to HD 63. Candidate Burnett's 2010 campaign finance reports show contributions from over 250 people and a dozen political action committees, reaching a total of over \$30,000. In turn, Candidate Burnett's reports show over \$30,000 in campaign expenses including costs for yard signs, campaign cards, fundraiser food, stamps, print ads, TV ads, and direct mail.

Mr. Madin's complaint focused on one campaign activity by Candidate Burnett, a campaign mailing composed of letters (one handwritten) signed by Candidate Burnett's wife and daughters. Mr. Madin stated that he had viewed a Frontline documentary "Big Sky, Big Money" that had featured a handwritten "WIFE letter" prepared by WTP. Mr. Madin's complaint alleged that the letter signed by Candidate Burnett's wife showed undisclosed corporate involvement by Western Tradition Partnership (WTP) in Candidate Burnett's campaign.

Indeed, there are grounds for Mr. Madin's observation. This Commissioner has found undisclosed, unreported, and coordinated corporate involvement by WTP in five 2010 candidate campaigns. *Bonogofsky v. Kennedy*, COPP 2010-CFP-015; *Washburn v. Murray*, COPP 2010-CFP-019; *Ward v. Miller*, COPP 2010-CFP-021; *Clark v. Bannan*, COPP 2010-CFP-023, and *Bonogofsky v.*

Boniek, COPP-2010-CFP-027.¹ An important part of each of these Decisions was a finding of undisclosed, unreported and coordinated corporate expenditures connected with a handwritten “WIFE” letter used in each campaign.²

Candidate Burnett’s campaign did prepare and mail out a letter signed by Melani Burnett, candidate Burnett’s wife (Commissioner’s records). The letter was accompanied by letters signed by Candidate Burnett’s daughters. *Id.* The cost of the letters was reported as a “wife/daughter letter plus postage” in the amount of \$3,169.95 on Candidate Burnett’s October 16, 2010 campaign expense report. *Id.*

The letter signed by Candidate Burnett’s wife bears some similarity to a model WTP “WIFE” letter. The letter is handwritten below a masthead (in this case “Melani Burnett”). The letter is also printed in blue ink on pink off-size stationary paper and mailed in a pink envelope. The masthead, handwritten style, off-size pink paper and blue ink are all features that appeared in WTP WIFE letters used by multiple candidates in 2008 and 2010 legislative campaigns.³ Clearly Candidate Burnett or someone with his campaign had viewed the WTP model WIFE letters used in 2008 Montana legislative campaigns. The Melani Burnett letter adopted some of the features of a WTP WIFE letter.

The Commissioner, however, determines that Melani Burnett’s letter was

¹ There are complaints pending against an additional four 2010 legislative candidates, excluding Candidate Burnett.

² WTP labels a handwritten letter signed by the wife of the candidate as a “WIFE” letter.

³ The Commissioner has viewed 20 such WTP WIFE letters.

not a WTP WIFE letter. The Melani Burnett letter was shown to be the product of a fully disclosed and reported arms-length transaction. The Melani Burnett letter was printed and handled by an arms-length printer, Executive Services of Bozeman, Montana, a Montana business with a 20 year history independent of WTP. (Commissioner's records). Further, the Executive Services receipt shows an adjusted cost billing of about \$1.34 for each of the Melani Burnett letters.⁴ This cost is double the 65 cents charged by WTP, even without valuing the additional scribe, letter writing and list provision services provided by WTP.

Having determined that the Melani Burnett letter is not a WTP WIFE letter the Commissioner next turns to an examination of the Candidate Burnett campaign. The Commissioner found direct, although sometimes disguised, contact between WTP and each of the five 2010 legislative candidates for whom the Commissioner has issued sufficiency findings. *Bonogofsky v. Kennedy*, COPP 2010-CFP-015; *Washburn v. Murray*, COPP 2010-CFP-019; *Ward v. Miller*, COPP 2010-CFP-021; *Clark v. Bannan*, COPP 2010-CFP-023, and *Bonogofsky v. Boniek*, COPP-2010-CFP-027. The Commissioner's review determined that there is no evidence of such direct WTP contact with Candidate Burnett's campaign. The Commissioner did not find a Candidate

⁴ Executive Services provided the paper, envelopes, and postage for preparing and mailing 2,950 Melani Burnett letters. Executive Services' bill shows charges for each of these 2,950 letters including: 12 cents for providing and printing each pink envelopes; 29.1 cents to insert, seal and affix the bulk rate stamp; and 21 cents to print. The total charge of \$3,169.95 means that Candidate Burnett paid about \$1.07 for materials, printing, handling, and mailing each of the 2,950 letters. The Executive Services mailing was done with a bulk rate stamp (billed at 27 cents each). In contrast, a WTP WIFE letter was mailed with a 44 cent first class stamp. This additional postage cost makes the adjusted cost of a comparable Burnett mailing (that is one with a first class stamp) \$1.34 per letter.

Burnett file folder in the WTP records.⁵ All five candidates discussed in the above listed Decisions had candidate folders in the WTP records. Likewise, the Candidate Burnett campaign does not list a single expense or contact with WTP or Direct Mail.

COPP regulations define a coordinated expenditure as “an expenditure made in cooperation with, consultation with, at the request or suggestion of, or the prior consent of a candidate...” 44.10.323(4) ARM. Commissioner Vaughey found such coordination based on a showing of “...prior knowledge, consent and encouragement ...” of the third party expense by the candidate. *Little v. Progressive Missoula*, July 22, 2004; see also *Friede v. Rice/Hill County Republican Central Committee*, May 2002. (Commissioner Vaughey). Based on the above reasoning and determinations the Commissioner finds that there is not sufficient evidence to show that there was any unreported, undisclosed expenditure that Candidate Burnett could have coordinated with WTP or any other party in connection with the Melani Burnett letter or any other expenditure of the Burnett campaign.

OVERALL 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 there is insufficient

⁵ The WTP records consist of 5 boxes of documents. The WTP records archive was formerly held by the Commissioner and is now in the possession of the FBI. Two of these boxes of documents are the records and work product of the Commissioner. The other three boxes consist of internal WTP documents showing WTP activity in elections held in Montana and Colorado. The WTP Records were delivered to the Commissioner by a third party who found the boxes of documents in a house in Colorado.

evidence, to justify a civil or criminal adjudication against Mr. Burnett under §13-37-124(1) MCA. The Commissioner hereby dismisses this complaint in full.

DATED this 5th day of February, 2014.

A handwritten signature in black ink, appearing to read 'Jonathan R. Motl', is written above a horizontal line.

Jonathan R. Motl
Commissioner of Political Practices
Of the State of Montana
P. O. Box 202401
1205 8th Avenue
Helena, MT 59620
Phone: (406)-444-4622