

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES (COPP)

<p>SONIA (SONNY) MUNDEN</p> <p>v.</p> <p>KYLE MCMURRAY (Montana House District 77 candidate)</p>	<p>COPP-2024-CFP-016</p> <p>DECLARATION OF MERIT OF COMPLAINT</p> <p>RESOLUTION OF COMPLAINT BY PROMPT REMEDIAL ACTION BY THE RESPONSIBLE PARTY</p> <p>DISMISSAL OF COMPLAINT</p>
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COMPLAINT

On May 14, 2024, Sonia (Sonny) Munden of Bozeman, MT, filed a campaign practices complaint against Kyle McMurray, candidate for election to the Montana House of Representatives, District 77. The complaint alleged that candidate McMurray failed to include the ‘paid for by’ attribution statement on campaign signs as required, and illegally placed these signs on a public right-of-way. The complaint also alleged that a billboard supporting candidate McMurray failed to include an accurate attribution message identifying him as the individual who financed the material, failed to include partisan affiliation, and was not fully or properly reported as a campaign expenditure.

The submitted complaint conforms to the requirements of Admin. R. Mont. 44.11.106 and alleges violations of statutes which fall under my jurisdiction as Commissioner of Political Practices. Therefore, I accepted it as filed, and in accordance with COPP procedures requested a response from Mr. McMurray which was timely provided on May 16, 2024. The complaint and response are posted on COPP’s website, politicalpractices.gov.

While MCA § § 75-15-111 and 113 prohibit the placement of campaign yard signs on a public right of way, this is not an area where COPP is provided proper jurisdiction. Enforcement of these statutes is specifically provided to the Montana Department of Transportation’s Right of Way Bureau. COPP’s authority as it

relates to campaign signs or similar political advertisements, is restricted to finance reporting and attribution requirements. Therefore, any allegations by the complainant as to the placement of Mr. McMurray's campaign signs are not addressed by this decision. All issues over which COPP does have proper jurisdiction have been considered as follows:

ISSUES

"Paid for by" attribution requirements, Montana Code Annotated (MCA) § 13-35-225; reporting contributions and expenditures, MCA § 13-35-229.

BACKGROUND

Montana election law requires candidates to file as such with COPP and to file periodic finance reports throughout their campaign in accordance with a statutorily mandated reporting calendar. MCA §§ 13-37-201, 226. Montana law also prohibits anonymous election material.

Kyle McMurray filed a C-1 Statement of Candidate with COPP, as a candidate seeking election as a representative for House District 77 in the Montana House of Representatives, on January 31, 2024.

Mr. McMurray timely filed a C-5 periodic campaign finance report on April 19, 2024, on which he reported two in-kind contributions, each in the amount of \$325.00, and described as "Billboard" from individuals Rachel and Richie Pemberton. On his subsequent C-5 report filed on May 20, 2024, Mr. McMurray disclosed one campaign expenditure on May 1, 2024, in the amount of \$650.00 to ART, described as "Campaign billboard 4-21-5-21-24."

Upon receipt of this complaint, COPP found the above-described billboard included an attribution statement of "paid for by Rachel and Richie Pemberton, PO Box 83, Manhattan, MT 58741" but did not include Mr. McMurray's partisan affiliation and that additional campaign signs referred to by the complainant contained neither Mr. McMurray's partisan affiliation nor the 'paid for by' attribution as required by MCA §13-35-225.

DISCUSSION

I. Attribution dismissal

Under Montana law “all election communications, electioneering communications, and independent expenditures 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,” MCA § 13-35-225(1). In partisan elections, communications must also “state the candidate's party affiliation or include the party symbol,” MCA § 13-35-225(2). This complaint references certain election communications financed by Montana House of Representatives, District 77 candidate Kyle McMurray that failed to include the required ‘paid for by’ attribution statement or failed to state his partisan affiliation as a Republican candidate.

Montana law requires an accelerated review (“as soon as practicable”) of a campaign practice complaint alleging an attribution violation. In this matter, COPP staff contacted Mr. McMurray on May 14, 2024, “as soon as practicable” to provide notification of the attribution deficiency. On May 16, 2024, Mr. McMurray provided COPP with photographic evidence that both the “paid for by” attribution statement and partisan affiliation had been added to his campaign materials as appropriate.

