

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES
OF THE STATE OF MONTANA

IN THE MATTER OF THE)	
COMPLAINT AGAINST)	SUMMARY OF FACTS AND
George Ames, Candidate for)	STATEMENT OF FINDINGS
Sheriff of Sweet Grass County,)	
Big Timber, Montana)	

Mrs. Sandra Parrent of Big Timber, Montana, in a complaint filed with this office on June 29, 1990, alleges violation of an election law by George Ames, candidate for sheriff of Sweet Grass County, Big Timber, Montana. Specifically, Parrent asserts that Ames violated a campaign practice statute by stating "[i]n an interview in the local paper . . . that he would appoint Svend Mauland as his Undersheriff should he win the election." Further, Parrent states that "[i]n effect, a lot of people in this community would be voting for Svend knowing that he would receive the position as Undersheriff under George Ames."

The statute applicable to the violation alleged by Parrent is section 13-35-214, Montana Code Annotated (MCA), titled "Illegal influence of voters," which provides in pertinent part:

No person, directly or indirectly, by himself or by any other person on his behalf, for any election, to or for any person on behalf of any elector or to or for any person, in order to induce any elector to vote or refrain from voting or to vote for or against any particular candidate, political party ticket, or ballot issue, may:
. . . .

(2) promise to appoint another person or promise to secure or aid in securing the appointment, nomination, or election of another person to a public or private position or employment or to a position of honor, trust, or emolument, in order to aid or promote his nomination

or election, except that he may publicly announce or define what is his choice or purpose in relation to an election in which he may be called to take part, if elected.

The results of an investigation of the alleged violation, conducted between July 21 and 23, 1990, are set forth in the following summary of facts.

SUMMARY OF FACTS

1. George Ames is currently the undersheriff of Sweet Grass County, having been appointed to that position a number of years ago by the incumbent sheriff, Svend Mauland.

2. Ames also is the Republican candidate for sheriff of Sweet Grass County, having won the June primary over three other Republican candidates.

3. Although no Democratic candidates ran for the office in the primary election, an independent candidate is running for sheriff and will be on the general election ballot in November.

4. The Big Timber Pioneer sent out to all four Republican candidates for sheriff a written questionnaire, the responses to which subsequently were printed in the Pioneer in its edition for the week of May 23-29, 1990 (a week before the June 5 primary election).

5. Among the questions asked by the Pioneer was this one: "Who will you ask to be your Undersheriff?" Ames answered that question as follows:

Initially, I will name Svend Mauland as my Undersheriff. We foresee this appointment not lasting indefinitely as his time to retire will be coming up.

After he has retired an Undersheriff will be named, utilizing the hiring board as explained above.

6. The other three Republican candidates--Tyler Molzahn, Louis Plaggemeyer, and Dennis Wilson--refused to supply the name of whom they would appoint as undersheriff if elected. Wilson said he had not made a decision yet; Plaggemeyer stated, "I do not feel it would be right to sway the constituents' votes by my choice of Undersheriff"; and Molzahn cited section 13-35-214(2), MCA, supra, as his reason for believing that he should not answer the question.

7. When interviewed on July 21, 1990, Ames stated that the Pioneer had faithfully printed his response to this question and to all of the others.

8. Ames said that no other person helped him to frame his responses to the questionnaire except for his wife who gave him some help. He said that he spent about a week writing his answers to the questions asked by the newspaper.

9. Other than answering the newspaper query, Ames stated that he did not seek out people to ask them to vote for him in exchange for his promise to appoint Mauland as his undersheriff if elected. In fact, Ames asserted that he probably lost some support because of his statement in the paper saying he would appoint Mauland as his undersheriff.

10. Ames said that he was not aware of Molzahn's having cited section 13-35-214(2), MCA, until the paper appeared. Ames said that he was surprised and wondered where Molzahn had found the law. After seeing Molzahn's answer, Ames said that he spoke with the

county attorney, G. Thomas Biglen. "Tom, did I do something wrong?" he asked. He said the reply was, "No."

