

BEFORE THE COMMISSIONER OF  
POLITICAL PRACTICES OF THE STATE OF MONTANA

Miller v. Lolo Public Schools No. COPP 2014-CFP-011	Finding of Insufficient Facts to Show a Violation of Montana Campaign Practice Laws  Dismissal of Complaint
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Lolo School District No. 7 in Lolo, Montana, placed consecutive school bond issues for approval by mail ballot with votes tabulated and released on October 1, 2013 and March 12, 2014. On March 21, 2014 Lolo resident Frank Miller complained that Lolo Public Schools engaged in illegal electioneering in support of the school bond issue

**SUBSTANTIVE ISSUES ADDRESSED**

The substantive areas of campaign finance law addressed by this decision are: applicability of Montana’s campaign practice act to school district bond elections; voting site electioneering; and, attribution.

**SUMMARY OF RELEVANT FACTS**

The foundational facts necessary for this Decision are as follows:

Finding of Fact No. 1: The Lolo School District #7 is classified as a second class (based on population) elementary school district. See § 20-6-201 MCA; Records Office of Public Instruction, State of Montana.

Finding of Fact No. 2: The Lolo School District No. 7 twice placed a school bond issue before voters resulting in October 1, 2013 and March 12, 2014 vote tabulations. (Missoula County Election Records).

Finding of Fact No. 3: On October 1, 2013, the Missoula County elections office tabulated the voting on the Lolo school bond issue and found it failed by a vote of 867 to 824. (Missoula County Election Records).

Finding of Fact No. 4: On March 12, 2014, the Missoula County elections office tabulated the voting on the Lolo school bond issue and found it failed by a vote of 948 to 919. (Missoula County Election Records).

Finding of Fact No. 5: On March 18, 2014 the Commissioner issued a decision, *Beal and Hickes v. Miller*, COPP-2014-CFP-007, finding sufficient facts to show a campaign practice violation in regard to the two Lolo school district bond elections.

## **DISCUSSION**

Lolo School District No. 7 serves a population of less than 6,500 people. On the basis of that population Lolo School District No. 7 is classified as a second class school district. FOF No. 1. The Campaign Practice Act has limited application to a second class school district election, including a bond issue election. §13-37-206 MCA. A second class school district election is exempted from many of the campaign finance reporting provisions set out in “part 2” of Chapter 37 of the Campaign Practice Act. *Id.*

This means the only campaign practice requirements directly applying to the Lolo School Bond vote are those set out in Chapter 35. The complaint in

this Matter sets out two potential violations of Chapter 35 requirements.

1. Electioneering violation

Montana law prohibits "...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..." §13-35-211(1) MCA. The complaint asserts such prohibited electioneering took place. The following findings of fact are made in regard to this part of the complaint:

Finding of Fact No. 6: The complaint is based on the placement of 4 large signs, three of which said vote "YES" along the edge of a road leading to the Lolo School gymnasium. (Complaint).

Finding of Fact No. 7: The signs discussed in FOF No. 6 were in place on March 12, 2014. (Response to Complaint).

Finding of Fact No. 8: Lolo public schools accepted return of completed mail ballots at its school gym on March 12, 2014. (Response to Complaint).

Finding of Fact No. 9: The signs discussed in FOF No. 6 were placed on private property adjacent to the Lolo School. (Response to Complaint).

Finding of Fact No. 10: The signs discussed in FOF No. 6 were placed by a political committee called "Vote Yes for Lolo Kids". (Response to Complaint).

Finding of Fact No. 11: George Hoover, director of operations for the Lolo School District, measured over 400 feet in distance between the signs and the door to gym area where mail ballots were dropped off. (Response to Complaint).

The Commissioner notes that there is an issue as to who or what entity engaged in the claimed electioneering and a further issue as to whether or not dropping mail ballots off constitutes “an election being held.” The Commissioner will not decide those issues as this part of the complaint can be resolved on a foundation issue.

Assuming *arguendo* that an election was held and that Lolo school district has some responsibility for the location of the signs, any electioneering occurred beyond the 100 foot legal boundary and is therefore permissible. See FF No. 11. In making this determination the Commissioner interprets the 100 feet to be measured from the “entrance to the building”, as stated by §13-35-211(1) MCA. Because the action, even if electioneering, is permissible this portion of the complaint is dismissed.

