

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Maxwell v. York No. COPP 2015-CFP-019	DISMISSAL OF COMPLAINT AS FRIVOLOUS
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On November 16, 2015, Jason Maxwell, a resident of Missoula, Montana, filed a complaint alleging various campaign practice violations against: KC York, a resident of Hamilton, Montana; Trap Free Montana, a Montana ballot committee; and Mary Baker an employee of the Office of the Commissioner of Political Practices (COPP). While not named, Mr. Maxwell also made allegations that Ravalli Early Head Start engaged in improper political activities.

ISSUES ADDRESSED BY THIS FINAL DECISION

The campaign finance issues addressed by this Decision are recusal, allowed non-profit activity, and frivolous complaints.

DISCUSSION

The Complaint makes several sweeping allegations based on a very limited set of facts. Each allegation is discussed separately, below.

1. Recusal is Not Required and Is Not Voluntarily Made

The complaint demands recusal citing to the mandatory recusal requirements of §13-37-111(4), MCA. The Commissioner, below, also considers discretionary recusal under the requirements of §13-37-111(3), MCA. The findings of fact necessary for discussion of the recusal issue are as follows:

Finding of Fact No. 1: The complaint addresses 2014 and 2015 campaign finance reports (Form C-6) filed with the COPP by a ballot committee called Trap Free Montana Public Lands. (COPP records).

Finding of Fact No. 2: In 2014/15 Trap Free Montana Public Lands filed a total of 43 pages of C-6 forms with the COPP. The 43 pages are available for viewing on the COPP website. (COPP records).

Finding of Fact No. 3: Each of the 43 pages of those certain C-6 forms shows a black mark on the margin of the form masking certain information. (COPP records).

Finding of Fact No. 4: The C-6 forms were fax filed with the COPP. The information masked by the mark was the phone number of origin of the fax filing. (Mary Baker notes, COPP records).

Finding of Fact No. 5: The mark masking the incoming phone number was made by Mary Baker, the COPP Director of Candidate and Committee Services or employees under her supervision. (Mary Baker, COPP records).

Finding of Fact No. 6: The Commissioner had no involvement in or knowledge of Mary Baker's actions until the Complaint was filed in this Matter. (COPP records).

The Complaint claims mandatory recusal under §13-37-111(4) MCA.

The complaint, however, does not name Jonathan Motl as a party and there are no facts showing that Jonathan Motl had any involvement in the information masking addressed by the Complaint (FOF Nos. 1-6).

The language of §13-37-111(4), MCA applies mandatory recusal only to those complaints naming “the commissioner” and thus mandatory recusal is not necessary in this Matter.¹ The Commissioner, during confirmation and in *Ponte v. Gallik*, COPP-2014-CFP-009,² has stated his strong preference to resolve complaints by use of in-house counsel. Referring complaints to outside counsel slows down decision-making and costs the agency (and therefore the people of Montana) money, a result that the Commissioner seeks to avoid as the agency’s budget is limited. The Commissioner rejects mandatory recusal in this Matter for the reasons stated.

The Commissioner next examines recusal under §13-37-111(3), MCA, the discretionary recusal statute: “If the commissioner determines that considering a matter would give rise to appearance of impropriety or a conflict of interest the commissioner is recused....” This recusal determination is a matter of discretion that may lawfully be exercised by the Commissioner. (See, *Powell v. Motl*, OP 14-0711 and OP 14-0664, *Montana Supreme Court*; §13-37-111(3), MCA).

Discretionary recusal could be argued in this Matter because a COPP staffer is involved and because the Commissioner, while in private

¹ This Commissioner referred a prior Matter, *Ponte v. Gallik*, COPP-2014-CFP-009 to the Attorney General, as required by §13-37-111(5), MCA, because a former Commissioner (David Gallik) was named in the complaint. There is no Commissioner, however, named in this Complaint and this Decision determines that there is no possible basis to name a Commissioner.

² *Ponte v. Gallik* was returned by the Attorney General to the Commissioner. In seeking return the Commissioner “specified that for budget reasons the COPP in-house staff would prefer to keep and decide the complaint rather than undergo the cost of outside counsel.”

practice as an attorney, represented groups or individuals with ties to the Trap Free Montana ballot committee. This Commissioner, however, again states that the slower and more costly method of assigning complaints to counsel outside of the COPP will not be used unless the appearance of impropriety meets a very high bar.³ As applied to this Matter, the remoteness of the former client contact and the shallowness of the complaint against Mary Baker (see discussion below) do not require discretionary recusal and the Commissioner declines to so recuse.

