

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES

In the Matter of the)	SUMMARY OF FACTS
Complaint Against)	AND
MONTANANS FOR CLEAN WATER)	STATEMENT OF FINDINGS
And)	
THE ORVIS COMPANY INC.)	

Tom Daubert, Communications Director for Montanans for Common Sense Water Laws/Against Initiative 122, a ballot issue committee, (Complainant), filed a complaint against Montanans for Clean Water (Respondent), and The Orvis Company Inc. (Orvis). Montanans for Clean Water is a ballot issue committee supporting Initiative 122. Orvis is a retail company that contributed to the campaign on behalf of Respondent. The complaint alleges that Respondent and Orvis violated various campaign finance reporting laws and rules when Respondent failed to timely report in-kind contributions made by Orvis, and further, that Orvis did not register as an incidental political committee, nor timely report expenditures made on behalf of Respondent.

Claim 1

Complainant alleges that Respondent received two in-kind contributions from Orvis and failed to report either of those in-kind contributions during the reporting period required by law.

Claim 2

Complainant alleges that Orvis failed to report the in-kind expenditures made on behalf of Respondent, and that Orvis did not register with the Commissioner of Political Practices (Commissioner) as an incidental political committee.

SUMMARY OF FACTS

1. Complainant filed a complaint with the Commissioner on October 23, 1996 at 4:09 p.m. The complaint was hand-delivered to the Commissioner's office.

Claim 1

2. Respondent entered into discussions with Orvis the weekend of September 14, 1996, regarding the possibility of Orvis providing payment to the advertising agency MacWilliams, Cosgrove, Snider, Smith, and Robinson (MCSSR), on behalf of Respondent, for television advertising supporting I -122. MCSSR is the advertising agency hired by Respondent to develop its media advertising.

3. Orvis realized that many of its customers supported Respondent's position on I-122 and that an advertising potential existed for both Orvis and Respondent. Orvis made the decision to spend \$20,000 in advertising on behalf of Respondent. On September 30, 1996, a contract was signed between Orvis and MCSSR to provide advertising time from September 25, 1996 through November 5, 1996. The advertising included running the same television ad originally produced for Respondent. The disclaimer on the ad was altered to reflect the fact that Orvis paid for the ad. Complainant witnessed the television advertising at least as early as October 16, 1996.

4. The advertising cost \$20,000. Orvis' financial records indicate that a check request was submitted to its accounting department on September 25, 1996. The check was made out to MacWilliams, Cosgrove, Snider, Smith and Robinson. A notation under the payee name is as follows: "ATT: Montanans for Clean Water Account." The check was dated September 27, 1996. Orvis stated that the check was cashed by MCSSR on October 7, 1996.

5. Respondent filed a campaign finance report (Form C-6) with the Commissioner as required by law on October 21, 1996. The report covered the period of September 6, 1996 through October 16, 1996. The report did not contain any information about the \$20,000 in-kind contribution made by Orvis.

6. Orvis also produced and mailed a letter to its customers. The letter was drafted by Orvis personnel and mailed on October 11, 1996 so that Orvis customers would receive the letter by October 16, 1996. Orvis estimated the value of this in-kind contribution as \$1,250. The estimated value was based on three items: printing, postage, and handling. The letter was mailed directly to 1,950 Orvis customers at a printing cost of .28 per piece, postage of .32 for each piece, and handling of .04 per piece. No value for staff time devoted to drafting the letter was included in the estimated value.

7. Respondent did not report the \$1,250 in-kind contribution made by Orvis or reference the mailing by Orvis on the October 21, 1996 report.

8. Complainant filed the complaint on October 23, 1996, and the Commissioner sent Respondent and Orvis copies of the complaint by certified mail.

Claim 2

9. Orvis' headquarters are located in Manchester, Vermont. Orvis filed a Statement of Organization and Report of Expenditures (Form C-4) with the Commissioner on October 24, 1996. The report indicated that two expenditures were made by Orvis on behalf of Respondent. The report stated that both expenditures were made on October 16, 1996. Orvis described the two expenditures on the report as "MCSSR television ads,"

and "Orvis direct mail letter." Orvis received a notification of possible violations of Montana campaign finance laws and faxed its completed Form C-4 to the Commissioner within 24 hours.

