

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES

STATE OF MONTANA

In the Matter of the
Complaint Against
MARY VAGNER AND BRUCE MOYER,
MISSOULA COUNTY HIGH SCHOOL
DISTRICT NUMBER ONE

SUMMARY OF FACTS AND STATEMENT OF FINDINGS

Richard A. Motta, 105 Hearth Court, Missoula, Montana, filed a complaint against Mary Vagner, District Superintendent, and Bruce Moyer, District Clerk, Missoula County High School District, Missoula, Montana. Motta submitted extensive factual allegations.

On July 20, 1994, this office gave notice to Respondents Moyer and Vagner about the complaint and requested responses to the allegations. The request was sent certified mail, return receipt requested.

This office received a written response from Respondent Vagner on August 25, 1994. In her response, Respondent Vagner stated, "At the present time, the District is consulting an attorney and will respond to these allegations as soon as possible." No response was received from Respondent Vagner or her attorney. No response was received from Respondent Moyer or the Missoula County High School District.

Summary of Facts

1. Mary Vagner (hereafter Vagner) was the District Superintendent, Missoula County High School District, Missoula, Montana. Bruce Moyer (hereafter Moyer) was the District Clerk/Business Manager, Missoula County High School District.

2. Missoula County High School District at the time was a political subdivision of the state of Montana, governed by a Board of Trustees.

3. Richard A. Motta (Complainant) is a private citizen and resident of Missoula County High School District. Complainant alleges Respondents Vagner and Moyer and other unknown persons "aided and abetted in a campaign in favor of a ballot issue effecting Missoula County elections held on May 3, 1994."

4. The school election was held for the purpose of levying sufficient mills to collect \$1,500,000 for the general maintenance and operation of the Missoula County High School District schools.

5. Complainant alleges the rules for establishing political committees were violated. Complainant identified committees, known as the Missoula Music Parent Organization and the Parents and Friends of Missoula County Schools and Morgenroth Music. The committees were not registered with the Commissioner of Political Practices. Complainant alleges these organizations violated campaign disclosure laws.

6. Complainant alleges Missoula County High School District mailed a request for support of the mill levy sponsored by the Missoula Music Parent Organization and paid for mailings and a newspaper ad that ran on May 1, 1994.

7. Complainant alleges Respondent Vagner and Moyer violated certain laws pertaining to public employees. More specifically, Complainant cites Mont. Code Ann. § 13-35-226, which states:

No public employee may solicit support for or opposition to any political committee, the

nomination or election of any person to public office, or the passage of a ballot issue while on the job or at his place of employment.

8. Complainant alleges from April 21, 1994 through May 2, 1994, a newspaper ad was placed in the Missoulian soliciting support for the mill levy. The ad was signed by Respondents Vagner and Moyer and paid for by Missoula County High School District.

Complainant alleges the newspaper ad was placed by public employees and public funds were used in support of a ballot issue. A copy of the ad is made a part of the record. Complainant alleges Respondents Vagner and Moyer violated Mont. Code Ann. § 13-35-226 in signing and allowing the ad to appear. Respondents Vagner and Moyer provided no information or evidence to counter or refute these allegations.

9. Complainant alleges unknown public employees at Big Sky High School "harangued students" at an assembly about the effect of a mill levy failure. Complainant contends meetings were held, pamphlets were printed and distributed to school employees in an attempt to illegally influence employees. Complainant maintains the overall campaign was supervised by Respondents Vagner and Moyer and aided and abetted by other unknown public employees. Respondents Vagner and Moyer provided no contrary information or evidence to counter or refute these allegations.

10. Complainant alleges the school mill levy campaign was presented unfairly, was coercive in nature with the intent to provide undue influence on voters. Complainant cites examples such as possible termination of teachers and reduction of

extracurricular activities. Further, Complainant cites the campaign presented a "worst-case" scenario without presenting facts. Respondents Vagner and Moyer presented no information or evidence to counter or refute these allegations.

11. Complainant alleges the taxpayer was misled by information that termination notices sent to teachers would result in a reduced teaching staff and directly curtail classes available to students. Notices were sent to students indicating the classes affected.

12. Complainant alleges information distributed and contained in the newspaper ad was misleading. Complainant cites an example where the ad stated the levy would cost only \$5 on an \$80,000 home. Complainant alleges the \$5 is misleading because it reflects reductions in other taxes which are not an issue of the election.

13. Complainant alleges Missoula County High School District provided "studies and pamphlets to indicate that sixty-six teachers would be terminated and classes would be reduced accordingly. The election campaign was orchestrated by public employees in such a manner as to intimidate teachers and use misinformation to unduly influence parents and taxpayers."

Statement of Findings

Finding Number One

From the evidence provided in the record, the Missoula Music Parent Organization and the Parents and Friends of Missoula County Schools and Morgenroth Music were "political committees" within the meaning of Montana election laws. The organizations solicited a

position in support of the Missoula County High School District mill levy. The organizations failed to appoint a campaign treasurer and certify the name and complete address of the campaign treasurer. This failure violates Mont. Code Ann. § 13-37-201. The failure to file a certification of a political committee also violates Mont. Code Ann. § 13-37-201. The organizations failed to designate one primary depository for the purpose of depositing all contributions. This failure violates Mont. Code Ann. § 13-37-205.

Montana law provides for exceptions for the filing requirements, affecting political committees and school district issues.

