

BEFORE THE COMMISSIONER OF  
POLITICAL PRACTICES

---

In the Matter of the Complaint	)	<b>SUMMARY OF FACTS</b>
Against the School Board	)	<b>AND</b>
Accountability Project	)	<b>STATEMENT OF FINDINGS</b>

---

Rosemary Harrison filed a complaint alleging that the School Board Accountability Project violated Montana campaign finance and practices laws.

**SUMMARY OF FACTS**

1. Rosemary Harrison was a candidate for a trustee position on the Missoula County Public Schools Board (MCPS Board) in 2005. At the time of the election Harrison had served as an incumbent trustee for three terms, and had chaired the MCPS Board for the two-year period prior to the election.

2. As Board chair Harrison had the responsibility to preside over Board meetings. The Board chair also works with the Superintendent to prepare an agenda. Board policy provides that the Board chair represents the Board to the community, and the chair should strive to keep the other trustees informed regarding correspondence and issues brought to the chair's attention. MCPS Policy Nos. 1210 and 1420.

3. Harrison's complaint alleges that a political flyer distributed prior to the election contains false statements in violation of § 13-37-131, MCA.

4. The School Board Accountability Project created and distributed a flyer that was mailed to voters prior to the May 3, 2005 election. The flyer included the following statements:

*Just this last year, here's what your School Board has done:*

*1. Closure of three schools, deciding within six weeks of announcing possible closures, without addressing alternatives proposed by parents and neighbors and without a long term facilities plan. THE RESULT: Dislocating 600 students and creating crowded conditions in the remaining three middle schools.*

*Why did Harrison not ask the administration for long-term facilities planning and consideration of alternatives before the Board allowed such major dislocation? If classroom crowding creates the demand for a new school, the replacement cost of over \$4 million will be paid by your increased property taxes.*

*2. Privatizing two MCPS school buildings, Prescott and Roosevelt, assisting interests that compete for students. THE RESULT: Lower enrollment and related state funding tied to enrollment.*

*Why did Harrison not urge the administration to pursue options that addressed community education priorities, small class size and art, and keep buildings open for public use rather than lock them up for private school use?*

*3. Ignored a board-appointed middle schools athletic committee report, and at the 11<sup>th</sup> hour, adopted a middle school principal's report for an Athletic Program. The approval came in opposition to public testimony from parents and coaches at a board meeting. This program is up for review now; there are concerns it will be privatized.*

*Why didn't Harrison support the board-appointed committee instead of letting the administration sideline its report?*

*4. Admitted to breaches in open meeting law and has been charged with not following its own policy in selling school land.*

*Why doesn't Harrison insist on following the law and the board's policies?*

*If re-elected this would be Harrison's 4th term.*

*Missoula students and teachers deserve better – we're overdue for a change. We deserve Board leadership that listens to citizens and does not turn its authority over to the administration.*

5. Harrison alleges the flyer inaccurately implies that as MCPS Board chair she had sole responsibility for decisions made by an eleven-member board. She contends she had no more authority than any of the other members of the Board. Harrison also alleges that the flyer contains certain specific misrepresentations under the subheadings, which will be described in more detail below.

6. The Superintendent and the Board chair approve the agenda for Board meetings. Requests by community members for items to be placed on the agenda are not honored, but the public has the right to comment at meetings.

#### Closure of Three Schools

7. The flyer states that the decision to close three schools was made within six weeks of the announcement of the potential closures. The flyer asks why Harrison did not ask the administration for long-term facilities planning and consideration of alternatives prior to the Board deciding on the closures.

8. Harrison contends that the entire closure process took at least three years. On February 5, 2004, a proposal was made to the MCPS Board to close three schools: Prescott, Mt. Jumbo, and Rattlesnake Elementary. On March 24, 2004 the MCPS Board voted to close the three schools. Thus, the time period between the school closure proposal and the vote to close the three schools was just under seven weeks.

9. In 1999 and 2000, a different set of MCPS trustees voted to close Prescott, but those decisions were later reversed when new trustees were elected to the Board.

