

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Ponte v. MT BASE, et. al. No. COPP 2014-CFP-012	PARTIAL DISMISSAL OF COMPLAINT AS FRIVOLOUS
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On April 7, 2014, Bozeman, Montana resident David Ponte filed a complaint with the Commissioner of Political Practices (COPP) against Montana Business Advocates for Sensible Elections (MT BASE), a duly formed Montana political committee, and a substantial number of additional corporations, candidates and political committees.¹ The Complaint alleges that MT BASE et. al. violated Montana campaign practice laws in a number of ways. A number of the individual complaints (within the Complaint) are hereby dismissed as frivolous.

FINDING OF FACT

The foundational fact necessary for this Decision is that the Complaint, with the exception of one email, is based solely on information derived from reports filed with the Commissioner of Political Practices offices and on allegations of the complainant, Mr. Ponte. The Commissioner can, as set out below, dispose of portions of this complaint without any further review.

¹ Please see Complaint, accessible on the Commissioner’s Website, for a listing of all the affected parties.

Discussion

This Complaint presents several issues. Each is discussed in the order presented by the complaint.

1. Naming and Labeling

Montana Business Advocates for Sensible Elections (MTBASE) draws its existence as a duly registered political action committee (PAC) with the office of the Commissioner of Political Practices (COPP). Montana law requires that a PAC name itself using a name that “clearly identifies the economic or special interest, if identifiable, of a majority of its contributors.” §13-37-210 MCA. Complainant Ponte alleges that MT BASE has violated this law.

In 2012 MTBASE filed the required financial disclosure (form C-6) reports. A determination of whether the naming and labeling statute has been violated is based on a review of employer and occupation information presented in the C-6 forms. *BFP v. Responsible Land Use* (January 6, 2010, Commissioner Unsworth). Complainant Ponte reviewed the forms and asserts that the identifiable interest of a majority of contributors is “legislators” and thus the PAC is misnamed. This assertion is wrong. The initial PAC C-6, for example, lists \$11,550 in receipts coming from one PAC, one corporation and 8 individuals. Complainant Ponte asserts the Commissioner should disregard the undisputed current business interests represented by these contributors and focus on the legislative connections these contributors may have. The Commissioner declines to do so. To make such a connection would be a cart-before-the-horse deduction. Montana has a citizen, not a professional,

legislature. It is the business training and interest of some of Montana's citizens that drives them to become legislators. They do not lose that business motivation just because they are legislators. The Commissioner determines that the MT BASE PAC is not inappropriately named.

Stop Dark Money is a duly registered ballot committee with the COPP. Stop Dark Money has also filed several forms C-6 with the COPP. The complainant makes a similar naming and labeling claim against Stop Dark Money. The Commissioner dismisses this complaint under the same reasoning as set out above. While the majority of contributions to Stop Dark Money may come from MT BASE, the statute measures the majority of contributors, not contributions. *BFP v. Responsible Land Use*. The majority of contributors are individuals of diverse interests (Commissioner's records) leaving the PAC free to select a name of its own choosing.

This entire naming and labeling portion of the Complaint is hereby dismissed without the necessity of a response. Under COPP regulations "no investigation shall be required if a complaint is frivolous on its face...." 44.10.307(3)(3)(a) ARM. Here this portion of the complaint is frivolous on its face and requires no investigation as it is dismissed as frivolous.

2. Corporate or Partnership C-2 Registration

A political committee, whether in the form of a ballot committee or incidental committee, is required to timely register (§13-37-201 MCA) and timely file reports of campaign contributions and/or expenditures (§§13-37-225, 226 MCA). Complainant Ponte asserts that multiple incidental

committees, along with the ballot committee, failed to timely register and/or report. This is an issue on which the Commissioner has split authority. The Committees involved in this Matter have now filed and disclosed. The Commissioner has recently determined that an “indicia of a frivolous complaint is a complaint making a challenge to a corrected campaign action.”

Landsgaard v. Peterson, COPP-2014-CFP-008. On the other hand, the COPP has a long history of strictly enforcing candidate and PAC filing deadlines, taking late filing issues outside of the *Landsgaard* determination. *Harrington v. Cap the Rate*, July 3, 2012, (Commissioner Murry). This particular portion of the complaint is retained for investigation and the respondents are hereby so notified.

