

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Ponte v. Buttrey No. COPP 2014-CFP-007	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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Francis (Ed) Buttrey is a resident of Great Falls, Montana. In 2010 Mr. Buttrey was a candidate for election to the Montana legislature, Senate District No. 13 (SD 13). David Ponte is a resident of Bozeman, Montana. On February 18, 2014, Mr. Ponte filed a complaint with the COPP alleging that Mr. Buttrey’s 2010 SD 13 campaign engaged in illegal campaign expense coordination with a corporation.

SUBSTANTIVE ISSUES ADDRESSED

The substantive area of campaign finance law addressed by this decision is that of campaign expense coordination between a candidate and a third party entity.

FINDING OF FACTS

The foundation facts necessary for this Decision are as follows:

Finding of Fact No. 1: In 2010 Edward Buttrey was elected to the Montana legislature as Senator from SD13, with 3,914 votes to Kathy Galvin-Halcro's 2,867 votes. (Montana Secretary of State's Office, SOS website).

Finding of Fact No. 2: Candidate Buttrey filed campaign finance reports applicable to his 2010 campaign. (Commissioner's records).

DISCUSSION

This Matter presents another look at issues involving corporate involvement in the campaign of a 2010 candidate for public office in Montana. This Office has issued 9 recent Decisions involving such 2010 campaigns by candidates.¹ Eight of these campaigns involved 2010 Republican Party primary elections in legislative races with one of the candidates in the primary election receiving support from a non-profit corporation then known as Western Tradition Partnership, WTP.² The commissioner found sufficient facts to show a violation of the Montana campaign practice act in each of the above Matters. See FN 1.

Each of the Matters listed in footnote 1 resulted in a Decision.³ These Decisions identified certain common patterns of activity between WTP and the

¹ *Bonogofsky v. Kennedy*, COPP 2010-CFP-015; *Washburn v. Murray*, COPP 2010-CFP-019; *Ward v. Miller*, COPP 2010-CFP-021; *Clark v. Bannan*, COPP 2010-CFP-023; *Bonogofsky v. Boniek*, COPP-2010-CFP-027; *Bonogofsky v. Wittich*, COPP-2010-CFP-031; *Madin v. Sales*, COPP-2010-CFP-029; *Bonogofsky v. Prouse*, COPP-2010-CFP-033, and *Bonogofsky v. Wagman*, COPP-2010-CFP-035.

² *Madin v. Sales*, COPP-2010-CFP-029 involved WTP actions on behalf of a candidate in an election to the Gallatin County Commission.

³ The Decisions determined that WTP carried out its actions through several affiliated corporate entities. One of those entities was Direct Mail and Services, Inc., a Colorado for-profit corporation. The Decisions listed in footnote 1 determine that Direct Mail acted as an agent of WTP in Montana 2010 elections for public office.

2010 candidates. First, the Decisions showed that WTP, and the WTP supported candidates, self-determined what Montana campaign finance laws they would or would not follow. Neither WTP nor Candidate Prouse, for example, reported contributions or expenditures despite engaging in an extensive direct mail campaign, including WTP attack slicks.⁴ The candidates in all 9 Matters listed in footnote 1, including 3 presently sitting legislators, did not comply with Montana law requiring all candidates to keep and produce campaign records.

Second, the Decisions showed that the 9 WTP supported candidates acted in concert with WTP so as to establish a campaign relationship. The WTP supported candidates did this by: entrusting WTP to carry out the bulk of their campaign activity, giving WTP campaign authority over use of their signature on letters, making use of voter ID'd lists created by WTP, and allowing campaign letters signed by the candidate to be coordinated with third party attack letters and attack Slicks.⁵

Third, all of the 9 WTP-supported candidates were involved in a contested Republican Party primary election. A primary election race involves fewer voters than a general election and therefore relies more on use of documents targeting specific voters. WTP's specialty was document campaigning through the mail. WTP self-described its campaign method as a "shock and awe electoral bombing campaign." WTP's campaign was based on use of

⁴ *Bonogofsky v. Prouse*, COPP-2010-CFP-033.

