

Commissioner of Political Practices
1205 Eighth Avenue
Post Office Box 202401
Helena, MT 59620-2401
Phone: 406-444-2942
Fax : 406-444-1643
www.politicalpractices.mt.gov

Campaign Finance and Practices

Complaint Form (10/09)

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2013 DEC -2 A 11: 13

COMMISSIONER OF
POLITICAL PRACTICES

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NOV 29 2013

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2013 NOV 32 A 11: 12

COMMISSIONER OF
POLITICAL PRACTICES

CERTIFIED MAIL

SIGNED/NOTARIZED

Type or print in ink all information on this form except for verification signature

Person bringing complaint (Complainant):

Complete Name Sheila Royston

Complete Mailing Address P.O. Box 77
Wilsall, MT 59086-0077

Phone Numbers: Work Not applicable Home (406) 578-2295

Person or organization against whom complaint is brought (Respondent):

Complete Name (1) Livingston Fire Fighters PAC; and (2) IAFF 630

Complete Mailing Address P.O. Box 616 326 S. 9th St.
Livingston, MT 59047-0616 Livingston, MT 59047-2961

Phone Numbers: Work unknown Home unknown

Please complete the second page of this form and describe in detail the facts of the alleged violation.

Verification by oath or affirmation

State of Montana, County of Park

I, Sheila Royston, being duly sworn, state that the information in this Complaint is complete, true, and correct, to the best of my knowledge and belief.

Sheila Royston
Signature of Complainant

Subscribed and sworn to before me this 29th day of Nov., 2013.

Pamela Pendill
Notary Public

My Commission Expires: /

Statement of facts:

Describe in detail the alleged violation(s) and cite the statute or statutes you believe have been violated. Please attached copies of documentary evidence to support the facts alleged in your statement.

If the space provided below is insufficient, you may attach additional pages as necessary.

This is a complaint concerning violations of Montana's Election Laws as set forth in Title 13 of the Montana Code Annotated. With the exception of Exhibits 1, 2, 3, 4, and 5, all other documentary evidence is maintained in its original form by the Commissioner of Political Practices. It will not be replicated and is incorporated herein by its reference.

My complaint is supported by the following facts and authority.

1. Complainant Sheila Royston is a resident of Wilsall, Montana.
2. Respondent 1, Livingston Fire Fighters (hereinafter "R1"), is a political action committee (PAC) registered with the Commissioner of Political Practices (COPP). *See: Committee Report Search, COPP website.*
3. Respondent 2, Local 630, an affiliate of the International Association of Fire Fighters (hereinafter "R2"), is a labor organization.
4. R1's PAC maintains post office box 616 and is headquartered at 414 East Callender Street, Livingston, Montana.
5. R1's place of employment is 414 East Callender Street, Livingston, Montana.
6. R2 is headquartered at 326 S. 9th Street, Livingston, Montana.
7. R2 established R1.
8. R1 has filed a C-6 Political Committee Finance Report for the following reporting periods: 07/01/2011 to 10/03/2011; 10/04/2011 to 06/25/2012; 06/26/2012 to 09/24/2012; 09/25/2012 to 11/29/2012; and 11/30/2012 to 10/24/2013. *See: Committee Report Search, COPP website.*
9. R1 reported direct contributions to the following candidates: Adam Stern for City Commission; Clint Tinsley for County Commission; Dorel Hoglund for City Commission; Mark Pesa for City Commission; and Jon Reddington for City Commission.

Statement of facts (continued):

10. Adam Stern filed a C-5 Candidate Campaign Finance Report for the following reporting periods: 05/31/2011 to 08/31/2011; 09/01/2011 to 10/02/2011; 10/03/2011 to 10/27/2011; and 10/28/2011 to 11/28/2011.

See: Candidate Report Search, COPP website.