3. Under \$35 Contributions.

Contributions in amounts under \$35 may be reported in mass without a listing of the name, address, occupation and employer of each contributor. §13-37-229MCA. Complainant Ponte asserts that there is something inherently wrong with the \$15,316 amount reported as “under \$35” contributions. It may just be an accounting glitch, but it cannot be explained without investigation and this complaint is also accordingly retained for investigation.

4. Coordination

Complainant Ponte alleges that MT BASE engaged in certain expenses that were coordinated with certain candidates. 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.²

Montana law, at 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 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

² 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.

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.*, 12-31-1997. 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 (PM) 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 PM’s expenditures for opposition flyers were made with “...prior knowledge, consent and encouragement of Handler...” Thus they were coordinated expenditures.

This Commissioner has issued a series of Decisions, all based on actions between Western (American) Tradition Partnership and 2010 candidates for Montana public office, finding coordination. 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. *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.

Complainant Ponte asserts that a shared expense by a PAC with a candidate creates coordination. The shared expense is a “kick-off” party. Complainant Ponte cannot claim a safe harbor for these allegations in any prior Decisions of the COPP as he offers no explanation of how the complained-of expense creates an election expense for a candidate and produces no document (or other objective measure) showing how this action somehow creates a coordinated expense.³ The Ponte coordination allegations do not “enable the commissioner to determine that it states a potential violation of statute or rule” and the coordination complaint is therefore dismissed as frivolous under ARM.10.307(3)(a) and *Landsgaard v. Peterson*, COPP-2014-CFP-008. The respondents need not reply to this particular complaint.

5. Illegal Corporate Contributions

As a derivation of the complaint based on coordination allegations complainant Ponte alleges that three certain legislative candidates acted together with several corporate entities to engage in certain undefined campaign activities. There is no claim that a candidate took corporate money

³ Ponte’s allegation, if acted on, likely implicates any association between any entity and a candidate including picnics, award ceremonies and workshops. The Commissioner requires something far more detailed than these allegations before starting to deal with this sort of issue.

into their campaign. Instead, the allegation is that certain corporate activity created an in-kind corporate contribution.

The Commissioner acknowledges the Ponte allegations, but determines that the allegations are empty and without any accompanying demonstration of just how the candidate and corporation supposedly worked together.⁴ This Commissioner is very aware of the type of evidence that is necessary to show coordination. The Ponte allegation has no showing of coordination within it and therefore does not “enable the commissioner to determine that it states a potential violation of statute or rule.” This portion of the complaint is dismissed as frivolous under ARM.10.307(3)(a) and *Landsgaard v.Peterson*, COPP-2014-CFP-008. The respondents need not reply to this particular complaint.

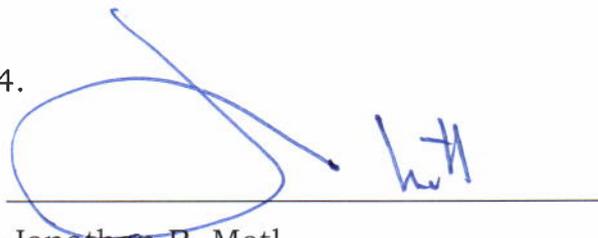
PARTIAL DECISION

The Commissioner has limited discretion when making the determination as to an unlawful campaign practice. In most cases the Commissioner must follow a process requiring that the Commissioner (“shall investigate,” *See*, § 13-37-111(2)(a) MCA) investigate any alleged violation of campaign practices law. However, “no investigation shall be required if a complaint is frivolous on its face....” 44.10.307(3)(3)(a) ARM. The Commissioner has further defined this concept in *Landsgaard v.Peterson*. In particular, the Commissioner noted that unfounded complaints assess unfair social costs on candidates and committees. *Id.* Here substantial portions of the complaint are frivolous and can be (and are) dismissed at a facial review, thereby limiting the social cost to

⁴ The one email supporting the allegation offers no support upon objective review.

the respondents. The remaining portions (late filing/reporting and under \$35 reporting), as limited by this Decision, will be sent to the respondents for their response. It is noted that this dismissal of certain complaints limits the number of respondents to those that are involved in the remaining allegations. In particular, all candidate campaigns named in the complaint no longer have allegations remaining against them.

DATED this 15th day of April, 2014.



Jonathan R. Motl
Commissioner of Political Practices
Of the State of Montana
P. O. Box 202401
1205 8th Avenue
Helena, MT 59620
Phone: (406)-444-4622