⁵ Decisions by the Commissioner (FN 1) establish that WTP used the word "Slick" to describe a campaign mailing that had a glossy finish on an oversize postcard type mailing.

coordinated candidate and attack letters aimed at primary voters.

WTP's involvement in Candidate Buttrey's 2010 campaign did not fall within any of the above three general patterns. The WTP involvement came in Candidate Buttrey's general election rather than a primary. The WTP involvement was a limited vendor involvement rather than a campaign involvement. This Matter presents a different sort of WTP involvement for analysis.

1. Candidate Document Retention and Production

Candidate Buttrey and his attorney met with the Commissioner on April 9, 2014.⁶ Candidate Buttrey produced a banker's box of 2010 campaign documents organized as 23 separate folders and one notebook. The Commissioner reviewed the contents of each of the folders and determined that Candidate Buttrey produced an acceptably complete record of his 2010 campaign activity, including that of expenses and contributions.

An account and records inspection by the Commissioner goes to the core of a candidate's public trust related campaign obligations.⁷ A candidate is required by Montana's campaign practice to account for, report and disclose all contributions and expenditures. The public and the opposing candidate rely

⁶ Candidate Buttrey had been sent the same style of COPP investigation letter as the candidates listed in footnote 1. The letter requested the production by the candidate of campaign documents and records.

⁷ By law Candidate Buttrey's campaign was required to preserve "detailed accounts" of all expenses made for a period of 4 years. §13-37-208 MCA. The detail in the accounts must be sufficient to determine the "purpose of each expenditure" §13-37-230(1)(a) MCA. The records preserved must be those used to prepare "...directly from the accounting records, the reports required by Title 13." ARM44.10.501. This must include invoices. Commissioner Vaughey determined that the invoices must be detailed sufficiently to "...describe the work performed..." so that a value can be set for in-kind services. *Motl v. Citizens for More Responsive Govt.*, Decided April 20, 2004, p. 15.

on the campaign finance reports as accurately disclosing campaign information. The candidate understands (or should understand) the public trust obligations inherent in a campaign finance report as he or she signs each campaign finance report “I [the candidate] certify the foregoing report of campaign finances with attachments is complete and correct to the best of my knowledge, in accordance with [Montana law]...” A Commissioner’s account and records inspection is the means by which the public is assured that a candidate’s campaign finance report was accurately made such that it met these public trust obligations.⁸

The Commissioner’s inspection determined that Candidate Buttrey met the public trust obligation inherent in filing a campaign finance report. This is in contrast to the determinations made in Decisions regarding 9 WTP-supported 2010 candidates for Montana public office. (See FN 1).

2. Coordination

Candidate Buttrey’s campaign finance reports disclosed \$2,374.79 in payments to “General Consulting.” The Commissioner takes administrative notice that prior Decisions (FN 1) have determined that General Consulting is Direct Mail operating under a different name.⁹ Further, the Commissioner

⁸ Under Montana law the Commissioner has a right to “inspect any records, accounts or books that must be kept” (§13-37-111(2)(b) MCA). The Commissioner may “require production of any books, papers, correspondence, memoranda, bank account statements ... or other records that are relevant material for the purpose of conducting any investigation...” (§13-37-111(2)(c)MCA).

⁹ Candidate Buttrey’s experience is consistent with this determination. Candidate Buttrey explained that he was contacted by WTP leader Christian LeFer who solicited his business on behalf of Direct Mail. (Commissioner’s interview of April 8, 2014).

takes administrative notice that prior Decisions (FN 1) have determined that Direct Mail is an agent of WTP in regard to its 2010 election activity.

