

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES

In the Matter of the Complaints)	SUMMARY OF FACTS
Against Dee Brown, Jerry)	AND
O'Neil, and George Everett)	STATEMENT OF FINDINGS

John Campbell filed complaints against Dee Brown, Jerry O'Neil, and George Everett, alleging that some of their campaign signs did not contain a proper attribution as required by Montana law.

SUMMARY OF FACTS

1. Complainant John Campbell filed separate complaints against Dee Brown, Jerry O'Neil, and George Everett. Brown and Everett were candidates for the Montana Legislature in 2006. O'Neil was a candidate for Justice of the Peace in 2006. The complaints allege that some of the campaign signs displayed by each of the candidates did not comply with the attribution requirement in § 13-35-225, MCA.

2. Attached to the complaints are photographs taken by Campbell of the front of each sign that was alleged to be in violation. None of the three signs depicted in the photos appear to contain any attribution language.

3. Within several days of receiving a copy of the complaint, Dee Brown submitted to the office of the Commissioner of Political Practices (Commissioner) a letter accompanied by a copy of a pink card containing information regarding her campaign, including the name and address of her campaign treasurer. Brown explained that the cards were taped to the *back* of the signs, but that several of her signs were missing the cards because the tape got moist and the cards fell off. Brown stated she located the noncompliant signs and glued cards with the attribution language to the lower left corners

of the front of the signs. Brown included a photograph showing a sign with the card attached to the front, along with a close-up photograph of the card, which contained the following language:

Re-Elect Dee L. Brown Republican Representative for House District 3
Business Owner – Educator – Active volunteer – Raised in Columbia Falls
Married 35 years – Live outside of Coram, 2 grown children
Recreation enthusiast – Involved citizen willing to listen to your concerns
& speak up at the State level – 387-9393 or repdee@yahoo.com
Brown for HD3, Debbie Melby – Treasurer, Box 444, Hungry Horse, MT
59919

Brown also exchanged several emails and had at least one telephone conversation with the Commissioner during this same time period, as she tried to bring her signs into compliance.

4. Within several days of receiving a copy of the complaint, George Everett sent a letter to the Commissioner stating that the attribution statements were inadvertently left off some of his yard signs. Everett's letter explained that he had seven 4' x 4' signs, like the ones in the photograph attached to Campbell's complaint, that were first constructed by Everett and his wife when Everett ran in House District 84 in 2002. Following redistricting Everett ran in House District 5, so he and his wife had to repaint the signs. During that process, according to Everett, the attribution statement was inadvertently omitted from the signs. Everett's letter also referred to a telephone call he had with the Commissioner, during which he indicated that as of October 30, 2006, the signs included the following attribution language, which he had added:

Paid for by George Everett . . . Patti Everett, Treasurer
1344 Helena Flats Rd., Kalispell, MT 59901

5. Everett sent another letter to the Commissioner dated November 13, 2007. Enclosed with the letter were several photographs of one of the signs, with the attribution statement attached. According to Everett's letter, the size of the attribution statements was ¼" x 3".

6. In response to the complaint Jerry O'Neil sent a letter to the Commissioner denying that any of his signs were out of compliance. O'Neil's letter states that his campaign signs included clear labels with the scales of justice printed on them, with the proper attribution language printed directly below the scales. O'Neil enclosed with his letter printouts of the attribution language, showing the scales of justice with the following language printed below the scales:

Paid for by Jerry O'Neil for JP
985 Walsh Road, Columbia Falls, MT 59912
406-892-7602

In the photograph attached to the complaint, the scales of justice are visible on the sign but it is not possible to determine whether an attribution is included under the scales of justice.

7. O'Neil later provided photos of some of his signs containing the attribution language quoted above, although in the photos the attribution does not appear directly below the scales of justice. Rather, the attribution language stands alone on the bottom right-hand corner of the sign, while the scales of justice are visible on the upper right hand corner of the sign. O'Neil explained that the signs depicted in those photos show a second means of including attribution language on his campaign signs.

STATEMENT OF FINDINGS

§ 13-35-225, MCA provides:

Election materials not to be anonymous -- statement of accuracy. (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. (Emphasis added).

