

BEFORE THE COMMISSIONER OF  
POLITICAL PRACTICES

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In the Matter of the )  
Complaint Against ) **SUMMARY OF FACTS**  
Paul Clark and Friends ) **AND**  
of Paul Clark ) **STATEMENT OF FINDINGS**

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Complainant Sue Akey, Chairwoman of the Montana Republican Central Committee, filed a complaint against Paul Clark, candidate for House District 72, and his organized supporters, known as "Friends of Paul Clark." The complaint alleges that a campaign finance report filed by the Clark campaign reveals "irregularities" regarding the reporting of debts or loans by the campaign.

**SUMMARY OF FACTS**

1. Paul Clark was a candidate for House District 72 in the November, 1998 general election.

2. This was Clark's first experience running for public office. He is a chemical dependency counselor and also runs a wilderness treatment program in Trout Creek.

3. Clark filed a form C-1 (Statement of Candidate) on April 21, 1998, listing Carla Parks as campaign treasurer and himself as deputy campaign treasurer. The campaign subsequently filed periodic reports of contributions and expenditures (forms C-5) with the office of the Commissioner of Political Practices (Commissioner), under the names of Paul Clark and Friends of Paul Clark (hereinafter referred to collectively as the "Clark campaign").

4. The C-5 filed by the Clark campaign for the period between March 12 and May 16, 1998, lists a \$100 cash contribution from Jim Elliott.

5. The C-5 filed by the Clark campaign for the reporting period of October 18 to November 18, 1998 lists, under Schedule C, "Debts and Loans Not Yet Paid," 1) \$50.00 owed to Jim Elliott for "sending out letters" and 2) \$704.44 owed to Gyppo Signs for "campaign signs." Both of the designated debts or loans were listed as having been incurred on November 12, 1998, nine days after the election.

6. Jim Elliott is the chairman of the Sanders County Democratic Central Committee. He is self-employed as a farmer and rancher, and also operates a sign business that he calls Gyppo Signs. He operates the sign business out of his home.

7. Elliott, who spent eight years in the Montana House of Representatives, approached Clark and asked him to run for the seat in House District 72. Clark initially declined but later changed his mind and decided to run. As noted above, Elliott supported Clark in his campaign with a \$100 cash contribution.

8. Sometime before the election a representative of the Clark campaign<sup>1</sup> entered into a verbal agreement with Elliott for

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<sup>1</sup>Clark does not recall who in the campaign placed the order for signs. He recalls asking Elliott to make the arrangements with Carla Parks. Parks stated she did not place the order, and assumes Clark made the arrangements with Elliott. Elliott is also not certain, but believes Clark may have placed the order.

the provision of Clark campaign signs in exchange for payment by the Clark campaign. This was an informal transaction, with no required down payment, no agreed upon amount, and no specific payment due date.

9. Elliott made some of the signs in his home. He purchased materials for the signs from Northwest Sign Supply, Inc. in Spokane, Washington. He made telephone purchase orders on September 4, 18, 21, and 22, and October 2, 1998. Elliott paid for the materials with his VISA card. He received his final VISA bill showing all of the purchases in early November, 1998. Elliott then submitted an invoice to the Clark campaign for \$704.44, which included \$610.69 for materials, \$33.75 for freight charges, and \$60 for labor. The invoice is dated November 12, 1998.

10. The Clark campaign paid the Gyppo Signs invoice on January 19, 1999, and reported it as an expenditure on its C-5 report for the period ending February 8, 1999.

11. Some time after October 25, 1998, Elliott mailed out 452 letters of support for Clark. Elliott later submitted an invoice to the Clark campaign in the amount of \$162.72 for the mailings (\$0.36 per letter). The invoice is dated November 12, 1998.

12. On November 18, 1998, the Clark campaign paid Elliott \$112.72 toward the \$162.72 owed for the mailings, leaving a balance of \$50 owed to Elliott.

13. On December 9, 1998, following a telephone conversation between Carla Parks and a representative of the office of the Commissioner, the Clark campaign paid Elliott the \$50 balance owed for the \$162.72 invoice. A revised C-5 was filed on December 10, reflecting the payment to Elliott. This payment was also reported as an expenditure on the Clark campaign's C-5 report for the period ending February 8, 1999.<sup>2</sup>

14. Prior to the services provided by Elliott, there were apparently no specific financial terms agreed upon between the Clark campaign and Elliott regarding the provision of campaign signs and the mailing of letters of support by Elliott. The intent of the parties appears to have been that Elliott would submit invoices when he determined a final cost for each service, and the Clark campaign would pay the invoices when they were received.

