

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Pinocci v. Hagan No. COPP 2014-CFP-021	Summary of Facts and Finding of Insufficient Evidence to Show a Violation of Montana's Campaign Practices Act <u>Dismissal of Complaint</u>
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Randy Pinocci is a resident of Sun River, Montana. Mr. Pinocci is a candidate for election to the Montana legislature, House District No. 19 (HD 19). Roger Hagan is a resident of Great Falls, Montana. Mr. Hagan is also a candidate for election to the Montana legislature, HD 19. On May 14, 2014, Candidate Pinocci filed a complaint with the COPP alleging that Candidate Hagan engaged in campaign practice violations in connection with his address and residency listings on required candidate registrations and filings.

SUBSTANTIVE ISSUES ADDRESSED

The substantive area of campaign finance law addressed by this decision is that of residency and address requirements for a candidate for public office in Montana.

FINDING OF FACTS

The foundation facts necessary for this Decision are as follows:

Finding of Fact No. 1: Three candidates are running in the June 2014 primary for House District #19 (Cascade County): Evan Bowser (Democrat), Roger Hagan, (Incumbent Republican) and Randy Pinocci (Republican). (SOS website's 2014 Candidate List).

DISCUSSION

This Matter presents a multi-level examination of the residency requirements of Montana law, as they relate to candidate eligibility for office and "false swearing" related to the residency address claimed by a candidate on forms filed in regard to his or her candidacy.

1. COPP Forms Were Properly Answered

Candidate Pinocci asserts that Candidate Hagan "did something wrong" when he provided responsive information on the forms filed with the Commissioner of Political Practices. The findings of fact necessary for this determination are as follows:

Finding of Fact No. 2: On January 12, 2012, Roger Hagan submitted a C1 Statement of Candidate form to the Commissioner of Political Practices (COPP) as a Republican candidate for House District #19 (HD #19) Cascade County. On his 2012 form, Mr. Hagan listed 117 Gerber Road, Great Falls, MT as his candidate mailing address. (Commissioner's records).

Finding of Fact No. 3: Roger Hagan (Republican) and Richard Liebert (Democrat) ran against each other in the 2012 general election. Mr. Hagan won the election with 2,609 votes over Mr. Liebert's 1,979 votes. Roger Hagan became the Representative for House District #19 (Cascade County) for a two year term. (Secretary of State's website).

Finding of Fact No. 4: On April 30, 2013, Roger Hagan filed a C1 Statement of Candidate form with the Commissioner of Political Practices Office. Mr. Hagan filed as the Incumbent Republican candidate for House District #19 (Cascade County). Mr. Hagan listed his candidate mailing

address as 117 Gerber Road, Great Falls, MT. Mr. Hagan listed himself as treasurer and Stephen Hagan as deputy treasurer. Mr. Hagan listed 117 Gerber Road, Great Falls, MT as his address as treasurer and PO Box 391, Ulm, MT 59485 as the address for his deputy treasurer. (Commissioner's records).

Finding of Fact No. 5: On April 30, 2013, Roger Hagan filed a D1 Business Disclosure Statement with the COPP. Mr. Hagan listed his mailing address as 117 Gerber Road, Great Falls, MT. Mr. Hagan listed himself as the Marketing and HR Advisor for Delta-S Services, LLC located at 117 Gerber Road, Great Falls, MT. 59405. Delta-S Services, LLC is a limited liability company in good standing with the Secretary of State's Office (SOS). The principal office address is listed as 117 Gerber Road, Great Falls. Delta-S Services, LLC was established with the SOS in 2006. (Commissioner's records, Secretary of State's website).

The COPP forms require Candidate Hagan, and any other candidate, to list their mailing address. The mailing address Candidate Hagan listed in his 2012 and 2014 forms was 117 Gerber Road, Great Falls, Montana. The Commissioner's investigator determined that Candidate Hagan, in fact, receives all his mail in a mailbox located at 117 Gerber Road, Great Falls, Montana (Commissioner's records).¹

Candidate Hagan's mailbox is located at and is intended to service a currently undeveloped homesite located at 117 Gerber Road. The Commissioner determines that 117 Gerber Road is, in fact, Candidate Hagan's mailing address. The COPP registration forms (C-1 and D-1) only require a mailing address listing. There is nothing improper with the manner in which Candidate Hagan completed forms, including mailing address, filed with the Commissioner. This portion of the complaint is dismissed.