10. On October 22, 1996, Orvis sent a memo to Respondent giving notice that Orvis made an in-kind contribution in the amount of \$20,000 for advertising supplied by MCSSR from October 16, 1996 through October 22, 1996.

11. On October 23, 1996, Orvis sent a memo to Respondent indicating that a letter urging support of I-122 had been sent to 2,000 customers at a cost of \$1,250, which included \$550 for printing, \$640 for postage, and \$60 for handling. The memo also states that the letter was mailed so that Orvis' customers would receive it by October 16, 1996.

12. Respondent filed the next campaign finance report (Form C-6) with the Commissioner as required by law on November 1, 1996. This report covers the period of October 17, 1996 through October 26, 1996. This report lists two in-kind contributions from Orvis. The report indicates that the in-kind contributions were received on October 22, 1996. Both Form C-6 filed by Respondent and Form C-4 filed by Orvis reported identical amounts of \$20,000 for advertising, and \$1,250 for direct mailing.

STATEMENT OF FINDINGS

Statewide ballot issue committees must disclose any contributions they receive within the reporting periods established by statute.

13-37-229. Disclosure of contributions received. Each report required by this chapter shall disclose the following information:

- (1) the amount of cash on hand at the beginning of the reporting period;
- (2) the full name, mailing address, occupation, and employer, if any, of each person who has made aggregate contributions, other than loans, of \$35 or more to a candidate or political committee (including the purchase of tickets and other items for events, such as dinners, luncheons, rallies, and similar fundraising events);
- (3) for each person identified under subsection (2), the aggregate amount of contributions made by that person within the reporting period and the total amount of contributions made by that person for all reporting periods;
- (4) the total sum of individual contributions made to or for a political committee or candidate and not reported under subsections (2) and (3) of this section;
- (5) the name and address of each political committee or candidate from which the reporting committee or candidate received any transfer of funds, together with the amount and dates of all transfers;
- (6) each loan from any person during the reporting period, together with

the full names, mailing addresses, occupations, and employers, if any, of the lender and endorsers, if any, and the date and amount of each loan;

- (7) the amount and nature of debts and obligations owed to a political committee or candidate, in the form prescribed by the commissioner;
- (8) an itemized account of proceeds that total less than \$35 from a person from mass collections made at fundraising events;
- (9) each contribution, rebate, refund, or other receipt not otherwise listed under subsections(2) through(8) of this section during the reporting period;
- (10) the total sum of all receipts received by or for the committee or candidate during the reporting period; and
- (11) other information that may be required by the commissioner to fully disclose the sources of funds used to support or oppose candidates or issues.

13-37-226. Time for filing reports. . . . (2) Political committees organized to support or oppose a particular statewide ballot issue shall file reports:

- (a) quarterly, due on the fifth day following a calendar quarter, beginning with the calendar quarter in which funds are received or expended during the year or years prior to the election year that an issue subject to a referendum is or is expected to be on the ballot;
- (b) on the 10th day of March and on the 10th day of each subsequent month through September;
- (c) on the 15th and 5th days preceding the date on which an election is held;
- (d) within 24 hours after receiving a contribution of \$500 or more if received between the 10th day before the election and the day of the election;
- (e) within 20 days after the election; and
- (f) on the 10th day of March and September of each year following an election until the political committee files a closing report as specified in 13-37-228(3).

The Commissioner has promulgated rules defining contributions, expenditures and detailing the required reporting procedures.

Administrative Rule, 44.10.511 Contributions, Reporting (1) A contribution becomes a contribution on the date it is received; or, in the case of an in-kind contribution, on the date the consideration is received by the candidate or political committee.

Administrative Rule 44.10.513 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 specified in 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.

Administrative Rule 44.10.531 Expenditures, Reporting (1) An expenditure is made on the date payment is made, or in the case of an in-kind expenditure, on the date the consideration is given.

(2) An expenditure shall be reported on the date and for the reporting period during which it is made. . . .

