

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES

In the Matter of the Complaint)	
Against Montanans for In-Home)	SUMMARY OF FACTS
Care for I-159, SEIU 775)	AND
Montana, and SEIU 775)	STATEMENT OF FINDINGS
PAC)	

Montana Health Care Association filed a complaint against Montanans for In-Home Care for I-159, SEIU 775 Montana, and SEIU 775 Montana PAC alleging violations of Montana campaign finance and practice laws.

SUMMARY OF FACTS

1. In 2008, a proposed statewide ballot initiative known as the Montana Home and Community Care Act or Initiative No. 159 (I-159) was approved for signature gathering to qualify it for the ballot. If approved by voters, I-159 would enact laws establishing a program to provide home-care services to low-income disabled and elderly persons by individual home-care providers. Under the program as proposed by I-159, a home-care recipient would choose an individual provider trained and certified by the state. Individual providers would be permitted to bargain collectively with the state, but only through a statewide union exclusively composed of individual providers who would not be permitted to strike.

2. I-159 was submitted to the secretary of state on April 14, 2008. The attorney general approved the petition language on May 9, 2008. The secretary of

state then approved the petition form for I-159 on May 12, 2008, and transmitted it to the sponsors, authorizing the gathering of signatures. The sponsors of I-159 voluntarily withdrew the initiative on June 25, 2008.

3. SEIU is an acronym for the Service Employees International Union, a labor union headquartered in Washington, D.C. SEIU 775 Montana (SEIU Montana), headquartered in Helena, is the Montana local union affiliate of SEIU.¹

4. SEIU 775 Montana PAC (SEIU Montana PAC) was formed as the local affiliate's political action committee.

5. SEIU Montana and SEIU Montana PAC both supported I-159.

6. Montanans for In-Home Care for I-159 (MIHC) was formed as a ballot issue committee to support passage of I-159.

7. Montana Health Care Association describes itself on its website as a "non-profit, member-driven professional association serving Montana's long term care facilities." Rose Hughes is the executive director and filed the complaint in this matter.

8. Jonathan Motl is a Helena attorney who represents the complaint respondents--MIHC, SEIU Montana, and SEIU Montana PAC. Mr. Motl submitted an answer and supplemental answer to the complaint.

9. The complainant generally alleges that SEIU Montana and SEIU Montana PAC spent approximately \$268,000 through in-kind contributions of staff, direct expenditures on behalf of the initiative, and monetary contributions to

¹ SEIU 775 Montana has since changed its name to SEIU Healthcare 775NW.

MIHC. The complainant alleges that MIHC was funded almost entirely by SEIU Montana and SEIU Montana PAC and reported only \$800 of non-SEIU related contributions. The complainant further alleges that, throughout the campaign, numerous attempts were made to become informed about where the money to support MIHC's efforts was coming from and going to; however, because reports were filed late by the entities, complainant was unable to obtain timely information about their activities. The following specific violations of Montana law are alleged in the complaint:

Claim 1

MIHC and SEIU Montana each failed to file a statement of organization in timely manner with the commissioner of political practices and to designate a campaign treasurer and depository, in violation of §§13-37-201 and 13-37-205, MCA, and ARM 44.10.405 and 44.10.413.

Claim 2

MIHC failed to designate a campaign treasurer in timely manner and permitted someone to serve as campaign treasurer before making a designation, in violation of § 13-37-203, MCA.

Claim 3

MIHC failed to include required attribution language on its website and on campaign fliers, in violation of § 13-35-225, MCA.

Claim 4

MIHC and SEIU Montana received and deposited contributions and made expenditures before filing their respective organizational statements, in violation of § 13-37-207, MCA and ARM 44.10.503.

Claim 5

MIHC, SEIU Montana, and SEIU Montana PAC improperly reported certain in-kind contributions and failed to make timely report of the contributions, in violation of §§ 13-37-225, 13-37-226, 13-37-228, 13-37-229, and 13-37-230, MCA.

