

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Braden v. Building Our Children's Future No. COPP 2016-CFP-003	ORDER DISMISSING COMPLAINT
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On March 3, 2016, Kip Braden, a resident of Glendive, Montana filed a complaint with the Office of the Commissioner of Political Practices (COPP) against Building Our Children's Future (BOCF), a school ballot issue committee. Mr. Braden alleged in his complaint that BOCF distributed campaign posters inside a school building in violation of campaign practice laws.

On March 7, 2016, Commissioner Jonathan Motl, citing a conflict of interest, recused himself from consideration of this matter pursuant to § 13-37-108(6)(b), MCA, and the provisions of § 13-37-111(4), MCA. Thus, the COPP appointed Kirsten Madsen, of Agency Legal Services Bureau, as the Deputy Commissioner of Political Practices to make a determination in this matter, pursuant to § 13-37-111(6), MCA.

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ISSUES ADDRESSED

The campaign practices issue addressed by this Decision is whether or not a public employee solicited support for a bond issue by distributing campaign posters in school buildings.

SUMMARY OF RELEVANT FACTS

The Complaint alleges that during parent-teacher conferences at Glendive's middle school there was a table with political posters of BOCF advocating "Vote Yes" on a school bond and two school employees were sitting at the table. Mr. Braden alleges that distribution of political posters inside the school building violated § 13-35-226(4), MCA.

The following factual findings are necessary for a decision in this matter:

Finding of Fact No. 1: Unified School District No. 1 of Dawson County, Montana (sometimes referred to just as Glendive Public Schools) is a class II school district, serving approximately 1,250 total students in its four schools: Jefferson Elementary School, Lincoln Elementary School, Washington Middle School and Dawson County High School. (Glendive Public Schools website.)

Finding of Fact No. 2: On December 14, 2015, Glendive Public Schools gave notice of a bond election seeking a \$33 million mill levy divided into two bonds: 1) \$5.742 million for the high school and 2) \$27.9 million for the elementary and middle schools. The bond election was conducted as a mail ballot election beginning March 3, 2016 and running through March 22, 2016. (Investigator's notes; Glendive Public Schools website.)

Finding of Fact No. 3: On January 25, 2016, "Building Our Children's Future" (BOCF) submitted a C-2 Statement of Organization form to the COPP to register as a ballot issue committee. The form listed Patricia (Patty) Atwell as treasurer with no deputy treasurer or other officers named. The purpose of the committee was to "promote the support of the local school bond levy" for the school bond election held on March 22, 2016. (Commissioner's records.)

Finding of Fact No. 4: On February 18 and 23, 2016, parent-teacher conferences were held at Washington Middle School in Glendive. (Response; Investigator's Notes.)

Finding of Fact No. 5: A parent who attended parent-teacher conferences at Washington Middle School told Mr. Braden that there was a table inside the school at which two school staff members were sitting during the conferences, and the table also had political signs and posters with "Vote Yes" on them. Attached to the complaint is a picture of a poster that Mr. Braden claims was at the table. The poster reads, "We Support Glendive Schools. Vote Yes. Building Our Children's Future" with an attribution at the bottom that read, "Paid for by Building Our Children's Future – Patty Atwell, Treasurer – 309 Taylor Ave – Glendive, MT 59330." (Complaint.)

Finding of Fact No. 6: BOCF's periodic campaign finance reports filed with the COPP reflect that BOCF used the committee's funds to pay for the logo design of the poster/yard sign, and to purchase the posters/yard signs. (Commissioner's records.)

Finding of Fact No. 7: Mr. Braden called Steve Engebretson, the superintendent of Dawson County Schools, on February 24, 2016 to complain about the BOCF posters being available during parent-teacher conferences at a District school. Mr. Engebretson then contacted Glendive Public Schools and asked them to investigate immediately. The Business Manager for Glendive Public Schools contacted all four schools in the district, and early in the morning on February 25, 2016 she reported to Mr. Engebretson that a few BOCF signs were available at Washington Middle School for parents to pick up; however, no signs were being handed out, they were just resting against a wall and available if parents wanted them. The principal of the school was instructed to remove all signs from the school property immediately. (Response.)

Finding of Fact No. 8: Mr. Braden was not present at Washington Middle School the night of the parent-teacher conference and he declined to identify the parent who relayed the information underlying his complaint to the COPP. Mr. Braden confirmed the photograph attached to his complaint was taken of a BOCF sign in someone's yard and was not a photograph of the actual campaign materials available within the school building the night of parent-teacher conferences. (Investigator's notes.)

