

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES

In the Matter of the) **SUMMARY OF FACTS**
Complaint Against) **AND**
Martin Bennett) **STATEMENT OF FINDINGS**

Susan Welker filed a complaint against Martin Bennett, candidate for Sanders County Sheriff during the 1998 election cycle. The complaint alleges the following violations:

Claim 1: Bennett violated Montana Code Annotated § 13-37-201 by failing to file his Form C-1-A until October 2, 1998.

Claim 2: Bennett violated Montana Code Annotated §§ 13-37-225 and 13-37-226 by failing to file a campaign finance report prior to the general election.

Claim 3: Bennett violated Montana Code Annotated § 13-35-225 when he passed out flyers that did not identify the name and address of the person who paid for the flyer.

Claim 4: Bennett violated Montana Code Annotated § 13-37-230 when he failed to report an expenditure for rental of a pavilion booth at the Sanders County Fairgrounds.

Claim 5: Bennett's late filing of his post-general election report and failure to file a copy of the report with the Sanders County election administrator was a violation of Montana Code Annotated §§ 13-37-225 and 13-37-226.

Claim 6: Bennett violated Montana campaign finance laws and regulations when he used his personal credit card to pay for campaign materials.

Claim 7: Bennett improperly paid to have *The River Journal* distributed outside its normal distribution area.

Claim 8: Bennett violated campaign laws by making false and inaccurate statements concerning the incumbent Sheriff and the complainant in a newspaper article.

SUMMARY OF FACTS

1. On August 3, 1998, Martin Bennett filed a declaration of intent for write-in candidates, declaring his intent to run for the office of Sanders County Sheriff.

2. When Bennett filed his declaration of intent in the office of the Sanders County election administrator, he was not provided any information regarding the necessary campaign finance and reporting forms to file or where to file them, nor was he given a C-1-A form. A C-1-A is a "Statement of Candidate" form for candidates for county offices, listing general information including the candidate's name and address, name and address of campaign and deputy campaign treasurers, and designation of campaign depositories.

3. On September 25, 1998, the Sanders County election administrator sent a letter to Bennett with two C-1-A forms enclosed, with instructions to file one form with the election administrator and one form with the Secretary of State.

4. On September 28, 1998, an employee of the office of Commissioner of Political Practices (Commissioner) attempted to contact Bennett to advise him that his C-1-A form had not been filed. She left a message advising him of the filing requirement. Bennett later called back and requested information

regarding the laws and regulations regarding campaign finance and reporting. On that date an employee of the Commissioner's office mailed to Bennett a "blue book," the *Montana Campaign Finance Practices Laws and Administrative Rules of the Commissioner of Political Practices*, 1998 edition.

5. On October 1, 1998, the Sanders County election administrator sent another letter to Bennett with two C-1-A forms enclosed. The letter again advised Bennett of the requirement that the form had to be filed with that office with another copy to be filed in the Secretary of State's office.

6. On October 2, 1998, Bennett filed his C-1-A forms with the county election administrator and the Commissioner.

7. On October 6, 1998, the Commissioner's office mailed to Bennett a packet of information for candidates, including reporting forms, a 1998 reporting calendar, and a copy of the "green book," the *Accounting and Reporting Manual for Candidates and Political Committees*, 1998 edition.

8. On October 28, 1998, an employee of the Commissioner's office telephoned Bennett and left a message advising him that his pre-general election report (form C-5) was late. A C-5 is a form required to be filed by a candidate, listing contributions and expenditures made by the candidate during the reporting period. Bennett's first C-5 was due October 22, 1998. On October 29, 1998, Bennett telephoned the Commissioner's office. Bennett claimed that he either did not receive the candidate packet (including reporting forms) and blue book that was mailed to him, or it was misplaced. Another packet of candidate

information, including another blue book and green book as well as reporting forms, was sent to him on October 29, 1998; however, Bennett admitted that he did not review the blue book or green book when he received them.

9. Bennett did not file a pre-general election report (form C-5).

10. Bennett did not file a post-general election report (form C-5) by the November 23, 1998 due date.

11. On December 4, 1998, an employee of the Commissioner's office telephoned Bennett and advised him that his C-5 reports were late and that they had to be filed as soon as possible to avoid issuance of an Order of Noncompliance.

12. Bennett filed a single C-5 with the Commissioner's office on December 10, 1998. He did not file a copy with the Sanders County Clerk and Recorder's office. The C-5 listed contributions and receipts from the beginning of Bennett's campaign until the filing of the report. The report listed "out of pocket" receipts of \$1,445.43, and the identical amount of expenditures for advertisements, printing and mailing, and "gas expenses." Bennett included a statement following his signature on the C-5, indicating that all funds came out of his own pocket.

13. On September 24, 1998, Bennett paid \$50 to rent a pavilion at the Sanders County Fairgrounds for an October 4, 1998 forum to discuss the candidates for the office of Sheriff.

