

BEFORE THE COMMISSIONER OF  
POLITICAL PRACTICES

---

In the Matter of the Complaint                    )  
Against LIBBY CITIZENS FOR                    )  
EDUCATION and MARLENE KELSCH            )

---

**SUMMARY OF FACTS AND STATEMENT OF FINDINGS**

---

Denise Y. Rowe and Kenneth A. Gerke, residents of the Libby School District, filed a complaint alleging violations of Montana campaign finance and practices laws in connection with the school levy election held on February 24, 1998. The various allegations in the complaint can be divided into three separate claims.

Claim 1:           Marlene Kelsch, a middle school teacher in the Libby Schools, failed to file a Form C-2 to register the "Pass the Mill Levy Committee" as a political committee.

Claim 2:           The "Libby Citizens for Education" political committee and other unnamed persons violated Montana Code Annotated (MCA) § 13-37-226(2) by coercing or requiring public employees to support the committee and passage of the mill levy.

Claim 3:           Kelsch and other unidentified school staff violated MCA § 2-2-121(3).

**SUMMARY OF FACTS**

1.       Marlene Kelsch, a school teacher at the Libby Middle School, is the school's building representative for the Libby Education Association (LEA). The LEA encouraged its members to assist in efforts to pass the mill levy. Heather Hull-Taylor, President of the LEA, asked Kelsch to contact other members to assist with a "get out the vote" effort.

2. Kelsch composed, printed, and distributed a notice to the school staff requesting assistance with efforts to pass the mill levy. The notice referred to a "Pass the Mill Levy Committee," and sought assistance with review of voter registration lists, participation in a telephone calling tree, and a neighborhood canvass. The notice was distributed through the school mail boxes and by hand in the school.

3. Kelsch made up the name "Pass the Mill Levy Committiee" when she composed the notice. She wrote the notice as part of her LEA duties, and considered herself a member of the "Libby Citizens for Education," the political committee established to support passage of the mill levy.

4. The "Libby Citizens for Education" political committee filed a Form C -2 (Statement of Organization) after being advised of the requirement that it do so.

5. There was never a political committee known as the "Pass the Mill Levy Committee." Kelsch inaccurately referred to the "Libby Citizens for Education" political committee as the "Pass the Mill Levy Committee" in the notice that she composed and distributed to school staff.

6. The LEA has a negotiated collective bargaining agreement with the School Board of Trustees. Included in the agreement is the right of the LEA to use school facilities for LEA activities. Paper used by Kelsch for the notice that she drafted was provided by the LEA.

7. Gary Huntsberger, a member of the Board of Trustees, was also active in the effort to support passage of the mill levy through the Libby Citizens for Education political committee. Huntsberger made speeches, paid for advertisements, and printed a brochure, of which approximately 2,000 copies were distributed. Contributions to defray Huntsberger's personal costs were solicited, as were volunteers, mostly teachers and parents. The volunteers distributed brochures, made "get out the vote" calls, and performed other tasks to assist the committee.

8. There is no evidence that any activities undertaken in support of passage of the mill levy were other than voluntary.

## STATEMENT OF FINDINGS

### Claim 1

MCA § 13-37-201 requires a political committee to file a Form C-2, a Statement of Organization, within five days after it makes an expenditure. Because there is no evidence that a separate political committee named the "Pass the Mill Levy Committee" ever existed, there was no violation of MCA § 13-37-201.

### Claim 2

MCA § 13-35-226(2) prohibits any person from attempting to coerce, command, or require a public employee to support or oppose a political committee or the passage of a ballot issue. There is no evidence that any such coercion occurred in this case. The efforts coordinated by the LEA and the Citizens for Education Committee, the political committee that was formed to support the mill levy, consisted of voluntary activities by teachers, school officials, and staff.

### Claim 3

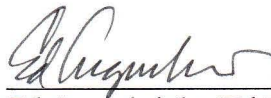
MCA § 2-2-121(3) states that public officers and employees may not "use public time, facilities, equipment, supplies, personnel, or funds for any campaign activity persuading or affecting a political decision" unless the use is authorized by law or properly incidental to another activity required or authorized by law. The complaint alleges that the notice prepared by Kelsch was created on school computers, was produced on school time, and was reproduced on a school copier, by school employees.

Because of the limited nature of my jurisdiction over the ethics laws I have not made any findings with respect to this claim. MCA § 2-2-136 authorizes the Commissioner of Political Practices to consider a complaint alleging violation of the ethics laws in Title 2, chapter 2, part 1 by a state officer or employee. MCA § 2-2-144 authorizes the County Attorney to determine whether a complaint against a local government employee justifies pursuance of a civil action. "Local government" means a county, an incorporated city or town, a consolidated government, or a school district. Therefore, this claim can only be brought before the County Attorney.

### CONCLUSION

Based on the preceding summary of facts and statement of findings, no further action will be taken in this matter.

DATED this 31<sup>st</sup> day of August, 1998.



---

Ed Argenbright, Ed.D.  
Commissioner of Political Practices