

**BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES
STATE OF MONTANA**

In the Matter of the Complaint)	SUMMARY OF FACTS
Against Jay Doyle)	AND
)	STATEMENT OF FINDINGS

Kenneth Scott filed a complaint against the 2010 Lake County Republican candidate for sheriff, Jay Doyle, on September 20, 2010. Scott alleged that Doyle violated Section 13-35-214(2), MCA, by publicly announcing his choice for undersheriff before the 2010 primary and general elections.

SUMMARY OF FACTS

1. Doyle campaigned for the office of Lake County sheriff in the 2010 Republican primary election. Doyle was serving as Sheriff Lucky Larson's undersheriff when he became a candidate for sheriff. Doyle won the Republican nomination for sheriff and was elected Lake County sheriff in the November 2, 2010, general election.

2. Before the June 8, 2010, Republican primary election Doyle announced that Mike Sargeant would be his choice for undersheriff if Doyle were elected. Doyle distributed campaign handouts captioned "Two for One Special," touting that the election of Doyle would get you "51 years of experience in ... law enforcement." Sargeant, like Doyle, was already employed by Sheriff Lucky Larson at the time. A copy of the campaign handout is attached as Exhibit 1.

3. After the primary election, Sargeant advised Doyle that he would not be able to serve as undersheriff because of health issues.

4. Doyle contacted Karey Reynolds during the summer of 2010 and asked Reynolds if he would be interested in serving as undersheriff if Doyle were elected. Doyle contacted Reynolds

about serving as undersheriff because there were problems in the Sheriff's Department, Doyle had known Reynolds for years, and Doyle thought Reynolds would be a good choice for undersheriff.

5. Doyle shared with Reynolds his one-, five-, and ten-year plans for changes in the Lake County Sheriff's Department. Reynolds took a few days to consider Doyle's request and ultimately agreed to serve as undersheriff if Doyle was elected.

6. Doyle's choice of Reynolds to serve as undersheriff was initially disclosed at a Lake County Republican Party meeting. Subsequently, Doyle published advertisements announcing Reynolds as Doyle's choice for undersheriff "should you choose to elect me as your next Sheriff." In a Doyle website posting, Reynolds stated he "was asked by Jay Doyle to consider the position of Undersheriff if he was elected as Sheriff..." and "I have accepted Jay's offer, and would be proud to serve the citizens of Lake County as their Undersheriff." Copies of the advertisements are attached as Exhibit 2.

7. Doyle denies that he asked Reynolds to vote for him.

8. Reynolds was sworn in as a reserve deputy by Sheriff Larson on November 9, 2010, just shortly after the general election.

9. Doyle was elected as the Lake County Sheriff in the November 2010 general election.

10. Doyle appointed Reynolds as undersheriff on January 11, 2011, after Doyle assumed office as sheriff.

11. In response to Scott's complaint, Doyle stated he consulted Polson attorney Ted Chester before publicly disclosing either of his choices for undersheriff. According to Doyle, he was advised it would be permissible to publicly disclose his choice for undersheriff based on Section 13-35-214(2), MCA. Doyle believed it was important for the public to know who would

temporarily assume the duties of sheriff if Doyle was elected but was, for any reason, unable to serve.¹

12. Attorney Ted Chester recalled discussing Section 13-35-214(2), MCA, with Doyle before Doyle publicly disclosed that Sergeant would be his initial choice for undersheriff. Chester confirmed it was, and is, his professional legal opinion that Doyle could identify his choice for undersheriff pursuant to the exception provision in Section 13-35-214(2), MCA.

13. Doyle also discussed his proposed decision to publicly disclose his choice for undersheriff with Brent Matson, president of the Republican Party in Lake County. According to Matson, he consulted Helena attorney Jim Brown about the language in Section 13-35-214(2), MCA. Matson asked attorney Jim Brown whether a sheriff candidate could announce his choice for undersheriff during an election. Brown's advice regarding Section 13-35-214(2), MCA, was similar to the legal opinion expressed to Doyle by Polson attorney Ted Chester. Matson recalls Jim Brown advised that a candidate cannot coerce someone to take a position if the candidate is elected, but absent coercion, a candidate can announce who is going to be part of his management team if elected.

14. Jim Brown confirmed he advised Mr. Matson about the Doyle matter and recalled that the consultation occurred between the 2010 primary and general elections. Brown agreed he advised Matson that Doyle's identification of an undersheriff did not violate Section 13-35-214(2), MCA, and was allowable under the exception language in this statute. Brown believes he was not contacted by Matson until after Doyle had identified his picks for undersheriff and no one asked his opinion prior to Doyle's selection of either Sargeant or Reynolds.

¹ 7-32-2122, MCA, states that if a vacancy occurs in the office of sheriff, the undersheriff must "execute the office of sheriff until a sheriff is elected or appointed and duly qualified." The county commissioners must appoint a successor to the office of sheriff as provided in Sections 7-4-2203 and 7-4-2206, MCA. The county commissioners are not obligated to appoint the sitting undersheriff as the successor sheriff.

STATEMENT OF FINDINGS

Section 13-35-214(2), MCA, reads, in pertinent part, as follows:

Illegal influence of voters. A person may not, directly or indirectly, individually or through any other person, for any election, 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:

...
(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 the candidate's nomination or election, except that the candidate may publicly announce or define the candidate's choice or purpose in relation to an election in which the candidate may be called to take part if elected.

