

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Wells v Lambert No. COPP-2013-CFP-0022	Finding of Lack of Sufficient Evidence to Show a Campaign Practice Violation Dismissal of Complaint
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On August 19, 2013 Ms. Gloria Wells of Bozeman, Montana, filed a complaint against Marty Lambert, Bozeman County Attorney. Ms. Wells' complaint (Complaint) is hereby dismissed for lack of evidence to support the Complaint. The reasoning is set out below.

SUBSTANTIVE ISSUES ADDRESSED

There were no substantive areas of law addressed by this Decision, other than a lack of sufficient evidence to support any violation of Montana campaign finance law.

FINDINGS OF FACT

The Complaint alleged that Bozeman County Attorney Marty Lambert dropped certain criminal charges after he took a "\$25,000 donation to his re-

election fund” from the mother of an accused drug dealer against whom charges were filed by Lambert’s office. The individuals listed in the complaint are Gloria Wells, Marty Lambert, Paul Buell and Kay (sic) Robinson.

The Findings of Fact necessary to respond to this complaint are as follows:

Finding of Fact No. 1.

Marty Lambert has served as Gallatin County Attorney since 1997. Gallatin County Website.

Finding of Fact No. 2

Marty Lambert’s two most recent re-election campaigns were in 2006 and 2010. In 2006, Derik Pomeroy challenged incumbent Lambert. Mr. Lambert was not challenged in his 2010 re-election bid. Gallatin County Website.

Finding of Fact No. 3.

Paul Buell was a Bozeman resident. Mr. Buell’s actions relevant to this Matter are as follows:

- a. Mr. Buell was arrested in 2006 on the charge of criminal possession of dangerous drugs: See *State of Montana v Paul Joseph Buell* No. DC-06-225B 18th Judicial District, Gallatin County.
 - i) Mr. Buell was sentenced in DC-06-225B under an Order signed and dated February 26, 2007. (Commissioner’s records). The Order included a suspended sentence for a 5 year prison term.
 - ii) Mr. Buell reappeared in DC-06-225B on February 23, 2009 for violating the terms and conditions of his 2-26-07 suspended sentence. Mr. Buell’s suspended sentence was revoked and he was sentenced to 5 years commitment to the Department of Corrections. (Commissioner’s records).
 - iii) Mr. Buell was arrested on 12-19-12 for parole violation. (Commissioner’s records).
- b. Mr. Buell was arrested and charged on May 30, 2008 for criminal distribution of dangerous drugs: *State of Montana v Paul Buell* No. DC-08-149-C 18th Judicial District, Gallatin County; *State of Montana v Paul Joseph Buell* No. TK-09-0546 Justice Court Gallatin County. (Commissioner’s records).
 - i) The DC-08-149-C case was dismissed without prejudice on January 13, 2009 upon motion of Todd Whipple, Chief Deputy County Attorney, Gallatin County. (Commissioner’s records).

- ii) The TK-09-0546 case was dismissed without prejudice on March 4, 2009 upon motion of Todd Whipple, Chief Deputy County Attorney, Gallatin County. (Commissioner's records).

Finding of Fact No. 4.

Gloria Wells is the complainant in this Matter. After filing the complaint Ms. Wells was unavailable to the Commissioner's investigator. COPP letters to Ms. Wells were returned unopened and attempts to reach Ms. Wells by phone were unsuccessful. Accordingly, the Commissioner makes the following findings based on the best information available:

- a. Ms. Wells was part of a group of 20 people, including Paul Buell, who were arrested in May of 2008 in a Gallatin County "drug sting" operation. Bozeman Daily Chronicle News Article, November 22, 2009.
- b. While charges were later dropped against a number of the individuals arrested in the spring of 2009, including Buell, the charges against Ms. Wells remained in place. Id.

Finding of Fact No. 5

Kae Robinson is the mother of Paul Buell and the person alleged by Ms. Wells to have made a \$25,000 contribution to Marty Lambert's reelection campaign. The Commissioner's investigator located and talked to Ms. Robinson on September 4, 2013 concerning the allegations of the complaint. Ms. Robinson called the allegations "absurd" and denied making any contribution to Mr. Lambert's election campaign.