11. Ames said that he does not believe he violated the law for the reasons that (1) "I was asked the question and I answered it" and (2) "it was common knowledge that Svend [Mauland] was not going to run and would have about 8 or 10 months to retirement after a new sheriff was elected." Ames went on to say that "it wouldn't seem fair to kick a man out after some 23 1/2 years and not let him earn his retirement."

12. Ames said that in "no way, shape, or form" was it his intent or purpose to gain votes by promising to name Mauland as his undersheriff. He maintained that he had never made a promise to anyone to gain a vote. He reiterated that he had probably lost some votes ". . . by saying Svend would be my undersheriff until his retirement. There are some people who asked me a few years ago to run against him, but I wouldn't do that. He's the one who hired me, and I didn't think it would be right."

13. When interviewed on July 23, 1990, Beccy Oberly, editor of the Big Timber Pioneer, said that she printed verbatim in the paper the written answers of the Republican candidates for sheriff.

14. When interviewed on July 23, 1990, Tyler Molzahn said that he did not discuss with any of the other Republican candidates for sheriff his concern about the legality of naming an undersheriff prior to the election.

15. Molzahn said that he did raise the issue with Oberly at the Pioneer offices when he dropped by with his written answers to

the newspaper questionnaire. He said, "I told the editor she might not like the answers to some of my questions, especially that one [about naming an undersheriff]. I told her it was against the law."

16. Molzahn said that he did not know how others had answered the undersheriff question when he was talking with Oberly and that he did not raise with Oberly the issue of the propriety of asking the question and printing any response of a candidate's choice for undersheriff.

17. County Attorney Biglen, in an interview on July 23, 1990, said that he did recall a conversation with George Ames that took place after the publication of the Pioneer with the sheriff candidates' responses. Biglen said that he told Ames he did not think there was any problem with Ames's answer to the question concerning appointment of an undersheriff. Biglen said that, in responding that way to Ames, he had in mind title 45 of the Montana Code and a statute in that title about inducing someone to do a criminal act.

18. Biglen also said that he intended to look into the law further and meant to get back to Ames; however, not having written himself a note to do so and never having heard again from Ames, Biglen said that he completely forgot about the matter.

STATEMENT OF FINDINGS

Section 13-35-214, MCA, provides, in relevant part:

No person, directly or indirectly, by himself or by any other person on his behalf, for any election, to or for

any person on behalf of any elector or to or for any person, in order to induce any elector to vote or refrain from voting or to vote for or against any particular candidate, political party ticket, or ballot issue, may:

. . . .

(2) promise to appoint another person . . . to a public or private position or employment . . . , except that he may publicly announce or define what is his choice or purpose in relation to an election in which he may be called to take part, if elected. [emphasis added]

Violation of section 13-35-214, MCA, is a misdemeanor. Section 13-35-103, MCA.

The language of the statute is cumbersome and ambiguous at best, particularly the last clause, which appears to establish an exception under certain vaguely delineated circumstances. However, applying the above underscored statutory language to the facts in this case, it is clear that a threshold requirement to establishment of a violation of the statute is some indication that Ames acted with the purpose of inducing electors to vote for him. The evidence does not establish that Ames responded to the newspaper questionnaire with that purpose in mind. Rather, the evidence shows that Ames simply responded to the query because he "was asked the question," with no ulterior motive of gaining votes in the election. Thus, no further construction of the statute is necessary, since the requisite purpose essential to establishment of a violation of the statute is absent.

CONCLUSION

Based on the facts and these findings, I conclude that Undersheriff George Ames, currently a candidate for sheriff of

Sweet Grass County, did not violate the campaign practice law that prohibits a person from illegally influencing voters.

DATED this 25th day of July, 1990.

Dolores Colburg

DOLORES COLBURG
Commissioner of Political Practices