

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES

In the Matter of the Complaint)
against the Committee to Defend)
First Amendment Rights/Against)
I-125.)

SUMMARY OF FACTS AND STATEMENT OF FINDINGS

On September 27, 1996, Jonathan Motl, on behalf of Common Cause of Montana, filed a complaint against the the Committee to Defend First Amendment Rights/Against I-125 (hereinafter "the Committee"). The complaint alleges that the Committee failed to properly report its contributions and expenditures and failed to properly name the Committee as required by law.

SUMMARY OF FACTS

1. Common Causes's complaint states that the Committee failed to report a \$20,000 contribution from the Montana Bankers Association as described in an August 23, 1996 memorandum from the Association's CEO to the Montana Society of Association Executives. Common Cause alleges that the Committee's first disclosure report on September 5, 1996 shows a total of \$4,040 of contributions, including in-kind contributions.

2. Common Cause alleges the Committee failed to properly report several expenditures in its September 5, 1996 report. Mr. Motl notes that the Committee reported no expenditures even though the Committee had a post office box, telephone number, fax number and an Executive Director no later than August 28, 1996.

Exhibit 2 attached to the complaint is a packet mailed to State Auditor Mark O'Keefe by the Committee complete with an envelope postmarked August 28, 1996. The August 28, 1996 packet includes information allegedly paid for by the Committee to Defend First Amendment Rights/Against I-125 and the envelope shows a post office meter number.

3. Common Cause alleges the Committee failed to report payments made to pollster Mark Nelson of Salem, Oregon, for an appearance on behalf of the Committee made in Helena, Montana, on September 6, 1996.

4. Common Cause alleges that the Committee failed to report a September 13, 1996 mass mailing of a three-ring binder of materials which includes a legal memorandum from Helena attorney, Page Dringman. Ms. Dringman gave a preliminary report of her work to the September 6 meeting of the Committee at the Colonial.

5. Common Cause also alleged the Committee failed to report payments made to Bill Leary, Executive Director of the Committee, for an appearance on a radio talk show in Missoula on September 24, 1996.

6. Mr. Motl inspected the books of the Committee to Defend First Amendment Rights/Against I-125 on October 1, 1996. Bill Leary, the Committee's Executive Director, agreed to make all of the Committee's records available to Mr. Motl and he was given free access to those records.

7. Mr. Motl submitted a letter to the Commissioner on October 2, 1996 updating his complaint against the Committee. In

that letter, he stated that after meeting with Mr. Leary, Mr. Motl believes that Mr. Leary did not understand the requirements of Montana's reporting law and that the error in reporting was not deliberate on Mr. Leary's part. Accordingly, Mr. Motl requests that if the Commissioner finds a violation occurred, the Commissioner simply direct Mr. Leary to keep the books current in the future. Mr. Motl does not believe a fine should be assessed.

8. Common Cause alleges that the Committee should have reported an \$8,000 obligation to Mark Nelson for polling work because the agreement was made before the end of the September 5, 1996 reporting period.

9. Common Cause alleges that a bill from Sage Advertising for telephone, fax and office rental should have been reported because the bill was dated before September 5, 1996.

10. The Commissioner and his Administrative Officer met with Bill Leary and the Committee's accountant, Gary Carlson, on October 2, 1996. The Committee made its records available to the Commissioner.

11. Bill Leary was hired to be the Committee's Executive Director on or about August 20, 1996. A "steering committee" already existed; the primary organizers of the committee were John Cadby of the Montana Bankers Association and Bob Henkel of Sage Advertising. It was agreed that Mr. Leary would be paid \$5,000 for his services as Executive Director but that he would not be paid until after the November election. The agreement to pay Mr. Leary

\$5,000 for services rendered was not reported as a Committee debt on the September 5, 1996 report.

12. The Committee's offices are located in space owned by Sage Advertising. The post office box for the Committee is the same post office box as Sage Advertising. One phone line is dedicated to the Committee's activities and long distance telephone calls are billed to the Committee. Rent for the Committee's office space was reported as an in-kind contribution of \$164.44 from Sage Advertising on the September 5, 1996 report. Telephone and copying costs payable to Sage Advertising had not been billed to the Committee as of September 5, 1996 and no such debt was reported.

13. The August 28, 1996 mailing referenced in Common Cause's complaint was reported as an in-kind contribution by the Montana Bankers Association of \$875.46 on the Committee's September 5, 1996 report.

14. Mark Nelson had been retained by Bob Henkel to conduct a poll and perform other services before Mr. Leary became Executive Director on August 20, 1996. The agreement between Mr. Henkel and Mr. Nelson was that Mr. Nelson would be paid \$8,000 for his services. The agreement to provide such services was made before the September 5, 1996 reporting deadline, however, it was not reported as a debt. The Committee reimbursed Sage Advertising for the \$8,000 paid to Mr. Nelson on September 26, 1996.

15. Legal services provided by Page Dringman were agreed to by Bill Leary on behalf of the Committee on August 29, 1996. Mr. Leary authorized Ms. Dringman to provide the services without

specifying an hourly fee or a total fee to be paid. Ms. Dringman has not submitted a bill for legal services as of this date. Mr. Leary expects that Ms. Dringman's bill for legal services will be received during the early part of October. The Committee will pay Ms. Dringman's bill for legal services. No estimated debt was reported on the September 5, 1996 report.

