

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES

In the Matter of the Complaint)	SUMMARY OF FACTS
Against Ravalli County Citizens)	AND
For Free Enterprise)	STATEMENT OF FINDINGS

Russell Lawrence filed a complaint against Ravalli County Citizens for Free Enterprise, a political committee. The complaint alleges the political committee violated § 13-37-210, MCA because its name does not reflect the economic or other special interest of a majority of its contributors.

SUMMARY OF FACTS

1. On April 12, 2006 the Ravalli County Commission passed Resolution 1844, which enacted an interim zoning ordinance capping retail store sizes at 60,000 square feet and establishing standards for design, landscaping, parking, lighting, and signage.

2. Resolution 1844 was passed after Wal-Mart Stores, Inc. (Wal-Mart) had announced plans to build a 154,000 square foot “Supercenter” north of Hamilton. The interim zoning ordinance established by the resolution was to remain in effect for one to two years while the county went through the process of developing county-wide zoning regulations.

3. Following adoption of Resolution 1844 by the County Commission, a group of citizens obtained sufficient signatures to place a measure on the November ballot that would repeal the resolution. The ballot measure, designated R-1-06, ultimately passed in the November, 2006 election, resulting in the repeal of Resolution 1844.

4. A political committee was formed as a ballot issue committee to support passage of R-1-06. The committee filed its Statement of Organization (form C-2) with the office of the Commissioner of Political Practices (Commissioner) on September 27, 2006.

The C-2 lists the name of the committee as “Ravalli County Citizens for Free Enterprise – Repeal 1844” (hereinafter “RCCFE”). The C-2 lists Ramona Wagner as the treasurer, Dallas Erickson as the president, and Jenny Erickson as the secretary. The Ericksons are both residents of Ravalli County. (See Fact 20.) An amended C-2 was filed on September 29, 2006. The amended C-2 contains the same information, except it identifies Jenny Erickson as the treasurer, rather than the secretary. Ramona Wagner is not listed as an officer of the committee on the amended C-2.

5. RCCFE filed its first campaign financial disclosure report (form C-6) on October 21, 2006. The report covers the reporting period from September 26, 2006 to October 21, 2006. The C-6 reports one contribution of \$100,000, listed on the C-6 as received from Wal-Mart on October 16, 2006.

6. The C-6 reports expenditures of \$24,046.62 during the reporting period.

7. Ramona Wagner resides in Missoula and operates a winery with her husband in the Missoula area. At the time, Wagner and her husband also had a consulting business known as Clearweather Enterprises. Wagner was approached by Dallas and Jenny Erickson and asked to provide certain administrative services to RCCFE, including accounting, preparation of campaign finance reports, and placement of advertisements. Wagner was compensated for these services through payments made by RCCFE to Clearweather Enterprises. As described above, Wagner was initially asked to be the committee’s treasurer, and then was told by the Ericksons that Jenny Erickson would be substituted as the committee treasurer.

8. Wagner wrote a \$100 check to RCCFE on September 26, 2006. A notation on the face of the check states “loan to RCCFE.” The check was deposited into RCCFE’s bank account on September 27, 2006. Wagner explained that she loaned the \$100 to RCCFE so the committee could open up the bank account.

9. RCCFE wrote a check for \$100 to Wagner, dated October 17, 2006. A notation on the face of the check states: “Reimbursement to open bank acct.”

10. RCCFE did not report the September 26, 2006 check from Ramona Wagner on any of the C-6 forms that it filed. RCCFE did not report the October 17, 2006 check from RCCFE to Ramona Wagner on any of the C-6 forms that it filed.

11. Christine A. Palin wrote a \$10 check to RCCFE dated October 15, 2006. A notation on the face of the check states: "Contribution."

12. RCCFE has no records disclosing when it received the \$10 check from Palin. RCCFE did not deposit the check from Palin into its bank account until November 3, 2006. (See Facts 17 and 18.)