10. During the April 13, 2004 MCPS Board meeting, Judy Smith, a member of the School Board Accountability Project, invited the public to meet on April 28, 2004 to discuss long-term planning and alternatives to closing schools in the district. During the Board meeting Harrison stated she was concerned with the “tone” that was coming from the parents. Harrison said she believed the Board had the best interest of students and

staff, and that it wasn't fair to conclude that the Board had not spent sufficient time on the decision to close schools.

11. Harrison contends that during a Board retreat held in the fall of 2004, the Board directed the administration to “compile all the pieces of long-range planning that have been done by MCPS . . . .” The session summary of the MCPS Board retreat held on September 17 and 18, 2004, reflects that goal; however, that direction came almost six months after the trustees had voted to close the three schools.

#### Privatization of Two MCPS School Buildings

12. The flyer states that privatization of Prescott and Roosevelt schools resulted in lower enrollment and lower state funding. The flyer asks why Harrison did not urge the administration to pursue options that addressed community education priorities, small class size, and art; and that would have retained the buildings for public use.

13. Harrison contends that Roosevelt school only had eleven children in a class, and that both schools were closed due to low enrollment. She concedes that after the closures and sales enrollment of MCPS students did decline slightly, but she attributes that to some unhappy parents transferring their children to private schools. Harrison did not make specific requests for community education priorities, small classes, and art, because she does not agree that MCPS needed all of those things.

14. In the November, 2004 election Missoula voters approved, by a nearly three to one margin, a ballot measure authorizing MCPS to sell Roosevelt school.

15. The lease agreement between Missoula Elementary District No. 1 and the Missoula International School for the use of Prescott school states that the district may continue to use the 2.3 acre playground and surrounding real property for public use, and that the building may be used as an official polling place for elections.

16. The lease agreement between Missoula Elementary District No. 1 and the Roman Catholic Diocese of Helena for use of the Roosevelt school permits the district to continue to use the premises as an official polling place for elections.

17. Judy Smith responded to the complaint on behalf of the School Board Accountability Project. Smith said that the intent of the representations in the flyer regarding the privatization of Prescott and Roosevelt was to show the impact the closures and sales would have on education in the district.

#### Middle Schools Athletic Committee Report

18. The flyer states that the MCPS Board ignored the report of a committee appointed by the Board to make recommendations regarding middle school athletics. Instead, according to the flyer, the Board accepted a report on the subject prepared by a middle school principal. The flyer states that the Board approved the principal's report despite opposition expressed by parents and coaches at a Board meeting. The flyer asks why Harrison didn't support the committee's report instead of "letting the administration sideline its report."

19. The MCPS Board appointed a committee to consider issues related to middle school athletics in the district, and to present a recommendation to the Board. The committee, known as the Middle School Athletic Subcommittee, prepared a report and submitted it to the Board.

20. Middle school principal Bob Gearheart also prepared and submitted a report to the Board. Gearheart was not directed or requested to do so by the Board.

21. The minutes of the August 10, 2004 MCPS Board meeting state: "Approve In-House Proposal for Middle School Athletics Including Heterogeneous Team Proposal from Principal Bob Gearheart." At the meeting the administration recommended that the Board approve Gearheart's proposal. The trustees discussed both Gearheart's proposal and the report prepared by the Middle School Athletic Subcommittee prior to voting to approve Gearheart's proposal.

22. Based on records obtained from the Board, it appears there was public support for the report and proposal submitted by the Middle School Athletic Subcommittee.

## Open Meetings Law and MCPS Policy

23. The flyer states that the Board admitted to breaches in the open meetings law and was charged with not following its own policy in selling school land. The flyer asks why Harrison does not insist on following the law and the Board's policies.

24. The Montana School Boards Association (MTSBA) is a statewide association of public school boards that provides legal assistance, legislative representation, and other services to member school boards. Elizabeth Kaleva is a former MTSBA attorney.

