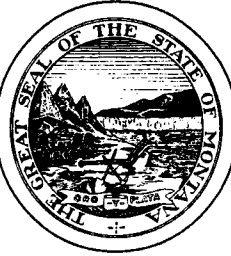


COMMISSIONER OF  
POLITICAL PRACTICES



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STATE OF MONTANA

DENNIS UNSWORTH  
COMMISSIONER  
TELEPHONE (406) 444-2942  
FAX (406) 444-1643

1205 EIGHTH AVENUE  
PO BOX 202401  
HELENA, MONTANA 59620-2401  
[www.politicalpractices.mt.gov](http://www.politicalpractices.mt.gov)

October 15, 2008

Ron Olfert  
5 Benedick Lane  
Plains MT 59859

Subject: Complaint received April 23, 2008

You filed a complaint alleging that Ernest Scherzer and a political committee called Folks for Responsible Planning violated Montana campaign finance and practices statutes. Your complaint alleges various violations based on Mr. Scherzer's and the committee's support of a ballot issue in Sanders County on the question of whether the county should create a planning board.

It is my understanding that on April 18, 2007 the Sanders County Board of County Commissioners (Sanders County Commissioners) passed a motion calling for a ballot issue on the question of whether Sanders County should create a planning board. The motion resulted in Resolution 2007-27, with the election on the question to be conducted by mail ballot.

On July 25, 2007 a political committee known as Folks for Responsible Planning (FFRP) was formed as a ballot issue committee to support passage of the planning board issue in Sanders County. FFRP filed a C-2 (Statement of Organization) with this office naming Rusti Leivestad as the treasurer and Ernest Scherzer as the "chair" of the committee. FFRP established a website and began actively campaigning for passage of the ballot issue.

On September 25, 2007, the Sanders County Commissioners voted to rescind Resolution 2007-27, which resulted in the cancellation of the mail ballot election on the planning board issue. On October 18, 2007, the Sanders County Commissioners passed a resolution placing a ballot issue on the June, 2008 primary election ballot, on the question of whether Sanders County should create a planning board. The wording of the resolution, designated Resolution 2007-34, was slightly changed by vote of the Sanders County Commission on November 7, 2007, but it remained scheduled for a vote on the June, 2008 primary ballot.

The complaint contains a number of allegations of wrongdoing, which are summarized below. Based on information provided by Mr. Scherzer and Mr. Leivestad, as well as additional information obtained in this matter, each complaint allegation is followed by an analysis and discussion regarding whether there is sufficient evidence of a violation.

**1. FFRP failed to fill in the "Date of Election" space on its C-2 (Statement of Organization) filed on July 25, 2007, in violation of § 13-37-201, MCA.**

The Statement of Organization form for a political committee (form C-2) includes a space on the second page for insertion of the date of the election. Scherzer admits that FFRP left that space blank on its C-2.

An employee of the office of the Commissioner of Political Practices (CPP) called Scherzer to inquire about the lack of a date of the election on the C-2. Scherzer told the CPP employee that the mail ballots had to be returned by October 16, 2007. Following the conversation the CPP employee wrote in "October 16, 2007" on the "Date of Election" section of the C-2.

When the Sanders County Commissioners cancelled the mail ballot election and rescheduled the election for June 3, 2008, Scherzer contacted the CPP employee and advised her of the new election date. The CPP employee then wrote "June 3, 2008" in the "Date of Election" section on the C-2.

FFRP readily admits that it neglected to include a date of election on the C-2. The omission was perhaps understandable given that initially the election was to be conducted by mail ballot, with no actual "date" of the election. More significantly, however, Scherzer was in regular contact with CPP regarding the requirements of the law. CPP staff wrote in the initial date of election and the revised date of election on the C-2 based on communications from Scherzer.

The C-2 form includes a space for designation of the date of the election, and political committees are expected to complete the C-2 in its entirety. The Commissioner of Political Practices has the authority to "prescribe forms for reports and other information required to be filed" pursuant to title 13, chapters 35 and 37, MCA. § 13-37-117, MCA. Under the circumstances as described above, however, FFRP's initial failure to include a date of election on the C-2 was a minor omission, and one that was quickly corrected.

