

1 it is somewhat unclear, there appears to be a space and a period between the words
2 “Montana” and “Showdown.”

3 3. The L-2 also listed Peter Bovington as the “Applicant,” and included his mailing
4 address and his correct email address.

5 4. § 5-7-306, MCA, establishes civil penalties that are required to be assessed against
6 any person who fails to file lobbying financial disclosure reports within the time required
7 by law.

8 5. The 2007 post-session lobbying financial disclosure report for the
9 Association was required to be filed no later than May 29, 2007.

10 6. On May 16, 2007, the office of the Commissioner sent an email to all
11 principals, including the Association. The email advised that a post-session lobbying
12 financial disclosure report was required to be filed no later than May 29, 2007. The
13 email referenced the appropriate form that was required to be filed, known as a form
14 L-5A, and noted that the form was available for download on the Commissioner’s
15 website. The email was sent to Beth Jones at “beth@showdown.montana.com,” the
16 apparent email address listed on the L-2. A copy was sent to Peter Bovington at the email
17 address listed for him on the L-2.

18 7. The Association failed to file its post-session L-5A on or before the due date.

19 8. On May 30, 2007, the Commissioner sent an email with an attached letter to the
20 Association, stating that an L-5A report was due by May 29, 2007, but had not been
21 received. The email was sent to Beth Jones at the email address listed for her on the L-2.
22 A copy was sent to Peter Bovington at the email address listed for him on the L-2. Citing
23 § 5-7-306, MCA, the letter stated that a civil penalty started being assessed on May 30,
24 2007 at \$50 per day, and would continue until the report was filed or until the penalty
25 amount reached \$2,500. The letter urged the Association to fax the delinquent report
26 immediately, followed by a hard copy. The Association filed its report on May 30, 2007.
27 Because the report was filed one working day late, the penalty amount was \$50.

1 9. The Association requested a hearing to contest the civil penalty. A hearing
2 was held on November 8, 2007. At the hearing the Association presented the
3 testimony of its lobbyist, Peter Bovingdon. Bovingdon testified that the
4 Association did not intentionally file its post-session report late, and that the
5 Association seeks to comply with the law in all respects. Bovingdon stated that it
6 appears email notices regarding the need to file the post-session report were sent
7 to an incorrect email address. According to Bovingdon, the correct email address
8 for Beth Jones, the Secretary-Treasurer of the Association, is
9 “beth@showdownmontana.com” (with no period between the words “showdown”
10 and “montana). The email address listed for Bovingdon on the L-2 is, however,
11 correct. When Bovingdon received a copy of the May 30, 2007 email from the
12 Commissioner’s office stating that the post-session report was due on May 29,
13 2007, he went to the Commissioner’s office and completed an L-5A on behalf of
14 the Association. Bovingdon requests that the civil penalty be waived because the
15 Association did not intentionally violate the law.

16 10. During the 2007 regular session of the Montana Legislature, the Association
17 reported lobbying payments in the form of two season ski passes given to
18 Bovingdon, valued at approximately \$560. The Association made no further
19 lobbying payments during either of the 2007 special sessions.

20 21 CONCLUSIONS OF LAW

22 1. The Commissioner has jurisdiction over this matter pursuant to §§ 2-4-604
23 and 5-7-306, MCA.

24 2. Notice of the hearing was provided as required by law. § 2-4-601, MCA.

25 3. § 5-7-306, MCA, provides:

26 **Civil penalties for delays in filing -- option for hearing --**
27 **suspension of penalty. (1) In addition to any other penalties or**

1 remedies established by this chapter, a person who fails to file a report
2 within the time required by this chapter is subject to a civil penalty of
3 \$50 for each working day that the report is late until the report is filed
or until the penalties reach a maximum of \$2,500 for each late report.

4 The person against whom a penalty is assessed may request an informal contested
5 case hearing before the Commissioner. At the hearing, the Commissioner is required
6 to consider any factors or circumstances in mitigation, and may reduce or waive the
7 civil penalty. § 5-7-306(3), MCA.

8 4. § 5-7-208(2)(c), MCA, requires a lobbying disclosure report to be filed with
9 the Commissioner “no later than 30 days following adjournment of a legislative
10 session,” and the report must include “all payments made during the session, except
11 as previously reported.” If payments are not made during the reporting period, the
12 principal must file a report stating that fact. § 5-7-208(4), MCA.

13 5. The second sentence of § 5-7-208(1), MCA states:

14 A principal is subject to the reporting requirements of this section only
15 if the principal makes payments exceeding the amount specified under
5-7-112 during a calendar year.

16 6. § 5-7-112, MCA established a monetary threshold of \$2,150 for calendar
17 years 2002 through 2004. The threshold amount is adjusted according to the
18 consumer price index in the year following a general election. The adjusted
19 payment threshold for calendar years 2007 and 2008 is \$2,300. ARM 44.12.204.

20 MEMORANDUM OPINION

21 Information and testimony presented at the hearing establishes that the
22 Association registered to lobby and engaged in lobbying activities during calendar
23 year 2007. However, the Association’s lobbying activities did not rise to the level
24 requiring registration or reporting.

25 The Association filed reports claiming it made payments valued at
26 approximately \$560 for lobbying during the 2007 regular legislative session. While
27

1 § 5-7-208(4), MCA requires principals to file reports even if no payments were
2 made during a particular reporting period, the key language in § 5-7-208, MCA is
3 the second sentence in subsection (1): “A principal is subject to the reporting
4 requirements of this section only if the principal makes payments exceeding the
5 amount specified under 5-7-112 to one or more lobbyists during a calendar year.”
6 As noted in Conclusion of Law 6, the threshold amount for calendar year 2007 is
7 \$2,300. Since the Association has reported spending less than the threshold amount
8 that triggers the reporting requirements of § 5-7-208, MCA, it was not subject to the
9 reporting provisions of the statute. There are sufficient factors or circumstances in
10 mitigation to justify waiver of the civil penalties.

11 Although I am waiving the civil penalties imposed against the Association based
12 on lobbying expenditures that did not meet the threshold established in the law, the
13 facts in this case illustrate that it is important for principals to carefully read and
14 follow the instructions for registration and reporting of lobbying expenses. The
15 “Principal’s Representative” designated by the principal on the L-2 form is the
16 person to whom future correspondence and inquiries from the Commissioner will be
17 addressed. It is therefore of paramount importance that principals provide legible
18 contact information, including email addresses.

19 Moreover, principals should be aware that the Commissioner’s office has no
20 legal obligation to send out email “reminders” approximately two weeks prior to the
21 due date for filing lobbying financial disclosure reports – these emails are sent as a
22 courtesy. Principals have an obligation to familiarize themselves with the due dates
23 for filing their reports to ensure that they comply with the law.

24 Finally, the office of the Commissioner is always available to answer any
25 questions should anyone need clarification regarding the calendar for filing reports
26 of lobbying expenses.

27

ORDER

THEREFORE, IT IS HEREBY ORDERED that the civil penalty assessed against the Montana Ski Areas Association is waived.

DATED this 5th day of December, 2007.



Dennis Unsworth
Commissioner of Political Practices

NOTICE: This is a final decision in a contested case. You have the right to seek judicial review of this decision pursuant to the provisions of §§ 2-4-701 through 2-4-711, MCA.

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and accurate copy of the foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDER, AND MEMORANDUM OPINION to be mailed to:

Beth Jones
Secretary-Treasurer
Montana Ski Areas Association
P.O. Box 92
Neihart, MT 59465

DATED: December 5th, 2007

Mary Baker
Program Supervisor