Claim 6

MIHC failed to disclose sufficient information regarding amounts paid to signature gatherers, in violation of § 13-27-112, MCA.

Claim 7

MIHC failed to report complete information regarding its receipt of in-kind contributions and failed to disclose the “nature” of the contributions, in violation of §§ 13-37-229 and 13-37-230, MCA, and ARM 44.10.513.

Claim 8

MIHC failed to report properly sufficient information to describe the “nature” of debts and obligations, in violation of ARM 44.10.535.

10. State law sets forth reporting requirements and the commissioner of political practices provides reporting calendars based on state statutes to political committees, showing deadlines for filing of campaign finance reports for ballot

issue committees, incidental committees, and PACs. For 2008 ballot issue committees, an initial report was due March 10th, with monthly reports due thereafter on the 10th of each month. For statewide incidental committees, an initial report was due March 8th, with monthly reports due thereafter on the 8th of each month. For other political committees, a pre-primary report was due May 22nd, a post-primary report was due June 23rd, and a pre-general report was due October 23rd.

11. MIHC filed a statement of organization with the commissioner of political practices on May 29, 2008, naming Jacquie Helt as treasurer and designating Wells Fargo as its primary depository. Helt performed duties as treasurer before being designated as treasurer on May 29, 2008.

12. MIHC filed its initial campaign finance report with the commissioner of political practices on June 10, 2008, covering the period from February 21 to June 5, 2008. MIHC reported that its first expenditure was made to M & R Strategic Services on May 16, 2008. The report also disclosed contributions received as early as May 6, 2008, and was signed by Jacquie Helt, treasurer. MIHC filed its next campaign finance report on July 10, 2008, designating it as a closing report. That report covered the reporting period from June 6 to June 25, 2008, the date on which I-159 was withdrawn. See Fact 2.

13. SEIU Montana PAC filed a statement of organization on June 28, 2006, naming Ted Dick as its treasurer and designating Wells Fargo as its primary depository.

14. SEIU Montana PAC filed a campaign finance report with the commissioner of political practices on May 22, 2008, for the reporting period January 1 to May 17, 2008. That report disclosed that SEIU Montana PAC had made expenditures before May 12, 2008, the day on which the secretary of state approved the form of the I-159 petition and transmitted it to the sponsors. See Fact 2. SEIU Montana PAC filed its second campaign finance report on July 11, 2008, covering the reporting period from May 18 to June 18, 2008.

15. SEIU Montana filed a statement of organization on July 16, 2008, naming Jacquie Helt as treasurer and designating Wells Fargo as its primary depository. Helt performed duties as treasurer before being designated as treasurer on July 16, 2008.

16. SEIU Montana filed an incidental political committee campaign finance report on July 16, 2008, for the period from February 21 to June 25, 2008. According to that report, SEIU Montana made its first expenditure, a consulting fee of \$5,400 paid to Sellers Feinberg & Associates, LLC, on February 29, 2008.

17. Complainant alleges that the MIHC website and fliers used by MIHC in petition signature gathering did not include the attribution "paid for by" followed by the name of the committee, name of the committee treasurer, and the address of the committee or treasurer. In response, MIHC concedes that the words "paid for by" were not included on the website or the fliers, but contends that all other required attribution information was included.

18. The fliers referenced in Fact 17 did not include the words “paid for by.” However, identifying and contact information for MIHC was listed on the fliers, including the MIHC name, address, telephone number, website address, and the name of its treasurer. The MIHC website also did not include the words “paid for by.” However, identifying and contact information for MIHC was listed on the website, including the MIHC name, address, telephone number, and email address. In addition, the name of MIHC’s treasurer was available through several links on the website.

