

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES
OF THE STATE OF MONTANA

IN THE MATTER OF THE)	
COMPLAINT AGAINST)	SUMMARY OF FACTS AND
CHARLEY SKINNER, Cascade)	STATEMENT OF FINDINGS
County Assessor, Great Falls,)	
Montana)	

Perry J. Nielsen of Vaughn, Montana, in a complaint filed with this office on March 26, 1990, alleges violation of election laws by Charley Skinner, Cascade County Assessor, Great Falls, Montana. Specifically, Nielsen asserts that Skinner apparently violated campaign practice statutes by:

- 1) Soliciting campaign contributions at the County Courthouse.
- 2) Providing no disclaimer on the solicitation.
- 3) Inviting potential contributors to contact her at her public place of employment and via the public telephone # assigned to the County Assessor's Office.

The statutes applicable to violations asserted by Nielsen are sections 13-35-225 and 13-35-226, Montana Code Annotated (MCA), titled respectively "**Election materials not to be anonymous**" and "**Unlawful acts of employers and employees.**"

In pertinent part, section 13-35-225, MCA, provides as follows:

- (1) Whenever any person makes an expenditure for the purpose of financing 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, or other form of general political advertising, such communication shall clearly and conspicuously state the name and address of the printer, if printed commercially, and the name and address of the person who made or financed the expenditure for the communication. . . .

In pertinent part, section 13-35-226, MCA, provides as follows:

(3) No public employee may solicit support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue while on the job or at his place of employment. However, nothing in this section is intended to restrict the right of a public employee to express his personal political views. [Emphasis added.]

The results of an investigation of the alleged violation conducted between March 27 and April 2, 1990, are set forth in the following summary of facts.

SUMMARY OF FACTS

1. Perry J. Nielsen, the complainant, works in the appraisal office located in the Cascade County Courthouse and is, himself, an officially filed candidate for the office of county assessor.

2. With his letter of complaint, Nielsen provided a piece of election material that he asserts was distributed by or under the direction and with the knowledge of Charley Skinner on or about March 9, 1990. A copy of the material (hereinafter "flier") is attached as Exhibit A.

3. The flier, dated March 7, 1990, is headed "**GO WITH A WINNER!! VOTE FOR SKINNER!!**" and is in the form of a letter addressed "Dear Friends" and signed by Charley Skinner.

4. Following an opening paragraph, the letter reads in part:

To get elected I need you, your friends and your neighbors support and vote.

I will also need some "media exposure", signs and other campaign materials, which are expensive. The visibility level of my campaign will be in proportion to contributions received. If you and your friends desire Charley Skinner to continue to be your County Assessor,

please send campaign contributions to: Skinner for Assessor Committee, Nancy Anderson, Sec/Treasurer, [sic] 3901 13th Avenue South, Great Falls, Montana 59405.

5. In closing her letter, Skinner writes as follows:

I welcome your questions or comments regarding assessment issues. Please feel free to contact me at 761-6700 ext 426 or 761-7945.

6. Reproduced on the back of the flier is an undated Great Falls Tribune article that is largely devoted to Skinner and features her photograph.

7. Skinner, in a personal interview at the courthouse on April 2, 1990, stated that a box of the fliers, along with printed cards intended to accompany each flier, were delivered to her office in the courthouse.

8. The printed card, about the size of a postal card, has space for a person to disclose name and address and provides a number of boxes to be checked indicating the kind of support, including financial, that an individual desires to give to the Skinner campaign. On the reverse, it is pre-addressed to Skinner's campaign secretary/treasurer. A copy of the card is attached as Exhibit B.

9. The solicitation of support card bears the following attribution (a "disclaimer" in political usage):

Paid for by: Skinner for Assessor Committe, [sic] Nancy Anderson, Secretary/Trea., 3901 13th Avenue South, Great Falls MT 59405

10. Skinner said that she took a quantity of her fliers and cards and put them on the desk of Virginia Williams, an employee in the office of the clerk of court. Skinner said that Williams had told her earlier that she wanted to help Skinner's campaign.

11. Skinner admitted that she had handed the fliers and cards to employees in the office of the county clerk and recorder. Further, she said that she had put some of the materials on the "break table" in the office of the county treasurer.

12. Skinner said that all distributions of materials by her occurred on her "breaks." Furthermore, during the interview, Skinner also maintained that she had no idea that her distributions were wrong and still held to that view since she had seen many other candidates passing out materials in the courthouse.

13. Skinner also stated that, when she filed for election to the office of county assessor, she was not provided a copy of the laws regarding campaign finance and practice.

14. Virginia Williams, also in an interview on April 2, 1990, said that she had known Skinner for 12 or 13 years and had told her she would do anything to help in her election campaign. Williams said that she had asked Skinner to provide her with campaign materials.

15. On or about March 9, 1990, Williams said she was away from her desk just before the quitting time of 5 p.m. and returned shortly after 5 p.m. to find a stack of Skinner's fliers and cards on her desk.

16. Bob Bateman, chief deputy in the office of the clerk and recorder, stated that Skinner had placed a flier and card on each employee's desk in that office. His recollection is that Skinner did not hand the materials to anyone or talk to anyone, but simply laid the materials on each desk in the office. He recalled her visit to the office as being late afternoon, around 4:00 or 4:30,

the busiest time of the day and when nearly all staff are engaged in dealing with people who have come in to file various papers.