2. Any Complaint Against Ravalli Early Head Start Is Dismissed

The Complaint does not name Ravalli Early Head Start. The Complaint, however, asserts that Ravalli Early Head Start is a non-profit entity and then alleges that “[n]on profit entities are expressly prohibited by law from engaging in political campaigns or being involved in political activities.”

Montana campaign practice law offers no support for an allegation of prohibition of corporate activity in ballot issue campaigns. Corporations, whether profit or non-profit, are free to contribute and spend in whatever amount they wish in regard to ballot initiatives.⁴ If the Complaint is attempting or intending to make a tax-related argument, that argument is misplaced as tax status issues are determined by the Internal Revenue Service

³ See *Greenwood v. MSWD*, COPP-2014-CFP-063 for a further discussion of discretionary recusal.

⁴ Corporations are prohibited from contributing to the campaigns of candidates for public office in Montana (§13-35-227 MCA). Corporations, however, may make unlimited independent expenditures in candidate related campaigns. *Citizens United v. Fed. Election Comm.*, 130 S.Ct. 876 (2010).

and are not a factor in Montana's campaign practice determinations. §13-37-233, MCA.

To any extent that the Complaint implies or intends a campaign practice complaint or slur against Ravalli Early Head Start, the same is dismissed as without merit and frivolous. The standards of a frivolous complaint are set out in *Landsgaard v. Peterson*, No. COPP-2014-CFP-008, and this allegation is dismissed as frivolous under those standards and because this allegation lacks any support in law.

3. Any Complaint Against KC York is Dismissed

The Complaint alleges that KC York violated Montana's campaign practice laws by either using "public time, facilities or equipment...." to promote a ballot issue or by failing to report certain campaign expenditures.⁵ The facts necessary for a determination of these allegations are as follows:

Finding of Fact No. 7: Ravalli Early Head Start is a not-for-profit corporation. (Ravalli Early Head Start website).

Finding of Fact No. 8: KC York is an employee of Ravalli Early Head Start. (Baker notes.)

Finding of Fact No. 9: KC York fax filed 43 pages of C-6 reports using a fax machine at her place of employment, Ravalli Early Head Start. (Baker notes.)

Finding of Fact No. 10: KC York reimbursed her employer for the cost of faxing the 43 pages of C-6 reports. (Baker notes.)

Finding of Fact No. 11: The C-6 reports filed by KC York did not report or disclose the funds she spent to pay for the cost of fax filing the C-6 reports. (COPP records).

⁵ The complaint was filed as a campaign practice complaint, not an ethics complaint. Accordingly, this allegation is interpreted as triggering a campaign practice review under §13-37-226, MCA.

The Complaint acknowledges that “Ravalli Early Head Start is a not-for-profit corporation.” (FOF No. 7.) The Complaint asserts that KC York’s employment with Ravalli Early Head Start, by itself, can be construed to make her a “public employee” under §2-2-102(7), MCA. There is no support in law for this allegation as a non-profit employee does not fall under the definition of public employee. *Id.* Further, there is no “employment” connection between the act complained of (use of a fax machine) and KC York’s day to day work for Ravalli Early Head Start.

The only connection is that of equipment use and in that regard KC York engaged in an act of citizenship in a completely appropriate manner by making a reimbursed use of a fax machine at a non-profit entity. This part of the complaint is dismissed as frivolous under *Landsgaard v. Peterson*, Indicia No. 1 (a demand for restriction on base level participation) as well as the general principles of a frivolous claim.

The Complaint next asserts that KC York failed to report the cost of fax filing 43 pages of documents. The Commissioner confirmed that this cost was not reported. (FOF No. 11.) However, this failure to report is of no consequence because a minimal expenditure (less than \$10.00) by one individual in a ballot issue campaign does not lead to a campaign practice violation.

