

COMMISSIONER OF  
POLITICAL PRACTICES

COPY



STATE OF MONTANA

DENNIS UNSWORTH  
COMMISSIONER  
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May 5, 2008

Ronald Lee Pierce and Ron Rebo  
PO Box 174  
Troy MT 59935

Subject: Complaint received December 3, 2007

You filed a complaint alleging that Don Banning, Larry Coryell, and Citizens for Honest Government violated campaign finance and practices statutes. Based on careful review of the information presented to me and described in this letter, I am dismissing your complaint.

At the time your complaint was filed you were both incumbent members of the city council in Troy, running for reelection. Banning and Coryell were candidates for two open seats on the council.

Your complaint alleges that the violations arose based on a handbill that was distributed to residences in Troy several days prior to the election. The handbill states:

Vote for change in City Hall. Help return honesty to municipal government. Don Banning and Larry Coryell are the candidates dedicated in honesty and experienced in budget management. Your vote for them is the start! Produced by citizens for honest government.

The complaint states:

"We know nothing about the citizens for honest government that produced and distributed this handbill except for one person and that is Frances McCully."

The complain alleges that the handbill violates several campaign finance and practices statutes, including 13-35-301, 13-37-131, 13-35-225, and 13-35-402, MCA.

I have received information from Don Banning, Larry Coryell, and Frances McCully. As you know, all three of them were candidates for the city council in Troy. Banning and Coryell both denied that they had advance knowledge of or played any part in the creation or distribution of the flyers.

McCully admits that she created the flyer on her home computer and printed copies on her home printer. She also personally delivered the flyers to residences in the Troy area. According to McCully's estimates the expenditures for the flyers were probably less than \$20. McCully contends she was not aware of the requirements of 13-35-225, MCA.

I have reviewed the statutes that you allege were violated, within the context of the specific facts and information presented to me in this matter. 13-35-301, MCA is part of Montana's Code of Fair Campaign Practices. Candidates for public office in Montana may voluntarily subscribe to the Code by completing and filing a form in the office of the Commissioner of Political Practices. However, the statutes do not give the Commissioner any authority to enforce the Code.

13-37-131, MCA prohibits any person from misrepresenting a candidate's public voting record or any other matter that is relevant to the issues of the campaign with knowledge that the assertion is false, or with reckless disregard of whether or not the assertion is false. The statute essentially requires proof of malice, and past case law has established that the standard of proof is quite high. In my view the representations in the flyer do not rise to the level of a violation of the statute. The flyer does not contain the names of Pierce or Rebo, and it does not directly state that any of the incumbent council members are dishonest.

13-35-402, MCA provides that under certain circumstances candidates must provide copies of campaign advertising materials to opposing candidates within the 10 day period prior to an election. The statute, however, only requires copies to be provided to other candidates "who are individually identified or mentioned in the advertising." Since the flyer does not directly identify or refer to either of you by name, in my view there was no potential violation of the statute.

13-35-225, MCA requires all communications advocating the success or defeat of a candidate 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 for honest government," 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. McCully 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 your complaint. I have been in contact with Frances McCully, and she has been counseled regarding the attribution requirements of 13-35-225, MCA. As discussed above, under the particular circumstances in this case, and in view of the relatively minimal value of the expenses associated with the creation and distribution of the flyers, I have determined that it is not in the best interest of the State to proceed with a prosecution seeking a civil penalty.

Thank you for bringing these matters to my attention.



Dennis Unsworth  
Commissioner

Copies: Don Banning  
Larry Coryell  
Frances McCully

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May 5, 2008

Donald C. Banning  
PO Box 487  
Troy MT 59935

Subject: Complaint received December 3, 2007

Several months ago I sent you a letter with a copy of a complaint filed against you by Ronald Lee Pierce and Ron Rebo, alleging that you violated Montana campaign finance and practices laws.

At my request, you provided a response to the complaint allegations. This is to advise you that I have reviewed the matter and I found no evidence that you violated the statutes as alleged in the complaint. The complaint has been dismissed.

Thank you for your cooperation and your patience during this process.

A handwritten signature in black ink, appearing to read "Dennis Unsworth".

Dennis Unsworth  
Commissioner

Enclosure

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STATE OF MONTANA

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May 5, 2008

Larry L. Coryell  
PO Box 1054  
Troy MT 59935

Subject: Complaint received December 3, 2007

Several months ago I sent you a letter with a copy of a complaint filed against you by Ronald Lee Pierce and Ron Rebo, alleging that you violated Montana campaign finance and practices laws.

At my request, you provided a response to the complaint allegations. This is to advise you that I have reviewed the matter and I found no evidence that you violated the statutes as alleged in the complaint. The complaint has been dismissed.

Thank you for your cooperation and your patience during this process.

Dennis Unsworth  
Commissioner

Enclosure

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May 5, 2008

Frances McCully  
PO Box 289  
Troy MT 59935-0289

Subject: Complaint received December 3, 2007

On March 4, 2008, I sent you a letter with a copy of a complaint filed by Ronald Lee Pierce and Ron Rebo, alleging that "Citizens for Honest Government" violated Montana campaign finance and practices laws. At my request, you provided a response to the complaint allegations. In addition, you were recently interviewed by Robert Hoffman, my investigator. You admitted creating and making copies of the flyer on your home computer and printer, and distributing the copies throughout the Troy area. You estimated that the total expenses associated with your activities amounted to less than \$20.

§ 13-35-225, MCA requires all communications advocating the success or defeat of a candidate to contain the attribution language "paid for by" followed by specific identifying information, including an address. A copy of the statute is enclosed for your reference. Your flyer, which advocated the success of Troy City Council candidates Don Banning and Larry Coryell, did not contain the attribution language required by the statute.

§ 13-37-128, MCA authorizes an action for a civil penalty for violation of § 13-35-225, MCA for an amount up to \$500 or three times the amount of the unlawful contribution or expenditure, whichever is greater. I have determined, however, that under the particular circumstances in this case it would not be in the best interest of the State of Montana to proceed with an action seeking a civil penalty. A significant factor in my determination is the relatively minimal amount of expenses associated with the creation and distribution of the flyer.

Although I have declined to prosecute this matter, please know that if you are going to become involved in the political process it is important to carefully review and understand the campaign finance and practices laws and regulations that may be applicable to your activities. If you have any questions when engaging in future activities, I would encourage you to contact my office. My staff and I are available to answer questions and provide information. Or, you may wish to visit our website: <http://politicalpractices.mt.gov>.

Thank you for your cooperation and candor during this process.



Dennis Unsworth  
Commissioner

Enclosures: copy of 13-35-225, MCA  
copy of dismissal letter