Mont. Code Ann. § 13-37-206 provides:

(1) The provisions of this part, except 13-37-217, do not apply to candidates for the office of trustee of a school district, their political committees, and political committees organized to support or oppose a school district issue when the school district is:

- · · · ·
- (c) a county high school district having a student enrollment of less than 2,000.

Information obtained from the Missoula County Superintendent of Schools indicates the student enrollment for Missoula County High School District for school year 93-94 was 3,650 students. The statutory exception for filing is not applicable.

Citizen groups must conduct their political activities in compliance with state campaign finance and practice statutes. These organizations appear to have spent money to promote passage of the school mill levy. They are required to file finance reports with the Commissioner of Political Practices office and with their

county election administrator. Pursuant to Mont. Code Ann. § 13-37-121 the organizations will be notified of the noncompliance and given an opportunity to file the required reports. If the organizations fail to comply following notification, an order of noncompliance shall be issued pursuant to that statute.

Finding Number Two

Did Respondents Mary Vagner and Bruce Moyer violate Mont. Code Ann. § 13-35-226 by signing an ad paid for by the Missoula County High School District? Mont. Code Ann. § 13-35-226 provides:

(3) No public employee may solicit support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue while on the job or at his place of employment.

In order to answer that question, I must determine whether the April 21, 1994 advertisement clearly urged a vote for the passage of a ballot issue, either in plain words or in context.

A close examination of the pertinent words do not support a finding that Respondents Vagner or Moyer solicited a favorable vote for the mill levy.

The text of the advertisement reads in part:

The Tuesday, May 3 mill levy election will affect the Missoula County High Schools' budget for 1994-95. The high schools are asking the voters to act on a mill levy request for 1.5 million dollars. \$761,000 of this is current instructional money to be renewed. The remaining \$740,800 is requested to help educate our current students, and to educate the 200 new students expected, due to community growth. The District is losing 4.5% in state funding next year. If the levy fails, proposed cuts include extracurricular activities like sports, drama, choir, speech and clubs, as well as the loss of 66

teachers, instructional assistants, the Young Family Program, food service, support staff, materials, computers, repairs and field trips. If the levy passes the district will be able to maintain the current programs for students. The tax increase would be just under \$19, but due to decreases in transportation, adult education, debt service and building reserve funds the total increase in 1994-95 would be less than \$5 per year on an \$80,000 home. It is important for the citizens to vote Tuesday, May 3. Call the Administration Building for any additional information. Missoula County High Schools. Paid for by Missoula County High Schools, 915 South Ave. W., Missoula, MT 59801. Mary Vagner, Superintendent, Bruce Moyer, Business Manager. 728-2400.

The pertinent portion of the text states "It is important for the citizens to vote Tuesday, May 3." The ad does not urge passage of the ballot issue or express a position on the issue. I do not find Respondents Vagner or Moyer in violation of Mont. Code Ann. § 13-35-226.

School officials must carefully consider all contemplated activities in light of Mont. Code Ann. § 13-35-226. They should avoid even the appearance of impropriety or illegality. They should consult the county attorney, as their statutory legal advisor or independent legal counsel prior to printing and distributing information sheets regarding school elections to ascertain their legality.

Finding Number Three

Complainant alleges the election campaign was orchestrated by public employees in such a manner as to intimidate teachers and use misinformation to unduly influence parents and taxpayers during the electoral process. Assuming that studies and pamphlets were

distributed to employees at the school, indicating that teachers would be terminated and classes reduced, such actions are not violative of Mont. Code Ann. § 13-35-226.

Mont. Code Ann. § 13-35-226(1) provides in part:

. . . It is unlawful for an employer to exhibit in a place where his workers or employees may be working any handbill or placard containing any threat, promise, notice or information that in case any particular ticket or political party, organization or candidate is elected, work in his place or establishment will cease, in whole or in part, or will be continued or increased; his place or establishment will be closed; the salaries or wages of his workers or employees will be reduced or increased; or other threats or promises (express or implied) intended or calculated to influence the political opinions or actions of his workers or employees. . .
[emphasis supplied]

Subsection (1) does not address the passage of a ballot issue. A ballot issue is not a ticket, organization or candidate within the meaning of Mont. Code Ann. § 13-35-226, and therefore the statute does not apply. I find Missoula County High School District did not violate Mont. Code Ann. § 13-35-226.

Finding Number Four

Complainant presented a multitude of factual allegations that Complainant alleged supported a finding of coercion and undue influence of voters, in violation of Mont. Code Ann. § 13-35-218.

Mont. Code Ann. § 13-35-218 provides in part:

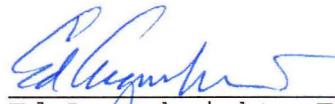
(1) No person, directly or indirectly, by himself or any other person in his behalf, in order to induce or compel a person to vote or refrain from voting for any candidate, the ticket of any political party, or any ballot issue before the people, may:

- (a) use or threaten to use any force, coercion, violence, restraint, or undue influence against any person; or
- (b) inflict or threaten to inflict, by himself or any other person, any temporal or spiritual injury, damage, harm, or loss upon or against any person. . . .

I have reviewed the factual allegations, and the exhibits submitted for the record and determine the evidence does not support a finding that any person, including Respondents Vagner, Moyer and the Missoula County High School District, violated Mont. Code Ann. § 13-35-218.

Based upon the preceding, there is insufficient evidence to conclude that Respondents Vagner, Moyer or Missoula County High School District, Missoula, Montana, violated Montana election laws.

Dated this 9th day of May, 1995.



Ed Argenbright, Ed.D.
Commissioner of Political Practices