19. In an answer to the complaint, respondents acknowledged that campaign finance reporting requirements for ballot issues are triggered by the date that a proposed initiative becomes a “ballot issue” under Montana law. Respondents contend, however, that prior to the 2008 election cycle, the commissioner of political practices interpreted the law to mean that a statewide initiative does not become a “ballot issue” for reporting purposes until sufficient signatures are submitted and certified such that it is qualified for submission for a vote by the public. According to the answer, a 2007 amendment to the statutory definition of the term “ballot issue” divided the definition into subparts (a) and (b), and the commissioner thereafter (in May, 2008) changed its interpretation, concluding that a statewide issue becomes a ballot issue upon preparation and transmission by the secretary of state of the form of the petition to those who submitted the proposed issue. Respondents claim that they filed their reports in a timely manner, but that if they were late there should be no fine based on their

contention that the commissioner changed its legal interpretation of the filing requirements in May 2008.

20. Previous complaint decisions establish that the commissioner of political practices has consistently interpreted the law to mean that a statewide initiative becomes a "ballot issue" upon approval of the form or petition by the secretary of state, not when sufficient signatures are gathered to qualify it for the ballot.

21. Complainant alleges that campaign finance reports filed by MIHC disclose substantial in-kind and monetary contributions (totaling \$267,984.09) from "SEIU 775 Montana." Complainant alleges that these contributions are listed under Schedule A, section 4 of the report form, which requires reporting of "Political Action Committee Contributions." Complainant notes that campaign finance reports filed by SEIU Montana PAC disclose no contributions made to MIHC during the same reporting periods covered by the reports. In their answer to the complaint, respondents acknowledge that MIHC should have reported the contributions, which were from SEIU Montana, under Schedule A, section 6 of the report form, which requires reporting of "Incidental Committee Contributions." Accompanying the answer filed by respondents was an amendment to the MIHC campaign finance reports, disclosing the amounts referenced above under section 6 instead of section 4 on Schedule A of the report form.

22. Complainant alleges that MIHC employed signature gatherers while trying to qualify I-159 for the ballot, but failed to include in its reports details

regarding who was paid to gather signatures and how much they were paid. In their answer, respondents contend that the amounts paid to signature gatherers were fully disclosed in MIHC campaign finance reports, listed as expenditures made to M & R Strategic Services (M & R) for “consulting.” The answer explained that part of the services provided by M & R included hiring and paying signature gatherers, but the previously filed reports from MIHC did not itemize those as separately identified expenses in listing expenditures made to M & R. Instead, MIHC reported its expenditures for all services provided by M & R, which included expenses related to payments made to signature gatherers. MIHC provided additional information in a supplemental report filed on July 21, 2008, including the names and addresses of signature gatherers and the amounts paid to each signature gatherer.

23. In August 2005, a stipulation was approved by Judge Donald Molloy in Montana Public Interest Research Group, et al. v. Bob Brown, et al., United States District Court Cause No. CV 03-183-M-DWM. The lawsuit challenged Montana’s signature gatherer disclosure requirements as set forth in § 13-27-112, MCA. Pursuant to the stipulation, the statute was declared unconstitutional to the extent it may be interpreted to require disclosure of the name and address of individual paid signature gatherers, and any enforcement of the statute that would require such information was enjoined by the court. However, the stipulation as approved by Judge Molloy did not affect the statute to the extent it requires disclosure of the amount paid to a signature gatherer. The commissioner of

political practices was not aware of the stipulation until after it had received the MIHC supplemental report referenced in Fact 22, providing additional information with respect to the payments made to signature gatherers.

24. Complainant alleges that MIHC reported receiving in-kind contributions in the form of time spent by SEIU and SEIU Montana staff, but that MIHC did not identify the contributions “as to [their] nature” in violation of ARM 44.10.513. Complainant alleges that MIHC was required to provide specific details regarding what type of services were provided by staff. In response, MIHC contends that it fully reported the value of the staff time provided by SEIU and SEIU Montana, including the value of costs, office overhead, staff time, benefits, and other expenses.

