

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES

IN THE MATTER OF THE) SUMMARY OF FACTS AND
COMPLAINT AGAINST) STATEMENT OF FINDINGS
Project 94 HEAL Montana)

Kelly Addy, Chairman of the Montana Democratic Party, filed a complaint with this office on August 11, 1994, alleging that Project 94 HEAL Montana (hereinafter "Project 94") violated Montana's campaign finance laws. Specifically, Addy alleges Project 94 violated political committee registration requirements when it included a solicitation packet from Tom Connor, Republican candidate for Senate District #21, in Project 94's July newsletter mailing to its members.

Section 13-37-201, Montana Code Annotated (MCA), requires that a political committee appoint a campaign treasurer and certify the appointment of a treasurer to the Commissioner of Political Practices ". . . within 5 days after it makes an expenditure or authorizes another person to make an expenditure on its behalf, whichever occurs first."

Addy alleges that "it is clear that the organization has already made a contribution to a partisan candidate for the legislature and has indicated that it intends to regularly contribute to candidates for the purposes of influencing state elections." This action, he contends, requires Project 94 to register as a political committee. Section 13-1-101(12), MCA, defines a political committee as

... a combination of two or more individuals or a person other than an individual who makes a contribution or expenditure:

- (a) to support or oppose a candidate or a committee organized to support or oppose a candidate or a petition for nomination; or
- (b) to support or oppose a ballot issue or a committee organized to support or oppose a ballot issue; or
- (c) as an earmarked contribution.

Addy also alleges that Project 94 may have made an illegal contribution using corporate funds.

Section 13-35-227, MCA, prohibits a corporation from making ". . . a contribution or an expenditure in connection with a candidate or a political committee which supports or opposes a candidate or a political party."

The alleged violations were investigated between August 12, 1994 and September 13, 1994; the results follow.

SUMMARY OF FACTS

1. Project 94 is an informal organization made up of members who are interested in health care reform. Project 94 conducts research and prepares educational materials on this issue.

2. The current name used by the group is "Project HEAL Montana (Project 94)." The organization is guided by an 18-member steering committee with Dr. Paul Gorsuch serving as the Director. Angela Lanning is the day-to-day administrator. Project 94 has no operating by-laws. Members are all individuals, some of whom come from the ranks of small or large businesses. Republican Representative Dick Simpkins is also a member of the steering committee.

3. The name "Project 94" was registered with the Secretary of State as an assumed business name on October 26, 1993, by Angela Lanning.

4. Project 94 is not registered as a political committee.

5. A financial record review reveals that Project 94 made no monetary contributions to any candidates or political committees. Project 94 did pursue developing and qualifying a ballot issue; however, this effort was abandoned in June 1994 because the language necessary for approval by the Secretary of State was unacceptable to Project 94.

6. Project 94 is not registered as a ballot issue committee.

7. Project 94 activities include appearances at various meetings dealing with health care issues, collection of a library of research materials, dissemination efforts, fundraising mailings, an office with an 800 number and staff to respond to questions, and publication of a member newsletter. A computer is used to maintain a separate list for member mailings. Other lists, such as the media list for press releases, are maintained separate from the membership list.

8. Three corporate checks were used to pay the Project 94 membership fees for three individuals.

9. The July mailing of the Project 94 newsletter to members included a letter and envelope (Attachments A and B) from Tom Connor soliciting support for his campaign as a Republican candidate for Senate District #21. Project 94's policy is that any candidate, regardless of party affiliation, who supports the ideas of health care reform as endorsed by Project 94, may put an enclosure in the Project 94 newsletter. Enclosures are limited to one per newsletter to keep the postage costs within the amount allotted without incurring additional postage due to increased

weight. The Project 94 business bulk permit allows up to 3.3 ounces without additional postage.

10. The July mailing of the Project 94 newsletter, that included the Tom Connor solicitation, was mailed to Project 94 members only.

