

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES

In the Matter of the Complaint Against Steve Daines)))	SUMMARY OF FACTS AND STATEMENT OF FINDINGS
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The Montana Democratic Party filed a complaint on March 4, 2008, against Steve Daines alleging violations of Montana's lobbying, campaign financial reporting, campaign disclosure, and campaign practice laws.

The complaint reasserted a June 7, 2007, complaint, which was dismissed. This Summary of Facts and Statement of Findings will address the March 2008 complaint.

SUMMARY OF FACTS

1. The Montana Democratic Party (MDP) is a political party committee registered with this office pursuant to Admin. R. Mont. 44.10.327(2)(b)(ii).
2. MDP filed a complaint against Steve Daines (Daines) in June 2007.
3. The June 2007 complaint was dismissed on the grounds Daines was not a candidate for elected office in Montana, and there was no evidence indicating Daines planned to become a candidate.
4. In March 2008 MDP filed another complaint, which included the original complaint material in addition to allegations that described specific conduct which, if substantiated, would provide for a violation of Montana lobbying, campaign finance and campaign practice law.
5. Steve Daines (Daines) was a candidate for Lieutenant Governor in the election cycle culminating in a November 2008 election.
6. Daines was running on a ticket with Roy Brown (Brown) for Governor.
7. A review of records on file with the Montana Secretary of State shows that on April 12, 2007, Daines registered the corporation GiveItBack.com with the State of Montana as a Public Benefit Corporation.
8. Daines was listed as the registered agent and incorporator. The articles of incorporation established a three-member board of directors, and three officer positions of President, Treasurer, and Secretary.

9. The website GiveItBack.com included the statement:

“GiveItBack.com was founded after watching the never-ending debate in Helena regarding the question – ‘What should be done with a budget surplus of \$1 billion?’ – The largest in the history of our state. We are proposing a simple proposition that anyone can understand – It’s our money, give it back!” (Emphasis original.)

10. The website goes on to draw an analogy between the State of Montana’s surplus and a business that has overcharged its customers.
11. Sometime before July 13, 2007, a photograph of Daines and his wife was added to the homepage, as well as a link to a lengthy biography of Daines
12. A newsletter signed by Daines dated April 30, 2007, on the website stated, in part:

I must admit I had to chuckle when I read yesterday’s Billings Gazette (4/29/07), and noted that our governor is now saying “give it back”. He said, *“I have proposed to give it back, I have proposed to give more money back to the taxpayers than any other governor in the history of the state, and in 90 days they couldn’t get it done.”* Only problem with that statement is he’s proposing to only return between 100-150 million dollars of **your billion dollar surplus**. Growing up in Montana, I was taught that “someone who says they’ll meet you in the middle, is usually a poor judge of distance”. I think we need our leaders in Helena to understand what meet-me-in-the-middle means. (Emphasis original.)

13. A newsletter signed by Daines dated May 9, 2007, on the website urged readers to call the Governor’s office and the legislature and request that \$500 million dollars be refunded to taxpayers. It also stated, in part:

Furthermore, over the past three weeks, the governor has left the state twice to attend fundraising events in support of his own political future. During the critical last 10 days of the regular legislative session in April, he left Helena and went to San Francisco for a political fundraiser. And if that weren’t disappointing enough, the Billings Gazette is reporting today that he went to the Kentucky Derby last week, for similar purposes -- he left the state and attended a self-serving fundraiser, instead of serving the people of Montana during this

critical time. Rather than focusing on returning a record surplus to hard working Montanan's, the governor left the state on two separate occasions to raise money for himself. (emphasis original)

14. GiveItBack.com ran a series of television and radio advertisements with general messages regarding the surplus. While Daines spoke on two of the radio ads, he was only identified in one - the transcript of that radio advertisement, entitled "Cha-Ching" is as follows:

[Female voice] The Montana Department of Revenue is projected to collect more than one billion dollars in taxes above what it's budgeted to spend. That's a couple thousand dollars per taxpayer. One billion dollars of extra tax money right out of the pockets of Montana families and businesses. So, what is Helena going to do?

[Steve Daines] I'd like an answer. I'm Steve Daines, a fifth generation Montanan and father of four. I was taught growin' up that if I overcharged somebody the first thing to do was apologize and then give them their money back. Because that's the right thing to do. The Governor might call it a surplus; I think we've been overcharged. Please join me in asking for our hard-earned money back.

[Female voice] Helena will decide by this Friday what to do with your tax overcharge. If you want more of it back in your pocket, you have to act right now. Call your representatives in Helena today. Go to GiveitBack.com and take the [CHA CHING SOUNDBITE] off your paycheck. Take action today. Join us at GiveitBack.com.

15. The radio, TV, and internet activity was financed by GiveItBack.com alone.
16. Daines served as President and Secretary of GiveItBack.com from the time it was organized until his resignation from that position at a regularly scheduled board meeting on March 18, 2008.
17. Daines did not receive a salary from GiveItBack.com for his services.
18. On January 25, 2008, Daines met with Brown at Brown's request. At that time Brown asked Daines to be his running mate. According to both Brown and Daines, this was the first conversation between the two regarding the possibility of Daines' candidacy.
19. On February 27, 2008, Brown and Daines announced their intention to run for Governor and Lieutenant Governor, respectively.