25. MIHC campaign finance reports disclose receipt of in-kind contributions from SEIU and SEIU Montana in the form of staff time and related expenses. The reports disclose the value of in-kind staff contributions from SEIU and SEIU Montana, identifying a) individual staff members and a portion of their salary and benefits based on the percentages of their time spent providing services with respect to MIHC, b) office overhead costs, and c) gas reimbursement. Although SEIU Montana filed a campaign finance report as an incidental political committee, SEIU did not file a statement of organization or a campaign finance report.

26. Complainant alleges that MIHC failed to report the nature of three debts amounting to \$98,424.70, owed to M & R Strategic Services. Complainant

acknowledges that the MIHC initial campaign finance report, filed on June 10, 2008, reported three debts owed to M & R for the amount listed above. However, citing ARM 44.10.535, complainant contends that the disclosure of the three debts should have included more detail and itemization as to the particular consulting services that were provided by M & R.

27. The MIHC campaign finance report, covering the period February 21 to June 5, 2008, discloses three debts owed to M & R in the following amounts: \$33,643.36 (incurred May 5, 2008), \$27,293.16 (incurred May 16, 2008), and \$37,488.18 (incurred June 5, 2008). The purpose for all three debts is described in the report as "consulting." On July 10, 2008, MIHC filed its second campaign finance report (also designated as a closing report) listing \$98,424.70 as an expenditure to M & R, to reflect payment of the three debts disclosed on the previous report. On the same date, MIHC faxed copies of billing statements from M & R to the commissioner of political practices.

STATEMENT OF FINDINGS

Claim 1

Complainant alleges that both MIHC and SEIU Montana failed to file in timely manner statements of organization, designating a campaign treasurer and primary campaign depository, in violation of §§13-37-201 and 205, MCA, and ARM 44.10.405 and 44.10.413. Consideration of this allegation requires a review of the statutes establishing registration and reporting requirements for political committees that support or oppose statewide ballot issues.

A “political committee” is defined to include “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 or a committee organized to support or oppose a ballot issue. . . .” Section 13-1-101(22)(b), MCA. A “person” includes a corporation, association, union, or other organization. Section 13-1-101(20), MCA.

The question arises: when did I-159 become a “ballot issue” for reporting purposes? The definition of the term is found in § 13-1-101(17), MCA, which provides:

(a) “Issue” or “ballot issue” means a proposal submitted to the people at an election for their approval or rejection, including but not limited to initiatives, referenda, proposed constitutional amendments, recall questions, school levy questions, bond issue questions, or a ballot question.

(b) For the purposes of chapters 35 and 37, an issue becomes a “ballot issue” upon certification by the proper official that the legal procedure necessary for its qualification and placement upon the ballot has been completed, *except that a statewide issue becomes a “ballot issue” upon preparation and transmission by the secretary of state of the form of the petition or referral to the person who submitted the proposed issue.* (Emphasis added).

Applying the last clause of subsection (b) of the above definition, it is clear that I-159, which was a statewide issue, became a “ballot issue” for campaign reporting purposes on May 12, 2008, when the secretary of state approved the form of the petition, thereby authorizing the gathering of signatures. See Fact 2.

The definition in subsection (17) was amended in 2007 by dividing it into its existing two parts, (a) and (b). Prior to the amendment, the definitional language was exactly the same, with the exception of the underscored and italicized language above in the last clause of the definition, which provided as follows:

. . . except that a statewide ballot issue becomes a “ballot issue” upon approval by the secretary of state of the form of the petition or referral.

This slight clarification to the language did not substantively change the definition, other than to clarify that transmission of the form of the petition by the secretary of state to the person who proposed the issue must occur before a statewide issue is considered a ballot issue. The amendment also did not change the interpretation of the commissioner of political practices concerning registration and reporting requirements related to statewide ballot issues. Contrary to respondents’ contentions summarized in Fact 19, both before and after the 2007 amendment, the commissioner interpreted the language to mean that for reporting purposes a statewide ballot issue exists once the secretary of state has approved the form of the petition, thus authorizing the gathering of signatures. For example, in Matter of the Complaint Against Canyon Ferry Road Baptist Church, Summary of Facts and Statement of Findings (March 3, 2006), former Commissioner Gordon Higgins, citing the previous version of the definition of “ballot issue” in § 13-10-101(17), MCA, stated: “. . . the form of the petition for CI-96 was approved by

the office of the Secretary of State on April 29, 2004; therefore CI-96 was a 'ballot issue' when the Church engaged in its signature-gathering activities." *Id.* At 6.