14. Bennett's C-5, filed on December 10, 1998, did not report the expenditure of \$50 for the rental of the pavilion at the Sanders County Fairgrounds. Bennett claims the \$50 amount

was included in an entry on the C-5 showing a \$150 expenditure for "gas expenses."

15. Bennett prepared a flyer announcing the October 4, 1998 forum. The flyer announced that Bennett was running for the office of Sanders County Sheriff and expressed his belief "that we should have more public forums for the people who are running for office, so that people know who they are voting for." It also stated:

I am very distressed at the way the Sheriff's office has been run. That's why I invite you to participate in an open forum for the position of Sheriff to discuss these matters on Sunday, October 4th at Plains fairgrounds.

The flyer also contained a number of quotes attributed to Bennett wherein he criticized his opponent, Sheriff Gene Arnold, and questioned his honesty. The flyer did not contain any language expressly advocating the election or defeat of a candidate, political party, or ballot issue.

16. Bennett admitted paying for some campaign expenses with his credit card. Invoices show that he used his VISA card to pay \$144.80 to the Printery in Plains, Montana for flyers and address labels related to his campaign.

17. Bennett did not establish a separate campaign account; rather, he used his personal checking account to pay for some campaign-related expenses.

18. For the reasons discussed in the Statement of Findings, no investigation was conducted with respect to Claim 7, which alleges that Bennett "paid to have the River Journal distributed

to the east end of Sanders County, where it is normally not circulated."

19. Bennett is quoted in several newspaper articles making certain negative comments concerning the incumbent sheriff, Gene Arnold, and the complainant, Susan Welker. Claim 8 alleges that the statements attributed to Bennett are "false and inaccurate." No investigation was conducted with respect to this claim for the reasons discussed in the Statement of Findings.

STATEMENT OF FINDINGS

Claim 1

Montana Code Annotated § 13-37-201 requires a candidate to file a form C-1-A within five days after becoming a candidate. Bennett became a candidate on August 3, 1998 when he filed his declaration of intent to run as a write-in candidate. He did not file his C-1-A until October 2, 1998. While Bennett violated the statute, a mitigating factor is that he was not advised of the filing requirement nor provided with a form C-1-A when he filed his declaration of intent with the Sanders County election administrator. Moreover, the letters from the Sanders County election administrator incorrectly advised him to file a copy of the C-1-A with the Secretary of State.

Claim 2

Montana Code Annotated § 13-37-225 requires each candidate to file periodic reports of contributions and expenditures made by or on behalf of the candidate. Such reports must be filed on forms C-5, and are required to be filed with the Commissioner and the county election administrator. Bennett was required to file

a C-5 on the twelfth day preceding the date of the election, or October 22, 1998. Montana Code Annotated § 13-37-226(3) and (4). He only filed one C-5, on December 10, 1998, and only after the Commissioner's office advised him that his reports were late. Bennett's failure to file a C-5 prior to the election constitutes a violation of Montana Code Annotated § 13-37-226.

Claim 3

This claim alleges that the flyer prepared by Bennett did not contain the name and address of the person who paid for the flyer, in violation of Montana Code Annotated § 13-35-225. That statute provides:

Whenever a person makes an expenditure for the purpose of financing communications **advocating the success or defeat of a candidate, political party, or ballot issue** through any . . . direct mailing, . . . handbill, . . . or other form of general political advertising, the communication must clearly and conspicuously state the name and address of the person who made or financed the expenditure for the communication, . . . [Emphasis added].

The statute requires that certain "communications" made for political purposes state, in a clear and conspicuous fashion, the name and address of the person who made or financed the expenditure for the communication. The flyer prepared by Bennett did not contain such identifying information. The statute is applicable, however, only if the communication is one "advocating the success or defeat of a candidate, political party, or ballot issue. . . ." [Emphasis added]. Thus, if the communication in this case can be construed as advocating the success or defeat of Bennett or his opponent, it is subject to

the attribution requirements of Montana Code Annotated § 13-35-225.

Montana Code Annotated § 13-37-128(2), sets forth the penalty for a violation of Montana Code Annotated § 13-35-225 as follows:

A person who makes or receives a contribution or expenditure in violation of 13-35-225, . . . is liable in a civil action brought by the commissioner or a county attorney . . . for an amount up to \$500 or three times the amount of the unlawful contribution or expenditure, whichever is greater.

Thus, Montana Code Annotated § 13-35-225, with its accompanying penalty provision stated above, is a penal statute. The test in determining whether or not a statute is penal in nature is "whether the wrong sought to be redressed is a wrong to the public or a wrong to the individual. . . ." If it is a wrong to the public, it is a penal statute. Department of Livestock v. Sand Hills Beef, Inc., 196 Mont. 77, 83, 639 P.2d 480, 483 (1981); Huntington v. Attrill, 146 U.S. 657, 668-69 (1892).