11. Project 94 has invited Tom Connor's Democratic opponent, Senator Eve Franklin, to submit an article containing her views on health care for inclusion in the Project 94 newsletter. Senator Franklin has not, as of this date, submitted an article for inclusion in the Project 94 newsletter.

12. Dr. Gorsuch and Angela Lanning both deny that Project 94 engaged in candidate recruitment. Lanning is alleged to have recruited Kris Mendenhall, a Republican candidate for the House of Representatives. Mendenhall denies being recruited by either Lanning or the Project 94 organization. Mendenhall stated that her husband, a member of the Project 94 steering committee, influenced her decision but that it was not Project 94's effort that made her decide to seek a House seat.

13. Christian Mackay indicated that he did hear the conversation between Jim Messina and Angela Lanning about the activities of Project 94. Mackay remembers Lanning saying that Project 94 was recruiting candidates and that Lanning had recruited Mendenhall, a friend and the wife of a doctor involved with Project 94. Mackay stated that the tenor of the conversation was a friendly discussion among three young people with differing political views.

14. A review of the financial records of Project 94 disclosed no monetary expenditures to candidates or political committees.

STATEMENT OF FINDINGS

The central question is whether Project 94 is required to register as a political committee and abide by the statutes and rules pertaining to political practices.

Project 94 is a voluntary membership organization dedicated to health care issues. Members are provided information about health care proposals and are encouraged to promote the goals of Project 94 within their communities and to educate others about the viability of Project 94's policies. Project 94 maintains that it is nonpartisan because its membership includes people from both major political parties. There is no evidence that Project 94 has made monetary contributions or expenditures to candidates or political committees.

Project 94 did work to qualify an initiative, CI-70, for the November 1994 ballot. CI-70 would have guaranteed Montanans a choice of doctors. Project 94's ballot issue effort was terminated prior to the approval of the final wording of the initiative by the Secretary of State. Since Project 94's wording of the statewide issue was never approved by the Secretary of State, it did not achieve the threshold of becoming a ballot issue.

Section 13-1-101(10), MCA, defines the term "issue" or "ballot issue" as:

. . . a proposal submitted to the people at an election for their approval or rejection, including but not limited to initiatives, referenda, proposed constitutional amendments, recall questions, school levy questions, bond issue questions, or a ballot question. For the purposes of chapters 35, 36 or 37, an issue becomes a 'ballot issue' upon certification by the proper official that the legal procedure necessary for its qualification and placement

upon the ballot has been completed, except that a statewide issue becomes an 'issue' upon approval by the secretary of state of the form of the petition or referral.

Project 94 would have been required to register as a ballot issue committee if the language of CI-70 had been approved by the Montana Secretary of State.

Did Project 94 make an in-kind contribution to the campaign of Tom Connor by including Mr. Connor's solicitation materials in the Project 94 newsletter mailing?

Section 13-1-101(3)(b)(iii), MCA, states that "contribution" does not mean:

...the cost of any communication by any membership organization or corporation to its members or stockholders or employees, as long as the organization is not a primary political committee; . . .

The July mailing of the Project 94 newsletter was a communication by a membership organization to its members and is not a contribution under Montana's campaign finance laws unless Project 94 is a primary political committee.

If the inclusion of candidate Connor's solicitation in the Project 94 newsletter mailing was not a contribution, was it an expenditure subject to regulation under Montana's campaign finance laws?

Section 13-1-101(7)(b)(iv), MCA, states that "expenditure" does not mean:

... the cost of any communication by any membership organization or corporation to its members or stockholders or employees, as long as the organization is not a primary political committee.

If the Project 94 newsletter mailing was sent to members only, the inclusion of candidate Connor's solicitation is not an expenditure under Montana's campaign finance laws unless Project 94 is a primary political committee.

The term "primary political committee" does not appear in the definition section of Montana's campaign finance laws (13-1-101, MCA). The term "political committee" is defined but provides no guidance as to what constitutes a "primary political committee." It is obvious that to be a political committee two or more individuals or a person other than an individual must make a contribution or expenditure to support or oppose a candidate or ballot issue. The preceding analysis establishes that Project 94 did not make a contribution or expenditure because communications with the members of a membership organization are exempt under sections 13-1-101(3)(b)(iii) and 7(b)(iv), MCA.

