

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Wells v. Lowy No. COPP 2014-CFP-049	<u>Dismissal of Complaint As Frivolous</u>
--	--

On October 28, 2014, Harlan Wells, a resident of Missoula, Montana filed a complaint against Matthew Lowy, a resident of Missoula, Montana and a current 2014 candidate for Missoula County Justice of the Peace. The Wells complaint alleged that Candidate Lowy violated campaign practice laws.

SUBSTANTIVE ISSUES ADDRESSED

The substantive area of campaign finance law addressed by this decision is application of the Frivolous Complaint standards.

FINDING OF FACT

The foundational facts necessary for this Decision is as follows:

Finding of Fact No. 1: On June 3, 2014, a primary election was held in Missoula County: Marie Andersen and Matthew Lowy were the two

top vote getters and advanced to the November 2014 general election. (Montana Secretary of State's (SOS) Website).

Finding of Fact No. 2: On October 16, 2014 the Commissioner of Political Practices issued a Decision in the matter of the *Williams v. Andersen*, COPP-2014-CFP-035, and Candidate Andersen was found in violation of campaign finance practices. (COPP website allows access to Andersen Decision)

Finding of Fact No. 3: On October 28, 2014 Harlan Wells filed a complaint against Matthew Lowy alleging Candidate Lowy violated campaign finance laws. (COPP Website).

DISCUSSION

The complaint alleges that Candidate Lowy failed to attribute a "stealth" email sent to certain individuals. The following findings apply to this complaint:

Finding of Fact No. 4: Candidate Lowy's campaign sent an email on October 21, 2014 which was entitled "JP candidate Andersen violated campaign laws" and attached a copy of a Missoulian article stating in the lead sentence that "Missoula County Justice of the Peace candidate Marie Andersen violated several campaign finance laws....". (Commissioner's records, Interview with Candidate Lowy).

Finding of Fact No. 5: The October 21, 2014 email was sent to several hundred Missoula people (our best count is 215 email addresses). The email was not attributed as coming from the Lowy campaign. (Commissioner's records).

Finding of Fact No. 6: On October 22, 2014 Candidate Lowy prepared and sent an email to the same email chain described in FOF No. 5 stating that the October 21, 2014 email originated from and was attributed to his campaign. (Commissioner's records).

Under Montana law all election materials prepared by Candidate Lowy "must 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.” §13-35-225(1) MCA.

The Commissioner notes that there is an argument that the October 21, 2014 email did not constitute a reportable campaign activity that needed attribution since the email did nothing other than introduce a scanned copy of a newspaper article. However, the Lowy campaign is treating the email as a campaign activity and accordingly the Commissioner treats it as such.

Examining this complaint, then, on the basis of the October 21, 2014 email the Commissioner classifies this Complaint under the “third indicia of a trivial complaint is one that focuses on a campaign error that has been promptly corrected by the campaign.” See FOF Nos. 4, 5 and 6. The indicia quote is from *Landsgaard v. Peterson*, COPP-2014-CFP-008. As stated in *Landsgaard*: “[t]he policy of Montana does not favor ‘got you’ campaign practice complaints. Instead, where it is possible to do so, Montana law favors correcting campaign reporting errors. Complaints seeking to score campaign related media hits based on corrected mistakes falls within this indicia of a frivolous complaint.” The Commissioner further places this complaint under the 4th indicia of a trivial complaint in *Landsgaard v. Peterson*: “A fourth indicia of a trivial complaint is one that focuses on a technical violation.”

The facts in the Matter show that any error (FOF No. 5) was promptly corrected (FOF No. 6) by the Lowy campaign. There was and is no real harm to the public (or to any of the 215 email recipients) stemming from whatever oversight had occurred. Having considered the facts of this Matter, the

Commissioner dismisses this complaint as a *de minimis* and frivolous complaint under Indicia No. 3 and No. 4, *Landsgaard v. Peterson*, COPP-2014-CFP-008.

In making this Dismissal the Commissioner notes that the complainant used the tactic of delivering a copy of the Complaint to the media before even filing the Complaint with the Commissioner.¹ Further, the complaint was filed in the last week of contested election, presumably with the thought that the Commissioner would not respond promptly and Candidate Lowy would be tarred with news coverage based on a frivolous complaint.

Consistent with the above the Commissioner notes that the complainant is quoted in a media article preceding the filing of his COPP complaint to the effect that Candidate Lowy's campaign practice actions were somehow comparable to those earlier determined as to Candidate Andersen.² In response, the Commissioner explicitly states that, while the complaint against Candidate Lowy is hereby dismissed as frivolous, the Decision against Candidate Andersen remains as stated. See *Williams v. Andersen*, COPP-2014-CFP-035.

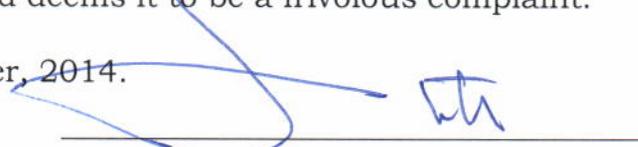
¹ The COPP received a copy of the Wells complaint from the complaint's target (Candidate Lowy) and as an attached document from the Missoulian article. The complaint copies meet the requirements of filing and, given the short time left before election, the COPP accepted the copies for filing and issued this Decision.

² Given the tactics used by this complainant the Commissioner hereby varies his normal practice and issues this Decision directly to the press at the same time it is issued to the complainant and Candidate Lowy.

OVERALL DECISION

This Commissioner having duly considered the matters raised in the Complaint, determines the same to be frivolous. The Commissioner hereby dismisses this complaint in full and deems it to be a frivolous complaint.

DATED this 28th day of October, 2014.



Jonathan R. Motl
Commissioner of Political Practices
Of the State of Montana
P. O. Box 202401
1205 8th Avenue
Helena, MT 59620