

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Page-Nei v. Colby Reynolds, Bill Hester and Kevin O'Brien	Summary of Facts and Finding of Insufficient Evidence to Show Violation of Montana's Campaign Practices Act
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Colby Reynolds and Bill Hester were candidates for School Board Trustee for the Florence-Carlton School District No. 15-6 in the election held May 7, 2013. Two positions on the Board were open. Reynolds was elected. Hester was not. Kevin O'Brien was not a candidate, but had previously served on the Board.

On May 3, 2013, Kristin Page-Nei, a resident of Florence, filed complaints against Reynolds, Hester, and O'Brien. She alleged violations of §13-35-225, MCA, in that a mailing (Exhibit 1) and signs (Exhibit 2) advocating election of Reynolds and Hester did not contain the "paid for by" attribution required by the statute. A presorting mark on the mailing Page-Nei herself received indicated it had been copied and mailed by a company called The Directory, which is located in Missoula.

A day before the complaint was received by the office of the Commissioner of Political Practices Page-Nei emailed the Commissioner's office to request that another allegation be considered. She alleged that an advertisement advocating the election of Reynolds and Hester appeared on Facebook without the "paid for by" attribution (Exhibit 3).

Commissioner of Political Practices Jonathan Motl recused himself from involvement in this complaint. The undersigned was appointed, pursuant to §13-37-111, MCA, as Deputy Commissioner of Political Practices for purposes of resolving this matter. The Deputy Commissioner finds and concludes as follows:

At the time of the election §13-35-225, MCA, provided in pertinent part:

13-35-225. 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.

....

(5) If information required in subsections (1) through (3) is omitted or not printed, upon discovery of or notification about the omission, the candidate responsible for the material or the person financing the communication shall:

- (a) file notification of the omission with the commissioner of political practices within 5 days of the discovery or notification;
- (b) bring the material into compliance with subsections (1) through (3); and
- (c) withdraw any noncompliant communication from circulation as soon as reasonably possible.

Hester and O'Brien each provided a written response to the complaint. An investigator for the Commissioner's office interviewed Reynolds, Hester, and O'Brien.

Investigation revealed the complaint against Kevin O'Brien has absolutely no basis. O'Brien was not a candidate, is not mentioned in any of the advertisements described in the complaint, and did not finance the advertisements. O'Brien acknowledged helping Reynolds put up some of the signs and later helped him add the "paid for by" attribution to the signs. Because he worked in Missoula, O'Brien dropped off Bill Hester's check for \$686 at The Directory, which represented full payment for the production and mailing of the flyer. Hester provided the Commissioner's office a copy of the check, drawn on his checking account. Although he dropped off the check, O'Brien did not pay for the mailing. O'Brien had nothing to do with the Facebook advertisement. None of O'Brien's involvement gives rise to legal liability on his part for lack of attribution on the advertisements.

With respect to the signs, Hester indicated there were two signs briefly displayed on his truck and another seven to eight signs placed by Reynolds and O'Brien around Florence. Hester and Reynolds made the signs themselves. They were put up a week or two before the election. After it was brought to their attention that attributions were missing from the signs, Reynolds and O'Brien created "paid for by" attributions and taped them to the right hand corner of the signs that were on display. Reynolds told the investigator the attribution read, "Paid for by Reynolds and Hester" and listed Reynold's home address.

Under the version of §13-35-225, MCA, in effect at the time of the election, subsection (5) provided a mechanism for communications lacking required attributions to be corrected. Shortly after learning of the omission, Reynolds, with O'Brien's assistance, brought the signs into compliance. While the statute contemplates the possible correction of missing attributions, prior decisions of the Commissioner's office have held that correction of missing attributions under §13-35-225, MCA, does not mean a statutory violation has not occurred or that penalty may not be appropriate. In *Childers v. Schneller* (Dec. 21, 2009), former Commissioner Unsworth stated:

It is also important to note that compliance or attempted compliance with the requirements of § 13-35-225(5), MCA does not cure a violation of the provisions of the statute, nor does it prohibit an action seeking a civil penalty if appropriate. See Matter of the Complaint Against Excellence in Voting, at p. 8 (November 1, 2006).

In this matter, given that only eight to ten signs were displayed for a brief period of

time, and corrected shortly after Hester and Reynolds learned of the violation, the Deputy Commissioner concludes that prosecution for the missing attributions on the signs is not warranted.

With respect to the mailings, as candidates whose election was advocated, both Reynolds and Hester were responsible for compliance with the "paid for by" requirement of §13-35-225, MCA. In his statements to the Commissioner's office, Hester took responsibility for the omission and said the flyers were mailed before he knew about the "paid for by" requirement. Because the mailings had already been distributed, they could not be corrected. An invoice relating to the flyers indicated that 2,312 flyers were mailed, at a cost of \$686. Both Reynolds and Hester were involved in creating the flyers and were candidates whose election was advocated. They are both in violation of §13-25-225, MCA, for the missing "paid for by" attribution in the flyers.

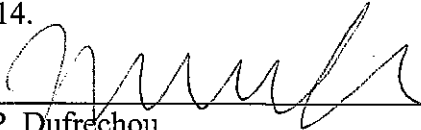
With respect to the Facebook page, advocacy for a candidate's election appearing on an internet website falls within the requirements of §13-25-225, MCA. (*See In the Matter of the Complaints against Donna Zook*, decided June 14, 2011). Reynolds told the Commissioner's investigator that he and a friend created some graphics on Facebook and that he now has a Facebook page given that he is a School Board Trustee. Hester told the investigator he had no knowledge of any advocacy on Facebook and that he does not have a Facebook page.