Here, the statutes clearly establish a penalty to redress a wrong to the public, not to any specific individual, since the public is entitled to know the identification of the person or group financing such communications.

Penal statutes, whether civil or criminal, must be strictly construed. Sand Hills Beef, Inc., 196 Mont. at 83, 639 P.2d at 483; State v. Nagle, 100 Mont. 86, 90, 45 P.2d 1041, 1042 (1935). Courts will not apply penal statutes to cases that are not within the obvious meaning of the language employed by the Legislature, even though they may be within the mischief intended to be

remedied. State v. Aetna Banking & Trust Co., 34 Mont. 379, 382, 87 P. 268, 269 (1906). See also State ex rel. Penhale v. State Highway Patrol, 133 Mont. 162, 165, 321 P.2d 612, 613-614 (1958).

Applying these rules of construction to the facts of this case, the evidence does not establish a clear violation of Montana Code Annotated § 13-35-225. While the flyers are obviously intended to be critical of Bennett's opponent, Sheriff Arnold, they do not include language that expressly advocates the success or defeat of either candidate in the election. Absent such clear and unambiguous language and applying the rules of strict construction set forth herein, I cannot find that the communications that are the subject of this investigation were required to have the attribution described in Montana Code Annotated § 13-35-225.

Claim 4

Bennett paid \$50 to rent the pavilion at the Sanders County Fairgrounds for the purpose of holding a candidates' forum. His C-5 filed on December 10, 1998 does not disclose this expenditure. Montana Code Annotated § 13-37-230(1) requires disclosure of:

the full name and mailing address (occupation and the principal place of business, if any) of each person to whom expenditures have been made by the committee or candidate during the reporting period, including the amount, date, and purpose of each expenditure and the total amount of expenditures made to each person[.]

Bennett violated Montana Code Annotated § 13-37-230 by failing to disclose this information.

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Claim 5

Bennett was required to file his post-election C-5 not more than 20 days after the date of the election, by November 23, 1998. Montana Code Annotated § 13-37-226(3) and (4). He filed his C-5 on December 10, 1998 and only after the Commissioner's office advised him to file the report or risk issuance of an Order of Noncompliance. While he filed a C-5 with the Commissioner's office, he did not file a copy with the office of the Sanders County election administrator. Bennett violated Montana Code Annotated §§ 13-37-225(1) and 13-37-226(3) and (4).

Claim 6

Montana Code Annotated § 13-37-205 requires a candidate to designate a primary campaign depository for the purpose of depositing all contributions received and disbursing all expenditures made by the candidate. Only a bank, credit union, savings and loan association, or building and loan association authorized to transact business in Montana may be designated as a campaign depository. In addition, a candidate "may not utilize his regular personal account in the depository as a campaign account." Montana Code Annotated § 13-37-205. Since Bennett admitted that he used his personal account to pay for campaign-related expenses, he violated Montana Code Annotated § 13-37-205.

Bennett also used his credit card to pay for some campaign expenses. Montana Administrative Rule 44.10.503(3) states that "[a]ll expenditures, except expenditures from the petty cash fund, shall be made by check drawn on the designated depository."

Bennett's use of a credit card for some campaign expenses violated that rule.

Claim 7

Claim 7 alleges that Bennett paid to have the River Journal distributed to an area of Sanders County where it is not normally circulated. No investigation of this claim was conducted because there are no statutes or rules within the Commissioner's jurisdiction that prohibit this alleged conduct.

Claim 8

Claim 8 alleges that Bennett made certain "false and inaccurate statements" concerning Sheriff Gene Arnold and the complainant, Susan Welker, in a newspaper article. The only statute within the Commissioner's jurisdiction that could conceivably apply to this alleged conduct is Montana Code Annotated § 13-37-131(1). At the time of the alleged conduct, that statute provided:

It is unlawful for a person to willfully or negligently make or publish a false statement about a candidate's public voting record **or to make or publish a false statement that reflects unfavorably upon a candidate's character or morality.** [Emphasis added].

In Montana Right to Life Association, et al. v. Eddleman, et al., United States District Court for the District of Montana, Billings Division, Cause No. CV 96-165-BLG-JDS, Judge Jack Shanstrom issued an order on February 3, 1998 declaring the statutory language emphasized above unconstitutional and permanently enjoined the Commissioner from enforcing those provisions of the statute. The 1999 Montana Legislature enacted Senate Bill 292, which amended Montana Code Annotated § 13-37-131

by deleting the language declared unconstitutional by Judge Shanstrom.

CONCLUSION

Based on the preceding Summary of Facts and Statement of Findings, there is sufficient evidence to conclude that Bennett failed to comply with Montana campaign finance reporting and disclosure laws and regulations; therefore, the matter will be referred to the county attorney for his review and possible exercise of prosecutorial discretion pursuant to Montana Code Annotated § 13-37-124.

Dated this 30th day of June, 1999.



Linda L. Vaughey
Commissioner