

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Botchek v. Target Range School No. COPP 2015-CFP-001	Dismissal of Complaint
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On April 27, 2015, Gary Botchek, a 2015 candidate for Target Range School Board Trustee, District 23 (Missoula County) filed a complaint against Target Range School alleging the School's administration and staff violated campaign law by advocating against certain candidates.

SUBSTANTIVE ISSUES ADDRESSED

The substantive areas of campaign finance law addressed by this decision are: 1) allowed personal speech by a public employee; 2) allowed election speech by an individual.

INTRODUCTION

In the spring of 2015 Target Range School District No. 23 held an election for members of its Board of Trustees. The issue of open enrollment was divisive among candidates and those voting for candidates. The following are necessary foundation facts:

Finding of Fact No. 1: Target Range School is a K-8 public school located in Missoula Montana, District 23. The school is overseen by Corey Austin, Superintendent, Barb Droessler, Principal and a five member board of trustees. (Target Range School website: www.target.k12.mt.us)

Finding of Fact No. 2: On May 5, 2015, a school election took place with three Target Range School District 23 Board of Trustee seats open for election. Three candidates competed for two positions having a three year term: **Nathan Lucke**, Evan Rosenberg and **Sharon Sterbis**. Three candidates competed for a single one year term: **Gary Botchek**, Elizabeth Moore and Shawn Skinner. The winning candidates are shown in bolded type. (Missoula County Election's office).

Mr. Botchek's Complaint alleges that Target Range School acted improperly by allowing a teacher and an individual to campaign against him.

TITLE 13 JURISDICTION

Target Range School District No. 23 serves a population of less than 6,500 people and is therefore classified as a second class school district. (Office of Public Instruction, State of Montana.) The Campaign Practice Act has limited application to a second class school district election, including a trustee election. §13-37-206 MCA. A second class school district election is exempted from the campaign finance reporting provisions set out in part 2 of Chapter 37 of the Campaign Practice Act. *Id.*

This means the campaign practice requirements applying to the Target Range School District No. 23 Trustee vote are limited to those set out in Chapter 35. The complaint in this Matter sets out two potential violations of Chapter 35 requirements involving the actions of a public employee and a

private person related to a trustee election. Further, the Complaint focused on the Target Range School District No. 23 through the conduct of an employee of the school.

The Commissioner therefore determines that the Complaint triggered Title 13 review, with the review taking place under the language of § 13-35-226(4) MCA: “[a] public employee may not solicit support for or opposition to ...election of any person to public office ... while on the job or at the place of employment” and the authority vested by § 13-35-226(5) MCA. This statute incorporates the standards of § 2-2-121 MCA. This Office has applied § 13-35-226(4) MCA to measure the propriety of election related activity engaged in by county and state level officials and entities. *Roberts v. Griffin*, decided November 19, 2009 (Commissioner Unsworth); *Hansen v. Billings School District #2*, COPP-2013-CFP-027 (Commissioner Motl); *Essmann v. McCulloch*, COPP-2014-CFP-053 (Commissioner Motl); *Nelson v. City of Billings*, COPP-2014-CFP-052 (Commissioner Motl); and *Grabow v. Malone*, COPP-2014-CFP-060 (Commissioner Motl).

DISCUSSION

The Complaint alleges that a Target Range School District No. 23 teacher argued against the election of Gary Botchek as Trustee “while on the time clock and in the school building.” Mr. Botchek did not witness the teacher speaking and instead relied on a second hand report from a person identified as a former Target Range School District 23 Trustee. On January 25, 2016 the

Commissioner's investigator jointly interviewed the teacher, the witness and the Superintendent of Target Range School District 23. From that interview the Commissioner determines as follows:

Finding of Fact No. 3: In the week before the Trustee election a Target Range School District No. 23 parent engaged a teacher in a conversation over the merits of open enrollment. The conversation took place on the school grounds after students were discharged from class and were in the process of being picked up by parents. (Investigator's notes.)

Finding of Fact No. 4: The teacher was in favor of open enrollment and she gave the parent her reasons for being in favor of open enrollment. (Investigator's notes.)

Finding of Fact No. 5: The witness (a former Trustee of Target Range School District 23) was not in favor of open enrollment and objected to the teacher having a conversation in favor of open enrollment on school property. (Investigator's notes.)

