

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Quinn v. Bridger Canyon Fire Trustees No. COPP 2014-CFP-031	Finding of Sufficient Facts to Show a Violation of Montana's Campaign Practice Act
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On June 16, 2014, Ann Marie Quinn, a resident of Bridger Canyon, Montana (Gallatin County) filed a complaint against the Bridger Canyon Rural Fire District Board of Trustees. Ms. Quinn's complaint alleged that the trustees violated certain Montana campaign practice laws during the Bridger Canyon Rural Fire District Board of Trustees 2014 Recall referendum.

SUBSTANTIVE ISSUES ADDRESSED

The substantive area of campaign practice law addressed by this decision is the application of certain campaign practices law to campaigns for a fire district.

INTRODUCTION

In December of 1979 Gallatin County Commissioners created the Bridger Canyon Rural Fire District (BC Fire District). The first five BC Fire District Trustees were appointed by the county commissioners to serve until elections

were held. Thirty-plus years later (in 2012) the BC Fire District was a fully functioning entity, having passed through multiple Trustee elections and mill levy votes. By 2012 the BC Fire District Trustees supervised a budget, fire facility, equipment and staff. Approximately 600 voting residents compose the Fire District.

In September of 2012, several Bridger Canyon residents began collecting signatures to recall all five BC Fire District Trustees, alleging that the trustees were holding illegal meetings and suppressing public comment. A formal complaint was filed with the Gallatin County Sheriff's Office by these same residents. In the same time period (November of 2012) several firefighters protested the BC Fire District Trustees' consideration of a proposal to allow alcohol use in the "firehouse" community room. The BC Fire District Trustees eventually voted down the plan, but a simmering animosity between the Trustees and the firefighters now came into full play. By March of 2013, Bridger Canyon Fire Chief Dan Astrom and 18 of his firefighters quit.

An ad-hoc group of about 35 Bridger Canyon residents met and formed the Bridger Canyon Fire District Safety Coalition (Coalition) to address concerns about BC Fire District Trustees. The Coalition prepared and circulated a recall petition for the BC Fire District Trustees, gaining enough signatures to add the recall initiative to the regularly scheduled election on May 6, 2014. (Gallatin County Election's Office).

The recall petition was based on the claim that the BC Fire District Trustees had engaged in improper public meeting activities. At the time of

formation (in 2012) the Coalition had filed a complaint with the Gallatin County Sheriff's Office (GCSO). The GCSO investigated the complaint, including examination of about 2,500 pages of emails between the five Trustees. The GCSO concluded their investigation in early 2014 finding evidence of a lack of public disclosure and denial of opportunity for public participation in meetings. The findings were forwarded to the Gallatin County Attorney's Office which, to date, has not taken any action. On June 16, 2014, the COPP Office received the complaint in this Matter. (Gallatin County Sheriff Brian Gootkin's statements to KTVM news, Bozeman, MT aired March 28, 2014, Investigator notes from interview with a GCSO Detective).

FINDINGS OF FACT

Finding of Fact No. 1: The BC Fire District "recall vote" for the remaining terms of all five Trustees was placed before the electorate for a May 6, 2014 vote. Two of these Trustee positions were also up for a new term election on the same ballot. (Gallatin County Election's Office).

Finding of Fact No. 2: Four candidates were on the ballot for the two new term positions of BC Fire District Trustee: John Maloney, Franklin Coles, Jane Lerner and Peggy Foster. Peggy Foster and Jane Lerner were elected as BC Fire District Trustees. (Gallatin County Election's Office).

Finding of Fact No. 3: Mike Conn, Chairman of the Board of BC Fire District Trustees was recalled by a vote of 195 for recall and 194 against. The remaining BC Fire District Trustees were not recalled. (Gallatin County Election's Office).

DISCUSSION

The Complaint alleges several breaches of provisions of Title 13, Chapter 35,

including a breach of the attribution provisions. Under Montana law a fire district election is deemed a “special district” election that is subject to some, but not all, requirements of Title 13. See §13-37-206 MCA.

