

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES

In the Matter of the Complaint)	SUMMARY OF FACTS
Against the Missoula Underage)	AND
Substance Abuse Prevention Team)	STATEMENT OF FINDINGS

Paul Befumo of Citizens for Responsible Crime Policy filed a complaint against the Missoula Underage Substance Abuse Prevention team, alleging that the team violated Montana campaign finance and practices laws.

SUMMARY OF FACTS

1. According to its website, the Missoula Forum for Children and Youth (MFCY) is an alliance of coalitions, agencies, and individuals with a common goal:

To build and maintain a supportive environment for collaborative and proactive work to help Missoula prevent substance abuse and other problem behaviors and grow healthy and resilient children and youth.

MFCY is composed of five “coalitions,” one of which is the Missoula Underage Substance Abuse Prevention team (MUSAP). Members of MUSAP include community leaders, professionals, and volunteers. MUSAP works to improve community strategies to reduce underage substance abuse in Missoula County.

2. Missoula County Initiative 2 (I-2) was on the ballot in 2006. I-2 makes investigations, citations, arrests, property seizures, and prosecutions for all adult marijuana offenses Missoula County’s lowest law enforcement priority. I-2 was passed by the voters in the November, 2006 election. Several months later the Missoula County Commission amended the law, limiting its scope to misdemeanor marijuana offenses.

3. Citizens for Responsible Crime Policy (CRCP) is an organization that was instrumental in proposing I-2 and obtaining sufficient signatures to qualify the initiative for the ballot. Paul Befumo, Treasurer of CRCP, filed the complaint against MUSAP. Attached to the complaint is a copy of a flyer containing the following statement:

“The Missoula Underage Substance Abuse Prevention (MUSAP) team urges Missoula County residents to Vote NO on Initiative 2.”

The flyer lists various reasons why I-2 deserved a “no” vote. According to the complaint the flyer opposing I-2 was distributed prior to the election. The complaint alleges that as a result of its creation and distribution of the flyer, MUSAP became a political committee and failed to file a statement of organization, in violation of § 13-37-201, MCA, and campaign finance reports, as required by § 13-37-225, MCA.

4. In 2006 Jori Frakie was the Coordinator of MUSAP and an employee of Missoula County. Frakie’s position was federally funded. Frakie’s supervisors were both in the Missoula County Office of Planning and Grants: Cindy Wulfekuhle, principal grants administrator, and Peggy Seel, senior grants administrator. Other members of MUSAP include volunteers from the community and individuals employed by other organizations or agencies. For example, other members included Peg Shea, Executive Director of the Montana Meth Project, Missoula County Sheriff Mike McMeekin, members of the Missoula Police Department, and representatives of St. Patrick’s Hospital.

5. In a written response to the complaint, Frakie contends that MUSAP was not involved in an effort to oppose I-2. According to Frakie, MUSAP first became aware of I-2 during its monthly meeting in August, 2006, when Peg Shea brought it to the group’s attention. During subsequent MUSAP meetings several members proposed that MUSAP oppose I-2. Frakie further contends that she eventually advised the other MUSAP members that as a public employee, and on the advice of the Missoula County Attorney, she could not engage in any activities in support of or in opposition to a ballot issue. (See Fact 6.)

6. Emails provided by Frakie show that on September 29, 2006 she asked Wulfekuhle, one of her supervisors, what activities she or MUSAP could engage in pertaining to I-2. Wulfekuhle posed that inquiry to Mike Sehestedt, Deputy Missoula County Attorney. In response Sehestedt stated that public funds or other resources could not be used to support or oppose a ballot issue, nor could public employees solicit support for or opposition to a ballot issue while on duty or at their place of employment. Wulfekuhle conveyed that information to Frakie.

7. According to a timeline submitted by Frakie during the investigation of this matter, at a MUSAP meeting on October 4, 2006 Frakie advised all attendees that she could not use her time as a MUSAP employee to engage in any activities opposing I-2. In addition, Frakie contends she advised that the MUSAP email tree and MUSAP's name, funding, equipment, and supplies could not be used to oppose the initiative.