25. Colleen Rogers was a MCPS Board trustee from 2001 to 2004. On several occasions between October, 2003 and February, 2004, Rogers emailed Kaleva with questions regarding proper notice and agenda preparation and distribution for MCPS Board meetings. In an email dated November 4, 2003, Kaleva responded to one of Rogers' emailed questions by stating: ". . . All meetings, whether they be regular, special, committee, or subcommittee, need to be noticed like a regular meeting and have an agenda. They also need to have minutes." Rogers forwarded copies of Kaleva's response to her questions to Harrison and to other MCPS Board trustees.

26. Minutes from a January 21, 2004 MCPS Board meeting show that Rogers expressed uncertainty "with regard to this meeting as far as Board not receiving an agenda or packet. . . . Would like to be more prepared." There is no indication in the meeting minutes that Harrison addressed Rogers' concerns. On that same date Rogers emailed Kaleva and expressed concerns about MCPS Board meetings not being properly noticed or having an agenda prepared.

27. On January 22, 2004, Kaleva emailed Rogers as follows:

The Bryan decision out of Billings last year made it completely clear that if any information is going to be handed out at the meeting, it needs to be available prior to the meeting. Trustees should have it in hand at least 48 hours before the meeting. If the information is not ready, postpone the meeting. . . . the Board needs to be careful or it will end up on the losing end of an open meetings lawsuit.

28. On February 2, 2004 Rogers emailed Kaleva stating that there would be no packet of information made available in advance of the MCPS Board's February 5, 2004 meeting. In an emailed response Kaleva stated that she had been instructed to respond to questions from trustees directly to MCPS Superintendent Jim Clark. On February 3, 2004 Clark sent a memo to the MCPS Board, stating:

. . . Under the guidance of MTSBA attorney Elizabeth Kaleva, there will be no printed materials available at the budget work session on February 5. For this and other similar instances, we will be able to post the PowerPoint presentation to the District website following the presentation on February 5 and will be able to provide printed copies following requests from the Board or members of the public.

Copies of materials will normally be available at least 48 hours prior to committee meetings, Board meetings, works sessions, and/or public input sessions. For this week, the 48 hour minimum requirement cannot be met due to the budget team meetings scheduled for Wednesday, February 4. . . .

29. On February 20, 2004, Clark sent another memo to the MCPS Board, stating:

Carol Bellin [another MCPS Board trustee] inquired about agenda preparation and committees. Attached please find copies of existing Board policies 1230 – Board of Trustees Committee, and 1420 – Board of Trustees Agenda Preparation and Format. You may note that, while past practice and the requirements of the Open Meeting Law require that Board members have agendas and information used for decision making in their hands at least 48 hours prior to a given meeting, our existing policy requires that you have such information three days in advance of the meeting. . . .

30. On March 19, 2004 trustee Bellin wrote a letter to Harrison. The letter expressed Bellin's concerns about what she perceived as a flawed procedure by which the MCPS Board developed and approved the MCPS budget. The letter complained that Superintendent Clark was permitted to determine the makeup of two budget teams that worked on the budget, and that meetings that were held by the budget teams "were held in private, without being open to the public, fully noticed or advertised at least 48 hours in advance."

In her letter Bellin expressed concern that individual trustees could be found liable for improper proceedings, and she urged Harrison to use her office as MCPS Board Chairperson to correct the process “for the sake of preventing a more damaging upheaval to our students and staff, . . . .”

31. The letter that Bellin wrote to Harrison was forwarded to Kaleva for her review and response. Kaleva sent a letter dated March 22, 2004 to Harrison stating:

Carol [Bellin] is correct that written information that will be relied upon or presented during any regular, special or committee meeting of the Board of Trustees should be available at least 48 hours in advance of that meeting. It is my understanding that the Administration complies with that requirement.

32. On April 23, 2004 Allan Oines and Molly Moody, members of the public, filed a complaint in the District Court of the Fourth Judicial District, naming as defendants MCPS, the MCPS Board, Rosemary Harrison in her capacity as Chairperson of the MCPS Board, and Superintendent Clark. The complaint alleges that the defendants violated the Open Meetings Law.