As reflected in the clear language of the statute, the Montana Legislature has established specific requirements for attribution on campaign materials. In the case of candidates, their campaign materials must contain the attribution “paid for by” followed by the name and address of the candidate or the candidate’s campaign. In addition, the attribution language must be displayed “clearly and conspicuously.”

Due to the passage of time and the lack of sufficient and convincing evidence, it is not possible now to determine how many of the three candidates’ signs were out of compliance, or for how long a period of time the signs lacked the proper attribution language. As noted above, O’Neil denies that any of his signs were out of compliance. Everett and Brown concede that at least some of their signs did not contain the proper attribution language for an undetermined period of time.

It is noteworthy, however, that as soon as Everett and Brown became aware of the complaint allegations they made what appears to have been a good faith effort to bring their signs into compliance.

§ 13-35-124(1), MCA requires the Commissioner to notify the county attorney after determining that there is sufficient evidence to justify a civil or criminal prosecution. The determination of whether a prosecution is justified must take into account the law and the particular factual circumstances of each case. A prosecutor can decide not to prosecute whenever he or she in good faith believes that a prosecution would not be in the best interests of the state. Despite the finding that some of the campaign signs created and displayed by the candidates may have failed to comply with the specific attribution requirements of § 13-35-225(1), MCA for a period of time, I have concluded that a civil prosecution is not justified in this particular case.

During the campaign season this office commonly receives informal telephone or email complaints alleging that certain campaign signs do not contain the appropriate attribution language required by the statute. Historically the office of the Commissioner has contacted the particular candidate or committee that is alleged to have signs that are out of compliance, and has worked with those people to bring the signs into compliance.

Although at least some of the signs that were at issue in this case were likely out of compliance for an indeterminate period of time, rather than attempting to exact a civil penalty I believe a more productive use of the limited resources of this office is to provide education regarding the attribution requirements in § 13-35-225(1), MCA.

The statute is quite specific regarding the content of the required attribution language. In the case of candidates the campaign materials must contain the attribution “paid for by” followed by the name and address of the candidate or the candidate’s campaign. In the case of political committees the materials must contain the attribution “paid for by” followed by the name of the committee, the name of the committee treasurer, and the address of the committee or the committee treasurer. § 13-35-225(1), MCA.

The statute also provides that the campaign communications must “*clearly and conspicuously*” include the attribution language.

While that phrase is not defined in the statute or in the rules adopted by the Commissioner, attribution language on written campaign materials should meet the following specifications and requirements:¹

1. The reader or observer should have no difficulty locating and reading the attribution language.
2. The attribution language should be of sufficient type size to be clearly readable by the recipient or reader of the communication.
3. The language should be contained in a printed area or segment set apart from the other contents of the communication.
4. The language should be printed with a reasonable degree of color contrast between the background and the printed statement.
5. In the case of yard signs and other campaign signs, the language should appear on whichever side or sides of the sign contain the campaign message.


¹ To date neither the Legislature, by statute, nor this office, by rule, has provided direction regarding the specific appearance, size, and location of the attribution language required by the statute. However, I find helpful guidance in the federal statute and rule that require attribution on political advertising for federal elective offices. The specifications described herein are modeled on the federal requirements. See 2 U.S.C. § 441d and 11 C.F.R. § 110.11(c). I will propose a rule that specifically establishes these and other requirements for attribution language.

My office will continue to work informally with candidates, political committees, and commercial sign printers to provide information and assistance to ensure that campaign communications comply in all respects with the attribution requirements of § 13-35-225, MCA.

My office has also secured funding from the legislature and now employs a full-time investigator. As a result, the office is better equipped to respond to complaints, including disclaimer violation complaints. When warranted, we are able to gather evidence in a timely way that can be used in prosecutions.

I encourage candidates and political committees to comply with the guidelines set forth in this decision. This office reserves the right, however, to address future violations of the statute through more formal enforcement means, including in appropriate cases an action seeking a civil penalty.

Dated this 9th day of May, 2008.

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

Dennis Unsworth
Commissioner