

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES

In the Matter of the Complaint)
Against JOE CROSS, DAVID IRION,)
BOB WHALEN, MIKE CASKEY, and)
JIM RENO)

SUMMARY OF FACTS AND STATEMENT OF FINDINGS

Bryan Johnson, Chairman of the Yellowstone County Christian Coalition, filed a complaint against five officials of Billings School District No. 2: Joe Cross, principal of Billings Senior High School, David Irion, principal of Billings West High School, Bob Whalen, principal of Billings Skyview High School, Mike Caskey, director of the Career Center, and Jim Reno, director of Adult Education. The complaint seeks a determination whether these five school district officials violated Montana Code Annotated § 13-35-226(3) and statutes regarding ethics for public employees.

SUMMARY OF FACTS

1. A letter was published in the "Voice of the Reader" section of the March 29, 1998 edition of the Billings Gazette. The letter discussed the merits of the April 7, 1998 Billings school mill levy election, and concluded with the following statement: "We urge you to cast your yes vote for the voted levy on April 7th to support this crucial investment." The letter was signed by Cross, Irion, Whalen, Caskey, and Reno. Each individual signed the letter over his title as an official of Billings School District No. 2.

2. The letter as it appeared in the Billings Gazette included a "Billings Public Schools" letterhead. Those who signed the letter, however, maintain that the letter that was submitted to the Billings Gazette did not include such a letterhead. Martha Sheehy, attorney for the Billings Gazette, confirmed that the letter received by the newspaper did not include a "Billings Public Schools" letterhead. That letterhead was added by the editorial staff of the Billings Gazette prior to publication of the letter.

3. David Irion was approached during his lunch hour by a representative of the Support Your Schools Committee and asked to draft a letter in support of the mill levy campaign. Mr. Irion agreed to do so, and drafted the letter on his own time and using his own equipment.

4. A principal's meeting was held on March 25, 1998 at the Lincoln Center. The meeting was attended by Reno, Cross, Whalen, and Irion. When the group broke for lunch these four individuals went to the basement of the First Interstate Bank Building and discussed the letter drafted by Irion. Reno, Cross, Whalen, and Irion signed the letter during the lunch meeting.

5. Mike Caskey signed the letter during his lunch hour at the secretary's desk at Billings West High School.

6. The letter was not posted, distributed, or used in any way in the school buildings. No postage was paid on the letter. Instead, the letter was taken to the Billings Education Association for delivery to the Billings Gazette.

STATEMENT OF FINDINGS

Montana Code Annotated § 13-35-226(3) prohibits public employees from engaging in certain political activities:

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 is not intended to restrict the right of a public employee to express personal political views.

Violation of the statute is a misdemeanor, punishable by a fine not to exceed \$1,000, imprisonment in the county jail for a term not to exceed six months, or both. Montana Code Annotated § 13-35-226(4). The five school officials who signed the letter were well aware of their obligation to avoid solicitation of support for the levy while on the job or at their place of employment. The letter was drafted and signed on their free time, not while they were on the job. While Mr. Caskey signed the letter on school property, he did so on his lunch hour. Moreover, there is no evidence that Mr. Caskey nor any of the other individuals engaged in solicitation of support for the levy while on school property or while on the job.

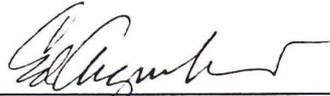
The complaint also questions whether the school officials may have violated the ethics statutes. With certain exceptions, Montana Code Annotated § 2-2-121 prohibits public officers and employees from using "public time, facilities, equipment, supplies, personnel, or funds for any campaign activity persuading or affecting a political decision." The Legislature has placed

enforcement of the ethics laws for local government officers and employees with the county attorney. Montana Code Annotated § 2-2-144. Therefore, I will express no opinion on this question.

CONCLUSION

Based on the facts and findings herein, I have determined that there is no basis for further action against Joe Cross, David Irion, Bob Whalen, Mike Caskey, and Jim Reno.

Dated this 21st day of April, 1998.



Ed Argenbright, Ed.D.
Commissioner of Political Practices