Clearly, MIHC, SEIU Montana, and SEIU Montana PAC all qualify as political committees under these definitions, based on their financial activities related to their support of I-159. The question to be addressed is this: when were their respective registration and reporting requirements triggered?

The statute requiring a political committee to register with the commissioner of political practices by filing a statement of organization, naming a campaign treasurer and providing other organizational information is § 13-37-201, MCA, which provides:

Campaign treasurer. Except as provided in 13-37-206, each candidate and each political committee shall appoint one campaign treasurer and certify the full name and complete address of the campaign treasurer pursuant to this section. A candidate shall file the certification within 5 days after becoming a candidate. *A political committee shall file the certification, which must include an organizational statement and the name and address of all officers, if any, within 5 days after it makes an expenditure or authorizes another person to make an expenditure on its behalf, whichever occurs first.* The certification of a candidate or political committee must be filed with the commissioner and the appropriate election administrator as specified for the filing of reports in 13-37-225. (Emphasis added).

Applying the statutory provisions referenced above, it is apparent that two things must occur to trigger registration and reporting requirements related to a statewide ballot issue. First, the secretary of state must prepare the form of the petition and transmit it to the person who submitted the proposed issue; second, a political committee must make or authorize an expenditure. If a political

committee made or authorized an expenditure *before* an issue became a ballot issue under § 13-1-101(17), MCA, the committee must file a statement of organization within five days after the secretary of state prepared the form of the petition and transmitted it to the person who submitted the proposed issue.

A. *Timeliness of Filing of Statements of Organization*

MIHC

MIHC filed its statement of organization on May 29, 2008. See Fact 11. According to its initial campaign finance report filed with the commissioner of political practices, MIHC made its first expenditure on May 16, 2008. Because I-159 became a ballot issue on May 12, 2008, (see Fact 2) MIHC had five days after making its first expenditure to file its statement—that is, no later than May 21, 2008. MIHC filed its statement of organization eight days too late, in violation of § 13-37-201, MCA.

SEIU Montana

SEIU Montana filed its statement of organization on July 16, 2008. See Fact 15. According to a campaign finance report filed with the commissioner of political practices, SEIU Montana made its first expenditure on February 29, 2008. SEIU Montana had five days after I-159 became a ballot issue to file its organizational statement—that is, no later than May 17, 2008. SEIU Montana filed its statement nearly two months too late.

SEIU Montana PAC

SEIU Montana PAC filed its statement of organization on June 28, 2006. See Fact 13. According to a campaign finance report filed with the commissioner of political practices, SEIU Montana PAC made expenditures in January, March, and April 2008. SEIU Montana PAC filed its statement of organization in timely manner.

B. Timeliness of Filing of Campaign Finance Reports

Section 13-37-226, MCA, establishes deadlines for candidates and political committees to file periodic campaign finance reports. Section 13-37-228, MCA, specifies the time periods that each report must cover. The commissioner of political practices makes available campaign finance report calendars for the different types of political committees, including statewide ballot issue committees (MIHC), statewide incidental committees (SEIU Montana), and other political committees (SEIU Montana PAC).

MIHC

Based on the statutory deadlines for reporting by statewide ballot issue committees, MIHC filed its campaign finance reports in timely manner. See Facts 10 and 12.