11. Clint Tinsley filed a C-5 Candidate Campaign Finance Report for the following reporting periods: 01/18/2012 to 05/20/2012; 05/21/2012 to 06/21/2012; 06/22/2012 to 10/23/2012; and 10/24/2012 to 11/09/2012, which serves as the closing report. *See: Candidate Report Search, COPP website.*

12. Dorel Hoglund filed a C-5 Candidate Campaign Finance Report for the following reporting periods: 06/18/2013 to 09/30/2013(a); 06/20/2013 to 09/30/2013; 10/01/2013 to 10/22/2013; 10/01/2013 to 10/22/2013(a); 10/23/2013 to 10/31/2013(a); and 11/01/2013 to 11/25/2013. *See: Candidate Report Search, COPP website.*

13. Mark Pesa filed a C-5 Candidate Campaign Finance Report for the following reporting periods: 08/09/2013 to 08/29/2013; 08/30/2013 to 10/01/2013; 10/02/2013 to 10/25/2013; and 10/26/2013 to 11/26/2013. *See: Candidate Report Search, COPP website.*

14. Jon Reddington filed a C-5 Candidate Campaign Finance Report for the following reporting periods: 08/15/2013 to 08/29/2013; 08/30/2013 to 10/01/2013; 10/02/2013 to 10/25/2013; and 10/26/2013 to 11/26/2013. *See: Candidate Report Search, COPP website.*

15. As more specifically alleged below, R1 violated and continues to violate § 13-35-226(4), MCA and § 13-37-225(3), MCA; and R2 violated and continues to violate § 13-37-217, MCA and § 13-35-227, MCA.

CLAIM 1

In 2005, the Montana Attorney General opined that “a public officer or public employee may engage in political speech so long as his or her speech does not involve the use of public time, facilities, equipment, supplies, personnel, or funds.” (*Exhibit 1*). This opinion still holds the force of law.

Since 2011, R1 has had its PAC headquarters at 414 East Callender Street, Livingston, Montana, which is the location of the City of Livingston-Park County Complex. The City-County Complex is a public facility. Previously, R1 operated out of this location (1966 – 2005) as a public benefit with members until it was

Statement of facts (continued):

involuntarily dissolved. (*Exhibit 2*). Further, the most recent C-6 filed shows that all PAC donors, who are public employees as defined by § 2-2-102(7)(b), MCA, use the City-County Complex as their complete mailing address.

Section 13-35-226(4), MCA, provides as follows:

Unlawful acts of employers and employees. (4) A public employee may not 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 the place of employment. However, subject to 2-2-121, this section does not restrict the right of a public employee to perform activities properly incidental to another activity required or authorized by law or to express personal political views.

R1 violated the above statute and its requisite subpart by engaging in political speech involving the use of public time, facilities, equipment, supplies, personnel, or funds.

CLAIM 2

Each candidate and political committee is required to file periodic reports of contributions and expenditures made by or on the behalf of a candidate or political committee. A C-6 to C-5 reporting comparison between R1 and the candidates is as follows:

What R1 Reported	What the Candidate Reported
11/03/2011: \$160 donation to "Adam Stern for City Commission"	11/01/2011: \$160 receipt from <i>Livingston Firefighters PAC</i> ; P.O. Box 616, Livingston, MT 59047
12/17/2012: \$97 donation to "Clint Tinsley for County Commission"	Did not report.
09/16/2013: \$160 donation to "Dorel Hogleund for City Commission"	09/05/2013: \$160 receipt from <i>Livingston Firefighters PAC</i> ; P.O. Box 616, Livingston, MT 59047
10/04/2013: \$160 donation to "Mark Pesa for City Commission"	09/11/2013: \$160 receipt from <i>IAFF 630</i> ; 326 South 9 th Street, Livingston, MT 59047
10/04/2013: \$160 donation to "Jon Reddington for City Commission"	09/11/2013: \$160 receipt from <i>IAFF 630</i> ; 326 South 9 th Street, Livingston, MT 59047

The above illustration begs the question "who in truth is supplying the money?". The improper reporting by R1 impedes the public's right to know who is financially backing candidates for public office. It is clear that R2 is channeling money through R1, which in turn makes any speech by R1 misleading to the public. This claim is not limited to the above contributions, which show good cause that a violation has occurred, but to all financial transactions and attributions made by R2 through R1 for the purpose of influencing elections held in 2011, 2012,

Statement of facts (continued):

and 2013. Using the current election year as an example, R1 wrote a letter to the editor (*Exhibit 3*) and placed an advertisement in the *Livingston Enterprise* (*Exhibit 4*) endorsing Dorel Hoglund, Mark Pesa, and Jon Reddington for the Livingston City Commission. Since R2 is funding the speech, both the endorsement and the advertisement should have been attributed to R2.