Complainant Ponte asserts that the single fact of Candidate Buttrey's payment to General Consulting is enough to create coordination between WTP and the candidate as to any unreported expenses. A campaign expenditure that is deemed to be "coordinated" between a candidate and another entity or person is treated as though it is a contribution to and/or expense by the candidate's own committee. Contributions to a candidate are limited in amount from any source and prohibited completely from a corporate source. (See §§13-35-227, 13-37-216, MCA). Because a coordinated third party election expense is deemed to be a contribution it becomes subject to the limits and prohibition of these laws.¹⁰

Montana law [44.10.323(4) ARM] defines coordination as "an expenditure made in cooperation with, consultation with, at the request or suggestion of, or the prior consent of a candidate..." Commissions and Commissioners have found coordination only in particular circumstances. The FEC, while advancing a new coordination regulation in 2012 (11 C.F.R. §109.21(d)(4)), operates under a 6 member commission structure and that commission has deadlocked on basic enforcement decisions. *Coordination Reconsidered*, Briffault, Columbia Law Review, May 2013. In regard to coordination, the FEC has found that there needs to be more than common vendors, interrelated

¹⁰ A third party, including a corporation, can participate in an election through an independent expenditure. An independent election expenditure is subject only to reporting and attribution and is not subject to contribution limits or bans.

individuals (as in a former employee of the candidate) and shared contacts. Thus, the FEC has not found coordination unless there is actual evidence showing the coordination between the expenditure and the candidate. *Id.*

Coordination decisions by Montana Commissioners show a similar approach to that of the federal decisions. Commissioner Argenbright considered a complaint that a political committee, Citizens for Common Sense Government (CCSG), and six candidates for the Missoula City council were coordinated or linked such that CCSG was a candidate committee subject to contribution limits. *Harmon and Sweet v. Citizens for Common Sense Government, et. al.*, December 31, 1997. Despite extensive crossover in involvement (participation in parade using same mode of transportation) and people, the Commissioner found no coordination because there were “no notes, memoranda, records of telephone conversations, correspondence, or other documents” supporting “coordination, cooperation, or consultation”. *Id.* p. 19. Further, there was “little, if any, similarity” in campaign literature. *Id.* p. 23.

Likewise, Commissioner Higgins rejected coordination between a candidate and a political committee that engaged in attack activity against the opposing candidate. *Close v. People for Responsive Government*, December 15, 2005. The Commissioner found crossover contributors between the political committee and the candidate, but found no evidence of communication or activity showing coordination between the candidate and committee. Commissioner Unsworth rejected coordination in *Keane v. Montanans for a True Democrat*, April 2, 2008. The Commissioner noted crossover

contributions/activity by people involved in both the candidate campaign and the political committee, but found no coordination because “...there is no evidence that MTDC’s expenditures for newspaper and radio ads, billboards, and campaign flyers opposing candidate Keane and supporting candidate McAdam were made with the prior knowledge, consent and encouragement of McAdam or his campaign.” *Id.* p. 9. In addition the Commissioner found that the crossover communication was “limited” and that it was personal and not on behalf of the political committee. *Id.*

In contrast to the above three decisions, Commissioner Vaughey found coordination in *Little v. Progressive Missoula*, July 22, 2004. The Commissioner identified crossover activity, finding that members of the Progressive Missoula steering committee were directly involved in the candidate’s (Allison Handler) campaign. Further, the Commissioner found specific evidence showing that Handler and the individual committee members knew of the negative attack role that Progressive Missoula would play in support of the candidate’s campaign. The Commissioner found that certain barriers between the Handler campaign and Progressive Missoula, including a letter of reproach from Progressive Missoula to Handler, were artifices designed to disguise the real cooperation. The Commissioner found that the Progressive Missoula expenditures for flyers were made with “...prior knowledge, consent and encouragement of Handler...” Thus they were coordinated expenditures.