Finding of Fact No. 6: There is no fact or suggestion that the teacher advocated a vote for or against any Trustee candidate. There is no fact or suggestion that any use of public resources, other than public time in the form of the teacher's time, was involved. (Investigator's notes.)

The Commissioner has determined that the facts of this complaint are examined for compliance with the authority of § 13-35-226(4) MCA: "A public employee may not solicit support for or opposition to...election of any person to public office...while on the job or at the place of employment." This statute incorporates the standards of § 2-2-121 MCA.

Thus, a Target Range School District No. 23 employee cannot "use public time, facilities, equipment, supplies" to support or oppose a trustee election. §

2-2-121(3)(a) MCA. Montana law, however, does not “restrict the right of a public officer or public employee to express personal political views.” § 2-2-121(3)(c) MCA.

In fact, Target Range School District No. 23 has a policy statement concerning “staff ethics and political activity” that reflects the distinction found in statute.¹ The facts of this matter show that the teacher acted appropriately within personal political limits (FOF Nos. 3-6). The teacher spoke on an issue, open enrollment, in the context of her personal political views without crossing over into the area of elections. Further, the teacher did so in an appropriate manner by speaking in response to a question from a parent rather than pushing her personal views through contact with students.

The civility and appropriate behavior of all involved is recognized. This is a nuanced area of behavior that was dealt with properly on a policy and personal level. This portion of the complaint is dismissed.

The Complainant next alleges that a citizen mailed a post card with incomplete or misleading information concerning candidates for the Target Range School District No. 23 trustee positions. Again, the COPP investigator conducted an interview with the citizen concerning this allegation:

Finding of Fact No. 7: The Commissioner’s investigator spoke with Bob Carter, then Vice Chair/Trustee of Target Range School and author of the “Open Enrollment Postcard”. From the interview the following facts are found:

¹ The Target Range School District No. 23 “staff ethics and political activity” policy reflects this distinction by prohibiting employees from any “attempt to coerce, command, or require another to support or oppose...election of any person” while also recognizing “its employees’ rights of citizenship.”

- Mr. Carter was not running for reelection at the time he created and mailed the postcard and did not consider the post card a campaign piece.
- Mr. Carter reviewed the content of the postcard with the school's attorney first to ensure he was not breaking any rules (in his position as current school Trustee).² Mr. Carter was also a parent of three children who attend Target Range School.
- Mr. Carter did not mention his position as Trustee within the postcard, only that he was a parent of three children who attended Target Range School. Mr. Carter signed his name on the postcard to avoid confusion with the school itself.
- Mr. Carter purposely did not list Trustee candidates Gary Botchek and Evan Rosenberg in the postcard because he felt that the two candidates did not support Open Enrollment (the other four candidates were mentioned as "supports open enrollment") which was Mr. Carter's purpose in creating the postcard.
- Mr. Carter signed the postcard in his name (not as a Trustee) and listed his personal phone number, however Mr. Carter did list the Target Range School phone number on the other side of the postcard (his intention, he said, was for people to call the school if they had further questions about open enrollment).
- Mr. Carter created the content and paid for the mailing and production of the postcard with his own funds:
 - Mr. Carter paid about \$800-900 total for printing and mailing of the postcard through Montana Printing in Missoula, Montana
 - 1,400 postcards were mailed by Montana Printing on April 21, 2015, to an address list Mr. Carter obtained through the Missoula County Election's Office.

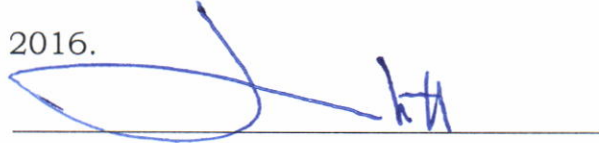
The facts of this Matter are clear. The Open Enrollment Postcard did not involve any use of public funds or public resources. The COPP's Title 13 jurisdiction and review is limited to this public funds use issue (see above).

² The request by Mr. Carter for policy conformance review of the postcard by Target Range School District No. 23 was prudent and appropriate and did not involve any use of public resources in the production of the post card.

This portion of the complaint is dismissed as well.

For the reasons set out above this Complaint is dismissed in full.

DATED this 27th day of January, 2016.



Jonathan R. Motl
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