



the Montana Secretary of State containing information concerning the American Freedom Coalition, listing Rep. Curtiss as one of the directors and the president; 4) four pages entitled "Aubyn Curtiss, 'Out on the Right Wing', Curtiss and the 'Moonies'", consisting mainly of quotes attributed to Rep. Curtiss in various news articles; and 5) copies of two letters to the editor from Rep. Curtiss and James W. Murry, Executive Secretary of the Montana AFL-CIO. The information packet does not list the name and address of the person who prepared or paid for the materials.

4. Portions of the information packet suggest that Rep. Curtiss, through her association with the American Freedom Coalition, is connected with the Unification Church and Rev. Moon. Rep. Curtiss alleges that any suggestion that she is associated with the Unification Church or Rev. Moon is false. The information packet does not contain any language expressly advocating the success or defeat of either candidate Utter or Rep. Curtiss.

5. Candidate Utter states that neither he nor any of his campaign workers drafted any of the materials in the twelve-page packet of documents. He states that the information packet was given to him by the Montana AFL-CIO and a private individual. He claims that he only made about 20 copies of the documents and gave them to his staff to discuss whether or not to use the information. He denies that he "distributed" the information, but admits that he showed the information to a person at a restaurant in Libby. Candidate Utter states that he did not pay for the packet of information, and no campaign money was spent to distribute it.

6. Rep. Curtiss contends that candidate Utter used the information packet during campaign appearances, quoting from it at times. She claims that candidate Utter admitted to her that he distributed copies of the materials during the campaign.

#### STATEMENT OF FINDINGS

Rep. Curtiss alleges that candidate Utter violated the Code of Fair Campaign Practices, Mont. Code Ann. §§ 13-35-301 and 13-35-302. The Code of Fair Campaign Practices is a voluntary code and the Commissioner of Political Practices is given no authority to enforce the Code. The Commissioner's responsibilities under the Code are limited to preparing and sending a copy of the fair campaign practices form to each candidate. Mont. Code Ann. § 13-35-302. Absent enforcement authority, I must decline to determine whether candidate Utter's campaign materials or his actions in the campaign violate the Code of Fair Campaign Practices.

Rep. Curtiss also alleges that the twelve-page packet of information used by candidate Utter in his campaign was in violation of Mont. Code Ann. § 13-35-225, which provides:

**Election materials not to be anonymous.** (1) Whenever a person makes an expenditure for the purpose of financing 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, or other form of general political advertising, the communication must clearly and conspicuously state the name and address of the person who made or financed the expenditure for the communication, including in the case of a political committee, the name and address of the treasurer. Communications in a partisan election financed by a candidate or a political committee organized on the candidate's behalf must state the candidate's party affiliation or include the party symbol.



(2) If a document or other article of advertising is too small for the requirements of subsection (1) to be conveniently included, the person financing the communication shall file a copy of the article with the commissioner, together with the required information, prior to its public distribution.

(3) If information required in subsection (1) is inadvertently omitted or not printed, upon discovering the omission, the person financing the communication shall file notification of the omission with the commissioner within 5 days and make every reasonable effort to bring the material into compliance with subsection (1).

The statute requires that certain "communications" made for political purposes state, in a clear and conspicuous fashion, the name and address of the person who made or financed the expenditure for the communication. The packet of materials used by candidate Utter did not contain such identifying information. The statute is applicable, however, only if the communication is one ". . . advocating the success or defeat of a candidate, political party, or ballot issue. . . ." [Emphasis added]. Thus, if the communications in the documents in question in this case can be construed as advocating the success or defeat of either candidate Utter or Rep. Curtiss, they were subject to the attribution requirements of Mont. Code Ann. § 13-35-225.

Mont. Code Ann. § 13-37-128(2), sets forth the penalty for a violation of Mont. Code Ann. § 13-35-225 as follows:

Any person who makes or receives a contribution or expenditure in violation of 13-35-225 . . . is liable in a civil action brought by the commissioner or a county attorney . . . for an amount up to \$500 or three times the amount of the unlawful contribution or expenditure, whichever is greater.

Thus, Mont. Code Ann. § 13-35-225, with its accompanying penalty provision stated above, is a penal statute. The test in

determining whether or not a statute is penal in nature is "whether the wrong sought to be redressed is a wrong to the public or a wrong to the individual. . . ." If it is a wrong to the public, it is a penal statute. Department of Livestock v. Sand Hills Beef, Inc., 196 Mont. 77, 83, 639 P.2d 480, 483 (1981); Huntington v. Attrill, 146 U.S. 657, 668-69 (1892). Here, the statutes clearly establish a penalty to redress a wrong to the public, not to any specific individual, since the public is entitled to know the identification of the person or group financing such communications.

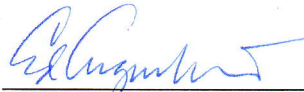
Penal statutes, whether civil or criminal, must be strictly construed. Sand Hills Beef, Inc., 196 Mont. at 83, 639 P.2d at 483; State v. Nagle, 100 Mont. 86, 90, 45 P.2d 1041, 1042 (1935). Courts will not apply penal statutes to cases that are not within the obvious meaning of the language employed by the Legislature, even though they may be within the mischief intended to be remedied. State v. Aetna Banking & Trust Co., 34 Mont. 379, 382, 87 P. 268, 269 (1906). See also State ex rel. Penhale v. State Highway Patrol, 133 Mont. 162, 165, 321 P.2d 612, 613-614 (1958).

Applying these rules of construction to the facts of this case, I do not find a clear violation of Mont. Code Ann. § 13-35-225. While the documents in question are obviously intended to be critical of Rep. Curtiss, they do not include language that expressly advocates the success or defeat of either candidate in the election. Absent such clear and unambiguous language, and applying the rules of strict construction set forth herein, I

cannot find that the communications that are the subject of this investigation were required to have the attribution described in Mont. Code Ann. § 13-35-225.

Based on the preceding, there is insufficient evidence to conclude that Terry Utter violated Mont. Code Ann. § 13-35-225.

DATED this 19<sup>th</sup> day of January, 1995.



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ED ARGENBRIGHT  
Commissioner of Political Practices