The complaint claims that on March 24, 2004 the MCPS Board held a special meeting to discuss new, revised, and additional budget information that was not made available to the public prior to the meeting. The complaint alleges that at the meeting MCPS Board Chairperson Harrison did not allow members of the public to comment on a preliminary budget until after the MCPS Board had voted on it. In September, 2004, Harrison and Clark were dismissed from the lawsuit.

33. Harrison contends that she and Superintendent Clark were in constant contact with Lance Melton, Executive Director of the MTSBA, regarding whether the MCPS Board’s actions were in compliance with the Open Meetings Law.

34. Harrison said Clark checked with the MTSBA to determine whether it was permissible to hand out packets with sensitive information after MCPS Board meetings, instead of 48 hours in advance of the meetings.



According to Harrison, MTSBA stated that it was acceptable as long as a vote on the matter was not being taken at that meeting. Harrison said that MTSBA advised that if a decision was going to be made at the meeting, then it was necessary to distribute a packet of information 48 hours in advance of the meeting.

35. Lance Melton is the Executive Director of the MTSBA. Although he was hesitant to discuss advice he may have given to Harrison or Clark due to the attorney-client privilege, Melton said he agrees with the written advice that Kaleva provided to trustee Colleen Rogers.

36. In the April 12, 2005 MCPS Board meeting, there was a discussion regarding a member of the public's contention that in deciding to sell Roosevelt school the Board was not following its Policy 7251, because that policy requires the Board to adopt a resolution rather than use a ballot measure to dispose of the property.

37. MCPS Policy No. 7251 states:

Disposal of School District Property

The Board of Trustees is authorized to dispose of a site, building, or any other real or personal property of the District that is or is about to become abandoned, obsolete, undesirable, or unsuitable for school purposes by section 20-6-604, MCA.

To do so, the Board shall pass a resolution according to state statute stating its decision concerning property disposal.

Once the resolution has been adopted or if appealed, and the decision upheld by the court, the Trustees may sell or dispose of the real or personal property in a reasonable manner determined to be in the best interests of the school district. Proceeds from the sale of fixed assets can be deposited to the general, debt service, building or any other appropriate fund.

38. Following discussion and public comments at the April 12, 2005 MCPS Board meeting, the Board voted to authorize the sale of Roosevelt school.

## STATEMENT OF FINDINGS

Harrison alleges that the School Board Accountability Project violated § 13-37-131(1), MCA, which provides:

**Misrepresentation of voting record -- political civil libel.** (1) It is unlawful for a person to misrepresent a candidate's public voting record or any other matter that is relevant to the issues of the campaign with knowledge that the assertion is false or with a reckless disregard of whether or not the assertion is false.

To prove a violation of this statute, it would be necessary to prove that the School Board Accountability Project misrepresented a “matter that is relevant to the issues of the campaign,” and either did so “with knowledge that the assertion is false or with a reckless disregard of whether or not the assertion is false.” The decision in the Matter of the Complaint Against Bradley Molnar and John E. Olsen (April 4, 2006), discussed the standard of proof necessary to establish a violation of § 13-37-131, MCA. The original source of the standard is the decision of the United States Supreme Court in New York Times v. Sullivan, 376 U.S. 254 (1964). To prove that a person acted with “reckless disregard” in violation of the statute, there must be *clear and convincing evidence* that the person who made the representation *subjectively entertained serious doubts* as to the truth of the representation. See Gertz v. Robert Welch, Inc., 418 U.S. 323, 334 n. 6 (1974); and St. Amant v. Thompson, 390 U.S. 727, 732 (1968). The facts established in this case do not support such a finding.

A review of the statements in the flyer about which Harrison complains leads to the conclusion that there is insufficient evidence that the School Board Accountability Project violated the statute. It is significant that the flyer begins with the following lead-in language: “Just this last year, here’s what *your School Board* has done:” The flyer then describes four actions taken by the MCPS Board. Each set of statements is followed by a question regarding Harrison’s alleged actions or failure to act. Because the statements in the flyer focus on actions alleged to have been taken by the School Board, it is difficult to conclude that the flyer misrepresents Harrison’s actions or inaction.