#### **STATEMENT OF FINDINGS**

Montana Code Annotated § 13-37-225 requires each candidate to file periodic reports of contributions and expenditures with the Commissioner and with the county election administrator. The

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<sup>2</sup>The C-5 report shows a payment of \$88 by the Clark campaign to Elliott. \$38 of this amount was a refund to Elliott of money that he had paid to cover the cost of a "candidate mixer" held in October, 1998, that included Sanders County Attorney candidate Robert Slomski. The event was sponsored and organized in part by the Clark campaign. Slomski's name was included as a sponsor of the event without his prior approval, so he refused to pay his share of the costs. Elliott therefore paid Slomski's share, characterizing it as an "in-kind donation." Since Elliott had already contributed the maximum amount allowed by law to the Clark campaign, the campaign refunded this amount to Elliott.

Commissioner has designated these reports as C-5 reports. Montana Code Annotated § 13-37-230 requires C-5 reports to disclose detailed information regarding expenditures made by a candidate during each reporting period. Subsection (6) of that statute requires C-5's to disclose "the amount and nature of debts and obligations owed by a political committee or candidate in the form prescribed by the commissioner."

The Commissioner has adopted Mont. Admin. R. 44.10.535 to implement Montana Code Annotated § 13-37-230(6):

**DEBTS AND OBLIGATIONS OWED BY A CANDIDATE OR POLITICAL COMMITTEE, REPORTING**

(1) Pursuant to section 13-37-230(6), MCA, each report required by section 13-37-226, MCA, shall disclose all debts and obligations owed by a candidate or political committee. Debts and obligations shall continue to be reported so long as they remain outstanding.

(2) A reporting candidate or political committee shall report the full name and mailing address (occupation and principal place of business, if any) of each person to whom a debt or obligation is owed at the end of a reporting period, including the amount, date contracted, and nature of each debt and obligation owed to each person. If the exact amount of a debt or obligation is not known, the estimated amount owed shall be reported. [Emphasis added].

The services to the Clark campaign by Elliott were clearly provided prior to the election; however, because of the informal nature of the transactions that resulted in the debts, the exact amount of each debt was not determined until Mr. Elliott submitted invoices to the Clark campaign on November 12, 1998. These debts were then reported on the Clark campaign's C-5 for the reporting period of October 18 to November 18, 1998. Expenditures for payment of the

debts were properly reported on the Clark campaign's C-5 report for the period ending February 8, 1999.

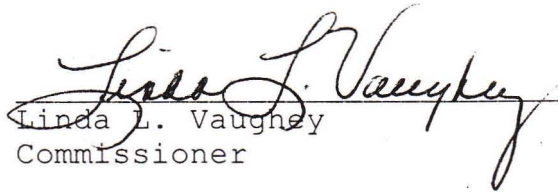
As noted, these debts resulted from business transactions that were entered into prior to the election. The complaint stems from entries on the C-5 report for the reporting period from October 18 to November 18, 1998, listing both debts as having been incurred on November 12, 1998, after the election. The debts were listed on that date which is the date on which the invoices were received. The last sentence of Mont. Admin. R. 44.10.535(2), as set forth on page 5 of this Summary of Facts and Statement of Findings states that "[i]f the exact amount of a debt or obligation is not known, the estimated amount owed shall be reported." Candidates and political committees are required by this rule to estimate their debts when they are incurred, if the exact amounts are not known.

Sometime prior to September 4, 1998 (the date of the first credit card debt incurred by Elliott for materials for the signs) the parties entered into an informal agreement whereby Elliott was to provide signs for the campaign. The Clark campaign should have listed an estimated debt as having been incurred at that time. That estimated debt should have been listed on the Clark campaign's report for the reporting period June 18 to October 17, 1998. The public has a right to full disclosure of all debts and estimated debts incurred by a candidate during the reporting period in which the debts are incurred.

**CONCLUSION**

Based on the preceding Summary of Facts and Statement of Findings, there is sufficient evidence to conclude that the Clark campaign failed to comply with Montana campaign finance reporting and disclosure laws; therefore, the matter will be referred to the county attorney for his review and possible exercise of prosecutorial discretion pursuant to Montana Code Annotated § 13-37-124.

Dated this 26th day of March, 1999.

  
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Linda L. Vaughney  
Commissioner