This Commissioner notes that deference to speech rights has caused past Commissioners to be cautious when making a determination of whether voting day electioneering occurred. See *Gee v. Childers*, decided February-17-2000; *Butorovich v. Walsh*, decided November-02-2000; and *Hope v. Busby*, COPP-2012-CFP-040. In that regard, the Montana Election Judge Handbook for 2014, at page 101, (Secretary of State Website) gives instructions to election judges as to how to deal with polling place electioneering on election day, including a clear description of the 100 foot zone as being the entrance to the building. The 2014 voting day, polling place use of signs in regard to the Lolo school vote was not within 100 feet of the entrance to a building and is therefore permissible.

## 2. Failure to Attribute

Section 13-35-225 MCA requires that “all communications advocating the success or defeat of a...ballot issue...must clearly and conspicuously include the attribution ‘paid for by’ followed by the name and address of the person who made or financed the expenditure...” The complaint alleges that a certain sign failed that requirement. The findings of fact necessary for this part of the complaint are as follows:

Finding of Fact No. 12: The Complaint identified 1 sign without an attribution, that sign containing in large text “Remember to Vote Lolo School Bond Issue” along with a red heart symbol followed by “2 complete schools.” (Commissioner’s records).

Again, there are issues involved with what entity printed the sign. The School District, however, states it permitted placement of the unattributed “remember to vote” signs on District fences. This use of public property, while slight, triggers the prohibition on use of public property to aid or oppose passage of a ballot issue. See § 2-2-121(3)(a) MCA. Montana law, however, only restricts use of public funds “in support of or opposition to a bond issue.” § 2-2-121(3)(b)(ii) MCA. Consistent with approach the Commissioner has determined generally that a government entity can provide neutral facts and information to electors related to a bond issue. *Roberts v. Griffin*, decided November 19, 2009.

As a foundational review, the Commissioner first examines the sign as to whether or not it met attribution requirements. The analysis begins with the obvious, that the sign does not advocate a vote for or against. Further, the “2

schools” statement is a neutral fact based on the bond proposal and is therefore permissible non-advocacy information. *Roberts v. Griffin*, decided November 19, 2009 and *Hansen v. Billings SD No. 2*, COPP-2013-CFP-30.

This leaves the heart symbol. Attribution is not required unless the heart symbol can be said to be advocating a vote “for” the school bond. An express advocacy analysis can be lengthy, depending on the wording examined (See, *Bonogofsky v. National Gun Owners Alliance*, COPP-2010-CFP-008). In this Matter a lengthy analysis is not necessary as “a court should find that an ad is the functional equivalent of express advocacy only if the ad is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate.” *Federal Election Comm’n v. Wisconsin Right to Life*, 551 U.S. 449, 469-70 (2007) (“*WRTL*”).

The Commissioner notes that the heart symbol was used by the group “Vote Yes for Lolo Kids” promoting passage of the school bond issue. “Vote Yes for Lolo Kids” was a political committee duly registered and reporting with the Commissioner of Political Practices. (Commissioner’s records). The information as to “Vote Yes for Lolo Kids” donations and expenses was available from the Commissioner website.<sup>1</sup> That concurrent heart symbol use, however, does not rise to the level of express advocacy. The associational links an elector is required to make in order to transform the heart symbol printed on the sign into a proponent group message, even if made, are not enough to

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<sup>1</sup> This reporting and disclosure by “Vote Yes for Lolo Kids” distinguishes this Matter from *Beal and Hickes v. Miller*, COPP-2014-CFP-007 wherein the entity or person making the expenditure had not registered as a political committee and did not attribute.

turn neutral words into words of express advocacy. The sign's dominate message is "remember to vote" and the heart symbol does not make the ad "susceptible of no reasonable interpretation other than as an appeal to vote for or against..." the bond issue. The Commissioner determines that the sign is not express advocacy. The sign is therefore permissible non-advocacy information that need not be attributed and could appropriately be placed on the School District's fence. This remaining portion of the Complaint is dismissed.

### **CONCLUSION**

Based on the preceding discussion as Commissioner I find and decide that there that this matter lacks sufficient evidence to show a violation of Montana's campaign practices laws, specifically §§13-35-221, 225, MCA, and that a civil penalty action under § 13-37-128, MCA is not warranted. This Matter is dismissed.

DATED this 29th day of April 2014.

  
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Jonathan R. Motl  
Commissioner of Political Practices