

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES

IN THE MATTER OF THE COMPLAINT
AGAINST
Project 94, HEAL Montana,
Refiled Complaint

SUMMARY OF FACTS
AND
STATEMENT OF FINDINGS

I. Introduction

Kelly Addy, Chairman of the Montana Democratic Party, originally filed a complaint on August 11, 1994, alleging that "Project 94, HEAL Montana" of Great Falls (hereinafter "Project 94") violated Montana's campaign finance laws. I issued a Summary of Facts and Statement of Findings concluding that Project 94 had not violated Montana's campaign finance laws at 10:30 a.m. on Friday, September 30, 1994 (hereinafter "Part I Facts and Findings"). Approximately four hours after issuing the Part I Facts and Findings, the Montana Democratic Party refiled its complaint against Project 94. The September 30, 1994 complaint (hereinafter "Part II complaint") contains an affidavit from Bill Lombardi, an employee of Democrat State Auditor Mark O'Keefe. Lombardi alleges, in pertinent part, that he is not a member of Project 94 and has never paid any membership dues to Project 94. Lombardi alleges that he received the Project 94 July mailing containing the solicitation and fund-raising literature from Republican State Senate candidate Tom Connor. The Part II complaint alleges that Project 94 violated Montana's campaign finance laws by sending Republican State Senate candidate Tom Connor's solicitation to nonmember Lombardi.

II. Summary of Facts

1. Lombardi initially contacted Project 94 and requested information about Project 94 in February or March of 1994. Lombardi initially gave his address as P. O. Box 4009, Helena, MT 59604 and a phone number of 444-2495. Lombardi acknowledged during his initial contact with Angela Lanning, Project 94's Administrator, that he was calling from a state office but Lombardi did not indicate that he was employed by State Auditor Mark O'Keefe. When Lombardi was asked if he wanted to be put on the mailing list to receive future literature, Lombardi said yes.

2. Project 94 mailed Lombardi an introduction letter and several other Project 94 documents in July of 1994.

3. Lombardi phoned the Project 94 offices again on August 11, 1994. Lombardi gave Lanning a new address (500 North Benton, Helena, MT 59601) for future Project 94 mailings. Lombardi indicated that he had received Project 94's introduction letter but had not received the July newsletter. Lombardi requested that a copy of the July newsletter be sent to him at the new address.

4. Lombardi's August 11, 1994 phone call was made on the same date that Kelly Addy filed the Part I complaint against Project 94.

5. Lombardi has acknowledged that his initial request for information from Project 94 was made as part of his duty to monitor health care issues for State Auditor Mark O'Keefe. Lombardi also acknowledges that 500 North Benton, Helena, MT is his home address.

6. Project 94 is an informal organization and has no definitive requirements for membership. Any individual who requests information or literature about Project 94 is automatically added to the membership mailing list. Requests for information can be made by phone or by signing a "sign-up sheet" at Project 94 speaking engagements or other events. The membership mailing list consists of those who have paid dues and/or requested information about Project 94. A person may request that his or her name be removed from the Project 94 membership mailing list at any time.

7. Lombardi was included in the Project 94 membership mailing list because Lombardi had requested information about Project 94, including a specific request for the July newsletter.

8. Project 94 maintains a separate computer list for member mailings. Other lists, such as the media lists for press releases, are maintained separate from the membership list (see Fact 7 of Part I Facts and Findings).

III. Statement of Findings

The Part I Facts and Findings in this matter are based on the narrow exemption for membership mailings under Montana's campaign finance laws (sections 13-1-101(3)(b)(iii) and (7)(b)(iv), MCA). The Part II complaint urges me to adopt a restrictive definition of membership which would require an organization to register as a political committee if it mailed political literature to anyone other than its dues-paying members. I must respectfully decline the invitation to adopt such a restrictive definition of membership.

Project 94 apparently has two membership groups. An individual or business can become a member by paying dues or by requesting information about Project 94. Both membership groups are included in the membership mailing list. In either instance, membership requires the affirmative act of paying dues or soliciting information from Project 94. Lombardi expressly requested that Project 94 send him the organization's mailings, including the July newsletter. Although Lombardi does not consider himself to be a member of Project 94, the organization considered Lombardi to be a member because of his request for information. The Project 94 membership mailing list reviewed during the Part I complaint investigation contained Lombardi's name and address. (That investigation was completed before Project 94 or this office was aware that Lombardi was concerned about Project 94's activities.) Lombardi would not have received any Project 94 information, including the July newsletter, had he not requested that such literature be sent to him.

My investigation does not indicate that Project 94's membership mailings are sent unsolicited to the public or the media. Membership mailings are limited to those who have undertaken the affirmative act of paying membership dues or requesting that Project 94 information be sent to them. A separate media list is maintained for Project 94's press releases. Project 94 does not send its membership mailings to the organizations on the media list unless a media organization requests copies of such mailings. I reiterate the admonition contained in my Part I Facts and Findings. If Project 94 mails a candidate solicitation to persons other than its dues-paying

members or persons who have requested Project 94 literature, then it must register as a political committee.

Based on the preceding, Project 94's mailing to Lombardi does not violate the membership exemption under Montana's campaign finance laws.

DATED this 14th day of October, 1994.



Ed Argenbright, Ed.D.
Commissioner

Copy: Kelly Addy
Paul Gorsuch, M.D.
Brad Martin