1. Some Attribution Is Required

The fire district exceptions to the reporting and disclosure obligations of §13-37-206 MCA do not extend to the general attribution requirements of §13-35-225 MCA. Attribution is therefore required for fire district elections. However, the Commissioner has determined that while some attribution is required, the political committee and treasurer requirements of §13-35-225 MCA do not apply to special district elections. *Mikkelsen v. Western Montana Water Users Assoc.*, COPP-2013-CFP-15.

In making this determination the Commissioner reconciled the language of §13-35-225 MCA with the language of §13-37-206 MCA as “[w]here there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all.” § 1-2-101 MCA. Maintaining the requirement of attribution, without the requirements of naming a treasurer or forming a political committee, reconciles and gives effect to both statutes.

The Commissioner makes the following findings of fact regarding this portion of the complaint.

Finding of Fact No. 4: A website called “SupportOurFireBoard.Org” was created in response to the move to recall BC Fire District Trustees. The website stated: “The purpose of this informational website is to support our duly elected Bridger Canyon Rural Fire District Board of Trustees. The site was created in response to the recent move to recall members of the current Board prior to the

upcoming 2014 elections and in light of legal action taken against Board Members. The Bridger Canyon Board Support Committee (BCFBSC) was formed by the following Canyon residents: Dawn Poindexter, Cathy Anderson, DeeDee Rasmus, Cis Hager, Charlie Hager, Phyllis Mather.” (Commissioner’s records).

Finding of Fact No. 5: The Commissioner’s investigator reviewed the website address and found a certain “NO RECALL” graphic, red and black in color with the word “NO” underlined. Underneath the words “no recall” read, “Support strong leaders. Say no to the recall.” (Commissioner’s records).

Finding of Fact No. 6: Ms. Quinn’s complaint alleged that “NO RECALL” election signs were posted in at least four locations along Highway 86 and Jackson Creek Road. The signs were red and black in color with white text and the word “NO” was underlined. Ms. Quinn stated that the signs did not contain an attribution statement and that they were posted from October 2013 to May 2014. Ms. Quinn’s complaint also alleged that several advertisements ran in the Bozeman Daily Chronicle supporting the “NO RECALL” position and those ads did not contain an attribution statement. The ads were also red, black and white in color. (Quinn complaint).

Finding of Fact No. 7: The BC Fire District Trustees do not dispute that “NO RECALL” election signs and other election communication lacked attribution but deny responsibility or involvement, pointing to the group of people identified in FOF No. 4. (Complaint and response to complaint).

Finding of Fact No. 8: The Trustees’ response to the complaint, included an email identifying Dawn Poindexter and DeeDee Rasmus as being in charge of the finances of the group of people identified in FOF No. 4. The email lists a date of June 25, 2014 but that is likely the date the email was printed, not the date it was composed, based on the content of the email. (Commissioner’s Records).

Finding of Fact No. 9: Election signs in support of Trustee candidates Jane Lerner and Peggy Foster were posted along Highway 86 and those signs also did not contain an attribution statement. (Commissioner’s records).

A number of individuals submitted a response to the complaint in this Matter. Trustee candidate Jane Lerner responded that she sought to determine, for herself and Peggy Foster, whether any attribution was required for campaign materials used in a fire district election. Lerner determined, in part based on her understanding of what she was told by COPP staff, that no attribution was required. The Trustee support group described in FOF No. 4 made no such claim of inquiry. Based on the above findings and fact the Commissioner makes the following sufficiency findings.

Sufficiency Finding No. 1. The Commissioner determines, at FOF No.9, that sufficient facts exist to show that Jane Lerner and Peggy Foster failed to attribute their campaign communication as required by §13-35-225 MCA.

Sufficiency Finding No. 2. The Commissioner determines, at FOF No. 6, that sufficient facts exist to show that the group identified in FOF No. 4, including its leaders, Dawn Poindexter and DeeDee Rasmus, failed to attribute its/their campaign communication as required by §13-35-225 MCA.

In making these sufficiency findings the Commissioner recognizes that Ms. Lerner made an effort to determine if attribution was required. The Commissioner further recognizes that Ms. Lerner vigorously asserts that her action in not attributing election materials was consistent with advice given by COPP staff.

