

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES

In the Matter of the Complaint)
Against Karen Orzech) **SUMMARY OF FACTS AND
STATEMENT OF FINDINGS**

Casey Gunter filed a complaint alleging that Karen Orzech violated Montana campaign finance and practices laws.

SUMMARY OF FACTS

1. In 2006 Casey Gunter and Karen Orzech both filed to run for the office of Justice of the Peace in Missoula County. No other candidates filed to run for the office. No one filed a declaration of intent to run as a write-in candidate.

2. § 3-10-201(2), MCA requires a Justice of the Peace to be nominated and elected as a nonpartisan candidate.

3. The complaint alleges that Orzech accepted contributions from several persons in excess of the limits permitted by law. According to the version of § 13-37-216, MCA that was in effect in 2006, aggregate contributions for each election in a campaign by an individual to a candidate for Justice of the Peace were limited to \$130. The complaint alleges that because there were only two filed candidate for the office of Justice of the Peace, and both candidates automatically advanced to the general election, there was only one “election” to which the limits in § 13-37-216, MCA applied – the general election. Gunter alleges that under the circumstances there was no contested primary, and thus individuals were limited to contributions of \$130.

4. Gunter contends Orzech accepted contributions in excess of \$130 from four contributors: Fouad Haddad, Rhonda Davis, Rebecca Barlow, and Molly Howard. According to Gunter, Orzech accepted from these four contributors a total of \$460 over the limit established in the statute.

5. A review of Orzech’s campaign finance reports on file at the office of the Commissioner of Political Practices (Commissioner) discloses the following aggregate contributions made to Orzech by the contributors identified by Gunter:

	<u>Primary</u>	<u>General</u>	<u>Total</u>
Fouad Haddad	\$100	\$100	\$200
Rhonda Davis	\$130	\$130	\$260
Rebecca Barlow	\$130	\$130	\$260
Molly Howard (Housewife)	\$130		\$130
Molly Howard (Attorney)		\$130	\$130

6. As shown above, Orzech’s campaign finance reports disclose that there were two separate contributors named “Molly Howard,” one whose occupation is listed as “housewife” and the other whose occupation is listed as “attorney,” each with separate addresses. Assuming that Gunter is correct in his contention that there was only one “election” to which the limits applied, neither contributor identified as “Molly Howard” made aggregate contributions in excess of the statutory limit. However, contributors Haddad, Davis, and Barlow each contributed in excess of the \$130 limit. Their combined contributions exceeded the limit by \$330.

7. Records on file at the office of the Commissioner also show that two other contributors made aggregate contributions to Orzech that exceeded \$130. Helen Maffei made a \$100 contribution for the primary and a \$100 for the general (an excess of \$70). Dale Mahlum made a \$100 contribution for the primary and a \$75 contribution for the general (an excess of \$45). When these amounts are added to the alleged excess contributions listed in Facts 5 and 6, Orzech accepted a total of \$445 in contributions over the limits permitted by the statute (assuming there was only one election to which the limits applied).

8. Orzech contends the primary election in which she ran against Gunter was a “contested” primary based on the option of voting for write-in candidates. She maintains that because the ballot listed the two filed candidates (Orzech and Gunter) along with the option for the voter to vote for a write-in candidate, the two filed candidates did not automatically advance to the general election.

9. Election results for the 2006 primary election in Missoula County show that Orzech received 12,438 votes, Gunter received 5,229 votes, and there were 34 votes cast for write-in candidates. However, as noted in Fact 1, no write-in candidates filed to run for the office. According to Missoula County election officials, both candidates automatically advanced to the general election. In the general election in November, 2006, Orzech was elected Justice of the Peace.

10. Although Orzech maintains she did not accept contributions in excess of the limits provided by law, she provided evidence establishing that in February 2008 she refunded contributions to the following contributors:

Fouad Haddad	\$70
Rebecca Barlow	\$130
Rhonda Davis	\$130
Helen Maffei	<u>\$70</u>
Total Refunded	\$400

Orzech refunded the disputed contributions “to avoid any appearance of impropriety.” She refunded the excess contributions made by Helen Maffei even though Maffei was not identified in the complaint as a person who had made contributions in excess of the statutory limit. Orzech did not refund \$45 to contributor Dale Mahlum, as that excess contribution was identified during the investigation and review of this complaint. (See Fact 7).

11. According to the office of the Secretary of State, in cases in which there is at least one declared candidate (whether the candidate has filed a declaration for nomination and his or her name is on the ballot, or has filed a declaration of intent as a write-in candidate), others who wish to have write-in ballots cast for them counted must file a declaration of intent as a write-in. Votes for non-declared write-in candidates are not counted if there are one or more primary candidates who have filed for the office. Nevertheless, even in the case where there are no declared write-in candidates, a tally of any write-in votes will be maintained, although the votes are not counted.

12. According to Orzech’s campaign finance reports, total contributions to her campaign, including in-kind contributions and loans that Orzech made to the campaign, exceeded \$16,400.