SEIU Montana

On July 16, 2008, SEIU Montana filed its initial and closing campaign finance report on one form covering the period February 21 through June 25, 2008. The committee failed to provide specific dates of expenditures, referring

instead to a timeframe of February to June 2008. SEIU Montana should have filed a report by June 8, 2008, the first deadline for an incidental committee reporting after I-159 became a ballot issue. See Facts 2 and 16.

SEIU Montana PAC

Based on the statutory deadlines for reporting by political committees, SEIU Montana PAC filed its pre-primary report for the period January 1 to May 18, 2008, in timely manner on May 22, 2008. Its report for the period May 18 to June 18, 2008, should have been filed by June 23, 2008; however, the report was filed several weeks late, on July 11, 2008. Other SEIU Montana PAC reports were filed on time, with the exception of its year-end report (for activity through December 31, 2008). That report was due January 31, 2009, but was not filed until February 2, 2009.

SEIU

SEIU (the national organization) made an in-kind contribution to MIHC in the form of staff time, thereby becoming an incidental political committee. ARM 44.10.327(2)(c). SEIU did not file a statement of organization or a campaign finance report. See Fact 25. Montana law authorizes the commissioner of political practices to adopt rules requiring reporting by incidental political committees. Section 13-37-226(6), MCA. The commissioner has adopted ARM 44.10.411, which requires incidental committees to file a statement of organization and establishes a schedule for filing of periodic campaign finance reports. SEIU did not comply with these reporting requirements.

C. Other Statutory and Regulatory Violations

Section 13-37-205, MCA, requires a political committee to designate a primary campaign depository for the purpose of depositing contributions received and making expenditures. According to the statute, the depository must be identified “at the same time and with the same officer with whom the . . . committee files the name of the . . . committee’s campaign treasurer pursuant to 13-37-201,” in other words, when the committee files its statement of organization. MIHC and SEIU Montana violated this statute when they filed their statements late.

Claim 2

Complainant alleges that because MIHC failed to designate a campaign treasurer in timely manner, it permitted someone, in effect, to serve as campaign treasurer before making a designation, in violation of § 13-37-203, MCA. That statute provides that an individual “may not serve as a campaign or deputy campaign treasurer or perform any duty required of a campaign or deputy campaign treasurer of a candidate or political committee until the individual has been designated and the individual’s name certified by the candidate or political committee.” MIHC, SEIU Montana, and Jacquie Helt violated the statute because Helt performed duties for MIHC and SEIU Montana that a treasurer would normally perform before being officially designated as treasurer of both committees. See Facts 11 and 15.

Claim 3

Complainant alleges that MIHC failed to provide proper attribution language by including the words "paid for by" on its website and on certain campaign fliers, in violation of § 13-35-225, MCA. Subsection (1) of the statute provides:

Election materials not to be anonymous -- statement of accuracy.

(1) All communications advocating the success or defeat of a candidate, political party, or ballot issue through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, poster, handbill, bumper sticker, internet website, or other form of general political advertising 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 for the communication. When a candidate or a candidate's campaign finances the expenditure, the attribution must be the name and the address of the candidate or the candidate's campaign. In the case of a political committee, the attribution must be the name of the committee, the name of the committee treasurer, and the address of the committee or the committee treasurer.

To comply with the statute, MIHC communications should have included the attribution language "paid for by" followed by the name of the committee, name of the committee treasurer, and address of either the committee or its treasurer.

While the words "paid for by" were not included on the website or the campaign fliers, all other identifying and contact information for MIHC was included. See Facts 17 and 18. In Matter of the Complaint Against CI-97 Stop Overspending Montana, et al., Summary of Facts and Statement of Findings (April 15, 2008), Commissioner Dennis Unsworth decided not to prosecute an alleged technical violation of the attribution requirements of § 13-35-225(1), MCA, where he found

that, despite the violations, the attribution language did not deprive the public of notice regarding which political committee paid for the campaign materials and how the committee could be contacted. For similar reasons, a civil prosecution of the technical violations of the attribution requirements is not justified in this particular case.