20. On March 20, 2008, Brown and Daines filed their candidacy for Governor and Lieutenant Governor, respectively.
21. Daines denies that any GiveItBack.com money was donated to any political action committee, or used to promote or further any political campaigns. A review of GiveItBack.com's financial reports confirms this.

STATEMENT OF FINDINGS

MDP alleges Daines violated several statutes by:

“a) making unreported campaign expenditures to benefit his future run for statewide office while denying that he would seek office, b) illegally coordinating political activity with his future campaign, and c) making unreported lobbying expenditures.”

Specific statutes alleged to have been violated are §13-37-229, MCA, §13-37-216, MCA, and §13-37-225, MCA, as well as 44.10.321(3) Admin. R. Mont. Further, MDP alleges violations of §5-7-102(11)(a), MCA, and §5-7-301, MCA.

AUTHORITY TO INVESTIGATE

Daines, through his attorney, has repeatedly asserted this office has no authority to investigate the allegations made in the complaint, and that there is no legal basis for the claim. 44.10.307 Mont. R. Admin., states, in pertinent part:

(2) A complaint shall be typewritten or legibly handwritten in ink. The complete name and mailing address of the person filing the complaint shall be typewritten or legibly hand printed on the complaint; and the complaint shall be signed and verified by the oath of affirmation of such person, taken before any officer authorized to administer oaths. A complaint shall name the alleged violator, and should include the complete mailing address of the alleged violator, if known or readily discoverable. The complaint shall describe in detail the alleged violation, and cite each statute and/or rule that is alleged to have been violated. The complaint shall be filed together with any evidentiary material... (3)(a)... No investigation shall be required if a complaint is frivolous on its face, illegible, too indefinite, does not identify the alleged violator, is unsigned, or is not verified by the oath of affirmation of such person, taken before any officer authorized to administer oaths. In addition, no investigation shall be required if the complaint does not contain sufficient allegations to enable the commissioner to

determine that it states a potential violation of a statute or rule within the commissioner's jurisdiction.

In short, there is a quantitative and then a qualitative analysis applied to any complaint filed in this office. The quantitative analysis determines if a complaint:

- is notarized, signed, have the address of the complainant,
- cites the statute or rule that is alleged to have been violated,
- describes the alleged violation, and if supporting material is available, is accompanied by such.

All of these requirements are met by the complaint. My predecessor then applied the qualitative analysis and made a determination that the complaint did, in fact, "contain sufficient allegations to enable the commissioner to determine that it state[d] a potential violation of a statute or rule within the [this office]'s jurisdiction." The respondent was notified of this determination via certified mail on March 24, 2008, and an investigation commenced.

The investigation has taken approximately 36 months, due in large part to the significant staffing shortages and financial strains of the agency. However, regardless of the perceived stale nature of the issues surrounding the complaint, this office is charged with the responsibility to look into valid allegations of infractions of campaign finance and practice laws, in order to preserve the sanctity of the electoral process in Montana.

While I fully appreciate the zeal with which Daines' attorney approaches his representation, I hope this clarification puts to rest any question of whether or not this office indeed has authority to investigate the circumstances under which Daines became a candidate, and the flow of money around that action.

LOBBYING ALLEGATIONS

Section 5-7-102(11)(a), MCA, defines "Lobbying" as:

- (i) the practice of promoting or opposing the introduction or enactment of legislation before the legislature or legislators; and
- (ii) the practice of promoting or opposing official action of any public official or the legislature.

Section 5-7-301, MCA, reads:

Prohibition of practice without license and registration.

(1) An individual may not practice as a lobbyist unless that individual has been licensed under 5-7-103 and listed on the docket as employed in respect to all the matters that the individual is promoting or opposing.

(2) A principal may not directly or indirectly authorize or permit any lobbyist employed by that principal to practice lobbying until the lobbyist is licensed and the names of the lobbyist and the principal are entered on the docket.

Critical to the analysis at hand is also the definition of a "Lobbyist" under 5-7-102(12), MCA, which reads, in pertinent part:

(a) "Lobbyist" means a person who engages in the practice of lobbying.

(b) Lobbyist does not include:

...
(iii) an individual who receives payments from one or more persons that total less than the amount specified under 5-7-112 in a calendar year.

(c) Nothing in this chapter deprives an individual who is not a lobbyist of the constitutional right to communicate with public officials or the legislature.

Daines served as President of a corporation advocating an approach to the state budget. Daines, through GiveItBack.com, encouraged readers to contact their legislators and the Governor. GiveItBack.com was not a principal who hired a lobbyist, but rather a corporate entity whose President was attempting to move individuals at the grassroots level to communicate to their policy makers the philosophy supported by that corporate entity.