The Commissioner accepts Ms. Lerner's representation but it cannot excuse her or the others listed in SF Nos. 1 and 2 from the failing-to-attribute finding. First, *Mikkelsen v. Western Montana Water Users Assoc.* was issued on

June 26, 2013. The Decision is directly on point and accessible to anyone in the public on the COPP website. Thus, at the time of Ms. Lerner's 2014 inquiry, there was a specific COPP directive that attribution was required for special district election communication.

Second, during the weeks before an election the COPP inspection staff¹ will field literally hundreds of phone calls on issues like the attribution issue involved in this matter. Ms. Lerner says she raised the special district election attribution issue with a COPP staff person and was told that no attribution was required. The COPP has no record of this conversation and that means Ms. Lerner's inquiry was not transferred to Mary Baker² who does keep a record of conversations. Further, the inquiry did not advance to a COPP lawyer as no applicable advisory opinions were issued. While the COPP does not doubt that Ms. Lerner made the phone call, the no attribution information was either wrongly given or wrongly heard and that cannot excuse the failure to attribute, as required by law. The COPP will, however, consider the phone call as a mitigating factor when resolving or settling this matter.

Third, attribution is the foundation of all campaign practice requirements. In *Mikkelsen v. Western Montana Water Users Assoc.* the group seeking to affect water district policy did not understand the law involved but still attributed out

¹ The COPP consists of 7 staff. Mary Baker, Kym Trujillo, Karen Musgrave and Lindsey Caldwell work primarily on candidate/public assistance and report inspection, including correction. Jonathan Motl, Jaime MacNaughton and Vanessa Sanddal work primarily on enforcement.

² Baker is program supervisor and the most experienced staff person at COPP. Baker normally responds to the more complicated or nuanced questions such as whether attribution is required on special district election materials.

of an intuitive understanding that those involved in the process of elections should identify themselves.

2. Sections 13-35-213 and 218, MCA

The complaint also alleges violations of two statutes prohibiting actions that serve to “willfully hinder[s] or prevent[s] electors from assembling...” (§13-35-213 MCA) or “compel a person to ...refrain from voting...” (§13-35-218 MCA). A violation of either of these statutes is a misdemeanor under either §§13-35-103 or 213 MCA.

Violations of Montana’s campaign practices law (Title 13) are enforced civilly and/or criminally. In the context of a greater evidentiary scrutiny afforded a complaint that must be enforced under a criminal statute, the Commissioner is guided by the decisions of prior Commissioners who have uniformly dismissed complaints alleging criminal violations of Montana election law: *Parrent v. Ames*, July 25, 1990 (Commissioner Colburg); *McFadden v. Stanko*, June 1, 1994 (Commissioner Argenbright); *Masters v. Nixon*, August 3, 1994 (Commissioner Argenbright); *Seward v. Andrick*, December 13, 2004 (Commissioner Vaughey); *Vance v. Walseth*, February 23, 2009 (Commissioner Unsworth); *Scott v. Doyle*, COPP-2011-CFP-007 (Commissioner Gallik); *Loney v. Moore*, COPP-2013-CFP-014 (Commissioner Murry); and *Royston v. Tinsley, et al.*, COPP-2014-CFP-039 (Commissioner Motl).

The complaint alleges that BC Fire District Trustees Dave McKee and Mike Conn and their “cohorts” disrupted a meeting on October 13, 2013 that was taking place at the fire station to discuss the recall of the trustees. The

complaint alleged that Mr. McKee, Mr. Conn and “10-12 of their supporters” positioned themselves at the entrance to the fire hall and “created a gauntlet to dissuade recall supporters.” The complaint further alleged that “one uninvited trustee supporter physically shoved one of the people who asked her to leave” and that “the Sheriff was called....”

In response the Trustees point out that the meeting was advertised as a public function so they could be there. They claim no disruption and that “the group opposing the recall simply set up a card table outside the station and politely offered to discuss election issues with the few residents who came.” The Gallatin County Sheriff’s Department confirmed that a deputy was called to the meeting location on October 13, 2013, but the deputy reported no disruptive attendees at that time and left the location. (Investigative notes).