This Commissioner has issued a series of Decisions finding coordination, all based on actions between Western (American) Tradition Partnership and

2010 candidates for Montana public office.¹¹ These Decisions, like *Little v. Progressive Missoula*, rely on documents, actions and activity showing coordination. In total this Commissioner has found undisclosed, unreported, and coordinated corporate involvement by WTP (and agents) in nine 2010 candidate campaigns. (See FN 1).

The Commissioner, however, for the following reasons, does not find coordination between Candidate Buttrey and WTP/Direct Mail. First, WTP/Direct Mail played a limited role in Candidate Buttrey's campaign, with its role being that of a vendor to the campaign. Candidate Buttrey's pre-election campaign finance report (filed October 20, 2010) lists a General Consulting expense in the amount of \$2,089.33.¹² That same report lists over \$13,000 in expenses for other campaign activity, including billboards, TV, radio and signs.

Candidate Buttrey's vendor relationship with Direct Mail is in stark contrast to the campaign relationship WTP/Direct Mail had with the 9 candidates involved in prior sufficiency Decisions. (See, FN 1). All 9 candidates used WTP/Direct Mail for the majority of their campaign activity, measured by expense and by campaigning. Candidate Miller,¹³ for example, reported Direct Mail expenses as constituting \$1,500 of his \$2,320.65 of total expenses in his pre-election (5/26/2010) campaign finance report and \$1,191.07 of \$2,550 of total expenses (excluding loan repayment and carryover

¹¹ Prior Decisions (FN 1) have determined WTP includes its corporate agents such as Direct Mail.

¹² Candidate Buttrey's involvement with General Consulting consisted of the purchase of 4,167 copies of one letter.

¹³ *Ward v. Miller*, COPP 2010-CFP-021.

funding to general) in his post-election report. WTP/Direct Mail produced at least 8 separate letters signed by Candidate Miller and at least one attack flyer. Candidate Miller's most extensive campaign activity was the direct mail campaign managed by WTP/Direct Mail. The Commissioner determined that Candidate Miller had a campaign relationship with WTP/Direct Mail.

The campaign relationship was itself evidence coordination by WTP/Direct Mail with the 9 candidates, as determined in the Decisions regarding those candidates. (See FN 1). Those 9 WTP supported candidates were part of the coordination as each allowed Direct Mail to write, assemble, target, coordinate and mail multiple letters bearing the candidate's signature to voters in a 2010 primary election. Those multiple candidate letters were coordinated with 3rd party attack letters and/or flyers, again prepared by or orchestrated by WTP/Direct Mail.¹⁴

The Commissioner determines that the vendor use of WTP by the Buttrey campaign is not sufficient by itself to show coordination. Further, if a vendor criteria was enough then it would apply to a number of additional 2010 candidates including: Jerry O'Neill (HD 3), reported \$3,879 paid to General Consulting; Bob Wagner (HD 71), reported \$2,078 paid to General Consulting; Lee Randall (HD 39), reported \$2,309 paid to Direct Mail; Derek Skees (HD 4), reported \$1,786 to Smart Simple Campaigns and \$3,214 to Direct Mail; Alan Doane (HD 38), reported \$535 to General Consulting; and James Knox (HD 47),

¹⁴ This was the "shock and awe electoral bombing campaign" that WTP promised to its funders.

reported \$1,202 to General Consulting.¹⁵ The coordination complaint is dismissed as to Candidate Buttrey.

3. Acceptance of In-Kind Contribution

Candidate Buttrey paid for a certain amount of WTP/Direct Mail services. Candidate Buttrey, even without coordination, would be violation of Montana campaign practice law if Candidate Buttrey's payment to WTP/Direct Mail was less than the fair market value of the WTP services. Montana law considers such a provision of below market services as an "in-kind" contribution. An in-kind contribution must be "reported at the difference between the fair market value at the time of the contribution and the amount charged the contributee..." 44.10.513(1) ARM; see also pages 10-11 of the COPP accounting and reporting manual for candidates. In-kind contributions from corporations, like WTP or Direct Mail, are illegal (corporate) contributions, the same as cash contributions. §13-35-227 MCA.