8. Frakie provided copies of email exchanges that show her involvement and the involvement of other MUSAP members in discussions regarding I-2. On October 6, 2006 MUSAP member Joclynn Ware sent an email to Peg Shea, Jori Frakie, and Matt Anderson. According to Anderson, he was at that time a University of Montana student in Social Work whose Master's Degree practicum required him to perform unpaid work for MFCY. The signature block on Anderson's emails includes the title "Youth Coordinator MUSAP" and a Missoula County government phone number and email address are listed. The subject line of Ware's email states: "Re: my take on the initiative 2 handout." The email states, in part:

"Attached are two versions of MUSAP's response to the Marijuana Initiative. Blurb 1 is Matt's initial draft; Blurb 2 are some suggested changes to that initial blurb. Hope we're getting close to what you want."

Attached to the email is Matt Anderson's draft of a flyer opposing I-2, with a second version of the flyer containing some suggested changes.

9. Nick Domitrovich works for the Montana Meth Project, but is not a member of MUSAP. Peg Shea had forwarded Joclynn Ware's October 6, 2006 email to him. After speaking with Shea, Domitrovich made some changes to the flyer attached to Ware's email, and emailed a revised version of the flyer to Ware, with a copy to Frakie. The revised version, with the exception of several minor changes subsequently made by someone, is essentially identical to the flyer that is the subject of this complaint. At the top of the flyer it states: "The Missoula Underage Substance Abuse Prevention (MUSAP) team urges Missoula County residents to Vote NO on Initiative 2."

10. On October 6, 2006, after receiving the email from Domitrovich, Shea emailed Ware and Domitrovich, with copies to Frakie and Matt Anderson, stating:

"Jorie [sic] – We need to get this to the list of people who offered to disperse this ASAP to their group and to the Project Success Counselors, etc. Can you do that today? Can we get it print it [sic] on a blue paper for people or do they have to print it themselves"

11. On October 10, 2006, Frakie emailed Ware, Domitrovich, and Shea, stating that she had been out from October 6 through 9, 2006, but that she was back in the office and available if anyone needed to talk to her. Frakie contends that when she opened the October 6 email from Domitrovich (on the 10th) and saw the draft of the flyer including the reference to MUSAP, she immediately made separate telephone calls to Matt Anderson and Nick Domitrovich and asked that they remove the reference to MUSAP from the flyer. According to Frakie, they both assured her that it would be removed.

12. Shortly after speaking by telephone with Domitrovich and Anderson, Frakie received an email from Shea that appeared to indicate Shea had already begun to distribute the flyer:

This is the version that I printed and started to hand out. I am making copies with my own money and whatever donations I can collect. Please send me the list of emails that we had gotten at the MUSAP meeting. We had told those folks that we were going to get this to them last Friday. They can print and distribute.

Shea's email was also sent to Domitrovich and Anderson. The email was included in the email stream referenced in Facts 9 – 11, and had as an attachment the version of the flyer with the reference to MUSAP. According to Frakie, she did not open the attachment to Shea's email. Frakie contends that because she had just spoken with Domitrovich (who works in the same office as Shea), Frakie assumed that based on her request the MUSAP reference had been removed from the flyer that Shea had begun to distribute.

13. Matt Anderson claims that, although he did not have access to MUSAP's entire email tree, he had a partial list of MUSAP members that he had compiled on his home computer (between 30 and 40 by his estimate). Anderson responded to Frakie's October 10 email stating that he planned to send the flyer to the MUSAP members on his list later that day.

14. Frakie claims that after she had spoken with Anderson and asked him to remove the reference to MUSAP from the flyer, she was left with the impression that Anderson would update the flyer by removing MUSAP's name and then email the revised version to the MUSAP members on his home computer list. Thereafter Frakie engaged in additional email exchanges that included references to distribution of the flyer, but she maintains she believed the "flyer" referenced in the emails was a revised version that had the MUSAP name removed.