The Commissioner notes that a relatively small community of 600 electors was split almost evenly on the BC Fire District Trustee issues. (See FOF No. 3). The discontent between the two factions was evident by the extent to which each side found it necessary to force an electoral face off. With this in mind, strong feelings such as those indicated by the complaint are not unexpected. However, those actions do not constitute sufficient facts to show a violation of §13-35-213 MCA or §13-35-218 MCA. The Commissioner declines such a sufficiency finding.

ENFORCEMENT OF SUFFICIENCY FINDINGS

The Commissioner has limited discretion when making the determination as to an unlawful campaign practice. First, the Commissioner cannot avoid,

but must act on, an alleged campaign practice violation as the law mandates that the Commissioner (“shall investigate,” *see*, §13-37-111(2)(a) MCA) investigate any alleged violation of campaign practices law. The mandate to investigate is followed by a mandate to take action as the law requires that if there is “sufficient evidence” of a violation the Commissioner must (“shall notify”, *see* §13-37-124 MCA) initiate consideration for prosecution.

Second, having been charged to make a decision, the Commissioner must follow substantive law applicable to a particular campaign practice decision. This Commissioner, having been charged to investigate and decide, hereby determines that there is sufficient evidence, as set out in this Decision, to show that Candidate s Lerner and Foster as well as a certain committee (see FOF No. 4) and its leaders Poindexter and Rasmus, have, as a matter of law, violated Montana’s campaign practice laws, including, but not limited to §13-35-225 MCA and all associated ARMs. Having determined that sufficient evidence of a campaign practice violation exists, the next step is to determine whether there are circumstances or explanations that may affect prosecution of the violation and/or the amount of the fine.

The individuals named above were directly engaged in the failure to attribute. Excusable neglect cannot be applied to such choices. *See* discussion of excusable neglect principles in *Matters of Vincent*, Nos. COPP-2013-CFP-006 and 009. Likewise, the failure to attribute on multiple communications and over an extended period of time cannot be excused as *de minimis*. *See* discussion of *de minimis* principles in *Matters of Vincent*, Nos.

COPP-2013-CFP-006 and 009. The individuals and parties involved in this Matter are directed to immediately attribute any websites or communications still being used in regard to any BC Fire District trustee issue.

Because there is a finding of violation and a determination that *de minimis* and excusable neglect theories are not applicable, civil/criminal prosecution and/or a civil fine is justified [See §13-37-124 MCA]. This Commissioner hereby, through this decision, issues a “sufficient evidence” Finding and Decision justifying civil prosecution under §13-37-124 MCA. Because of nature of violations (the failure to attribute occurred in Gallatin County) this matter is referred to the County Attorney of Gallatin County for his consideration as to prosecution. §13-37-124(1) MCA. Should the County Attorney waive the right to prosecute [§13-37-124(2) MCA] or fail to prosecute within 30 days [§13-37-124(1) MCA] this Matter returns to this Commissioner for possible prosecution. *Id.*

Most of the Matters decided by a Commissioner and referred to the County Attorney are waived back to the Commissioner for his further consideration. Assuming that this Matter is waived back, the Finding and Decision in this Matter does not necessarily lead to civil or criminal prosecution as the Commissioner has discretion [“may then initiate” See §13-37-124(1) MCA] in regard to a legal action. Instead, most of the Matters decided by a Commissioner are resolved by payment of a negotiated fine. In the event that a fine is not negotiated and the Matter resolved, the Commissioner retains statutory authority to bring a complaint in district court against any person

who intentionally or negligently violates any requirement of law, including those of §13-35-225(1) MCA. [See 13-37-128 MCA]. Full due process is provided to the alleged violator because the district court will consider the matter *de novo*.

At the point this Matter is returned for negotiation of the fine or for litigation, mitigation principles will be considered. The fact that Ms. Lerner made an inquiry as to proper action will be considered at that time. See discussion of mitigation principles in *Matters of Vincent*, Nos. COPP-2013-CFP-006 and 009.

DATED this 5th day of November, 2014.



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