13. RCCFE did not report the \$10 contribution from Palin on its C-6 for the reporting period from September 26, 2006 to October 21, 2006. RCCFE reported the contribution on its C-6 for the next reporting period (October 22, 2006 to November 22, 2006), when it was listed with seven other contributions less than \$35 each. (See Facts 15-17, below.)

14. Wal-Mart provided a \$100,000 check to RCCFE, dated October 13, 2006. RCCFE deposited the check into its bank account on October 16, 2006. Wal-Mart provided a \$15,000 check to RCCFE in November, which was reported by RCCFE on its second campaign financial disclosure report. (See Facts 5, 15 and 19.)

15. RCCFE filed a C-6 for the reporting period from October 22, 2006 to November 22, 2006 listing the following contributions:

Wal-Mart	\$15,000
Jenny Erickson	10
Dallas Erickson	20
Karen C. Johnson	10
Christine A. Palin	10
Jason Rice	10
Alexandra Morton	10
Donald Morton	10
Karen Thompson	10

The C-6 lists the following occupations for the individual contributors:

Jenny Erickson	Disabled/Retired
Dallas Erickson	Storage Rental, Self-Employed
Karen C. Johnson	Administrative Assistant, Bitterroot Building Assn.
Christine A. Palin	Marketing Assistant, 1 st American Title
Jason Rice	Civil Engineer, Landworks Consulting & Design
Alexandra Morton	Housewife
Donald Morton	Finance, Self-Employed
Karen Thompson	Executive Officer, Bitterroot Building Assn.

16. As noted in Fact 11, the check from Palin was dated October 15, 2006. The check from Jenny Erickson was dated October 26, 2006. The check from Dallas Erickson was dated October 27, 2006. The check from Karen Johnson was dated November 2, 2006. The individual \$10 contributions from Rice, Alexandra Morton, Donald Morton, and Thompson were cash contributions.

17. RCCFE has no records establishing the date or dates on which it received any of the contributions described in this decision.

18. RCCFE deposited the contributions from the individual citizens, described in Facts 15 and 16, into its bank account on November 3, 2006.

19. The \$15,000 check from Wal-Mart was dated November 12, 2006. RCCFE reported that it received the check on November 15, 2006.

20. According to RCCFE's C-6 report, Palin, Johnson, Rice, Thompson, the Ericksons, and the Mortons all list residence addresses in Ravalli County.

21. Wagner is not now, nor was she at any time an employee of Wal-Mart. Wagner did not receive any payment or compensation from Wal-Mart for her activities related to RCCFE. Neither Wagner nor Clearweather Enterprises had a contractual or other business relationship with Wal-Mart. In addition, RCCFE did not have a contractual or business relationship with Wal-Mart.

STATEMENT OF FINDINGS

Naming of Political Committees

Complainant Russell Lawrence alleges RCCFE is not appropriately named under § 13-37-210, MCA, which provides in part as follows:

Naming and labeling of political committees. (1) Any political committee filing a certification and organizational statement pursuant to 13-37-201 shall:

(a) name and identify itself in its organizational statement using a name or phrase:

(i) that clearly identifies the economic or other special interest, if identifiable, of a majority of its contributors; and

(ii) if a majority of its contributors share a common employer, that identifies the employer;

The complaint alleges that RCCFE is improperly named because during the reporting period from September 26, 2006 to October 21, 2006, the committee's C-6 reports only a single contribution -- \$100,000 from Wal-Mart. According to the complaint, Wal-Mart "has a vested interest in opposing" Resolution 1844; therefore the name of the committee opposing the ordinance should have reflected that economic or special interest.

To establish a violation of this section it would be necessary to prove that RCCFE's name did not clearly identify the economic or special interest (if identifiable) of a majority of the *contributors* to RCCFE. The source of the majority of the *contributions* received is not the test for determining whether a violation has occurred. Determination of shared economic or special interest will be based on the "name of the employer" and "occupation" information provided by the contributor and listed in a political committee's C-6 report. (See § 13-37-210, MCA and Commissioner's Opinion Regarding Interpretation and Enforcement of Naming and Labeling Statute, October 22, 1999.)