15. Frakie replied to Shea's email, described in Fact 12, stating, "Matt should be emailing it out as we speak." Shea emailed Frakie, asking whether Matt Anderson would "let people know that they can change it for their audience if needed?" In response, Frakie sent an email to Anderson and Shea, stating:

Matt, will you please let people know they can change it for their audience if needed? Thanks for all your help, both of you. I'm sorry I can't be more useful in this process!

16. On October 10, 2006, in response to the email from Shea (Fact 12), Anderson sent an email to Shea, Domitrovich, and Frakie stating that he had emailed the flyer to those MUSAP members on the distribution list on his home computer. According to his email, Anderson had also asked whether anyone was interested in distributing the flyer. On the same day Anderson sent an email to MFCY stating that if anyone had not received the flyer that was created as a result of the previous week's MUSAP meeting, it would be emailed soon. In response Peg Shea emailed Anderson and asked him to check into the cost of radio spots and production.

17. On October 12, 2006 Cindy Wulfekuhle sent an email to Peggy Seel regarding the activities of Frakie and other MUSAP members:

I talked to Jori today about the marijuana initiative. She has gone out of her way to stay away from making any public or private comment against the initiative or lobbying against the initiative. She has also made it very clear to all members of MUSAP that they as individual members of MUSAP can take a stance against the initiative but cannot do so as MUSAP. If it appears otherwise it is because MUSAP members either ignored her instructions or members of the community were not aware of what she is doing or in this case not doing.

18. According to Frakie, her supervisor Peggy Seel asked her to email Domitrovich and Anderson reiterating what she had previously communicated to them verbally – that the MUSAP name should not be listed on materials that opposed I-2. On October 16, 2006 Frakie sent the following email to Domitrovich and Anderson:

I've been asked to send an email to reiterate what I said verbally to you both last week. In publications regarding CI-2, please do not put forward that MUSAP is the primary affiliation of the individuals opposing this initiative.

Frakie contends that after she sent the email Domitrovich called her and again agreed to take the MUSAP name off the flyer. Frakie claims that when she spoke with Domitrovich on October 10th (see Fact 11) and October 16th, she believed the draft of the flyer (which included the MUSAP name) had not yet been distributed. She thought that Domitrovich would remove the MUSAP reference from the draft flyer and that any flyers subsequently distributed would not include the MUSAP name.

19. On October 18, 2006 Anderson sent an email to a large group of people, including Frakie, Shea, Missoula County Sheriff Mike McMeekin, First Security Bank, and Beach Transportation, asking recipients to review strategies concerning I-2. The email states: “. . . If you would like hard copies of the attached flyer you can pick them up at the MT Meth Project office . . .” In response to the email First Security Bank agreed to put up flyers in all of their bank employees’ break rooms. Beach Transportation also distributed copies of the flyers to its drivers. Anderson’s email also proposed radio and television ads, as well as more extensive distribution of the flyers by area businesses, including Wal-Mart and Smurfit-Stone Container Corp.

20. On October 20, 2006 Frakie emailed Peggy Seel with a draft of a letter that Frakie stated she would like to send to the Missoulian. The letter, which included Frakie’s name and referred to her as the coordinator of MUSAP, stated that “outside-funded groups” had come to Missoula and distorted the community’s perceptions about marijuana. The letter stated that concern about drug use in the Missoula community must include concern about marijuana. The letter included Frakie’s home address. Seel replied by email, seeking to confirm that Frakie had written the letter on her lunch hour. In response, Frakie emailed Seel stating, “On my 15-minute break, if necessary.” Frakie and Seel continued their email discussion on the question of whether Frakie’s letter should be sent. There is no evidence that the letter was sent by Frakie or published in the Missoulian.

21. Nick Domitrovich stated that Peg Shea approached him one day at work (at the Montana Meth Project) and stated that she and her friends wanted to oppose I-2. Shea also forwarded Joclynn Ware’s October 6, 2006 email to Domitrovich, and she asked Domitrovich how he would oppose the initiative. Shortly thereafter Domitrovich had completed a new draft of the flyer, which he emailed on October 6, 2006. (See Fact 9.) According to Domitrovich, the reason he included the reference to MUSAP on the flyer is because Shea and her friends were MUSAP members, so he assumed it was appropriate to include the name of the group on the flyer.