Claim 1

Complainant alleges that Respondent failed to timely report two in-kind contributions from Orvis. An in-kind contribution becomes a contribution on the date consideration is received by the political committee. Although discussions about the in-kind advertising took place between Orvis and Respondent as early as the weekend of September 14, 1996, the contract for services was signed by Orvis on September 30, 1996. The contract was between MCSSR, Respondent's advertising agency, and Orvis for advertising services in support of I-122. The ads were scheduled to run between September 25 and November 5, 1996. The ads actually ran from October 16, 1996 through October 22, 1996. The Orvis check was dated September 27, 1996, and the check was cashed by MCSSR on October 7, 1996. The consideration for this in-kind contribution was received as early as September 30, 1996, the date the contract was signed, and no later than October 7, 1996, the date the check was cashed. Both of these dates are within the mandatory reporting period applicable to the October 21, 1996 report.

The October 21, 1996 report required that all contributions and expenditures made between September 6, 1996 through October 16, 1996 be reported. Respondent had knowledge of the expenditure made by Orvis and failed to report it as an in-kind contribution in its October 21, 1996 report. Respondent submitted its report (Form C-6) on October 21, 1996 with no mention of any contributions from Orvis. In addition, when the next report (Form C-6) was submitted, Respondent indicated that it received the advertising on October 22, 1996. The dates reported are incorrect and do not accurately disclose the required campaign finance information.

The second in-kind contribution was also incorrectly reported. The letters to customers of Orvis were mailed by Orvis on October 11, 1996, well before the October 16, 1996 reporting deadline. In fact, Orvis stated that the letter was mailed on October 11, 1996 so that it would be received before October 16, 1996. Respondent received the benefit of the letter during the reporting period ending October 16, 1996. Yet, Respondent failed to timely and accurately report this in-kind contribution as required by law. Further, Respondent under-estimated the value of the in-kind contribution. Orvis' staff time to draft the letter was not included in the value of the in-kind contribution. The method used to determine the value of in-kind contributions is defined by administrative rule. Respondent failed to fully and lawfully disclose the amount and source of the Orvis contributions.

Respondent has violated the reporting requirements as alleged in Claim 1. Respondent failed to timely and accurately report receipt of two in-kind contributions and failed to properly report the value of the in-kind contribution from Orvis.

Claim 2

Complainant alleges that Orvis failed to register as an incidental political committee and failed to timely report the in-kind expenditures it made on behalf of Respondent. An expenditure becomes reportable by an incidental political committee on the date payment is made. The \$20,000 expenditure made by Orvis for advertising became reportable on September 27, 1996, the date payment was made to MCSSR. Orvis did not register as an incidental political committee. Orvis became an incidental political committee when it made expenditures on behalf of Respondent. However, because Orvis' headquarters are located in Manchester, Vermont, Orvis was not aware of Montana's campaign finance and reporting laws. The Commissioner normally informs incidental political committees of their reporting requirement upon becoming aware of their expenditures. In this case, the beneficiary of the Orvis contributions did not timely report the in-kind contribution. Therefore, the Commissioner had no knowledge that Orvis had expended funds on behalf of Respondent, or that Orvis was an incidental political committee. Thus, the Commissioner did not notify Orvis of its obligation to register and report the expenditures made on behalf of Respondent. Respondent apparently did not inform Orvis of its obligation either. After the filing of the complaint, Orvis was notified. Orvis demonstrated good faith by immediately filing the required paperwork.

Orvis has violated Montana's campaign finance laws by not timely reporting its expenditures, by failing to timely register as an incidental political committee, and by under-reporting the value of the letters sent to Orvis customers. However, Orvis acted promptly and in good faith in attempting to resolve this matter.

CONCLUSION

Based on the preceding facts and findings, there is sufficient evidence to conclude that Montanans for Clean Water violated sections 13-37-229, 13-37-226, Montana Code Annotated (MCA) and 44.10.511, and 44.10.513, Administrative Rules of Montana (ARM).

Based on the preceding facts and findings, there is sufficient evidence to conclude that The Orvis Company Inc. violated sections 13-37-226, MCA, and 44.10.531, ARM.

I find that Montanans for Clean Water and Orvis intentionally or negligently violated Montana's campaign finance laws and rules and that a civil penalty action under section 13-37-128, MCA, is warranted.

DATED this 27th day of February, 1997.



ED ARGENBRIGHT, Ed.D.
Commissioner of Political Practices