

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES

In the Matter of the Complaint)	SUMMARY OF FACTS
Against Joseph Sample, the)	AND
Committee for a Free Choice,)	STATEMENT OF FINDINGS
And Billings Cultural Partners)	

Dallas Erickson filed a complaint alleging that Joseph Sample, the Committee for a Free Choice, and Billings Cultural Partners violated Montana campaign finance and practices laws.

SUMMARY OF FACTS

1. In the June 6, 2006 election two ballot issues were submitted to the voters of Yellowstone County. One ballot issue proposed an ordinance that would have imposed a county-wide ban on obscenity. The second ballot issue proposed an ordinance that used the county's zoning regulations to restrict the operations of strip clubs and other sexually oriented businesses.

2. The complainant, Dallas Erickson, was instrumental in ensuring that the two proposed ordinances were placed on the ballot.

3. Voters rejected the ballot issue that would have banned obscenity, but approved the ballot issue adopting an ordinance regulating sexually oriented businesses.

4. The complaint is based on a full page ad that ran in the Billings Gazette on Sunday, June 4, 2006 (the Sunday prior to the election) expressing opposition to the two ballot issues. The ad, entitled: "Don't Fence Me In," included a list of persons who opposed the two ordinances that were proposed through the ballot issues. The ad included the following statements preceding the list of opponents:

We believe both ordinances are unconstitutionally vague and violate the rights of Yellowstone County residents. As county taxpayers, we do not believe our tax dollars should be used to defend such laws.

At the bottom of the ad were the following statements:

Paid for by Joseph Sample. President, Committee for a Free Choice.
www.billings-montana.blogspot.com. The complete wording for the two
county ordinances are on the website: www.billings-montana.blogspot.com

The complaint alleges that “Committee for a Free Choice” was not registered as a political committee with the office of the Commissioner of Political Practices (Commissioner), and that the ad did not include an address other than a website. The complaint also alleges that the ad was created by Billings Cultural Partners. The complaint alleges that the sponsors of the ad and those who paid for its publication violated Montana campaign finance and practices laws and regulations that require political committees to register and report their contributions and expenditures.

5. Joseph Sample stated that when the ad described in Fact 4 was created he was “somewhat involved” with a group known as Billings Cultural Partners. Billings Cultural Partners, Inc. (BCP) was at the time a nonprofit corporation composed of several cultural entities in Billings, including the Alberta Bair Theater, the Yellowstone Art Museum, the Western Heritage Center, the Rimrock Opera, the Parmly Billings Library, the Moss Mansion, and the Billings Symphony Orchestra. Sample was also a director of the Alberta Bair Theater, one of the organizations in BCP. BCP was involuntarily dissolved in December, 2006.

6. Sample stated that prior to the publication of the ad he was at the Yellowstone Public Radio (YPR) studio and spoke with Lois Bent, the YPR General Manager and Program Director. Bent told him she was interested in organizing an effort to oppose the two ballot issues described in Fact 1. Sample told her he would provide whatever assistance he could.

7. Lois Bent stated she is the lead executive partner in BCP. According to Bent, BCP was created so that non-profit organizations could help each other by maximizing their abilities when collaborating on various cultural events in Billings. The organizations in BCP were concerned about the two obscenity ordinances proposed through the ballot issues due to their potential impact on Billings art and culture and the

civil rights of various organizations in Billings, and the ability of Billings organizations and cultural entities to function. BCP voted to take a position opposing the two ordinances.

8. Several people associated with BCP formed an informal, ad hoc committee to propose a method by which to oppose the ordinances. In addition to Lois Bent, the committee was composed of Corby Skinner, Kathleen Benoit, and Michelle Hippler, all of whom were at the time associated with Skinner Benoit, a Billings public relations and marketing communications firm. The committee decided to purchase an ad in the Billings Gazette. The committee members contend that their activities in opposition to the ballot issues were not conducted on behalf of BCP. The committee members were not paid by BCP to engage in those activities.

9. The group working on the ad met at a coffee shop and at a conference room at Skinner Benoit. The firm known as Skinner Benoit is located on the first floor of Corby Skinner's three-story home. Skinner also uses the conference room as a living room. Members of the group emailed each other during the process of creating the ad. Lois Bent used her work computer at Yellowstone Public Radio to read some of the emails. The principals at Skinner Benoit stated that they did not use any office space, fax machines, telephones, computers, or other office equipment or supplies to work on the ad. Michelle Hippler, who at the time was an unpaid intern at Skinner Benoit, did much of the work involved with creating the ad. Hippler stated that she always used her personal computer and did not use any of the resources of Skinner Benoit.

10. The committee, following the Billings Gazette's guidelines, provided the newspaper with the information they wanted included in the ad, and had the Billings Gazette format the ad. Corby Skinner provided a list of persons who agreed to sign on to the ad. Skinner stated he does not know who came up with the name "Committee for a Free Choice." Although he contends he does not recall whether he reviewed the ad in its final form before it was published, Skinner signed a "Certificate of Authority" at the request of the Gazette, in effect approving the ad's content. Skinner stated that the group that created the ad did not accept any contributions and did not have any expenses. The

“Certificate of Authority” signed by Skinner was faxed to the Billings Gazette using a Skinner Benoit fax machine.

11. Kathleen Benoit stated that when the ad was being created she telephoned the Commissioner’s office. She said she was told the ad needed to state who paid for the ad and that it had to include a contact address. Benoit said she has no idea where the name “Committee for a Free Choice” came from.

12. The website address that appeared on the ad referred to a free website created by a boyfriend of Benoit’s daughter. That person kept the website updated. The website contained information about the proposed ordinances, and included links to the language of the proposed ordinances, as well as newspaper articles, editorials, and letters to the editor concerning the proposed ordinances.