My predecessor, Commissioner Linda Vaughey, undertook an extensive review of Montana's lobbying disclosure rules and statutes in 2002. She appointed a Lobbying Rules Advisory Council to consider proposed rules and legislation related to the reporting of lobbying expenditures. The Advisory Council considered draft rules adopting a definition of the term "grassroots lobbying" and requiring that grassroots lobbying expenditures be reported under the current provisions of Montana's Lobbying Act (Title 5, Chapter 7, MCA). After much discussion by the Advisory Council, Commissioner Vaughey and the Advisory Council concluded that rules requiring that grassroots lobbying expenditures be reported could not be adopted under the existing provisions of Title 5, Chapter 7, MCA. Montana's current Lobbying Act statutes do not require that grassroots lobbying expenditures be reported.¹

ALLEGATIONS OF CAMPAIGN FINANCE VIOLATION

MDP alleges violations of §13-37-229, MCA, §13-37-216, MCA, and §13-37-225, MCA, as well as 44.10.321(3) Admin. R. of Mont.

¹ A complete file regarding the 2002 Advisory Council's work and the adoption of amended lobbying rules that were effective on 9/13/02 is available for review in the Commissioner's office.

Section 13-1-101(6)(b), MCA, defines "Candidate" as

...
(b) for the purposes of chapter 35, 36, or 37, an individual who has solicited or received and retained contributions, made expenditures, or given consent to an individual, organization, political party, or committee to solicit or receive and retain contributions or make expenditures on the individual's behalf *to secure nomination or election to any office* at any time, whether or not the office for which the individual will seek nomination or election is known when the:

- (i) solicitation is made;
- (ii) contribution is received and retained; or
- (iii) expenditure is made
(*emphasis added*)

Violations of §13-37-229, MCA, §13-37-216, MCA, and §13-37-225, MCA, are dependent upon an individual's candidacy as defined by § 13-1-101(6)(b), MCA, above. In order to determine violations of campaign finance, it must first be determined if there was a campaign to finance, or, in this circumstance, a candidate. In the definition of candidate, the existence of the attempt "to secure nomination or election to any office" is required for the definition to be fulfilled.

Nothing on the website expresses or implies Daines was attempting to secure nomination or election when he created GiveItBack.com. While Daines' actions addressing the budget surplus put him squarely in the media spotlight, there is no evidence to support a finding that his actions were for any purpose other than publicly addressing the budget surplus and potential redistribution of excess funds to the tax-paying public.

Daines stated he never expressed an interest in running for office in 2007 or 2008, and was surprised when asked by Brown to be his running mate. Brown confirms Daines' surprise, and further stated after some begging and pleading, Steve [Daines] accepted my offer."

Once Daines agreed to run as Lieutenant Governor with Brown, he officially resigned as President and Secretary of GiveItBack.com on March 18, 2008, which was the first board meeting after he made the decision to join Brown on the ballot. Roy Brown and Steve Daines formally filed their candidacy on March 20, 2008.

Daines denies that any money from GiveItBack.com was spent on or donated to political endeavors, including, but not limited to independent expenditures in the 2008 gubernatorial race and political action committees advocating for the success or defeat of a gubernatorial candidate. A review of the corporate expenditures of GiveItBack.com from January 2008 – November 2008 confirms this denial.

An individual may, throughout his or her lifetime, make decisions to become involved with different organizations, causes, or even employers that add substance and desirability to a public image. However, to argue that every organization or cause that shines a media spotlight upon a

person who later becomes a candidate for office is subject to candidate contribution laws, or that every cause or employer was a part of an individual's early campaign, would be an unreasonable interpretation of the statutes.

In the instant case, the complainant believes that Daines was using GiveItBack.com as a fundraising and image promotion vehicle for his subsequent Lt. Governor race. Because the involvement with GiveItBack.com immediately preceded the announcement of candidacy, and because the issues that GiveItBack.com addressed were those discussed at length in the subsequent gubernatorial campaign, this was not an unreasonable conclusion. Certainly, Daines' name recognition and desirability within the conservative audience may have increased as a result of his spokesperson role for the organization thereby making him an attractive and unsurprising candidate for Brown's selection of running mate. Daines had the financial means to self-fund the entire corporate expenditure, and used it as an image promotion vehicle, but there is not sufficient evidence that he did so in anticipation of his political career.

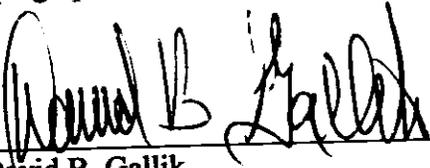
Daines indicated that he had not considered a run for public office prior to Brown's proposal. Indeed, Daines very well could have *privately* considered the idea of public office as GiveItBack.com was a lightning-rod for publicity, but *if* he did entertain thoughts of a life as a candidate, no actions were formally or publicly taken through GiveItBack.com.

Everything that this office's investigator discovered when questioning not only Daines but also Brown pointed to a natural progression of activist to candidate, with no inappropriate crossover of funds or endorsement occurring.

CONCLUSION

Based on the preceding Summary of Facts and Statement of Findings there is insufficient evidence to conclude that Steve Daines violated Montana lobbying, campaign financial reporting, campaign disclosure, and/or campaign practice laws.

DATED this 14th day of June, 2011.



David B. Gallik
Commissioner of Political Practices