In-kind valuation will always be a nuanced evaluation. Past Commissioners have considered fair market value to require disclosure of the value of office equipment use and overhead by a volunteer professional. *Matter of Common Sense Water Laws*, April 30, 1998, Commissioner Unsworth. FEC regulations allow pricing "discounts" to candidates if made in the ordinary course of business to candidates and non-candidates alike. 11 CFR 9008.9(a). A review of internet entries shows vendors offering "cheap" candidate printing

¹⁵ The Commissioner has determined that Direct Mail did business in 2010 using its own name and the names of Smart Simple Campaigns and General Consulting.

and cautioning candidates to avoid being steered toward expensive “politically connected” vendors.

WTP/Direct Mail presents for particularly special consideration as to “in-kind” valuation. Prior Decisions by this Office (FN 1) determined that WTP/Direct Mail fundraised and created its own financial base to support the costs of direct mail efforts supporting WTP’s chosen candidates. The Commissioner has determined that WTP/Direct Mail carried out direct mail campaigns for 2010 legislative candidates partially supported with its own funds. One Decision (*Bonogofsky v. Prouse*, COPP-2010-CFP-033) involved WTP/Direct Mail paying (but not disclosing) the entire cost of a direct mail campaign for a 2010 legislative candidate.

Candidate Buttrey therefore starts with a suspect position in that he was dealing with WTP/Direct Mail, entities that the Commissioner (and at least one court) has determined operated as serial campaign practice abusers in 2010 Montana elections.¹⁶ Candidate Buttrey’s circumstances and actions, however, remove him from that suspect position.

Candidate Buttrey was a first time candidate in 2010. Candidate Buttrey had no prior relationship with WTP and his 2010 campaign contact with WTP was limited to one or two phone conversations with Christian LeFer. Those conversations addressed whether or not his campaign would purchase printing services (Commissioner’s interview). This limited involvement distinguishes Candidate Buttrey from the 9 WTP-supported candidates covered by prior

¹⁶ Candidates O’Neill (HD 3), Wagner (HD 71), Randall (HD 39), Skees (HD 4), Doane (HD 38) and Knox (HD 47) are in that same suspect position.

Decisions. Importantly, Candidate Buttrey also drew a line with WTP as he gained more knowledge about its operations.¹⁷ The Commissioner determines that Candidate Buttrey's ties with WTP/Direct Mail were arms-length.

As an arms-length arrangement the remaining issue is whether or not there was something in the pricing offered that should have informed Candidate Buttrey that he was not being charged market value for the WTP services. Direct Mail's invoice (produced by Candidate Buttrey) shows that Direct Mail charged Candidate Buttrey \$1,089.25 to print, address, and mail 4,167 four page candidate Buttrey letters with an accompanying survey and return envelope. The charge was 26 cents a unit.¹⁸ As materials Direct Mail supplied each unit two pages of letter paper, a one page survey form, two envelopes and the ink to print the letters, survey and addresses. In services Direct Mail created, printed, folded and stuffed the letter, survey and return envelope into a mailing envelope. The mailing envelope was addressed and mailed.

Candidate Buttrey argued that the unit cost of 26 cents was market value, citing to a 2014 estimate he secured from Rivers Edge Printing in Great Falls. The Commissioner rejects the Rivers Edge estimate. The estimate shows an estimated charge of 17.6 cents to print a 4 page letter and a one page flyer. There is no cost listed for the two required envelopes and the estimate includes

¹⁷ WTP asked Candidate Buttrey's wife to fill out the WIFE letter survey (See FN 1 Decisions for a description of the WIFE letter). The survey was completed, but Candidate Buttrey severed his ties with WTP and did not contract for the printing of the WIFE letter.