Section 13-37-217, MCA, provides as follows:

Contributions in name of undisclosed principal. A person may not make a contribution of the person's own money or of another person's money to any other person in connection with any election in any other name than that of the person who in truth supplies the money. A person may not knowingly receive a contribution or enter or cause the contribution to be entered in the person's accounts or records in another name than that of the person by whom it was actually furnished.

R2 violated the above statute by using R1 as an intermediary to pass funds along from a third party, which conceals the identity of the true donor.

CLAIM 3

R1 and R2 are commingling monies as evidenced in CLAIM 2. It is also clear from the initial C-6 that treasury funds (mandatory) and political action funds (voluntary) are mixed based upon the year-to-date amounts of its members, as well as the absence of a bank service charge for opening a new account. R1 and R2 are separate entities. Campaign finance laws require that a campaign bank account be established in order to legally deposit political donations and make payments for campaign expenses.

Section 13-35-227, MCA, provides as follows:

Prohibited contributions from corporations. (1) A corporation may not make a contribution or an expenditure in connection with a candidate or a political committee that supports or opposes a candidate or a political party. (2) A person, candidate, or political committee may not accept or receive a corporate contribution described in subsection (1). (3) This section does not prohibit the establishment or administration of a separate, segregated fund to be used for making political contributions or expenditures if the fund consists only of voluntary contributions solicited from an individual who is a shareholder, employee, or member of the corporation. (4) A person who violates this section is subject to the civil penalty provisions of 13-37-128.

Statement of facts (concluded):

R2 violated the above statute by not establishing a separate, segregated fund for its political activity.

CLAIM 4

Park County is a member of the iDoc Marketplace, a service which allows individuals to conduct an online search of recorded documents. The search results for R1 Election Files support that R1 has not complied fully with reporting provisions of the law. (*Exhibit 5*).

Section 13-37-225(3), MCA, provides as follows:

Reports of contributions and expenditures required. (3) All reports required by this chapter must be filed with the commissioner and with the election administrator of the county in which a candidate is a resident or the political committee has its headquarters.

R1 violated the above statute and its requisite subpart by not filing C-6 Political Committee Finance Reports with the Election Administrator of Park County.

16. Rule 44.10.307 of the Administrative Rules of Montana provides that a person who believes a violation of a provision of Title 13, chapters 35 and 37, MCA, has occurred may file a written complaint.

17. Section 13-37-111, MCA, provides the COPP with the authority and jurisdiction to investigate legitimate complaints and to enforce Montana's Election Laws.

Complaints must be:

- signed
- notarized
- delivered in person or by certified mail.

PUBLIC EMPLOYEES - Right to exercise political speech;
PUBLIC OFFICERS - Right to exercise political speech;
STATUTORY CONSTRUCTION - Construing plain meaning of words of statute;
MONTANA CODE ANNOTATED - Section 2-2-121, (3), (a), (b), (c).

HELD: A public officer or public employee may engage in political speech so long as his or her speech does not involve the use of public time, facilities, equipment, supplies, personnel, or funds.

January 31, 2005

Mr. Mathew J. Johnson
Jefferson County Attorney
P.O. Box H
Boulder, MT 59632

Dear Mr. Johnson:

You have requested my opinion on a number of questions concerning public officers and political speech. I have rephrased your questions as follows:

Does Mont. Code Ann. § 2-2-121 limit a public officer's or employee's right to support or oppose a political candidate or passage of a ballot issue?

Mont. Code Ann. § 2-2-121 sets forth the rules of conduct for public officers and employees. Subsection (3) includes a prohibition against the use of public time and resources for political speech, as well as a provision protecting a public officer or employee's freedom to express personal political beliefs. It provides:

(3)(a) A public officer or public employee may not use public time, facilities, equipment, supplies, personnel, or funds to 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 unless the use is:

(i) authorized by law; or

(ii) properly incidental to another activity required or authorized by law, such as the function of an elected public officer, the officer's staff, or the legislative staff in the normal course of duties.