The COPP has long held that a minimal number of fax messages sent by ballot proponents, particularly those serving as a volunteer, are considered *de minimis* such that they need not be reported or disclosed. (2002 Settlement

Agreement *Griffen v. MontPIRG*, Commissioner Vaughey, posted on COPP Website with August 13, 2002 Decision). Later, the Ninth Circuit further instructed that limited use of staff and copying expenditures by a party involved in a ballot issue campaign must be excused as *de minimis*. *Canyon Ferry Rd. Baptist Church of E. Helena v. Unsworth*, 556 F. 3d 1021, 1028-1029 (9th Cir. 2009). In the 2014 Decision of *Lansgaard v. Peterson*, this Commissioner recognized that “de minimis violations are not favored” as Indicia No. 4 of a frivolous complaint.

With the above in mind, the Commissioner determines that this allegation concerns an activity (minimal use of a fax machine) that had been long determined by the COPP to be insufficient to trigger a campaign practice violation. The failure to report allegation made against KC York is dismissed as frivolous.

4. Any Complaint Against Mary Baker/COPP is Dismissed

The Complaint alleges that Mary Baker failed to properly maintain public records because she marked out the phone number of origin on the C-6 forms filed by Trap Free Montana. The following factual findings are necessary to determine this allegation:

Finding of Fact No. 12: KC York requested that Mary Baker remove the fax number of origin from the C-6 filings made by KC York. (Baker notes).

Finding of Fact No. 13: KC York explained that she wanted the number removed because she perceived that she was being harassed by an individual named Jason Maxwell and she did not want Jason Maxwell to know of her place of employment. (Baker notes).

Finding of Fact No. 14: Mary Baker accepted KC York's explanation and removed the phone number showing the place of origin of the fax filing. (Baker notes.)

Jason Maxwell, the person KC York sought privacy protection from, filed the complaint in this Matter. Mr. Maxwell's actions in October of 2015 alone demonstrate why KC York correctly sought protection from his actions. In October of 2015 Mr. Maxwell: 1) Posted a profile photo on Facebook showing himself dressed in camouflage clothes and holding a handgun in the mouth of a wolfish appearing animal held in an arm lock by Mr. Maxwell; 2) Informed KC York that he might buy land next to "her place"; and 3) Did exactly what KC York feared, showed up at her place of employment. (Commissioner's records). This latest burst of action by Mr. Maxwell followed earlier emails accusing KC York of tax fraud and identifying himself as "Sgt. Jason Maxell - USMC."⁶ Mr. Maxwell's rhetoric was strong enough to bring out email chatter among trappers with rhetoric such as "somebody's gonna end up getting hurt!! Or disappearing!!" (Commissioner's records).

The COPP has long recognized its obligation to consider both privacy and public interests in regard to information filed with the COPP. The COPP's Office Management Policy 2.2 (adopted in April of 2007) observes that the COPP "is constitutionally obligated to balance the public's right to know with individual privacy rights under Article II, Sections 9 and 10 of the Montana Constitution." In this Matter KC York asserted a right of privacy in the fax number she used to file the C-6 reports of Trap Free Public Lands. KC York

⁶ These emails were sent to the COPP by KC York to demonstrate why she wanted to keep her place of employment information confidential.

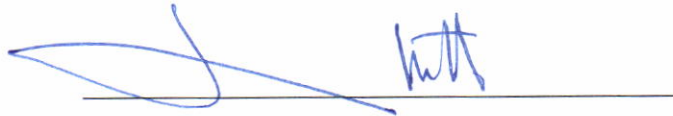
articulated a sound reason for asserting privacy. The Commissioner determines that Mary Baker acted appropriately and consistent with COPP policy in redacting the phone number from viewing by the public, including Mr. Maxwell. The complaint against Baker is dismissed in full.

Summary

The Commissioner has read the Articles of Purpose of the Montana Trappers Association. It sets out principles including "...to practice the ethics of true sportsmanship toward others" and "to cultivate a feeling of goodwill and mutual understanding..." KC York likely has a different view of how to use and appreciate Montana's outdoor treasures than do most MTA members. Ms. York is entitled to advocate for her view, just as the MTA members are entitled to advocate for theirs. It seems to this Commissioner that the true test of any citizen is whether they act to protect and afford the full rights of participation to all, including those with whom they disagree. Mr. Maxwell, as a Vice-President of the Montana Trappers Association, is failing that test, as demonstrated by the dismissal of this Complaint.

The Complaint is dismissed as frivolous for the reasons set out above.

DATED this 23rd day of November, 2015.



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