¹ Candidate Hagan even receives the utility bills for the separate condominium property he owns at the 117 Gerber Road address.

2. Candidate Hagan Is Eligible for HD 19 Candidacy

Candidate Pinocci next claims that Candidate Hagan is not qualified to run for HD 19 because his residency is Helena, Montana. Montana's constitution, at Article V, §4, imposes two residency requirements on a legislative candidate: 1) residency in Montana for at least one year preceding the general election; and, 2) residency "of the county if it contains one or more districts" for at least six months preceding the general election.

Candidate Pinocci's complaint claims that Candidate Hagan "lives in Helena." Candidate Hagan's response asserts that he owns a home in Helena, but that it is not his residence. The Commissioner's investigator interviewed Candidate Hagan to further explore this fact. Candidate Hagan told the investigator that he and his wife resided in Helena during the "1990s and 2000s" while he served in the National Guard. Candidate Hagan further stated that he still stays at the Helena home occasionally when he is in town on legislative business, but that he lives in a condominium in Great Falls.

Prior Commissioners have determined that ownership of a home in Helena, along with staying in the Helena home for period of time, did not disqualify a candidate from running for office in Deer Lodge and Powell counties through residency based in his parents' home in Anaconda. *Motta v. Laslovich*, November 18, 2009 (Commissioner Unsworth). The Commissioner looked to family ties, business interests and voting residency to determine that Laslovich's residency remained in Anaconda, even though he was a lawyer

who jointly owned a Helena home with his wife and his wife claimed residency in Helena.

This Matter does not have anywhere near the complexity of the residence issue decided in *Motta v. Laslovich*. Candidate Hagan currently lives at a condominium in downtown Great Falls. He has children and grandchildren living in Great Falls. He has business interests and owns property in Great Falls.² (Investigative notes, Response to complaint). Setting aside the issue of the exact address of residence in Cascade County, the Commissioner determines that more than sufficient facts exist to show that Candidate Hagan resides in Cascade County. This satisfies Article V, §4 of the Montana Constitution. The Commissioner determines that there are insufficient facts to show any problem with Candidate Hagan's Cascade County residency for the purpose of running for election in HD 19. This portion of the complaint is dismissed.

3. Candidate Hagan's Residency Declaration

Candidate Pinocci urges the Commissioner to find fault in the residency statement made by Candidate Hagan in his 2012 and 2014 declarations of candidacy filed with the Montana Secretary of State. The facts necessary for this determination are as follows:

² Candidate Hagan provided the Commissioner's investigator with his 2013 property tax bills showing his ownership of the 117 Gerber Road lot in Great Falls, as well as a condominium unit in downtown Great Falls. Candidate Hagan also provided a recent NorthWestern Energy bill for his downtown Great Falls condominium dated March 10, 2014. All three receipts provided to the investigator were in the name of Roger A. Hagan and the locations listed were within Cascade County and all three bills were mailed to 117 Gerber Road, Great Falls.

Finding of Fact No. 6: On January 12, 2012, Roger Hagan filed as a candidate for HD #19 with the Montana Secretary of State's Office as a candidate for House District #19 (Cascade County). Mr. Hagan listed 117 Gerber Road, Great Falls, MT as his mailing address, but listed 83 Gerber Road, Great Falls, MT as his residence. (Secretary of State's Office).

Finding of Fact No. 7: On January 9, 2014, Roger Hagan filed as a 2014 candidate for House District #19 (Cascade County) with the Montana Secretary of State's Office. Mr. Hagan listed 117 Gerber Road, Great Falls, MT as his mailing address and 117 Gerber Road, Great Falls, MT as his residence. (Secretary of State's Office).