(b) As used in subsection (3), "properly incidental to another activity required or authorized by law" does not include any activities related to solicitation of support for or opposition to the nomination or election of a person to public office or political committees organized to support or oppose a candidate or candidates for public office. With respect to ballot issues, properly incidental activities are restricted to the activities of a public officer, the public officer's staff, or legislative staff related to determining the impact of passage or failure of a ballot issue on state or local government operations.

(c) This subsection (3) is not intended to restrict the right of a public officer or public employee to express personal political beliefs.

(Emphasis added.)

It is not personal political speech that is prohibited by subsection (3)(a); rather, it is the use of public time or resources in the presentation or furtherance of political speech. While a public officer or employee is not required to shed his public persona in order to exercise his right to free speech, he may not use public resources when expressing personal political beliefs.

Your questions pose scenarios involving elected officers, like county commissioners and sheriffs, whose unique positions require them to work a schedule outside of the typical 8 to 5 schedule of most public employees. You ask, for instance, what of the county commissioner who receives phone calls at home in the evenings, or the sheriff who is on call 24 hours a day?

In Keyishian v. Board of Regents of Univ. of State of N.Y., 385 U.S. 589, 605-606 (1967), the Supreme Court stated, "a government employee does not relinquish all First Amendment rights otherwise enjoyed by citizens just by reason of his or her employment." Likewise, a county commissioner or sheriff (or any other public employees or officers) does not relinquish her First Amendment rights by the mere fact that she may be a public official. Pursuant to the plain language of Mont. Code Ann. § 2-2-121(3)(a), so long as a public officer or employee is not using "public time, facilities, equipment, supplies, personnel, or funds" she may engage in political speech. See Dahl v. Uninsured Employers' Fund, 1999 MT 168, ¶ 16, 295 Mont. 173, 983 P.2d 363.

Although "public time" is not defined, a reasonable construction would be those hours for which an employee receives payment from a public employer. Elected officials, of

Mr. Mathew J. Johnson

January 31, 2005

Page 3

course, do not have specific hours of employment nor do they receive vacation leave or other time off duty. They receive annual salaries rather than hourly wages. Thus, they could be considered to be on "public time" at all times. However, as long as public facilities, equipment, supplies, or funds are not involved, elected officials are not restricted in the exercise of political speech by the provisions of Montana law.

You also ask if subsection (3) prohibits a public employee or officer from signing a letter to the editor with his official title or prevents a law enforcement officer from wearing a uniform to campaign for a political issue or candidate. I conclude that, for the reasons stated above, subsection (3)(c) allows a public official to sign a letter to the editor, expressing personal political beliefs, with his official title, so long as public resources were not used to create the letter. Moreover, a sheriff would not be prohibited from wearing a uniform while campaigning for a political issue or candidate. In my opinion, neither activity would be prohibited by subsection (3).

Again, subsection (3)(a) only prevents use of "public time, facilities, equipment, supplies, personnel, or funds" in the furtherance of personal political speech. A title or a uniform is simply an accouterment of a public employee's or officer's position. A sheriff is not required to shed all associations, including his uniform, with his official position in order to exercise his protected right to express personal political beliefs.

The presumption is that free speech rights are protected and only the very specific restrictions in Mont. Code Ann. § 2-2-121 can be invoked to limit a public officer's or public employee's right to political speech.

THEREFORE, IT IS MY OPINION:

A public officer or public employee may engage in political speech so long as his or her speech does not involve the use of public time, facilities, equipment, supplies, personnel, or funds.

Very truly yours,

MIKE McGRATH
Attorney General

mm/anb/jym

Business Entity Search

[Instructions](#) [Search Tips](#) [Feedback](#)

[Data Current as of...](#)

If you are ordering a Certificate of Fact or Certificate of Existence, please make sure the Foreign/Domestic Corporation or Limited Liability Company is in "Good Standing".

Enter the name of the business, and check to see whether their annual report was filed in the current year.

We are not able to provide a Certificate of Fact or Certificate of Existence unless the current annual report is filed.

If you would like to purchase information on the principals (i.e., officers, directors, members, managers, partners, etc) associated with this entity, select the button below. You will be assessed \$2.00 for each search you perform.

If you would like to purchase a Certificate of Fact for this business entity, select the button below. You will be assessed a \$15.00 fee for this service.