Is it possible for an organization to become a "primary political committee" even though it did not make a contribution or expenditure?

Rule 44.10.327, Administrative Rules of Montana (ARM) defines three types of political committees. This rule requires that the primary purpose of a political committee, and hence, its proper classification, will be determined by evaluating such facts as the allocation of budget, staff activities and the organization's purpose or goals (44.10.327(3), ARM). Using a "primary purpose" analysis leads to the conclusion that Project 94 is not a primary political committee.

Project 94 cannot be classified as a principal campaign committee or an independent committee because Project 94 was not organized to support or oppose a particular candidate or various candidates "over a continuing period of time." (44.10.327(2)(a) and (b), ARM).

An "incidental committee" is defined in 44.10.327(2)(c), ARM, as:

an independent committee which is not organized or maintained for the primary purpose of influencing elections but which may incidentally become a political committee by reason of making a contribution or expenditure. . .

As stated previously, Project 94 cannot be an incidental committee because its communications with its membership are not contributions or expenditures under applicable law. It appears that Project 94 can only be a primary political committee if its primary purpose is to influence elections regardless of whether it has made a contribution or an expenditure.

Project 94 is concerned with the single issue of health care and stresses an educational and research mission to influence public policy. Although Project 94 is interested in the positions of legislative candidates, Dr. Gorsuch, Ms. Lanning and candidate Mendenhall deny that any candidate recruitment was undertaken by the organization. One individual member of the group, Dr. Jim Mendenhall, husband of candidate Kris Mendenhall, did influence his wife's decision to become a candidate. Project 94's resources are being spent on research and analysis of health care issues. Absent some formal evidence that the organization officially and systematically undertook a coordinated effort to recruit candidates, there is insufficient evidence to support a finding that Project 94 is a primary political committee.

These findings are consistent with the opinion of former Commissioner Dolores Colburg in her February 4, 1988 letter to the Montana Education Association (MEA). (Attachment C) The MEA asked whether it would be permissible for MEA to copy and distribute to its membership, at MEA's expense, a video produced by the Nancy

Keenan campaign committee. Keenan was a candidate for Superintendent of Public Instruction in 1988 and MEA's political action committee had already made the maximum contribution to the Keenan campaign. Commissioner Colburg concluded that MEA could copy and distribute the video to its membership without violating applicable campaign finance laws under the exemptions in sections 13-1-101(3)(b)(iii) and (7)(b)(iv), MCA.

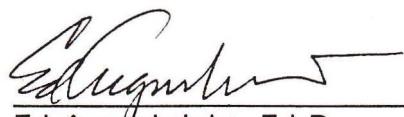
It is important to note that the exemption for communications with members of a membership organization was created by the Montana Legislature, apparently recognizing that the First Amendment protects political association as well as political expression (*Buckley v. Valeo*, 424 U.S. 1, 15, 39-59 (1976)). This does not mean that the exemption for communications with members of a membership organization is all-encompassing. Such communications must be limited to members only. If Project 94 mails a candidate solicitation to persons other than its members, then it must register as a political committee. If Project 94 officially and formally engages in candidate recruitment or qualifies a ballot issue for consideration by the electorate, then it must register as a political committee.

Addy also alleges that Project 94 may have made an illegal corporate contribution by including candidate Connor's solicitation in its newsletter mailing to members. The membership fees of three members of Project 94 were paid by corporations; however, the preceding portions of these findings have established that the cost of communicating with an organization's members is not a contribution or expenditure under Montana's campaign finance laws.

Based on these facts and findings, I conclude that Project 94 is not required to register as a political committee at this time.

No action against Project 94 is contemplated based on the evidence available at this time.

DATED this 30th day of September, 1994.



Ed Argenbright, Ed.D.
Commissioner of Political Practices