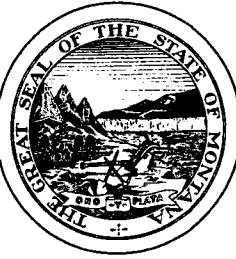


COMMISSIONER OF
POLITICAL PRACTICES



COPY



STATE OF MONTANA

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September 25, 2008

James Richard Olsen
701 South 3rd Street
Hamilton MT 59840

Subject: Complaint received November 8, 2006

You filed a complaint alleging that Concerned Citizens of Ward Two violated campaign finance and practices statutes. Your complaint alleges that the violation arose based on a campaign flyer that was distributed to households in Hamilton urging the reader to "Recall Bob Scott." At the time the flyers were distributed, Bob Scott was a City Council member in Hamilton who was subject to a recall election. The flyer lists a number of reasons why Mr. Scott should be recalled. The flyer states: "Paid for by Concerned Citizens who know the facts." The flyer does not contain the name, address, or other contact information of the person or persons who created the flyer.

The complaint alleges that the flyer violates § 13-35-225, MCA, because it does not contain the identifying information required by the statute. § 13-35-225(1), MCA provides, in relevant part:

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 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 flyer urging the recall of Bob Scott clearly falls within the category of communications described in § 13-35-225(1), MCA. See § 13-1-101(17)(a), MCA, which defines a "ballot issue" to include recall questions. Therefore, it was required to include the name and address of the person who made or financed the expenditure for the communication.

I have received admission from Bonnie Small that she and her mother, Rebecca Burke, created the flyer using Ms. Small's home computer and printer. Ms. Small and Ms. Burke then personally distributed approximately 200 copies of the flyer. Ms. Small states that she included the "paid for by" language that is on the flyer because she had seen similar language on other campaign materials. She contends she was not aware of the specific requirements of § 13-35-225(1), MCA.

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As you know, Ms. Small wrote a letter to the Ravalli Republic taking responsibility for creation and distribution of the flyers, and apologizing to the voters for failing to include the identifying information on the flyers as required by Montana law.

Ms. Small estimates the cost of printer ink and paper for the flyers was less than \$25, and she claims there were no other expenses associated with the creation and distribution of the flyers.

§ 13-35-225, MCA requires all communications described in subsection (1) to contain the attribution language "paid for by" followed by specific identifying information, including an address. As noted above, the flyer states only that it was produced by "citizens of Ward 2 who know the facts," and contains no other identifying attribution language. Typically this type of violation would be prosecuted under § 13-37-128, MCA, which authorizes a court to impose a civil penalty. Although there is evidence that the flyer produced and distributed by Ms. Small and Ms. Burke was in violation of the statute, I have determined that a civil penalty action is not warranted given the minimal amount of expense associated with the flyer.

Based on the information presented to me as described in this letter, I am dismissing the complaint. I have been in contact with Ms. Small, and she has been counseled regarding the attribution requirements of § 13-35-225, MCA.

Thank you for bringing these matters to my attention.



Dennis Unsworth
Commissioner