[Do another Search](#)

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[Search](#)

Name: LIVINGSTON FIRE FIGHTERS
ID #: D032653
Type: PUBLIC BENEFIT WITH MEMBERS
Jurisdiction State: MT
Status: INACTIVE
Status Reason: INVOLUNTARILY DISSOLVED

Status Dates

Expiration Date:
Date of Incorporation: 08/03/1966
Last AR Filed: 01/28/2004
Suspension:
Inactive Date: 12/01/2005
Diss/Widthdr/Revoke: 12/01/2005

Additional Info

Term: PERP
Shares: *
Purpose Code: SERVICE-GENERAL

*Displayed is the first class of shares authorized for the entity. To see if the entity has additional shares, go to app.mt.gov/beform and view the pre-filed annual report form under item #6

Agent

Registered Agent: RICHARD O. WOOD
Address 1: 414 E CALLENDER
Address 2: PO BOX 616
City: LIVINGSTON
State: MT
Zip: 59047-0000

Disclaimer

Exhibit 2

Any statement by the Secretary of State's Office is not intended as legal advice and should not be construed as such. If you have specific legal questions, the Secretary of State's office urges you to seek professional legal advice.

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Park, two didn't even know
a third asked if the commis-
And these are the people the
posed to be fooled into letting
udget and decide what *our pri-*

This is the *city* of Livingston
lection for Park County Com-
Paradise Valley or the Crazies
is it an election to the leader-
ridger Bowl (the nearest ski
in the next county!) It's not an
, and recreation commissioner
lected "King of the Mountain"
mountains here in Livingston.
ston is the dirt path that runs
y's Sacajawea Park for a wee

r of becoming one of our City
s matters of running *our city*.
on to the homecoming court or
ither!)

estion submitted last evening,
s, was for each to state cate-
e supports the use of the legal
U.S. Supreme Court, of "emi-
nents and whether each would
voke it here in Livingston. I'd
ve answers ...

Bill Burris
Livingston

represent everyone

ivingston (two-plus years), I've
the community for a fraction
citizens have. From an objec-
a bit about "my" Livingston

ervice industry workers, who
muters, who live across the

at heart, not just more trails, but an overpass that is very
needed on the west end.

I listen to people who are struggling to pay sewer, water
and garbage while their income doesn't go up. All these costs
are passed on even if you're paying rent. My budget billing
just went up \$33 per month and I doubt my Social Security
check will increase that much.

So I suggest we pay close attention to who we put into
office so *our town* can be fiscally sound.

Lenore Haws
Livingston

Livingston Firefighters' Political Action Committee endorsement

Editor:

As a person who has grown up in this community and is
now raising children here, I have a stake in the future of Liv-
ingston. In this election year it is important that all eligible
voters turn out and make their voices heard. It is local elec-
tions where every vote truly counts.

For that reason, the Livingston Firefighters' Political
Action Committee has endorsed Dorel Hogle, Mark Pesa,
and Jon Reddington for Livingston City Commission. The
Livingston Firefighters' PAC is supported by local firefight-
er/paramedics who live in and serve this community and the
surrounding areas every day. These candidates have shown a
commitment to providing Livingston with the emergency
services our citizens have come to expect and deserve.

Rather than pushing personal agendas or ideological theo-
ries, these candidates are focused on providing the leader-
ship needed to maintain and improve our infrastructure,
attract businesses, and legislate effectively. We are proud to
support these candidates. We urge everyone to get out and
vote on November 5th, or fill out and return an absentee bal-
lot. When you do, please consider voting for Hogle, Pesa,
and Reddington, the candidates that have our community's
best interests in mind.

Seth Rivard
Livingston

Exhibit 3

BY

LIVINGSTON FIREFIGHTERS



**SUPPORT THE
FOLLOWING
CANDIDATES -**

**DOREL HOGLUND, MARK PESA
AND JON REDDINGTON
FOR CITY COMMISSION**

*Paid for by Livingston Firefighters Political Action Committee,
Jacob Devries, Treasurer, PO Box 616, Livingston, MT 59047*

Exhibit 4

Results Park, MT

Found: 1 results

Instrument: ELECTION FILES, Name Contains Livingston Firefighters

#366911
ELECTION FILES

7/26/2011
2 Pages

LIVINGSTON FIREFIGHTERS POLITI...

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