Claim 4

Complainant alleges that MIHC and SEIU Montana received and deposited contributions and made expenditures before filing their respective organizational statements, in violation of § 13-37-207, MCA, and ARM 44.10.503. Subsection (1) of § 13-37-207, MCA, requires all funds received by a campaign treasurer to be deposited within five days of receipt in a campaign depository designated pursuant to § 13-37-205, MCA. ARM 44.10.503(1) provides that no contribution received or expenditure made by a political committee shall be deposited or expended except by the appointed campaign treasurer through the designated campaign depository. MIHC and SEIU Montana violated the statute and rule when they engaged in financial transactions before officially appointing a treasurer and designating a campaign depository by filing their statements of organization.

Claim 5

Complainant alleges that MIHC improperly reported substantial in-kind contributions (amounting to \$267,984.09) from SEIU Montana under Schedule A, section 4 of the campaign finance report form, which requires disclosure of PAC contributions, and notes that SEIU Montana PAC did not report making those

contributions to MIHC during its corresponding reporting periods. In response, MIHC acknowledged that the contributions should have been reported under Schedule A, section 6 of the form, which requires reporting of incidental committee contributions such as those received from SEIU Montana. MIHC amended its campaign finance reports to correct the oversight. Because the contributions were fully disclosed and simply had been entered in the wrong part of the report form, no violation is found.

Claim 6

Complainant alleges that MIHC failed to disclose sufficient details regarding amounts paid to signature gatherers. Section 13-27-112, MCA, requires a person who employs a paid signature gatherer to file a report with the commissioner of political practices “containing those matters required by Title 13, chapter 37, part 2” for, *inter alia*, ballot issue committees. According to the statute, the reports “must include the amount paid to a paid signature gatherer.” Section 13-27-112(2), MCA.

MIHC disclosed expenditures it had made to M & R Strategic Services, a consulting firm that had hired and paid signature gatherers to obtain signatures for I-159. Reports from MIHC did not itemize the amounts of the expenditures made to M & R that were for signature-gathering expenses rather than other consulting services. In July 2010, MIHC filed a supplemental report disclosing the names and addresses of signature gatherers and the amounts paid to each. See Fact 22. Apparently neither the attorney for MIHC nor the commissioner was aware of a

stipulation approved by Federal District Judge Donald Molloy in August, 2005, which interprets § 13-27-112, MCA, to require only the disclosure of amounts paid signature gatherers without disclosure of their names and addresses. See Fact 23. MIHC provided sufficient information regarding amounts paid to signature gatherers and, thus, did not violate the statute.

Claim 7

Complainant alleges that MIHC failed to report the “nature” of in-kind contributions received from SEIU and SEIU Montana, in violation of ARM 44.10.513. The rule describes reporting requirements for in-kind contributions:

IN-KIND CONTRIBUTION, REPORTING (1) For the purposes of Title 13, chapter 37, and these rules, an in-kind contribution shall be reported as follows:

(a) A candidate or political committee shall report an in-kind contribution on the appropriate reporting schedule and, in addition to the reporting requirements of ARM 44.10.511, shall identify it as to its nature.

(i) The total value of the services, property, or rights contributed in-kind shall be deemed to have been consumed in the reporting period in which received.

(b) The value of an in-kind contribution shall be determined as follows:

(i) It shall be reported at its fair market value at the time of the contribution; or

(ii) It shall be reported at the difference between the fair market value at the time of the contribution and the amount charged the contributee; or

(iii) It shall be reported at the actual monetary value or worth at the time of the contribution; or

(iv) If due to extraordinary circumstances none of these provisions would be appropriate or no reasonable fair market value can be established, it shall be sufficient to report a precise description of such in-kind contribution so received.

(c) Fair market value shall be the retail price of such services, property, or rights in the market from which it ordinarily would have been purchased by the contributee at the time of its contribution.

MIHC reported the value of SEIU and SEIU Montana staff contributions, naming individual staff members and the percentage of their time and corresponding value of their salaries and benefits attributable to providing services to MIHC. The reports also disclosed a value for office overhead costs and for gas reimbursement. The rule requires reporting of the fair market value of an in-kind contribution.