13. Lois Bent said that Joseph Sample had offered to provide assistance to oppose the two ballot initiatives. Bent asked Sample whether he would pay for the ad, and Sample agreed to do so. Sample gave Bent a check made out to the Billings Gazette, in payment for the ad. The cost of the ad was \$4,267.32. Sample wrote a check for that amount from his personal account. According to Bent, Sample had no other involvement in the creation and publication of the ad.

14. Although Sample paid for the ad, he also denied that he had any other involvement with the creation of the ad or the determination of its content. Sample said the first time he saw the ad was when it was published in the Billings Gazette on Sunday, June 4, 2006. He was surprised to see his name listed as President of Committee for a Free Choice, since he did not even know that such a committee existed.

15. Like Skinner and Benoit, Bent stated she does not know who composed the phrases “Paid for by Joseph Sample. President, Committee for a Free Choice.” Bent said that BCP had no intention of becoming a political committee. She stated she did not review a copy of the ad before it was published. Bent suggested that either the Billings Gazette or one of the three other persons who was involved in the creation of the ad may have added the “Paid for by” language.

16. Mandy Schilling of the Billings Gazette stated the ad was created under the name “Sample Foundation.” Skinner and Benoit were primarily involved in working with the Gazette to get the ad published. Schilling advised them the ad needed a “paid for by” line, with the name of an individual or group, along with contact information. Schilling does not recall who provided the language for the “paid for by” line that appeared in the ad, but she said the Gazette did not create the content for that line. She said that the Gazette’s policy is to require the client to review and approve an ad prior to its publication.

17. After the complaint was filed Sample retained an attorney, William O’Connor. After a telephone conversation with the Commissioner, O’Connor sent a letter to the Commissioner’s office, dated October 30, 2006, along with two forms: a C-2 (Statement of Organization) and a C-6 (Political Committee Finance Report). The C-2 listed the name of the political committee as Committee for a Free Choice. Lois Bent was listed as the committee Treasurer, and no other committee officers were listed. Bent signed the C-2. The C-6 listed no contributions and no expenditures. Bent also signed the C-6.

STATEMENT OF FINDINGS

With limited exceptions not applicable here, § 13-37-225, MCA, requires a political committee to file periodic reports of contributions and expenditures. § 13-1-101(20), MCA, contains the following definition:

"Political committee" means a combination of two or more individuals or a person other than an individual who makes a contribution or expenditure:

- (a) to support or oppose a candidate or a committee organized to support or oppose a candidate or a petition for nomination; or
- (b) to support or oppose a ballot issue or a committee organized to support or oppose a ballot issue; or
- (c) as an earmarked contribution.

When Joseph Sample, Lois Bent, and the others collaborated to make an expenditure to oppose the two ballot initiatives, they became a political committee under subsection (b) of the above definition.

ARM 44.10.327 describes the different types of political committees. Based on its formation, its composition, and its activities, the loosely-knit "Committee for a Free Choice" most closely fits within the description set forth in subsection (2)(a)(i) of the rule:

A ballot issue committee is specifically organized to support or oppose a ballot issue, as defined in 13-1-101, MCA.

The Committee for a Free Choice was required to file a Statement of Organization (form C-2) within five days after it made the expenditure opposing the two ballot initiatives. § 13-37-201, MCA. An expenditure is made on the date payment is made. ARM 44.10.531(1). Sample's check is dated June 1, 2006. The Committee for a Free Choice was required to file its C-2 by June 6, 2006. The committee filed a C-2 on November 1, 2006, several months late.

The Committee for a Free Choice was also required to file periodic reports of contributions and expenditures (form C-6). §§ 13-37-225 and 13-37-226, MCA. The Committee for a Free Choice failed to file a C-6 until November 1, 2006, which was past the due dates set forth in the statutes. Moreover, the C-6 filed by the Committee for a

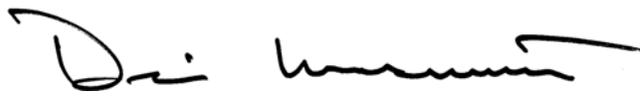
Free Choice does not list any contributions or expenditures. The C-6 should have reported the contribution and expenditure that resulted in the publication of the ad in opposition to the two ballot issues. To the extent that there was some use of work computers and a fax machine during the process of creating the ad, the fair market value of that use should have been included in the reports. See the Summary of Facts and Statement of Findings in *Matter of the Complaint Against Montanans for Common Sense Water Laws/Against I-122* (April 30, 1998), at 74-77 (entities who provide equipment or property for campaign-related activities must report the fair market value of the equipment and property).

Citizens are entitled to voice their political opinions regarding candidates and ballot issues, and they may spend money to do so. Under Montana law, however, when two or more individuals make a contribution or expenditure to support or oppose a ballot issue, they become a political committee that has specific reporting requirements. The Montana Legislature has determined that the public has the right to know who is spending money to support or oppose ballot issues, and how much is being spent. Therefore, when citizens such as Sample, Bent, and others chose to combine their efforts to oppose the two Yellowstone County ballot issues by placing a paid ad in the Billings Gazette, they incurred disclosure and reporting requirements under Montana law.

CONCLUSION

Based on the preceding Summary of Facts and Statement of Findings there is sufficient evidence to conclude that the Committee for a Free Choice and the individual treasurer and committee members violated Montana campaign finance reporting and disclosure laws and rules, and that a civil penalty action under section 13-37-128, MCA, is warranted.

Dated this 3rd day of January, 2008.



Dennis Unsworth
Commissioner