STATEMENT OF FINDINGS

The 2006 version of § 13-37-216, MCA provided:

Limitations on contributions. (1) (a) Aggregate contributions for each election in a campaign by a political committee or by an individual, other than the candidate, to a candidate are limited as follows:

(i) for candidates filed jointly for the office of governor and lieutenant governor, not to exceed \$500;

(ii) for a candidate to be elected for state office in a statewide election, other than the candidates for governor and lieutenant governor, not to exceed \$250;

(iii) for a candidate for any other public office, not to exceed \$130.

(b) A contribution to a candidate includes contributions made to the candidate's committee and to any political committee organized on the candidate's behalf.

(2) (a) A political committee that is not independent of the candidate is considered to be organized on the candidate's behalf. For the purposes of this section, an independent committee means a committee that is not specifically organized on behalf of a particular candidate or that is not controlled either directly or indirectly by a candidate or candidate's committee and that does not act jointly with a candidate or candidate's committee in conjunction with the making of expenditures or accepting contributions.

(b) A leadership political committee maintained by a political officeholder is considered to be organized on the political officeholder's behalf.

(3) All political committees except those of political party organizations are subject to the provisions of subsections (1) and (2). For purposes of this subsection, "political party organization" means any political organization that was represented on the official ballot at the most recent gubernatorial election. Political party organizations may form political committees that are subject to the following aggregate limitations from all political party committees:

(a) for candidates filed jointly for the offices of governor and lieutenant governor, not to exceed \$18,000;

(b) for a candidate to be elected for state office in a statewide election, other than the candidates for governor and lieutenant governor, not to exceed \$6,500;

(c) for a candidate for public service commissioner, not to exceed \$2,600;

(d) for a candidate for the state senate, not to exceed \$1,050;

(e) for a candidate for any other public office, not to exceed \$650.

(4) A candidate may not accept any contributions in excess of the limits in this section.

(5) For purposes of this section, "election" means the general election or a primary election that involves two or more candidates for the same nomination. If there is not a contested primary, there is only one election to which the contribution limits apply. If there is a contested primary, then there are two elections to which the contribution limits apply.

Under this statute aggregate contributions by an individual to a candidate for the position of Justice of the Peace were subject to the \$130 limit for “a candidate for any other public office.” (§ 13-37-216(1)(a)(iii), MCA.)

The limit applies to “each election in a campaign.” (§ 13-37-216(1)(a), MCA.) The term “election,” as used in the statute, refers to a general election or a primary election that involves two or more candidates for the same nomination. The statute includes explicit language regarding primary elections, specifying that if there “is not a contested primary, there is only one election to which the contribution limits apply.” (§ 13-37-216(5), MCA.)

The Legislature has authorized the Commissioner to adopt rules to carry out the provisions of title 13, chapter 37, MCA. The Commissioner adopted ARM 44.10.334 to implement the provisions of § 13-37-216, MCA. Subsection (2)(b) of the rule states:

In judicial and other nonpartisan primary elections, if a nonpartisan candidate automatically advances from the primary election to the general election pursuant to 13-14-117, MCA, it is not a contested primary election.

§ 13-14-117, MCA provides:

Placing names on ballots for general election. (1) Except as provided in subsection (2), candidates for nomination equal to twice the number to be elected at the general election who receive the highest number of votes cast at the primary are the nominees for the office. *If the number of candidates is not more than twice the number to be elected, then all candidates are nominees for the office.* (Emphasis added)

(2) If, pursuant to 13-14-115(2), a primary election is not held, then all candidates who filed for an office are nominees for the office.

Applying the plain meaning of the statutes and the rule provision cited above, the primary election in which Gunter and Orzech were candidates for the office of Justice of the Peace was not a contested primary election because the number of candidates who filed for the office was “not more than twice the number to be elected.” Therefore, there was only one “election” to which the contribution limits in § 13-37-216, MCA applied.

Orzech contends that based on the possibility that voters could vote for write-in candidates, the primary election was a contested election and she and candidate Gunter did not “automatically” advance to the general election.

Orzech is incorrect. With an exception not applicable here, § 13-10-211, MCA requires a person seeking to become a write-in candidate to file a declaration of intent with the Secretary of State or the election administrator, depending on the office sought. No one filed a declaration of intent to run as a write-in candidate in the 2006 Justice of the Peace election in Missoula County. (Facts 1 and 9). Because Gunter and Orzech were the only candidates, pursuant to § 13-14-117(1), MCA, both candidates automatically advanced to the general election.

§ 13-37-216, MCA states that a candidate may not accept contributions in excess of the limits provided in the statute. Orzech accepted contributions that collectively exceeded the statutory limit by \$445. Orzech has already refunded \$400 to several contributors. (Fact 10). Orzech is directed to also refund \$45 to contributor Dale Mahlum (Fact 7) and provide this office with evidence once she has done so.

CONCLUSION

Based on the preceding Summary of Facts and Statement of Findings, there is sufficient evidence to conclude that Karen Orzech violated Montana campaign finance reporting and disclosure laws and rules by accepting certain contributions in excess of the limits established by law, and that a civil penalty action under §13-37-128, MCA is warranted.

Dated this 19th day of December, 2008.



Dennis Unsworth
Commissioner