

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Washburn v Murray Decided January 28, 2013	NOTICE OF WITHDRAWAL OF THE COMMISSIONER'S DECISION DATED JANUARY 28, 2013
Washburn v Murray No. COPP-2010-CFP-019	NOTICE OF SUBSTITUTE DECISION IN MATTER NUMBERED COPP-2010- CFP-019

The Commissioner has withdrawn the Decision dated January 28, 2013.
That now withdrawn Decision immediately follows this Notice.

The Commissioner has issued a replacement Decision in the Matter of
Washburn v. Murray, No. COPP-2010-CFP-019. This Decision may be found
on the Commissioner's website under the above caption.

DATED this 19th day of December, 2013.



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BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES

In the Matter of the Complaint)
Against Ronald Murray)

**SUMMARY OF FACTS,
STATEMENT OF FINDINGS
AND CONCLUSION**

Ted Washburn, State Representative for House District 69, and a resident of Gallatin County, filed a complaint against Ronald Murray, his challenger in the June 2010 primary election. Representative Washburn's complaint alleges three instances of campaign law violation: (1) that Murray accepted a contribution in the form of a loan from Smart Simple Campaigns in violation of §13-35-227, MCA (prohibiting direct contributions from corporations) and that the contribution was in excess of the applicable contribution limit in violation of §13-37-216(1)(a)(iii), MCA; (2) that Murray filed his post-primary election finance report eleven days late in violation of §13-37-226, MCA; and (3) that Murray mailed out campaign literature failing to provide the disclaimer and identification required by §13-35-225, MCA.

SUMMARY OF FACTS

1. On May 27, 2010, Murray filed his C-5 Candidate Campaign Finance Report for the pre-primary election period. The report listed a loan of \$824.00 from Smart Simple Campaigns, a limited liability company Washburn alleges is effectively a corporation. The same report listed \$824.00 on Schedule C as a debt owed to Smart Simple Campaigns.

2. On July 9, 2010, Murray filed his C-5 Candidate Campaign Finance Report for the post-primary election period. The report listed \$1,575.96 as both a loan from Smart Simple Campaigns and debt to Smart Simple Campaigns.

3. The Commissioner's office noticed the dual entries and inquired of Murray's Treasurer, Susan Nickson, about the reported "loans." Nickson advised the loan entries were reporting errors and should have been reported only on Schedule C as a debt for printing and handling of letters. While the debt to Smart Simple Campaigns was incorrectly reported as a "loan," it was also correctly reported as a debt not yet paid. The amounts in question were debts, not loans. Murray did not receive loans from Smart Simple Campaigns.

4. Murray's post-primary C-5 report was due June 28, 2010, but not filed until July 9, 2010, eleven days late. Murray's treasurer, Susan Nickson, acknowledged to the Commissioner's office that the post-primary report was late. She stated she had been unavailable for a couple of weeks and had been remiss in the late filing. She noted this was her first campaign and acknowledged mistakes. Nickson corrected the erroneous loan entry and filed a revised report removing reference to a "loan" from Smart Simple Campaigns. There is no evidence Murray's campaign intended to evade disclosure requirements.

5. Murray sent out a campaign letter on May 10, 2010. The letter did not contain the requisite disclaimer indicating "Paid for by, name and address of candidate." The letter did state it was from "Ron Murray Republican Candidate for HD 69," thereby indicating the name of the candidate, the position sought, and party affiliation. However, no address, phone number, email address, or other information was provided to allow the recipient to contact the sender to discuss what was contained in the letter. There was also no indication as to who paid for the campaign material.

STATEMENT OF FINDINGS

Mont. Code Ann. § 13-35-227 prohibits direct corporate contributions to candidates. The definition of "contribution" under § 13-1-101(7)(a)(i), MCA, includes a "loan." Pursuant to §

13-37-216(1)(a)(iii), MCA, the maximum contribution to Murray for a house seat campaign was \$160. Given that Smart Simple Campaigns rendered a service to Murray for which a debt was incurred, there was no "loan" and therefore no contribution in violation of any statute. The transaction with Smart Simple Campaigns was disclosed as a debt, providing the public with the information required by law.

Mont. Code Ann. § 13-37-226(3) establishes time periods for legislative candidates to file required reports. Murray's Treasurer conceded the post-primary C-5 report was late, explaining that she was new to campaigns and had been occupied with other matters. She cooperated fully with the inquiries of the Commissioner's office and conceded the error. There was no indication of any intention on the part of the Murray campaign to avoid filing requirements or hide information.