Finding of Fact No. 6

The Commissioner's investigator solicited a response from Mr. Lambert. Mr. Lambert prepared a written response in which he states he has "no recollection whatsoever" of Mr. Buell as the cases were handled by Deputy county attorney Whipple. Mr. Lambert further stated that he received no campaign contribution from Ms. Robinson. (Commissioner's records).

Finding of Fact No. 7

The dismissal of charges against Buell (see FOF No. 3) occurred in 2009. The election to which a contribution would have been made was Mr. Lambert's 2010 reelection. Mr. Lambert ran unopposed in the 2010 election. Mr. Lambert reported \$1360 in contributions to his campaign of which \$1200 came from his personal funds and \$160 came from Erik Schmidt of Bozeman. (Commissioner's records).

DISCUSSION

Gloria Wells filed a complaint making an accusation of an illegal campaign contribution to a public official, Mr. Lambert. The complaint was a public document when filed, meaning the public official, Mr. Lambert, was required to acknowledge and respond to the complaint.

Complaints of large, unreported campaign "contributions" have been lodged with prior commissioners. *Swingley v Dutton* COPP- 2012-CFP-8 was based on an allegation that Leo Dutton received an anonymous contribution of \$10,000 to his 2010 campaign for election as Sheriff of Lewis and Clark County, Montana. Commissioner Murry summarily dismissed the complaint as lacking any evidentiary support since even the source of the alleged contribution was not identified.

This Matter involved a complaint that listed motivation (dismissal of criminal charges) and the name of the source of the alleged \$25,000 campaign contribution. The Commissioner's office therefore investigated.

The Commissioner's investigation found no basis to claim improper motivation in the 2009 dismissal of the County's Attorney's criminal complaint filed against Mr. Buell. (See FOF No. 3). Instead, the dismissal was made because of a change in evidentiary standards resulting from a decision by the Montana Supreme Court, as well as because of the loss of an informant witness. Bozeman Daily Chronicle News Article, November 22, 2009. (See *State v. Goetz* and *State v. Hamper*, 2008 MT. 296, 345 Mont. 421,191 P.3d 489.)

The Commissioner's investigation further found there was no evidence to support the allegation that a \$25,000 campaign contribution was made. The person alleged to have made the contribution denied making any contribution (FOF 5) and Mr. Lambert denied receiving any such contribution (FOF 6). Further, Mr. Lambert ran unopposed, with his campaign taking in few contributions and making few expenditures. (FOF 7).

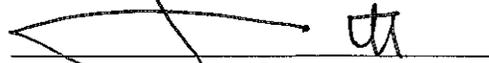
Finally, the Commissioner notes that the complainant, Ms. Wells, had personal involvement in the drug related criminal charges made against Mr. Buell and a number of other people. Charges were not dropped against Ms. Wells and she is quoted in a newspaper article as believing she was being treated "unfairly" as compared to other like defendants. (Bozeman Daily Chronicle News Article, November 22, 2009).

Under Montana law the Commissioner is required to ["shall investigate," **See**, §13-37-111(2)(a) MCA] investigate any alleged violation of campaign practices law. The mandate to investigate is followed by a mandate to take action as the law requires that if there is "sufficient evidence" of a violation the Commissioner must ["shall notify", **See** §13-37-124 MCA] initiate consideration for prosecution.

This Commissioner, having duly considered the matters raised in the Complaint, and having completed his review and investigation, hereby holds and determines that there is insufficient evidence to justify a civil or criminal prosecution under §13-37-124(1) MCA. The Commissioner notes that there is some social value to this investigation and Decision as it provides Mr. Lambert,

in his role as a public official, with something more than a technical dismissal of the complaint filed against him. The Commissioner has investigated and found insufficient evidence, indeed no evidence, to support the Complaint filed against Mr. Lambert. The Commissioner hereby dismisses in full this Complaint filed against Mr. Lambert.

DATED this 24th day of October, 2013.

A handwritten signature in black ink, appearing to read 'JRM', is written over a horizontal line.

Jonathan R. Motl
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