22. Domitrovich recalls the following sequence of events: Frakie telephoned him on October 10, 2006 (Fact 11). Frakie asked him to remove the reference to MUSAP from the flyer, and Domitrovich agreed to do so. Domitrovich realized that when he spoke with Frakie he had already distributed the email with the attached flyer, so it was not possible to remove the reference from the flyer. However, based on Frakie’s request Domitrovich removed the MUSAP reference from the draft of the flyer on his own computer. He did not pass Frakie’s request on to anyone else.

23. According to Matt Anderson, approximately six weeks prior to the election a group of people got together and began to collect information and discuss ideas regarding how I-2 would affect young people in Missoula County. Most of the group members were MUSAP members, but it is possible there were some non-MUSAP members as well. The group consisted of approximately eight people, and they met three or four times. The group decided to create and distribute a flyer. The group had a flip chart to document input from individual group members.

24. Anderson contends that, although Frakie had made it clear that the MUSAP name should not be used on communications opposing I-2, not everyone in the group referenced in Fact 23 was made aware of that request. Anderson, Shea, and Domitrovich were the primary authors of the flyer that ultimately became the subject of this complaint. According to Anderson, everyone used their own personal computers and printers for the flyers.

25. Anderson asserts that he is not sure who originally inserted the MUSAP reference on the flyer, but contends it was not him or Peg Shea. Anderson recalls that after Frakie requested that the reference to MUSAP be removed, the reference was deleted and the flyer was finalized and printed, approximately two weeks before the election. According to Anderson, everyone in his group received flyers without the MUSAP reference for distribution. Anderson claims he does not know who may have distributed flyers containing the MUSAP reference.

26. Peg Shea contends there was no organized plan for distribution of copies of the flyer. Instead, those who chose to distribute the flyers did so as individuals, on their own time. Shea claims she doesn't know who actually distributed the flyer. When reminded of the email she sent to Frakie on October 10, 2006, which referred to "the version that I [Shea] printed and started to hand out" (Fact 12), Shea surmised that her email had been in reference to materials that the police had put together related to drug issues in general – not the flyer opposing I-2.

27. Shea stated she does not recall any group meetings with Matt Anderson regarding the flyer, and she does not recall flip charts. She maintains she does not know who distributed the flyers that included the reference to MUSAP, and MUSAP as a group did not create or distribute the flyer.

28. It is unknown how many flyers were produced and distributed. No evidence was disclosed establishing that any commercial printing service was used to create or produce copies of the flyer.

29. Notwithstanding Matt Anderson's October 18, 2006 email alluding to proposed radio and television ads (Fact 19), no evidence was disclosed establishing that MUSAP, individual members of MUSAP, or others whose activities are described herein made expenditures for any other forms of communication in opposition to I-2, such as radio, television, or newspaper ads.

STATEMENT OF FINDINGS

With limited exceptions not applicable here, § 13-37-225, MCA requires a political committee to file periodic reports of contributions and expenditures. § 13-1-101(20), MCA defines the term "political committee" as follows:

"Political committee" means a combination of two or more individuals or a person other than an individual who makes a contribution or expenditure:

- (a) to support or oppose a candidate or a committee organized to support or oppose a candidate or a petition for nomination; or
- (b) to support or oppose a ballot issue or a committee organized to support or oppose a ballot issue; or
- (c) as an earmarked contribution.

A "person" is defined to include a "corporation, association, firm, partnership, cooperative, committee, club, union, or other organization or group of individuals." (§ 13-1-101(19), MCA.) The question for resolution in this case is whether the group known as MUSAP (which qualifies as a "person") or two or more individuals became a political committee with corresponding reporting responsibilities, based on activities in opposition to I-2, a ballot issue. A political committee that opposed I-2 would have been required to file a Statement of Organization (form C-2) within five days after it made an expenditure opposing the ballot issue. (§ 13-37-201, MCA.) A political committee opposing I-2 would also have been required to file periodic reports of contributions and expenditures (form C-6). (§§ 13-37-225 and 13-37-226, MCA.)