Each of the statements listed in FOFs 6 and 7 are titled "Declaration for Nomination and Oath of Candidacy." As such each is a sworn statement.

Candidate Pinocci sent a copy of §45-7-202 MCA, one of the statutes defining the offense of "false swearing." There are two statutes (§13-35-207 MCA and §45-7-202 MCA) pertinent to election related false swearing.

Section 13-35-207 MCA, entitled "deceptive election practices" states, at subsection (4) that "[a] person is guilty of false swearing ...whenever the person...falsely makes a declaration of certificate of nomination." Section 45-7-202(1) MCA defines the offense of false swearing as follows:

A person commits the offense of false swearing if the person knowingly makes a false statement under oath or equivalent affirmation or swears or affirms the truth of a statement previously made when the person does not believe the statement to be true and:...

(c) the statement is one that is required by law to be sworn or affirmed before a notary or other person authorized to administer oaths.

Either of these statutes could apply. Both are enforced as criminal laws under

Title 45, with §13-35-207 MCA incorporating enforcement as a misdemeanor under §45-7-202(3) MCA.

In making this Decision the Commissioner is thus guided by the decisions of prior Commissioners, all of whom have uniformly dismissed complaints alleging criminal violations of Montana election law: *Parrent v. Ames*, July 25, 1990 (Commissioner Colburg); *McFadden v. Stanko*, June 1, 1994 (Commissioner Argenbright); *Masters v. Nixon*, August 3, 1994 (Commissioner Argenbright); *Seward v. Andrick*, December 13, 2004 (Commissioner Vaughey); *Vance v. Walseth*, February 23, 2009 (Commissioner Unsworth); *Scott v. Doyle*, COPP-2011-CFP-007 (Commissioner Gallik); and *Loney v. Moore*, COPP-2013-CFP-014 (Commissioner Murry). The dismissed complaints challenged actions such as partisan distribution of water to electors at the polling place and the announcement of the name of an undersheriff by a sheriff candidate.

In regard to past Decisions involving false swearing and residency issues, the Commissioner notes that Commissioner Vaughey did find sufficient facts to show that the candidate failed the residency requirement at issue, but did not find sufficient facts to show false swearing. *Galt v. Davison*, May 21, 2004 (Commissioner Vaughey). Likewise Commissioner Unsworth (*Motta v. Laslovich*, November 18, 2009) and Commissioner Higgins (*Molnar v. Doty*, April, 2006) did not find sufficient facts to show false swearing.

This Commissioner has determined insufficient facts to show a criminal election inducement violation (*Bixler v. Suprock*, COPP-2013-CFP-013; *Ravndal*

v. Halver, COPP-2014-CFP-020) and found sufficient facts to show criminal misrepresentation violations (*Howell v. Stamey*, COPP-2014-CFP-003).

With the above Decisions in mind the Commissioner turns to the false swearing issue involved in this Matter. There being no real difference between the two statutes in that both enforce criminally, the Commissioner chooses to apply §13-35-103 MCA since it is directly applicable to the certificate of nomination at issue in this matter. Turning then to Section 13-35-207 MCA, the operative law is that “[a] person is guilty of false swearing ...whenever the person...falsely makes a declaration of certificate of nomination.” The Commissioner needs to determine whether sufficient facts exist to show such a false declaration.

There are no such facts in regard to Candidate Hagan’s 2012 declaration. In January of 2012 Candidate Hagan listed his residency at 83 Gerber Road (FOF 6). In January of 2012 Candidate Hagan was living in the basement of his daughter’s home at 83 Gerber Road (Investigator’s notes). As Commissioner Unsworth already determined in *Motta v. Laslovich* (and as every college student knows) sharing residency with another member of your family is allowed for voting residency. The 83 Gerber Road residency address listed by Candidate Hagan in the 2012 Declaration is acceptable. Any complaint against Candidate Hagan’s 2012 declaration is dismissed.