Where Hester had no involvement in or knowledge about the Facebook advocacy, he cannot be held in violation of statute. With respect to Reynolds, he did create an internet presence, albeit on Facebook, that must reasonably be interpreted as advocating his election. There is some cost associated with posting something on the Internet (at the very least, maintaining Internet access), but the page was not an internet advertisement for which Reynolds paid. Rather, it was a posting on a page clearly associated with Colby Reynolds as an individual, albeit also a candidate. The Deputy Commissioner concludes Reynolds should have indicated on the web page that he created the posting and paid for any cost associated with the posting. The page should have contained the address of his campaign or have provided a link to complete campaign information, including an address, on a web page dedicated to his campaign. However, under these circumstances, the Deputy Commissioner finds any violation of §13-35-225, MCA, with respect to Facebook posting to be *de minimis* and not an appropriate use of state resources for prosecution.

CONCLUSION

For the reasons stated above, there is sufficient evidence to conclude that Colby Reynolds and Bill Hester violated §13-35-225, MCA, through failing to cause a "paid for by" attribution, with their addresses, on the 2,312 flyers mailed to voters in the Florence Carlton School District at a cost of \$686.00.

Dated this 30th day of January, 2014.



Jay P. Dufrechou
Deputy Commissioner of Political Practices

ELECT

ELECT

ELECT

COLBY

REYNOLDS

&

BILL

HESTER

RESIDENTIAL CUSTOMER
*****ECRWSS*****

PRRST STD
US POSTAGE PD
THE DIRECTORY

FLORENCE CARLTON SCHOOL DISTRICT 15-6
SCHOOL BOARD TRUSTEE ELECTION
TUESDAY MAY 7TH, 2013

"Quality Education Through Quality Leadership"

- Honesty
- Integrity
- Financial Accountability
- Public Participation
- Academic Excellence



Colby Reynolds has been a resident of Florence for over 40 years. He is a graduate of the Florence schools, as are his daughter and son. As a business man, husband, and father he is a firm supporter of the community and the goal of academic excellence in our schools. Colby's solemn pledge to Florence citizens is to provide the leadership that will insure that every student from Kindergarten through High School is given the opportunity to acquire an educational experience which is the very best in the State of Montana and beyond.

Dr. William "Bill" Hester is running for the second open seat on the school board. Dr. Hester is a retired M.D. who has owned land in Florence since 1987 and has been a resident since 1999. He is one of the founding members of "Montana Citizens for Excellence in Education". He is in full support of the views of Colby as expressed above.

This is not "just another school board election". There are recent serious issues that have embarrassed both the school and the community and are not yet totally resolved. In addition, there is a watershed issue to determine whether Florence will retain local control of our schools or relinquish it to a federal/private entity called "Common Core" over which we will have no voice. The public is only now becoming aware of the gravity of this question. Finally, the subject of academic performance needs a full and open examination. We know we have good students, and good teachers, but do we have the academic results we desire? These and other issues are what we need to solve, and if you elect us on May 7, they will be dealt with honestly, fairly, openly and always with the best interests of the students, the school, and the community as our first consideration.

REYNOLDS
HESTER
SCMOOLBOARD

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2



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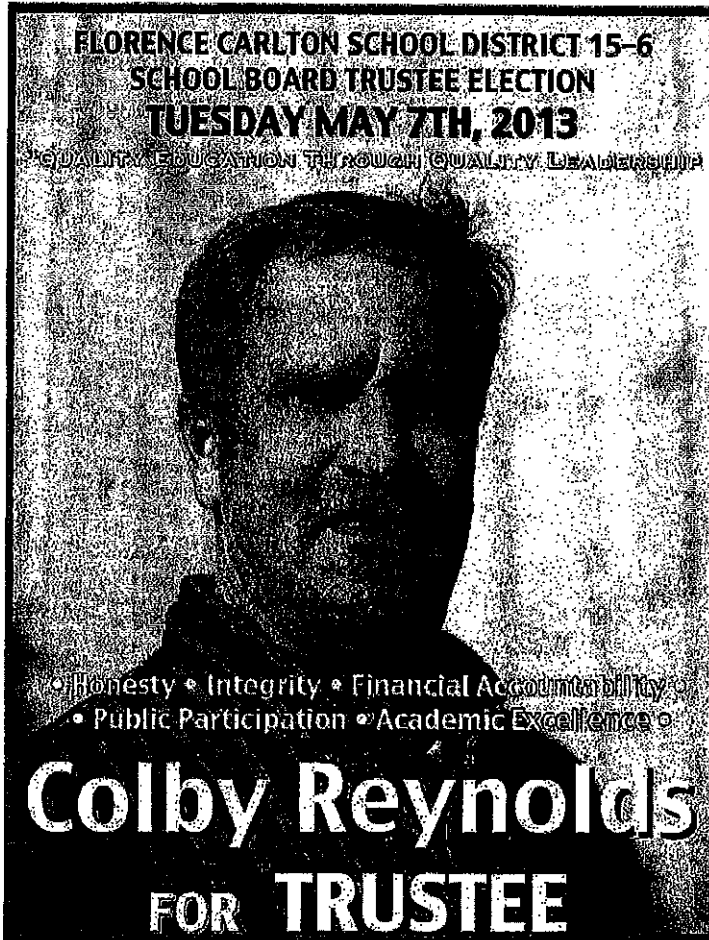
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Colby Reynolds, Trustee - Florence Carlton School District

"My number one goal as Trustee is to gain and maintain the trust of the people whom I will represent and maintain open lines of communication with the public. My experience and working knowledge in the business world gives me confidence that I will be successful in overseeing things like balancing budgets, managing personnel, and fiscal accountability." — with Colby Reynolds in Florence, MT.

Jordan Emery, Cortney Reynolds, Kevin Crews and 5 others like this.

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