16. The Montana Bankers Association had pledged to contribute \$20,000 to the Committee before September 5, 1996. \$10,000 of that \$20,000 contribution was paid on September 16, 1996. The remaining \$10,000 will be paid at a later date. The Committee's September 5, 1996 report properly reflected the \$1,000 cash contribution and \$875.46 in-kind contribution made by the Montana Bankers Association before September 5, 1996.

17. The Committee's accountant, Gary Carlson, has been making deposits for the Committee even though he is not the treasurer or deputy treasurer for the Committee. Bill Leary has been signing checks for the Committee even though he is not the Committee's treasurer or deputy treasurer. Mr. Leary registered as a deputy treasurer for the Committee on October 2, 1996.

18. The Committee had the following five contributors as of September 5, 1996:

Bankserv	\$ 1,874.56
John R. Daly, Inc.	500.00
Montana Contractors Association	500.00
Montana Independent Bankers	1,000.00
Sage Advertising	164.44

19. Common Cause alleges the Committee is improperly named because all of the contributors as of October 1, 1996 have strong

business ties and are businesses or business associations. Mr. Motl believes that the Committee's name should be changed to "Montana Businesses to Defend First Amendment Rights/Against I-125."

STATEMENT OF FINDINGS

A. Reporting of Contributions and Expenditures

The following requirements apply to the reporting of contributions and expenditures by the Committee to Defend First Amendment Rights. Section 13-37-228(1), MCA, requires that the initial report of a political committee cover all contributions and expenditures prior to the time that the political committee is formed until the fifth day before the date of filing the initial report. The Committee was required to include in its September 10, 1996 report all contributions received or expenditures made as of September 5, 1996.

Sections 13-37-229 and 13-37-230, MCA, specify what must be reported as contributions and expenditures in each report. It is clear that any contribution actually received or expenditure made on or before September 5, 1996 should have been reported. In addition, section 13-37-230(6), MCA, requires the amount and nature of debts and obligations owed by a political committee to be reported in the form required by the Commissioner.

The Administrative Rules of Montana (ARM) provide that an expenditure is made on the date payment is made. Section 44.10.531(1)(ARM). The rules also provide that pursuant to section 13-37-230(6), each report shall disclose all debts and obligations

owed by a political committee. If the exact amount of the debt or obligation is not known, the estimated amount shall be reported. section 44.10.535 (ARM).

The Committee appears to have violated the applicable reporting requirements of Sections 13-37-229 and 230, MCA, and applicable rules as follows:

1. The \$5,000 to be paid Bill Leary as Executive Director after the election should have been reported as a debt owed by the Committee.

2. The \$8,000 paid to pollster Mark Nelson by Sage Advertising before September 5, 1996 was a debt to be paid by the Committee. This indebtedness should have been reported in the Committee's September 5, 1996 report.

3. The Committee's September 5, 1996 report should have contained an estimate of the copying, telephone and legal costs to be paid by the Committee. Page Dringman was retained to provide a legal analysis of I-125 on August 29, 1996. Although a specific fee had not been negotiated, the September 5, 1996 report should have included an estimate of Ms. Dringman's expected bill for legal services.

B. Treasurer or Deputy Treasurer to Deposit Funds.

Section 44.10.503, ARM, requires that any contribution made or expenditure received be deposited or expended by the appointed campaign treasurer or duly authorized deputy treasurer. It appears that the Committee's accountant, Gary Carlson, had been making deposits for the Committee even though he is not the treasurer or

deputy treasurer for the Committee, in violation of the rule. In addition, Bill Leary had been signing checks for the Committee even though he was not certified as the Committee's treasurer or deputy treasurer. Mr. Leary did subsequently register as the deputy treasurer. It appears that the Committee has violated section 44.10.503, ARM.

C. Naming of Political Committees

Common Cause alleges the committee is not appropriately named under section 13-37-210(1), MCA. That section states:

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.

Common Cause alleges the Committee is improperly named because all of the contributors as of October 1, 1996 have strong business ties and are businesses or business associations. Mr. Motl believes that the Committee's name should be changed to "Montana Businesses to Defend First Amendment Rights/Against I-125."

The Committee's five contributors as of September 5, 1996 were Bankserv, John R. Daly, Inc., Montana Contractors Association, Montana Independent Bankers, and Sage Advertising. While it is true that the five contributors are all businesses, there is no discernable special interest or economic interest which all the businesses share. Two of the five contributors are banking entities. The other three contributors are involved in meat

packing/sales, advertising and road construction. The Committee to Defend First Amendment Rights/Against I-125 has not violated Section 13-37-210, MCA, based on the report filed on September 5, 1996.

The Commissioner hereby finds that there is sufficient evidence of violations of campaign finance laws to justify transmittal of all relevant information to the County Attorney of Lewis and Clark County.

DATED this 11th day of October, 1996.



Ed Argenbright, Ed.D.
Commissioner