¹⁸ The cost of mailing the letters was separately billed at 24 cents per letter. The Commissioner takes administrative notice of the 24 cent amount and adjusts all prior Decisions dealing with 2010 WTP/Direct Mail services to conform to this amount charged for each mailed item.

another 3.5 cents cost per unit for mail prep and stuffing along with at least 5 cents cost per unit to mail. As so examined the estimate actually shows a charge of greater than 26 cents per unit, including the cost of the 2 envelopes.¹⁹

The Commissioner determines that the amount charged the Buttrey campaign for the letter was below fair market value.²⁰ The determination of below market in this Matter is consistent with the Commissioner's past determinations in WTP/Direct Mail Decisions. Those Decisions used 2010 printing costs in other campaigns to show that Direct Mail did not bill its chosen candidates fair market value for its printing services. Further, the Decisions determined that WTP/Direct Mail provided WTP supported candidates additional coordinated campaign actions and services. The Commissioner determines that the amount charged Candidate Buttrey was not fair market value and could be charged by WTP/Direct Mail only because the true cost was being subsidized by WTP fundraising. WTP/Direct Mail's provision of below market print services to the Buttrey campaign was an in-kind corporate expenditure by WTP/Direct Mail.

At the very least an in-kind corporate expenditure on the Buttrey campaign needed to be reported and disclosed by WTP as an independent campaign

¹⁹ Candidate Buttrey's campaign records show that on April 6, 2010 he paid Advanced Litho Printing 11 cents each for 2,000 printed envelopes. On April 28, 2010 Candidate Buttrey paid Innovative Postal Services 7.75 cents each for 1,500 #10 printed return envelopes. A Direct Mail's billing to Candidate Miller lists a charge of 8.5 cents for each of 500 remittance envelopes.

²⁰ Candidate Buttrey's campaign records included a bid from a consulting firm for direct mail that lists costs from 62.5 cents to 72.5 cents per piece, again showing below market Direct Mail charges. (Commissioner's records).

expenditure. There was no such reporting and disclosure by WTP. The issue now arises of whether or not Candidate Buttrey “accepted” that in-kind corporate expenditure such that it became an illegal corporate contribution to his campaign. Consistent with the arms-length determination set out above, the Commissioner determines that there are insufficient facts to show that Candidate Buttrey accepted the WTP in-kind contribution.

There are two major considerations in this insufficient facts determination. First, the Commissioner looks to the fact of Candidate Buttrey’s first time status as a candidate.²¹ This first time candidate status, along with Candidate Buttrey’s severing of ties with WTP once he understood their method of operation, and Candidate Buttrey’s appropriate records production response to COPP’s request distinguishes his candidacy from that of the 9 WTP supported candidates for which Decisions have been made. (FN 1). This distinction does not allow the Commissioner to determine that there are sufficient facts to find acceptance of below market services.

Second, there are particular practical implications of a determination of acceptance of in-kind corporate contributions as to Candidate Buttrey’s 2010 campaign. The WTP/Direct Mail intrusions into Montana’s 2008, 2010 and 2012 political campaigns were taken at staggered depths, depending on the candidate. The Commissioner has decided those Matters involving nine 2010 candidates in which WTP/Direct Mail involvement was at a campaign level.

²¹ The Commissioner’s Decisions (FN 1) have determined that WTP’s 2008 activities established a presumption that a 2010 candidate for Montana elected office had knowledge of Direct Mail’s tactics, including provision of in-kind services. That presumption was removed by Candidate Buttrey’s actions.

