

BEFORE THE COMMISSIONER
OF POLITICAL PRACTICES
STATE OF MONTANA

In the Matter of the)
Complaint Against)
Senator Sharon Estrada)
and Patrick K. Goggins)

SUMMARY OF FACTS
AND
STATEMENT OF FINDINGS

Complainant John Bohlinger, who is presently a member of the Montana House of Representatives and a Republican candidate for Senator Sharon Estrada's State Senate seat, filed a complaint against Senator Estrada and Patrick K. Goggins on May 7, 1998. The Bohlinger complaint alleges that Senator Estrada received an illegal corporate contribution from WLR Productions, Inc. (Western Livestock Reporter), a Montana corporation. Specifically, Representative Bohlinger alleges that an April 20, 1998 endorsement letter signed by Patrick K. Goggins as president of WLR Publications, Inc. and printed on WLR's corporate stationery is an illegal corporate contribution under Section 13-35-227, Montana Code Annotated (MCA).

SUMMARY OF FACTS

1. Mr. Goggins is a prominent Republican and Billings businessman who personally made a \$50 monetary contribution to Senator Estrada's campaign. Senator Estrada reported Mr. Goggins' \$50 cash contribution in her May 26, 1998 C-6 report.

2. Following receipt of Mr. Goggins' personal contribution, Senator Estrada asked Mr. Goggins to write an endorsement letter. Mr. Goggins asked Senator Estrada to prepare a proposed endorsement letter and indicated that he would review her proposed letter. Senator Estrada wrote a draft endorsement letter on plain stationery and delivered the letter to Mr. Goggins' office.

3. Mr. Goggins' endorsement letter (See Exhibit 1 attached to this decision) was typed on WLR stationery and was signed by Patrick K. Goggins, Publisher and President of WLR Publications, Inc. The final endorsement letter was written and typed at the offices of WLR. The endorsement letter was virtually unchanged from the draft proposal delivered to Mr. Goggins' office by Senator Estrada.

4. Senator Estrada indicated that she received Mr. Goggins' signed endorsement letter in the mail the day after it was written. Mr. Goggins indicated that Senator Estrada came to his office and picked up the endorsement letter.

5. Senator Estrada obtained the name of WLR's printing company from Mr. Goggins' secretary. Senator Estrada took Mr. Goggins' endorsement letter to WLR's printing company and had 4,000 copies of the endorsement letter and 4,000 envelopes printed on WLR letterhead.

6. Senator Estrada added the following disclaimer to Mr. Goggins' endorsement letter: "Paid for by Sharon Estrada for Senate, Bruce McLean, Treasurer."

7. On or about May 4, 1998 Senator Estrada mailed Mr. Goggins' endorsement letter to her contributors and potential supporters.

8. Senator Estrada's campaign paid for all mailing and distribution costs associated with the dissemination of Mr. Goggins' endorsement letter.

STATEMENT OF FINDINGS

Representative Bohlinger alleges that Mr. Goggins' endorsement letter constitutes an illegal corporate contribution under Section 13-35-227, MCA, which reads as follows:

13-35-227. Prohibited contributions from corporations. (1)(a)
Except as provided in subsection (4), a corporation may not make a contribution or an expenditure in connection with a candidate, a ballot

issue, or a political committee which supports or opposes a candidate, a ballot issue, or a political party.

(b) For purposes of this section, "corporation" refers to for-profit and nonprofit corporations.

(2) A person, candidate, or political committee may not accept or receive a corporate contribution described in subsection (1).

(3) This section does not prohibit the establishment or administration of a separate, segregated fund to be used for making political contributions or expenditures if the fund consists only of voluntary contributions solicited from an individual who is a shareholder, employee, or a member of the corporation.

...

(5) A person who violates this section is subject to the civil penalty provisions of 13-37-128.

Senator Estrada's campaign paid for the printing and distribution of 4,000 copies of Mr. Goggins' endorsement letter. Senator Estrada asserts that because Mr. Goggins' corporation did not make a monetary contribution to her campaign, there has been no violation of Section 13-35-227, MCA.

Montana law prohibits corporate contributions or expenditures to support or oppose a candidate. A corporation may not make a contribution or an expenditure in connection with a candidate or a political committee that supports or opposes a candidate or a political party. The prohibition applies to all forms of contributions and expenditures whether monetary or in-kind. Mr. Goggins' endorsement letter was printed on the official corporate stationery of a prominent and well-respected Montana corporation and signed by Mr. Goggins as the president of the corporation. The endorsement letter had great value to Senator Estrada's campaign. Such an endorsement letter carries with it not only the personal endorsement of Mr. Goggins but the business endorsement of WLR. Mr. Goggins' endorsement letter was a corporate contribution prohibited by Section 13-35-227, MCA.

It must be noted that Section 13-35-227, MCA, does not absolutely prohibit corporate officials from participating in candidate campaigns. Corporate officers may make personal monetary contributions to candidates. Corporate officers may form a political action committee ("PAC") under Section 13-35-227(3), MCA, and collectively make personal monetary contributions to the PAC. A corporate officer may make personal in-kind contributions to a candidate so long as the personal in-kind contributions do not involve the use of corporate offices or equipment. A corporate officer may even volunteer his or her time (see Section 13-1-101(6)(b)(i), MCA). However, writing a candidate endorsement letter on corporate stationery at the office, while on the corporate payroll, is the type of corporate campaign activity prohibited by Section 13-35-227, MCA.

In finding that Senator Estrada and Mr. Goggins violated Montana law prohibiting corporate contributions to a candidate, two important points must be emphasized:

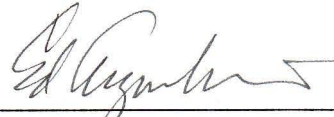
First, I do not believe that Senator Estrada or Mr. Goggins intentionally violated Montana law. Nevertheless, Montana's prohibition against corporate contributions to candidates has a long and well-established history. This violation cannot be overlooked and will provide guidance to both candidates and corporate officials who are considering involvement in candidate campaigns.

Second, Section 13-37-128, MCA, authorizes a county attorney or the Commissioner to bring an action for collection of a civil penalty in an amount up to \$500 or three times the amount of the illegal contribution, whichever is greater. The amount of time spent by Mr. Goggins and his secretary in preparing the final endorsement letter was, most likely, not substantial. Accordingly, the amount of the civil penalty that may be collected from Senator Estrada and WLR in a civil penalty action must be considered in deciding whether to file an action under Section 13-35-128, MCA.

CONCLUSION

Based on the preceding Summary of Facts and Statement of Findings, there is substantial evidence to conclude that Senator Sharon Estrada and WLR Publications, Inc. violated Section 13-35-227, MCA. This matter will be referred to the Yellowstone County Attorney as required by Section 13-37-124, MCA.

DATED this 28th day of May, 1998.



Ed Argenbright, Ed.D.
Commissioner