There is insufficient evidence to establish that the group known as MUSAP became a political committee, with reporting responsibilities, by making a contribution or expenditure in opposition to I-2. MUSAP coordinator Jori Frakie contends she advised MUSAP members that they could not use the MUSAP name, MUSAP equipment, MUSAP supplies, or the MUSAP email tree to oppose the initiative. (Facts 5 – 7). According to Frakie, when she learned that a flyer created by Domitrovich included a reference to MUSAP, she requested that the reference be removed. (Facts 11, 18, 22, and 25).

It is apparent Frakie could have done more to avoid questions regarding her involvement or the apparent involvement of MUSAP in efforts to oppose I-2. For example, Frakie contends she insisted that the MUSAP name be removed from the flyer created by Domitrovich. She initially claimed that she “(i)mmediately emailed two people who I thought could make changes to the content of the flyer and told them to remove the MUSAP’S name.” However, no such email was produced. She later claimed that request was made by phone. (See Fact 11.) But when she received subsequent emails with the same flyer attached, she did not appear to object. (See Fact 12.) She contends she did not open the attachment to the email, but she could obviously have exercised more care to ensure that the flyer that was apparently being widely distributed by email did not appear to be sponsored by MUSAP and that the editing and distribution was not being undertaken with public funds or other public resources. Moreover, Frakie’s responses to some emails appear equivocal, and might suggest to the casual reader that as a representative of MUSAP she approved of efforts to oppose the initiative. (See, e.g., Facts 12 – 16.)

Nick Domitrovich, who was not a member of MUSAP, took credit for creating the version of the flyer with the MUSAP name included. Domitrovich asserts that he did so based on his discussions with Peg Shea, who was Domitrovich’s co-worker at the Montana Meth Project and a member of MUSAP. Domitrovich stated that since Shea and her friends, who were MUSAP members, had expressed an interest in opposing I-2, he assumed it was appropriate to include the MUSAP name on the flyer that he created. (Facts 9 and 21).

Although Shea took it upon herself to distribute copies of the flyer created by Domitrovich, she insists she did so on her own initiative, and not on behalf of MUSAP. (See Facts 10 – 12, 15, 26, and 27.) Shea also claims that comments she made in an email regarding the flyer in question were, in fact, not about the flyer, but about other information related to drug issues she said the police had put together. That seems unlikely, however, given that her email was part of an email stream that included as an attachment a copy of the flyer. (See Fact 12).

In summary, it does not appear that the MUSAP team, per se, engaged in an organized effort to oppose I-2 or to create and distribute flyers in opposition to I-2.


There is, however, evidence that Peg Shea, Nick Domitrovich, Matt Anderson, Jori Frakie, Joclynn Ware, and others participated in coordinated activities to oppose I-2, thereby becoming a political committee under Montana law. They all had input into the creation of a flyer opposing I-2, and they were all engaged in efforts to distribute the flyer to interested parties as well as the general public. Based on their

collaborative activities in opposition to I-2, the group should have registered as a political committee and filed periodic reports of contributions and expenditures, whether in-kind or cash.

CONCLUSION

Based on the preceding Summary of Facts and Statement of Findings there is insufficient evidence to conclude that the Missoula Underage Substance Abuse Prevention team violated Montana campaign finance and practices laws. There is, however, sufficient evidence to conclude that Peg Shea, Nick Domitrovich, Matt Anderson, Jori Frakie, Joclynn Ware, and others engaged in coordinated activities in opposition to I-2, thereby becoming a political committee with registration and reporting requirements. Their failure to comply with Montana campaign finance and disclosure laws and rules justifies an action seeking a civil penalty.

Dated this 19th day of March, 2009.

A handwritten signature in black ink, appearing to read "Dennis Unsworth", written over a horizontal line.

Dennis Unsworth
Commissioner