Candidate Hagan’s 2014 declaration needs a longer discussion. In January of 2014 Candidate Hagan listed his residency as 117 Gerber Road. Candidate Hagan explained that he and his wife owned the lot at 117 Gerber Road. (FOF

7). Their daughter's family lived in a home located on the adjacent lot at 83 Gerber Road. Candidate Hagan and his wife had planned to start building their home at 117 Gerber Road in early 2012. In anticipation of home building they had moved into and were living in their daughter's basement at 83 Gerber Road. In October of 2011 Candidate Hagan's wife was killed in a car wreck. (Investigator's notes).

Candidate Hagan remained living with his daughter's family for a period of time and then bought and moved into a condominium in the spring of 2012. Candidate Hagan has been living in the condominium since, intending to start building at 117 Gerber Road "any day." (Investigator's notes). Candidate Hagan told the Commissioner's investigator that "it feels like yesterday" when his wife died. He said he listed the 117 Gerber Road address as his residency in January of 2014 because he regarded it as, and intends it as, his home. In Candidate Hagan's view, any other residency address would be temporary while the 117 Gerber Road address is permanent and fixed.

Past Commissioners have accepted as a proper residence address a parent's home address for an adult, married attorney (*Motta v. Laslovich*) and a business address for a Bozeman businessman. *Close v. McCrone*, May 24, 2005 (Commissioner Higgins). Both decisions focused on whether the address listed was regarded as the "fixed" address for the elector and, in the case of a legislator, whether the legislator had business, social and family ties into the district so as to be familiar with "the issues and electorate" in the district. *Motta v. Laslovich*, p. 8.

Candidate Hagan certainly passes the business, social and family ties test. He also has an understandable desire to leave 117 Gerber Road as his fixed residency address. Nevertheless, Candidate Hagan does not have a structure, or even the start of structure, on the lot located on 117 Gerber Road. Candidate Hagan said he never intended to take this long to start building and admitted to the Commissioner's investigator that, given the lack of a structure, it was "understandable" that Candidate Pinocci was confused.

With the above in mind, the Commissioner accepts Candidate Hagan's explanation to the extent necessary that he does not find sufficient facts to show that Candidate Hagan had the necessary intent to falsify his residency in January of 2014 when he filed his declaration listing 117 Gerber Road as his residence (FOF 7). That was January of 2014, however, and it is now almost June and construction is not yet started on his home at 117 Gerber Road. Accordingly, the Commissioner directs Candidate Hagan to immediately change his residency address to 503 1st Ave. No. 401, Great Falls, MT 59401, the address of his condominium. Candidate Hagan can change his residency address back to 117 Gerber Road once he has a structure built to the point where it is apparent to the public that it is a residence.

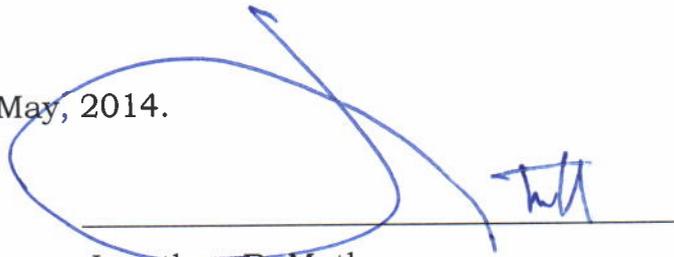
There is no reason to believe that Candidate Hagan will not change the residency address on his current candidate declaration as he has informed the Commissioner's investigator that he intends to so act. Once Candidate Hagan takes this action this portion of the complaint is also dismissed. Should Candidate Hagan not take this action within a reasonable amount of time (10

days from the date of this Decision) then there will be a demonstration of intent to list a false address sufficient to find a violation of §13-35-207 MCA.

OVERALL DECISION

This Commissioner, having duly considered the matters raised in the Complaint, and having completed his review and investigation, hereby holds and determines (subject to Candidate Hagan changing his residency address), under the above stated reasoning, that there is insufficient evidence, to justify a civil or criminal adjudication against Candidate Hagan. The Commissioner hereby dismisses this complaint in full, contingent upon the change in residency address.

DATED this 23rd day of May, 2014.



Jonathan R. Motl
Commissioner of Political Practices
Of the State of Montana