**2. FFRP failed to file a new C-2 when the date of the election on the ballot issue was rescheduled from the fall of 2007 to the primary election date in 2008.**

As discussed above, when the Sanders County Commissioners rescheduled the planning board election to June 3, 2008, Scherzer contacted CPP. CPP records disclose that at that time CPP advised Scherzer that the C-2 that FFRP had filed on July 25, 2007, could continue to serve as FFRP's C-2 while the committee was engaged in campaign activities related to the June, 2008 ballot issue election. Both scheduled elections involved the same ballot issue question – whether Sanders County should create a planning board. In view of the directive of CPP staff, FFRP was not required to file a new C-2 following the change in the date of the election.

**3. FFRP was not a legal ballot issue committee from following the cancellation of the fall, 2007 mail ballot election by the Sanders County Commissioners on September 25, 2007, in violation of § 13-37-201, MCA.**

This claim is related to claim 2. As discussed above, CPP advised Scherzer that FFRP's original C-2 could continue to serve as its C-2 following the Sanders County Commissioners cancellation of the fall 2007 mail ballot election and its decision to hold the election in June, 2008. There is no basis for the claim that FFRP was not a legal ballot issue committee during the period between the cancellation of the mail ballot election and the June 3, 2008 election.

**4. FFRP's treasurer violated § 13-37-203, MCA by performing duties before being certified as a treasurer.**

This claim is related to claims 2 and 3. § 13-37-203, MCA provides, in part, as follows:

No individual may serve as a campaign or deputy campaign treasurer or perform any duty required of a campaign or deputy campaign treasurer of a candidate or political committee until he has been designated and his name certified by the candidate or political committee.

The complainant contends FFRP did not exist as a legal ballot issue committee between the cancellation of the fall, 2007 mail ballot election and the June, 2008 election. He submits that FFRP's treasurer performed duties as a committee treasurer in violation of the statute. For the reasons discussed in connection with claims 2 and 3 above, there is no basis to the claim.

**5. FFRP failed to file campaign finance reports, in violation of §§ 13-37-229 and 13-37-230, MCA.**

A review of FFRP's file at CPP establishes that the committee filed all required campaign finance disclosure reports in a timely way.

**6. FFRP illegally transferred funds from one campaign to another, in violation of § 13-37-240, MCA.**

FFRP did not improperly transfer any funds, since it was advised by CPP that the original C-2 was sufficient, even after the original election date was changed. Further, § 13-37-240, MCA, cited by the complainant, applies to candidates, not ballot issue committees.

**7. Between November 7, 2007 and the date the complaint was filed, FFRP illegally solicited funds through its website.**

As explained above, FFRP continued to exist as the same ballot issue committee despite the changes in the dates of the election. FFRP was entitled to solicit funds between November 7, 2007 and the date the complaint was filed.

**8. FFRP operated a booth at the Plains Trade Fair on March 29, 2008, and distributed campaign materials that did not contain required attribution language, in violation of § 13-35-225, MCA.**

The complaint alleges that FFRP posters, business cards, and buttons that were displayed or distributed at the Plains Trade Fair were in violation of § 13-35-225, MCA, because they did not contain the identifying information required by the statute. The statute provides:

**Election materials not to be anonymous -- statement of accuracy.** (1) All communications advocating the success or defeat of a candidate, political party, or ballot issue through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, poster, handbill, bumper sticker, internet website, or other form of general political advertising must clearly and conspicuously include the attribution "paid for by" followed by the name and address of the person who made or financed the expenditure for the communication. When a candidate or a candidate's campaign finances the expenditure, the attribution must be the name and the address of the candidate or the candidate's campaign. In the case of a political committee, the attribution must be the name of the committee, the name of the committee treasurer, and the address of the committee or the committee treasurer.