Furthermore, an analysis of the challenged statements in the flyer does not support a conclusion that there are obvious misrepresentations.

#### Closure of Three Schools

As set out in Facts 7 through 11, the time between the proposal to close the three schools and the vote to close the schools was just under seven weeks. While the flyer incorrectly states that the Board's decision to close was made within six weeks of the proposal, that is not a significant deviation from the actual time period. Moreover, as noted above, the statements refer to the Board's actions, not Harrison's. The statement posing questions about Harrison's actions (or in this instance her alleged inaction) regarding long term facilities planning and consideration of alternatives to closure of the schools appear to reflect legitimate subjects for discussion in a campaign, and there are no clear misrepresentations regarding Harrison.

#### Privatization of Two MCPS School Buildings

Facts 12 through 17 describe the statements made in the flyer regarding the privatization of two schools in the district. Again, the statements pertain to alleged actions of the Board, rather than Harrison. Moreover, Harrison does not seriously dispute the flyer's question regarding why she did not urge the administration to pursue other options. While Harrison defended the Board's decisions, she does not disagree with the representation in the flyer that she did not urge the administration to pursue other educational options, because she did not agree with those goals. There are no clear misrepresentations regarding Harrison.

#### Middle Schools Athletic Committee Report

For the most part the flyer accurately describes the Board's actions with respect to recommendations regarding middle school athletics. While the representations that the Board "ignored" the report of the subcommittee, and that the administration "sidelined" the report may constitute hyperbole, those are representations regarding actions of the

Board and the administration, not Harrison. There are no clear misrepresentations in this section of the flyer regarding Harrison.

### Open Meetings Law and MCPS Policy

Facts 23 through 35 set forth a brief history regarding issues relating to contentions that the Board was not complying with the Open Meetings Law. Several MCPS Board trustees raised concerns about insufficient advance notice for matters that were to be discussed at MCPS Board meetings, and related irregularities in the procedures utilized by the MCPS Board to develop a budget for the school district. MTSBA attorney Elizabeth Kaleva responded to several questions from MCPS Board members, emphasizing the importance of providing sufficient advance notice of MCPS Board meetings and urging the MCPS Board to “be careful or it will end up on the losing side of an open meetings lawsuit.”

Ultimately two citizens filed a lawsuit against the school district, Superintendent Jim Clark, and Board Chairperson Harrison, alleging violations of the Open Meetings Law. While Harrison and Clark were later dismissed from the lawsuit, clearly there were serious questions concerning whether the MCPS Board had followed all of the requirements of Montana’s Open Meetings Law.

Facts 36 through 38 describe an allegation that the MCPS Board failed to follow its policy when it decided to sell Roosevelt school. The flyer states that the Board was “charged with not following its own policy,” and that is an accurate statement (see Fact 36). Similar to the other statements in the flyer, these statements pertain to actions or inactions of the Board, not Harrison. The question following these statements asks why Harrison did not “insist” on following the law (the Open Meetings Law) and the Board’s policies (MCPS Policy No. 7251). Read in context, this statement does not constitute a clear misrepresentation pertaining to Harrison’s actions.

Harrison complains that the flyer implies she had more authority than the other voting trustees. Although she only had one vote, as the Board chair Harrison was required to work with the Superintendent to prepare the agenda for Board meetings. As Board chair Harrison was in the best position to request that items be placed on the agenda based on issues brought to her attention by community members. See Facts 2 and 6.

As the Board member who represents the Board to the community, pursuant to MCPS Policy No. 1210, Harrison was also in the best position to seek information from the administration, to bring issues before the Board where appropriate, and to ensure that the Board followed the law and its policies. In that sense, Harrison did have more authority than the other trustees.

In summary, there is insufficient evidence that any of the statements contained in the flyer constitute clear misrepresentations that meet the strict standard of proof established by the United States Supreme Court.

### **CONCLUSION**

Based on the preceding Summary of Facts and Statement of Findings there is insufficient evidence to conclude that the School Board Accountability Project violated Montana campaign finance and practices laws.

Dated this 26th day of February, 2007.



---

Dennis Unsworth  
Commissioner