In *Motl v. Citizens for More Responsive Government* (Feb. 2002), Commissioner Vaughey explained:

The law establishes deadlines for filing of campaign finance reports. The Commissioner of Political Practices strives to ensure compliance with all filing deadlines. If a particular candidate or political committee has failed to file a report by the applicable deadline, the standard practice of the Commissioner is to contact the campaign treasurer and request the treasurer to file the report as soon as possible. If such an informal effort to ensure compliance is not successful, the Commissioner may employ more formal measures, including issuance of orders of noncompliance or a court action seeking a civil penalty.

In the instant case, CMRG unquestionably failed to file the post-primary election finance report by the statutory deadline; but I found no evidence that the committee intended to evade disclosure of reportable contributions and expenditures. Rather, CMRG's transgression appears to have resulted from miscommunication between the treasurer, deputy treasurer, and "administrator" of the committee regarding who would prepare and file reports together with failure to become familiar with applicable reporting deadlines. The post-primary election report was filed shortly after committee members became aware that a complaint had been filed.

Under the circumstances, I have determined that it would not be in the best interests of the State of Montana to pursue a civil prosecution. Political committees should be aware, however, that the Legislature has established specific deadlines for filing campaign finance reports. While the Commissioner will continue, when appropriate, to employ informal means to ensure compliance with the deadlines established in statute, the Commissioner also reserves the right to take more formal action when circumstances warrant.

Having found no intention to evade filing requirements on the part of the Murray campaign, the Commissioner finds a civil penalty action not in the interest of the State of Montana with respect to this late filing. However, like Commissioner Vaughey, the undersigned reserves the right to take more formal action in other situations with respect to late-filed reports. The decision not to take formal action in this instance is not a signal that filing deadlines are lax or may be missed without penalty.

Mont. Code Ann. § 13-35-225 requires all communications advocating the success of a candidate through direct mailing or any other form of general political advertising to “clearly and conspicuously include the attribution ‘paid for by’ followed by the name and address of the person who made or financed the expenditure for the communication.” In addition, “[w]hen a candidate or a candidate’s campaign finances the expenditure, the attribution must be the name and the address of the candidate or the candidate’s campaign.”

Murray’s May 10, 2010, letter to voters did not contain the requisite disclaimer or an address for him or the campaign. Subsection (5) of § 13-35-225, MCA, establishes a procedure for notifying the Commissioner’s office of erroneous failure to include required information within five days of discovery, but no notification of error or attempt to bring communications into compliance was followed in this case. Recipients of the mailing were deprived of information the statute requires them to receive.

The Commissioner recognizes Murray may have been unfamiliar with the specifics of campaign disclosure requirements but candidates for public office are required to incorporate legal requirements into their campaign practices before engaging in campaign activities. As noted by Commissioner Unsworth in *In the Matter of the Complaint Against Juliann Jones*, some reporting and disclosure violations may appear minor to some observers, but: "Disclosure provides voters information that can help them evaluate those who seek public office. Transparency through disclosure is a widely accepted means of improving public awareness and limiting actual or perceived corruption." Like Commissioner Unsworth, "I urge candidates and others engaged in influencing elections in Montana to carefully review and understand the statutory disclosure requirements to ensure they are in full compliance with the law and to avoid penalties."

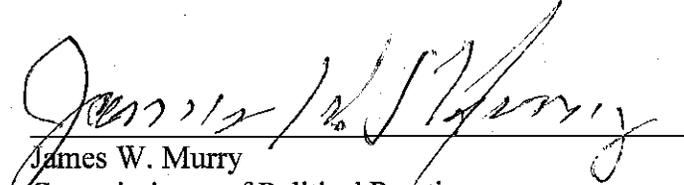
A violation of § 13-35-225, MCA, has been established with respect to the omissions in Murray's campaign mailing. The Commissioner finds pursuit of a civil penalty pursuant to §13-37-128, MCA, appropriate for this violation of §13-35-225, MCA.

CONCLUSION

Murray did not violate § 13-35-227, MCA or § 13-37-216, MCA, where there was no loan from Smart Simple Campaigns. While his post-primary election finance report was eleven days late in violation of §13-37-226, MCA, the late filing does not warrant pursuit of a civil penalty. However, Murray's mailing of campaign literature which failed to identify the source of funding for the literature or provide a contact address

violated §13-35-225, MCA, and the Commissioner deems pursuit of a civil penalty appropriate.

Dated this 28 day of January, 2013.


James W. Murry
Commissioner of Political Practices