The materials that were displayed or distributed at the trade fair would only be required to include the attribution language contained in the statute if they were “communications advocating the success or defeat of a candidate, political party, or ballot issue.” (§ 13-35-225(1), MCA.)

The small business card that was available for distribution included the following language:

FFRP  
FOLKS FOR RESPONSIBLE PLANNING  
827-0305  
www.responsibleplanning.org  
FFRP Box 1644, Trout Creek, 59874

Several posters displayed at the trade fair included the following language:

Folks For Responsible Planning

The posters also contained the same contact information as the business cards.

A number of small buttons were available for distribution. The buttons contained the following language:

I'm For Planning  
www.responsibleplanning.org  
Folks For Responsible Planning  
FFRP Box 1644, Trout Creek, 59874

It is questionable whether any of the materials displayed at the trade fair were required to include the attribution language specified in § 13-35-225(1), MCA, since they arguably did not expressly advocate the success or defeat of a candidate, political party, or ballot issue.

However, assuming for purposes of analysis that the buttons could be construed as advocating the success of the planning board ballot issue, which was scheduled to be held several months later, it is apparent that the buttons included nearly all the attribution language required by §13-35-225(1), MCA.

Generally, attribution language on campaign material must include the words “paid for by” followed by the name and address of the person who made or financed the expenditure for the communication. In the case of a political committee, the attribution must include the name of the committee, the name of the committee treasurer, and the address of the committee or the committee treasurer. The buttons included all the required information except for the words “paid for by” and the name of the committee treasurer. The fact that those portions of the required attribution language were initially omitted from the buttons did not deprive the public of notice regarding which political committee paid for the campaign materials, and how the committee could be contacted. (See Matter of Complaint Against Yes CI-97, Stop Overspending Montana, et al; Summary of Facts and Statement of Findings, April 15, 2008)

It is also significant that as soon as Scherzer learned that the campaign materials were alleged to be out of compliance with the statute, he affixed stickers to the remaining buttons with the required “paid for by” language and identifying the committee treasurer.

Scherzer provided an invoice establishing that the committee paid \$220 for 500 buttons, plus \$16.82 shipping charges. Scherzer also provided the following additional information. Twelve buttons that did not include all the necessary attribution language were distributed at the trade fair. Two non-compliant buttons were kept by some of the committee members.

Between March 29 and April 2, 2008, committee members took approximately 40 buttons to distribute, but most of them were discarded and not distributed to the public. Scherzer learned on April 2, 2008 that the buttons were alleged to have been out of compliance. At a committee meeting that day Scherzer instructed committee members to stop distributing buttons. After affixing stickers to the remaining buttons Scherzer called CPP and confirmed that the buttons complied with the requirements of §13-35-225(1), MCA.

Thus, it appears that the value of the few buttons that were distributed and that were arguably out of compliance was relatively minimal – likely less than \$20.

Typically a violation of §13-35-225(1), MCA would be prosecuted under § 13-37-128, MCA, which authorizes a court to impose a civil penalty. In this case, however, I have determined that a civil penalty action is not warranted. As noted, there was minimal expense associated with the few buttons that were distributed lacking the attribution language specified in the statute. (See Olsen v. Concerned Citizens of Ward 2; Letter Decision Dismissing Complaint, September 25, 2008).

**9. Ernest Scherzer wrote a letter to the editor that was published in two newspapers during the week of March 10 – 14, 2008. In the letter Scherzer accused Ron Olfert, the complainant, of campaign violations, illegal activities, and unethical behavior.**

The complainant does not cite any statutes or rules within the jurisdiction of CPP that are alleged to have been violated.

**10. The letter to the editor described above also made allegations against the Dieter Scholz for Commissioner campaign. Olfert served as the treasurer and campaign manager of Scholz's campaign. Scherzer's letter to the editor caused a loss of support for Scholz.**

The complainant does not cite any statutes or rules within the jurisdiction of CPP that are alleged to have been violated.

Based on the information presented to me as described in this letter, I am dismissing your complaint.



Dennis Unsworth  
Commissioner of Political Practices

Copies: Ernest Scherzer  
Rusti Leivestad