The Buttrey campaign is at a far lower vendor level, as set out above. Any finding of violation in Buttrey would necessarily trigger a review of a number of additional 2010 campaigns including those of O'Neill (HD 3), Wagner (HD 71), Randall (HD 39), Skees (HD 4), Doane (HD 38) and Knox (HD 47). All of these candidates had more vendor contact (perhaps even approaching campaign contact) than did Candidate Buttrey and all would be implicated by a Candidate Buttrey sufficiency decision. There is neither time or resources to expand 2010 campaign investigations into this lesser level of WTP involvement.²² Further, there is no gain in public policy or public trust determination in prosecution of the Candidate Buttrey complaint, or any other new complaint focusing on a lesser level of WTP related 2010 campaign issues, because the in-kind corporate contribution issue is already before Montana courts in multiple 2010 campaign level candidate prosecutions.²³

The Commissioner notes that this Decision is based on the facts and circumstances of a 2010 campaign, as measured by the allegations raised in a complaint filed almost 4 years after the fact, thereby triggering all the nuances discussed above. The Commissioner again cautions 2014 candidates for Montana public office to avoid compromising campaign relationships and situations involving entities such as WTP or Direct Mail. Big time money has

²² The Commissioner does not invite any further complaints against 2010 candidates and likely will dismiss any such new complaints on statute of limitations grounds.

²³ *COPP v. Kennedy*, Lewis & Clark Co., Cause DDV-2014-234; *COPP v. Murray*, Lewis & Clark Co., Cause BDV-2014-170; *COPP v. Miller*, Lewis & Clark Co., Cause CDV-2014-62; *COPP v. Bannan*, Lewis & Clark Co., Cause CDV 2014-178; *COPP v. Boniek*, Lewis and Clark Co., Cause ADV-2014-202; *COPP v. Prouse*, Lewis & Clark Co., Cause DDV-2014-250; *COPP v. Wittich*, Lewis & Clark Co., Cause ADV-2014-251; *COPP v. Wagman*, Lewis and Clark Co., Cause DDV-2014-267; *COPP v. Sales*, Lewis and Clark Co., Cause DDV-2014-283.

entered Montana's federal election campaigns and some of that money may be on its way into Montana's state office campaigns. A candidate is best served to limit the expenditure side of his or her campaign activities to arms-length expenditures (thereby creating fair market value) rather than complicate their campaign by allowing under market expenditures by an entity that claims a "wants to help" role, even a vendor role. WTP/Direct Mail did Candidate Buttrey no favors in this Matter, nor will any similar entity do any favor to a 2014 candidate.

4. Failure to Attribute

The Candidate Buttrey letter, as is the case with many of the candidate letters printed by WTP/Direct Mail, does not meet the full attribution requirements of §13-35-225 MCA. The letter itself lacks an attribution and the attribution on the accompanying survey lacks an address. The general policy of the COPP is that a complaint leading to a Decision based solely on a failure to fully report/disclose in compliance with §13-37-229(2) MCA will be dismissed as a complaint based on a *de minimis* violation. That same policy, with the examination set out below, has application to an attribution violation under §13-35-225 MCA.

In general Candidate Buttrey did attribute properly. The Commissioner's inspection determined that the remainder of Candidate Buttrey's campaign material was meticulously attributed. It was only the WTP/Direct Mail letter that lacks proper attribution. The Commissioner has reviewed the entire letter and determines that a member of the public would, by reviewing the letter,

survey, and return envelope, be able to piece together the information required by §13-35-225(1) MCA. This distinguishes this failure to attribute from the failure to provide contributor information in the Matters of *Montana Republican Party v. Wright*, COPP-2012-CFP-001 or attribution information in *Bixler v. Suprock*, 2013-CFP-013.

The attribution violation stands alone as all other allegations have been dismissed. Because the attribution violation stands alone and because the public is not deprived of information the violation is technical and it is dismissed as *de minimis*.

OVERALL DECISION

This Commissioner, having duly considered the matters raised in the Complaint, and having completed his review and investigation, hereby holds and determines, under the above stated reasoning, that there is insufficient evidence, to justify a civil or criminal adjudication against Mr. Buttrey under §13-37-124(1) MCA. The Commissioner hereby dismisses this complaint in full.

DATED this 21st day of April, 2014.



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