Finding of Fact No. 9: Ms. Atwell also did not attend a parent-teacher conference at Washington Middle School, nor did BOCF

sponsor a table at the school during the conferences. (Investigator's Notes.)

Finding of Fact No. 10: In response to Mr. Braden's complaint, Mr. William Thibault, Principal at Washington Middle School, identified himself and the school's Secretary as the two employees who manned the table inside the school during parent-teacher conferences on February 18 and 23, 2016. (Response; Investigator's Notes.)

Finding of Fact No. 11: The two employees had five items on the table available for parents: 1) an informational Mill Levy pamphlet, 2) "Frequently Asked Questions Related to Glendive School Bond Resolution," 3) "Proposed Improvements to Glendive Schools," 4) two sheets analyzing estimated Mill Levy impacts (one concerning the elementary bond, and one for the high school bond), and 5) a Parent Teacher Association (PTA) flyer for parties interested in the Glendive PTA. (Response; Investigator's Notes.)

Finding of Fact No. 12: Except for the mill levy impact analyses which were prepared by DA Davidson, all of the handouts available at the table inside Washington Middle School were prepared by the District. The materials were each informational in nature. (Investigator's Notes.)

Finding of Fact No. 13: During the parent-teacher conferences Mr. Thibault and the Secretary were primarily busy greeting parents and doing sessions with the students. Mr. Thibault recalls seeing a few BOCF yard signs at the school on the first night (February 18, 2016) but neither he, nor the school Secretary, handed out any campaign materials or verbally advocated for passage of the bond. Mr. Thibault did not request the BOCF materials, and does not know who brought them to the school. He only noticed the signs when he saw a teacher lay a few behind a chair to take home to the teacher's own yard. (Investigator's Notes.)

Finding of Fact No. 14: Although neither Mr. Thibault nor the Secretary had handed out any BOCF signs, or advocated for the school bond while they were at the informational table, he made sure that any campaign materials (BOCF or otherwise) were removed after the first night of parent-teacher conferences. Mr. Thibault reported that no campaign materials of any kind were present the second night of conferences. (Investigator's Notes.)

Finding of Fact No. 15: Mr. Engebretson stated that the matter had been promptly investigated by the District, the signs were only available at one school, on one night, and were promptly removed. (Response.)

Finding of Fact No. 16: Both bonds ultimately failed to pass. (Glendive Public Schools website.)

From these factual findings, the undersigned turns to the following discussion of the allegations of the Complaint and campaign practice law.

DISCUSSION

Mr. Braden alleges a violation of § 13-35-226(4), MCA, which states in relevant part:

A public employee may not solicit support for or opposition to any political committee . . . or the passage of a ballot issue while on the job or at the place of employment. However, subject to 2-2-121, this section does not restrict the right of a public employee to perform activities properly incidental to another activity required or authorized by law or to express personal political views.

By its plain language, this statute applies to the conduct of “public employees.” The definition of the term “public employee” is found in the Code of Ethics and refers to “any temporary or permanent employee of a local government.” § 2-2-102(7)(b), MCA; *see also* § 13-35-226(4), MCA (citing Code of Ethics (“subject to 2-2-121”)).¹

Here, there are no facts showing that Ms. Atwell, BOCF’s treasurer, is a school employee, or even that she was present at Washington Middle School during parent-teacher conferences. (FOF No. 9.) Because BOCF is an entity (rather than a person), it can only act through its appointed agents; its single

¹ COPP’s jurisdiction does not extend to ethics of local employees. § 2-2-144, MCA.

named agent is Ms. Atwell. (FOF No. 3.) The directives of § 13-35-226(4), MCA, do not apply to the actions of either Ms. Atwell or BOCF as neither are public employees, and they could not have violated the statute.

Therefore, to the extent this Complaint has been stated against BOCF, or its treasurer Ms. Atwell, there are insufficient facts to state a campaign practice violation and the Complaint should be dismissed as to them.

Here, attachments provided with BOCF's Response to the Complaint identified the two persons who *were* at the table during parent-teacher conferences: the Principal and the Secretary of Washington Middle School. (FOF No. 10.) Unlike Ms. Atwell, these individuals clearly are public employees within the meaning of § 2-2-102(7)(b), MCA and § 13-35-226(4), MCA.