MIHC reported the value of staff time and other costs contributed by SEIU and SEIU Montana, including a percentage of staff time contributed and a corresponding proportion of salaries and benefits, office overhead costs, and costs for gas reimbursement. MIHC reports adequately identified the "nature" of in-kind contributions it received.

Claim 8

Citing ARM 44.10.535, complainant alleges that MIHC did not adequately disclose the nature of three debts that total more than \$98,000 owed to M & R Strategic Services for consulting services. See Fact 26. ARM 44.10.535(2) requires a reporting committee to report the full name and mailing address of those to whom a debt is owed, including the amount, date contracted, and nature of each debt or obligation. MIHC accurately reported the debts, listing M & R's name and

mailing address, specifying the date each debt was incurred, and describing the purposes of each as “consulting.” The MIHC closing report filed on July 10, 2008, reports an expenditure that fully paid the debts. See Fact 27.

In 2008, § 13-37-230, MCA, which provides for disclosure of expenditures, did not require the reporting of details regarding amounts paid to consultants, advertising firms, and other entities for services performed for committees and candidates. The statute was amended in 2009 to add the following language:

(2) Reports of expenditures made to a consultant, advertising agency, polling firm, or other person that performs services for or on behalf of a candidate or political committee must be itemized and described in sufficient detail to disclose the specific services performed by the entity to which payment or reimbursement was made.

Although the statute was amended to require more specificity in the description of services performed by firms like M & R, it was not enacted until 2009; thus, the MIHC 2008 campaign finance reports of debts owed was in compliance in all respects with the laws and rules in effect at that time.

CONCLUSION

Following is a summary of the violations found in this case:

MIHC

- Filed its statement of organization eight days late, in violation of § 13-37-201, MCA.
- Violated § 13-37-205, MCA, requiring designation of a campaign depository, when it filed its statement of organization late.

- MIHC and its treasurer, Jacquie Helt, violated § 13-37-203, MCA, when Helt performed duties for MIHC that a treasurer would normally perform before being officially designated as treasurer.
- Violated the attribution language requirements of § 13-35-225(1), MCA; however, because sufficient identifying and contact information was provided on the campaign materials, a civil prosecution of this violation will not be pursued.
- Violated § 13-37-207, MCA, by engaging in campaign-related financial transactions before officially appointing a treasurer and designating a campaign depository by filing a statement of organization.

SEIU Montana

- Filed its statement of organization nearly two months late, violating § 13-37-201, MCA.
- Failed to file certain campaign finance reports, thereby violating §§ 13-37-226 and 13-37-228, MCA.
- Violated § 13-37-205, MCA, requiring designation of a campaign depository, when it filed its statement of organization late.
- SEIU Montana and its treasurer, Jacquie Helt, violated § 13-37-203, MCA, when Helt performed duties for SEIU Montana that a treasurer would normally perform before being officially designated as treasurer.

- Violated § 13-37-207, MCA, by engaging in campaign-related financial transactions before officially appointing a treasurer and designating a campaign depository by filing a statement of organization.

SEIU Montana PAC

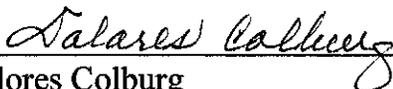
- Filed two campaign finance reports late, violating § 13-37-226, MCA.

SEIU

- Failed to file a statement of organization and an incidental committee campaign finance report, in violation of ARM 44.10.411.

Therefore, based on the preceding Summary of Facts and Statement of Findings, sufficient evidence is found to conclude that MIHC, SEIU, SEIU Montana, and SEIU Montana PAC violated Montana campaign finance and reporting laws and that a civil penalty action under § 13-37-128, MCA, is warranted.

Dated this 31st day of August, 2011.



Dolores Colburg
Deputy Commissioner of Political Practices