Although RCCFE's initial C-6 financial disclosure report only disclosed a single \$100,000 contribution from Wal-Mart, RCCFE received one other unreported contribution during the reporting period. Ramona Wagner loaned RCCFE \$100, which was deposited into RCCFE's bank account on September 27, 2006. Even though the loan from Ramona Wagner was never reported by RCCFE, the loan was a contribution. (See §§ 13-1-101(7)(a)(i) and 13-37-229(6), MCA; ARM 44.10.321(1)(a) and 44.10.515.)

Thus, RCCFE actually received two contributions during the first reporting period: a \$100,000 check from Wal-Mart and a \$100 loan from Ramona Wagner. Wal-Mart and

Wagner do not share an economic or special interest (Fact 21); therefore there was no violation of Montana's statute regulating naming and labeling of political committees.

Although I find there was no violation of Montana's naming and labeling statute, this finding is based on the somewhat atypical facts of this case. On its face, RCCFE's first C-6 disclosed only one contribution during the first reporting period – a \$100,000 contribution from Wal-Mart. If that had been the only contribution received by RCCFE during the reporting period, the naming and labeling statute would have required that the committee be named *Wal-Mart For R-1-06* or something comparable, and all campaign material would require a "Paid for by Wal-Mart for R-1-06" disclosure.

It was only through the complaint and investigation process that Ramona Wagner's unreported \$100 loan to the committee was determined to be a second contribution, thereby negating what could have been a significant violation of the naming and labeling statute by RCCFE. With this in mind, my staff and I will re-examine the statutory and rule provisions regarding the status of loans made to campaigns to determine whether any changes or clarification is merited.

Reporting Violations

As described in Facts 8-10, RCCFE did not report the \$100 loan it received from Ramona Wagner as a contribution, which violates § 13-37-229(6), MCA. RCCFE also did not report the repayment of the loan to Wagner as an expenditure, which violates § 13-37-230(1), MCA.

The checks and cash contributions received from the Ericksons, the Mortons, Johnson, Palin, Rice, and Thompson were deposited into RCCFE's bank account on November 3, 2006. See Facts 15 and 18. RCCFE did not maintain records establishing the date or dates on which it received any of the contributions. See Fact 17. This violates § 13-37-208, MCA, which requires a campaign treasurer of a political committee to keep detailed accounts. The statute requires accounts to be current within not more than 10 days after the date of receiving a contribution or making an expenditure, and current as of the fifth day before the due date for filing reports. The failure to record the dates on

which contributions are received makes it impossible for the treasurer to ensure that a committee's accounts are current within the time frames established in the statute – an important consideration for anyone who seeks inspection of the committee's records pursuant to § 13-37-209, MCA.

Moreover, because RCCFE did not maintain complete and accurate records it is not possible at this time to determine whether RCCFE may also have violated § 13-37-207(1), MCA, which requires all funds received by a campaign treasurer to be deposited within five business days following receipt of the funds, and ARM 44.10.511(4), which requires a contribution to be reported “for the reporting period during which it was received.”

The statutory requirement that a campaign treasurer keep detailed and current accounts is at the core of Montana's laws requiring full disclosure of campaign financial activities. Montana's campaign finance and practices laws were extensively revised in 1975, in the wake of abuses of the political process that came to light during the Watergate scandal. Section 1 of Chapter 480, Laws of 1975, states: “It is the purpose of this act to establish clear and consistent requirements for the full disclosure and reporting of the sources and disposition of funds used to support or oppose candidates, political committees, or issues” The failure to employ basic accounting principals such as recording the dates on which contributions are received raises serious questions about the entire record-keeping process maintained by RCCFE.

CONCLUSION

Based on the preceding Summary of Facts and Statement of Findings there is insufficient evidence to conclude that RCCFE violated § 13-37-210, MCA. There is, however, substantial evidence to conclude that RCCFE violated the reporting and records maintenance provisions of Montana law, as discussed above.

Dated this 16th day of October, 2008.



Dennis Unsworth
Commissioner of Political Practices