

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES

In the Matter of the Complaint)	SUMMARY OF FACTS
Against Lee Kierig and the)	AND
Ravalli County Planning Department)	STATEMENT OF FINDINGS

Dewey Baker and Patricia Coombs filed complaints with the Commissioner of Political Practices (CPP) alleging Lee Kierig and the Ravalli County Planning Department (Planning Department) violated Montana Campaign Finance and Practices Law.

SUMMARY OF FACTS

1. Ravalli County prepared a county growth policy in 2001 and 2002. The Ravalli County Planning Board (Planning Board), an advisory board to the County Commission, recommended adoption of the growth policy. On December 31, 2002, the County Commission adopted the growth policy. In April 2003 and August 2004, the County Commission amended the growth policy.

2. Lee Kierig served as President of the Planning Board that recommended adoption of the growth policy.

3. A growth policy is a comprehensive development plan establishing long-range goals and policies intended to guide future growth. A county growth policy is a necessary precursor for adopting zoning regulations. (See 76-2-201, MCA.) However, it is not a regulation *per se*. § 76-1-605(2), MCA, quoted in the county growth policy, provides in relevant part:

...

A growth policy is not a regulatory document and does not confer any authority to regulate that is not otherwise specifically authorized by law or regulations adopted pursuant to the law.

...

4. The Ravalli County Planning Department (Planning Department) is the office of Ravalli County government that deals with land use planning, subdivision review, and floodplain management. In late 2007 and 2008, the County Commissioners, Planning Department staff, and Planning Board volunteers were drafting zoning regulations and disseminating related information in an effort to implement the goals in the growth policy -- an effort referred to as the "countywide zoning project."
5. The two complaints, both received on September 16, 2008, allege that Lee Kierig and the Planning Department, respectively, violated § 13-35-225, MCA, by not including a "Paid for by. . ." disclosure statement on two large banners located near the airport in Stevensville and south of Hamilton. The banners each said "Support Countywide Zoning Project" and included the Planning Department's phone number.
6. In a statement in response to the complaint, Kierig said that it was his idea to erect the banners "(s)o people could find out more about the Zoning Project." Kierig stated that the effort was supported by an unnamed "local benefactor." According to Kierig, the banners were produced in March of 2008 and erected the first week of April 2008. The banners did not include a "Paid for by. . ." disclosure statement. The investigation in this matter confirmed that the banners were completed in mid-March 2008, nearly 5 months before the repeal of the growth policy referendum was placed on the ballot.
7. On or about August 6, 2008, a petition was approved by the Ravalli County Clerk and Recorder placing a referendum on the November 4, 2008 ballot to repeal the growth policy. The effect of the referendum, if approved by voters, would be to end work on projects authorized under the approved growth policy, including drafting of general zoning and streamside setback regulations.
8. CPP notified Kierig by phone of informal complaints about the banners on or about August 20, 2008. Kierig initially blacked out the word "support" on one of the banners. Following written notification by CPP of the formal complaints on or about September 23, 2008, both banners were taken down.
9. In a written response to the complaint, Planning Department Director John Lavey stated that the Planning Department had no role in creating or placing the banners, and that no county funds or resources were used to create the banners. He said the number printed on the banners was the main number for the Planning Department, and that the number was the appropriate public contact number for any citizens wishing to comment either for or against zoning during the process of drafting zoning regulations.
10. On November 4, 2008, the voters in Ravalli County voted to repeal the growth policy.

STATEMENT OF FINDINGS

§ 13-35-225, MCA establishes a requirement that certain election materials shall not be anonymous. The statute provides in relevant part:

- (1) All communications advocating the success or defeat of a candidate, political party, or ballot issue through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, poster, handbill, bumper sticker, internet website, or other form of general political advertising 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. When a candidate or a candidate's campaign finances the expenditure, the attribution must be the name and the address of the candidate or the candidate's campaign. In the case of a political committee, the attribution must be the name of the committee, the name of the committee treasurer, and the address of the committee or the committee treasurer. not more than 20 days after the date of the election;
...

Kierig's banners displayed the message "Support Countywide Zoning Project." The banners were produced and erected prior to the time the repeal of the growth policy referendum was placed on the ballot and do not expressly advocate for or against a ballot issue.

CONCLUSION

Based on the preceding Summary of Facts and Statement of Findings there is insufficient evidence to conclude that Lee Kierig and the Ravalli County Planning Department violated §13-35-225, MCA by failing to include a "Paid for by. . ." disclosure statement on banners erected in Ravalli County. Kierig contends he organized display of the banners as an informational outreach to the public in Ravalli County. The Planning Department did not participate in the creation or display of the banners in question. Because the banners pre-date the repeal of the growth policy referendum and do not expressly advocate support or opposition to a ballot issue, they were not campaign communications subject to regulation.

DATED this 7th day of April 2010.



Dennis Unsworth
Commissioner of Political Practices