Thus, there may still be a campaign practice violation under § 13-35-226(4), MCA if the school employees were soliciting support for or opposition to the passage of a ballot issue while on the job or at their place of employment.

In addition to the definition of public employee found in the Code of Ethics, this analysis draws in the definition of a "ballot issue," which includes school levy questions and bond issue questions. § 13-1-101(6)(a), MCA. As it pertains to political speech, the ethics statute referred to in § 13-35-226(4), MCA, does not prohibit personal political speech,

rather, it is the use of public time or resources in the presentation or furtherance of political speech. While a public officer or employee is not required to shed his public persona in order to exercise his right to free speech, he may not use public resources when expressing personal political beliefs.

2005 Mont. Atty. General Op. 51-01 (Jan. 31, 2005) (analyzing § 2-2-121(3)(a)-(c), MCA).

COPP has applied § 13-35-226(4), MCA, to measure the propriety of election related activity engaged in by public officials and entities: *Roberts v. Griffin*, decided November 19, 2009 (Comm'r Unsworth); *Hansen v. Billings School District #2*, COPP-2013-CFP-027 (Comm'r Motl); *Essmann v. McCulloch*, COPP-2014-CFP-053 (Comm'r Motl); *Nelson v. City of Billings*, COPP-2014-CFP-052 (Comm'r Motl); *Grabow v. Malone*, COPP-2014-CFP-060 (Comm'r Motl); and *Botchek v. Target Range School*, COPP-2015-CFP-001 (Comm'r Motl).

A school bond proposal, such as those put forth by Glendive Public Schools (FOF No. 2), is a ballot issue under § 13-1-101(6)(a), MCA, and thus materials or activities which advocated for or against the passage of the bond would fit within the meaning of § 13-35-226(4), MCA. Clearly the BOCF's signs available at the school advocated for passage of the bond. (FOF Nos. 3, 5, 7.) However, the BOCF posters were paid for by BOCF. (FOF No. 6.) Further, the BOCF signs were not requested by the public employees and there is no evidence that either public employee brought the BOCF materials to the school the night of the parent teacher conferences. (FOF No. 13.) The Principal and the Secretary also did not hand out BOCF materials, rather the posters sat against wall (not on the table), and they did not verbally advocate for the bond while manning the table during parent-teacher conferences. (FOF No. 7, 13.)

Thus, although the BOCF posters were present in the school building, the two public employees never handed out campaign materials or solicited

support or opposition to the bond, and thus did not violate § 13-35-226(4), MCA. By the same token, no public funds or public time was expended by either school employee in relation to the BOCF materials and there has been no violation of § 2-2-121(3), MCA.

There is still the matter of the materials which *were* made available at the school-sponsored table. (FOF No. 11.) Although four of the handouts related to the bond issue (*id.*), the handouts were informational and did not advocate for or against the bond proposal (FOF No. 12). Further, the handouts were not prepared by the Principal or the Secretary. (*Id.*) While these two school employees staffed the informational table where the handouts were available, the employees did not advocate either way for the school bond. (FOF No. 13, 14.) In fact, most of the time expended by these employees was spent welcoming parents and doing sessions with the students. (FOF No. 13.)

As to the handouts, the Principal and the Secretary did not verbally advocate for or against the bond, and in any event, the available materials were informational; thus, these two public employees were not soliciting support or opposition as prohibited by § 13-35-226(4), MCA. The District presumably spent public resources to prepare, or have prepared, and disseminate these materials. (FOF No. 12.) A district providing this sort of informational material to schools to be made available to parents is the type of dissemination of information which is properly incidental to the operations of the school district. § 2-1-121(3)(a)(ii), (b)(ii), MCA. However, neither the Principal nor the Secretary

expended public funds or public time in relation to those materials and, thus, they did not violate § 2-2-121(3), MCA.


Therefore, to the extent this Complaint has been stated against the Principal and the Secretary of Washington Middle School who staffed the informational table during parent teacher conferences, there are insufficient facts to make a finding of a campaign practice violation against them and the Complaint is dismissed.

OVERALL DECISION

Having duly considered the matters raised in the Complaint, and having completed a review and investigation, this Deputy Commissioner of Political Practices hereby holds and determines, under the above stated reasoning, that there is no evidence of a campaign practice violation, and certainly none sufficient to justify a civil adjudication against the parties complained of in this Matter.

Therefore, this Complaint is hereby DISMISSED in full.

DATED this 12 day of April, 2016.


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