

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES

IN THE MATTER OF THE)	
COMPLAINT AGAINST)	SUMMARY OF FACTS AND
Group of Concerned)	STATEMENT OF FINDINGS
Taxpayers)	

Lawrence J. McCarthy of Plains, Montana, in a complaint dated April 9, 1992, and filed with this office on April 10, 1992, alleges violation of section 13-35-225, Montana Code Annotated (MCA), by a self-styled "Group of Concerned Taxpayers." The statute alleged to have been violated, titled "Election materials not to be anonymous," requires that proper attribution be provided on communications in support of or in opposition to a candidate, a political party, or a ballot issue.

The results of an investigation conducted between April 13 and April 24, 1992, are set forth in the summary of facts that follows.

SUMMARY OF FACTS

1. With his complaint, Lawrence J. McCarthy provided a copy of an advertisement that he stated had appeared on Thursday, April 2, 1992, in The Plainsman, a weekly newspaper in Plains, Montana.

2. The advertisement addressed a school levy to be voted on at the April 7, 1992, election and recommended ". . . a NO vote on this special levy. . . ." At the bottom of the

advertisement, these words appeared: "Paid for by a group of concerned taxpayers."

3. On April 13, 1992, a spokesperson at the office of The Plainsman confirmed that the advertisement indeed had run in the edition of April 2, 1992, and that it had appeared just that one time.

4. When asked, the spokesperson at the newspaper office identified Wesley Stearns of 540 River Road, Plains, as the person who had placed the advertisement, which cost \$23.10.

5. When interviewed on April 24, 1992, Wesley Stearns stated that he personally had taken the advertisement to the newspaper office, having collected some money from two other individuals, Delbert Vannice and Wesley Vacura, and that he had paid cash to run the ad.

6. Stearns agreed that, since he had collected the money for the ad and then had paid over the money to the newspaper to run the ad, he had acted in the capacity of treasurer for the group.

7. Stearns said that he discussed with the publisher of the newspaper what had to be on the advertisement to disclose its source and said that neither he nor the publisher thought any more was needed than what appeared. Further, Stearns stated that he did not think the ad was political since it was ". . . not for or against a candidate, just a ballot issue."

8. On April 15, 1992, Stearns received from this office by certified mail a copy of the McCarthy complaint, along with a

copy of section 13-35-225, MCA, the statute alleged to have been violated. In a letter dated April 24, 1992, and sent the same date by teletransmission, Stearns notified this office of the names of the people (i.e., the "group of concerned taxpayers") who had paid for the advertisement and provided an address. In his letter, Stearns further stated that

We [he, Vannice and Vacura], along with the publisher of the newspaper, were unaware of the wording of the law, especially in regards to ballot issues. This letter is to inform you of the omission that was inadvertantly [sic] made and not printed on the advertisement. Please consider this letter as your notice of the above omission.

Stearns indicated that his April 24, 1992, letter was meant to provide notice of the omission as outlined in subsection (3) of section 13-35-225, MCA.

STATEMENT OF FINDINGS

Section 13-35-225, MCA, the statute alleged to have been violated in McCarthy's complaint, reads in pertinent part as follows:

(1) Whenever a person makes an expenditure for the purpose of financing communications advocating the success or defeat of a candidate, political party, or ballot issue, . . . the communication must clearly and conspicuously state the name and address of the person who made or financed the expenditure for the communication, including in the case of a political committee, the name and address of the treasurer. [Emphasis added.]

As the facts show, an advertisement appeared in the April 2, 1992, edition of The Plainsman, a weekly newspaper in Plains, Montana, that clearly advocated the defeat of a school levy, an

issue on the ballot for the April 7, 1992, election. That advertisement was a paid communication within the meaning of section 13-35-225(1), MCA; therefore, a statement disclosing who had paid for the advertisement was required to appear in the ad.

As the facts also show, at the bottom of the advertisement appeared the words "Paid for by a group of concerned taxpayers." An address, as required by law, was missing. Also missing from the attribution was the name of the treasurer, a requirement if the "group of concerned taxpayers" was a political committee.

A political committee is defined in section 13-1-101(12), MCA, to mean ". . . a combination of two or more individuals or a person other than an individual who makes a contribution or expenditure . . . to support or oppose a ballot issue. . . ."

The facts show that three individuals--Wesley Stearns, Delbert Vannice and Wesley Vacura--contributed money for the purpose of running an advertisement against the school levy and that the ad did appear in the weekly paper days before the election. Stearns acted as treasurer for the group, collecting the money and disbursing it. The three individuals, acting together as a "group of concerned taxpayers" and with Stearns as its self-appointed treasurer, therefore constituted a political committee as defined in section 13-1-101(12), MCA.

I find, therefore, that the advertisement should have included the name and address of the committee treasurer, Wesley Stearns.

After receiving a copy of McCarthy's complaint and a copy of section 13-35-225, MCA, Stearns became aware that he had failed to provide the full disclosure in the advertisement as that statute requires. As the facts show, his letter to this office dated April 24, 1992, was meant to provide notice of the omission and was sent to comply with subsection (3) of section 13-35-225, MCA, that states:

If information required in subsection (1) is inadvertently omitted or not printed, upon discovering the omission, the person financing the communication shall file notification of the omission with the commissioner within 5 days. . . ."

Stearns discovered the omission of attribution information required in section 13-35-225(1), MCA, on receipt of his copy of McCarthy's complaint--that is, on April 15, 1992. Not counting non-business days, which are not considered in the 5-day period for filing a notice of omission, Stearns still did not file his notification until seven days had elapsed. Thus, he was two days late in filing his notification of omission.

I find, therefore, that Stearns did not meet the time requirements for filing a notification of omission of attribution information on election materials.

CONCLUSION

Based on the facts and these findings, sufficient evidence exists to conclude that section 13-35-225(1), MCA, was violated in that proper attribution did not appear in an advertisement against a ballot issue. At the same time, as the facts also

show, Wesley Stearns on behalf of the "group of concerned taxpayers" sought the legal means to remedy his oversight by providing notification of the omission of required information, although he did so within 7 business days, not 5 days as the law requires.

While the notification provision statute technically was violated, I conclude that Stearns's being two days late in filing notification of the omission does not justify prosecution of the matter; therefore, no further action will be taken.

DATED this 21st day of May, 1992.

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DOLORES COLBURG
Commissioner of Political Practices