17. Tom Pysher is an employee in the appraisal office located in the courthouse, and his desk is adjacent to that of complainant Nielsen. Pysher said that Skinner never brought any materials around to that office. Pysher believes that the Skinner flier that Nielsen found on his desk was probably placed there by a fellow worker who did it just to "get a rise" out of Nielsen.

STATEMENT OF FINDINGS

In his complaint, Nielsen asserts wrongdoing on the part of Skinner in three areas: (1) lack of appropriate attribution on campaign materials, (2) invitation of potential campaign contributors to be in touch with her at her public place of employment, and (3) solicitation of campaign contributions at the courthouse.

As to the first issue, section 13-35-225(1), MCA, supra, clearly states that all manner of communications "advocating the success or defeat of a candidate" are required to show the name and address of the person who either made or paid for the communication and the name and address of the printer, if printed commercially. Both the flier and the card in question are communications and both are clearly supportive of the election bid of Skinner for county assessor; thus, these materials fall under the requirements of the cited statute.

An examination of the materials shows that the card bears the typical "Paid for by . . ." introduction found on most campaign

materials and is followed by a name and address. The flier does not carry an attribution in similar fashion; that is, there is no "Paid for by . . ." statement. The flier, however, is signed by Charley Skinner; and, within the text, it clearly provides the name of her campaign, the name of her campaign treasurer, and an address. Any person seeing these materials would conclude that they were prepared and financed by Skinner's campaign. They certainly are not anonymous; therefore, they do meet the intent of section 13-35-225, MCA, that proscribes anonymity of election materials.

The second issue surrounds Nielsen's allegation that Skinner improperly invited "potential contributors to contact her at her public place of employment" and listed the telephone number of her public office. As the facts show, Skinner's flier concludes by stating that she welcomes "questions and comments regarding assessment issues" and then lists both her public office and residence telephone numbers.

As the facts also show, the invitation for people to be in touch with Skinner about assessment matters is not limited solely to "potential contributors." Rather, it is a general invitation to any reader of her flier. Furthermore, making available her office telephone number to receive inquiries from anyone about assessment concerns is entirely proper.

In his complaint on this particular issue, Nielsen implies that it is illegal for any of Skinner's supporters, financial or otherwise, to have any communication with her while she is on the job or at her work place. That is simply not the case. Such a

prohibition is nowhere to be found in campaign practice law. Indeed, if anybody wished to drop off a monetary contribution to a candidate at the candidate's public place of employment, no election law is violated in doing so.

The third and final issue of the Nielsen complaint concerns the solicitation of campaign contributions and other support by a public employee "while on the job or at his place of employment," a practice which is prohibited under section 13-35-226(3), MCA, supra.

A fair and reasonable reading of the flier is persuasive that it is a solicitation of support for "the nomination or election of a candidate for public office." The flier, at the very top, urges **"GO WITH A WINNER!! VOTE FOR SKINNER!!"** Within the text, Skinner makes the following plea: "To get elected I need you, your friends, and your neighbors support and vote" and "please send your campaign contributions to. . . ."

The card, intended to accompany the letter, provides a means for people to sign on to help the Skinner campaign. While it does not include the kinds of urgings found in the flier (the closest thing is "YES! Charley, I can help in the following ways:"), the intent of its distribution clearly is to gain support for Skinner's election. However, even if the card were to be discounted as a solicitation because it lacks words of clear importunity, the flier may stand alone and, as indicated above, is judged a solicitation.

The only remaining questions, therefore, are whether or not the solicitations were made by Skinner "while on the job or at [her] place of employment." I conclude that they were not.

Skinner has stated that all distributions were made by her while she was on her "breaks." While the law requires that the office of county assessor be kept open for business between the hours of 8 a.m. and 5 p.m., Monday through Friday (section 7-4-2211, MCA), there apparently are no established hours of employment for the county assessor. Since Skinner has stated that she was on a "break" from her job at the time she made the distributions and since there is no evidence to dispute that assertion, then the distributions of the campaign materials were not made by her "while on the job."

Additionally, the evidence shows that the distributions were all made in offices other than the county assessor's office, Skinner's actual place of employment. While it could be argued that Skinner's place of employment is the county courthouse, I do not choose to construe the law so broadly. Section 13-35-226, MCA, is a criminal statute, which must be strictly construed and may not be extended by construction. Montana Automobile Association v. Greely, 38 St. Rptr. 1174, 1180, 632 P.2d 300, 306 (1981); Shipman v. Todd, 131 Mont. 365, 368, 310 P.2d 300, 302 (1957). Skinner's place of employment is the county assessor's office. Since Skinner made no distributions of her campaign materials in that office, then no solicitations were made by her while "at [her] place of employment."

CONCLUSION

Based on the facts and these findings, I conclude that Charley Skinner did not violate the election law regarding appropriate

attribution on election materials to the extent that would justify a criminal prosecution. I conclude, as well, that Charley Skinner did not violate any election law by inviting people to call on her at her public office concerning matters of assessment, her job.

Finally, I conclude that Charley Skinner did not solicit support for her nomination and election as county assessor while she was on the job or at her place of employment.

Dated this 23rd day of April, 1990.

Dolores Colburg

DOLORES COLBURG
Commissioner of Political Practices