The law governing complaints of failure to properly attribute political communications provides precise directions to the Commissioner:

1. The Commissioner is to immediately assess the merits of the attribution complaint, MCA § 13-35-225(5). The Commissioner found merit to the attribution complaint and hereby memorializes that finding.
2. The Commissioner shall notify the individual of the merit finding, requiring the individual to bring the material into compliance, MCA § 13-35-225(6)(a). In this matter, COPP was able to notify Mr. McMurray of the attribution deficiency via telephone and email correspondence on May 14, 2024.
3. The individual financing the material is provided two business days to bring the material into attribution compliance, MCA § 13-35-

225(6)(a)(i). In this matter, Mr. McMurray did so by adding the required attribution statement and partisan affiliation to relevant campaign material and notifying COPP of this action on May 16.

Under Montana law, the individual with an attribution deficiency is relieved of a campaign practice violation, provided he/she promptly carries out the attribution correction. Mr. McMurray has met these duties by adding the required attribution message and partisan affiliation to campaign materials lacking them within two business days. Mr. McMurray is therefore relieved of a campaign practice violation under MCA § 13-35-225(6).

II. Mr. McMurray properly reported contributions and expenditures related to the billboard

This complaint also alleges that Mr. McMurray failed to properly report a billboard supporting his HD 77 candidacy as a campaign expenditure. Specifically, it alleges that “It says it’s paid for by a private individual, but it has been paid for by the candidate” and “the full amount of the expense has not been reported by the candidate.” The complaint also questions the amount spent on this billboard by Mr. McMurray, estimating it to be far greater than the amount reported by the campaign.

All contributions received or expenditures made by a campaign in order to support or oppose a candidate must be reported on C-5 periodic campaign finance reports in accordance with MCA § §13-37-226 and 229. A contribution includes “an advance, gift, loan, conveyance, deposit, payment, or distribution of money or anything of value.” MCA § 13-1-101(9)(a)(i). An expenditure includes “a purchase, payment, distribution, loan, advance, promise, pledge, or gift of money or anything of value made. . .to support or oppose a candidate. . .” MCA § 13-1-101(21)(a)(i). Anything of value provided to the campaign, that does not go through the campaign depository, such as the Pemberton’s payment for the billboard, is an in-kind contribution and the value is reported by the candidate as any other contribution. ARM 44.11.403.

Here, Mr. McMurray appropriately reported the billboard both as an in-kind contribution from Rachel and Richie Pemberton and as an expenditure by his campaign.

In his response Mr. McMurray indicates that individuals Rachel and Richie Pemberton “did pay first month of lease on that billboard as an in-kind contribution to our campaign” (*Response*). On his April 20 C-5 report, Mr. McMurray disclosed his campaign’s receipt of in-kind contributions from individuals Rachel and Richie Pemberton, described as a “billboard” valued at \$325.00 each (\$650.00 total). Also in his response, Mr. McMurray included invoice information for this billboard provided by vendor Art Outdoors, indicating that it cost \$650.00 per month to rent, with the first monthly payment being billed to and made by Richie Pemberton. While the invoice lists only Richie Pemberton, COPP has no evidence to disprove that the cost was split evenly between Richie and his wife, Rachel - \$325.00 each - thus not exceeding Montana’s applicable contribution limit of \$450.00 per individual contributor.

Beyond the initial \$650.00 paid by the Pembertons, COPP determined that Mr. McMurray was responsible for financing continued use of the billboard, as indicated in his response. On this front, Mr. McMurray reported making a campaign expenditure in the amount of \$650.00 to rent the billboard for another month on his May 20, 2024, C-5 finance report. Around the same time, candidate McMurray added attribution language of “Paid for By Elect Kyle McMurray, PO Box 83, Manhattan, MT 58741. Treasurer Brand Robinson” to the billboard, meeting the attribution requirements of MCA 13-35-225(1) and publicly identifying his campaign as responsible for financing it.

Any allegation that the billboard was not fully or properly reported as a contribution received, or expenditure made, by Mr. McMurray or his campaign is dismissed. The factual record does not support finding a violation. The campaign reported the \$650.00 paid by Richie and Rachel Pemberton for the first month’s display as in-kind contributions received from those individuals, and then reported a \$650.00 expenditure made by his campaign for its continued display. COPP lacks

evidence that Mr. McMurray received additional contributions or made additional expenditures related to this billboard that were not disclosed in an appropriate or timely manner, nor that he misrepresented the true value of the billboard. Consequently, this allegation is fully dismissed.

CONCLUSION

Mr. McMurray has fully resolved any attribution deficiencies in compliance with MCA § 13-35-225 and has properly reported expenditures related to the billboard at issue. The complainant's allegations have been considered as described above and are hereby dismissed in full.

DATED this 8th, day of August,



Chris J. Gallus
Commissioner of Political Practices
Of the State of Montana
P. O. Box 202401
1209 8th Avenue
Helena, MT 59620