Scott's complaint is based on the argument Doyle stated his intent to hire Reynolds while Reynolds was unemployed and that Doyle promised to provide Reynolds employment if Doyle was elected Sheriff of Lake County. Scott's complaint further references Section 13-35-103, MCA, which provides a person who knowingly violates a provision of the election laws of this state for which no other penalty is specified is guilty of a misdemeanor.²

The Commissioner's office has previously addressed alleged violations of 13-35-214(2), MCA, in Matter Of The Complaint Against George Ames, Candidate for Sheriff of Sweet Grass County, Big Timber, Montana, 1990; Matter Of The Complaint Against Ray Nixon, Donald E. Shaw, and Ronald V. Snyder, candidates for Lincoln County Sheriff, Libby, Montana, 1994; and Matter of the Complaint Against Ivan Andrick, 2004.

In Ames and Nixon, the Commissioner held the language of 13-35-214(2) was "*cumbersome and ambiguous at best, particularly the last clause, which appears to establish an*

² Because a violation of 13-35-214(2) is a misdemeanor under Montana's election laws, a criminal prosecution must be commenced within one year after the offense is committed. Section 45-1-205(2)(b), MCA. A violation of Section 13-35-214(2), MCA, is not subject to a civil penalty action under Section 13-37-128, MCA, or the corresponding four-year statute of limitations applicable to civil penalty prosecutions in 13-37-130, MCA.

exception under certain vaguely delineated circumstances.” (Emphasis added; Ames, at p.6; Nixon, at p. 5.)

I agree with my predecessors’ conclusions regarding Section 13-35-214(2), MCA. Regardless of the conduct prohibited by Section 13-35-214(2), the last clause of subsection 2 expressly allows a candidate to “publicly announce or define the candidate's choice or purpose in relation to an election in which the candidate may be called to take part if elected.” The exception language in 13-35-214(2) prevents any meaningful enforcement of this statute until the Montana legislature amends and clarifies the last clause in subsection 2.

Although not alleged in the Scott complaint, Doyle’s job offers to Sargeant and Reynolds must be examined in light of the prohibitions in Section 13-35-215(1)(a), MCA. Both Sections 13-35-214 and 13-35-215 were enacted by the 1977 Legislature. However, unlike Section 13-35-214(2), MCA, Section 13-35-215 does not contain the “publicly announced candidate’s choice” exception. Section 13-35-215(1)(a), MCA, reads, in pertinent part, as follows:

Illegal consideration for voting. No person, directly or indirectly, by himself or by any other person, may:

(1) before or during any election, for voting or agreeing to vote or for refraining or agreeing to refrain from voting at the general election or for inducing another to do so:

(a) receive, agree, or contract for any money, gift, loan, valuable consideration, office, place, or employment for himself or any other person....

Doyle’s offers to appoint Sargeant and Reynolds as undersheriff if Doyle was elected clearly constitute valuable consideration, an office, or an offer of employment under Section 13-35-215(1)(a), MCA. The issue to be determined is whether the offers to Sargeant and Reynolds were made for the purpose of inducing the undersheriff designees to vote for Doyle.

Because violations of Sections 13-35-214 and 13-35-215 are misdemeanors, a person must act either knowingly or purposely to violate these statutes. Section 45-2-103(1), MCA.

The term "knowingly" is defined in 45-2-101(34) to mean:

. . . [A] person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when the person is aware of the person's own conduct or that the circumstance exists. A person acts knowingly with respect to the result of conduct described by a statute defining an offense when the person is aware that it is highly probable that the result will be caused by the person's conduct. When knowledge of the existence of a particular fact is an element of an offense, knowledge is established if a person is aware of a high probability of its existence. Equivalent terms, such as "knowing" or "with knowledge", have the same meaning.

The term "purposely" is defined in 45-2-101(64) to mean:

. . . [A] person acts purposely with respect to a result or to conduct described by a statute defining an offense if it is the person's conscious object to engage in that conduct or to cause that result. When a particular purpose is an element of an offense, the element is established although the purpose is conditional, unless the condition negatives the harm or evil sought to be prevented by the law defining the offense. Equivalent terms, such as "purpose" and "with the purpose", have the same meaning.

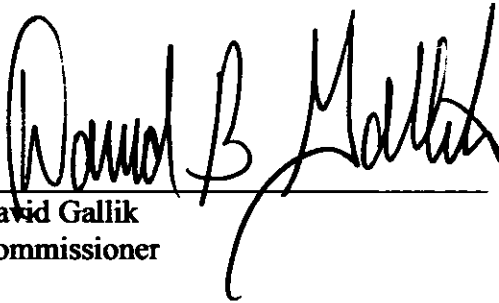
To establish that Doyle violated 13-35-215(1)(a), MCA, it would be necessary to prove beyond a reasonable doubt that Doyle, acting knowingly or purposely, intended to induce Sargeant or Reynolds to vote in his favor by offering them the undersheriff's position if Doyle was elected. Doyle steadfastly maintains he publicly identified his choice for undersheriff to inform the voters who would be temporarily in charge if Doyle won the election, but Doyle was unable to perform his duties as sheriff. There is no evidence suggesting that Doyle's undersheriff designees agreed to serve as Doyle's undersheriff as an inducement to vote for Doyle. The evidence indicates the contrary -- Sargeant and Reynolds agreed to serve as Doyle's undersheriff because Doyle had a plan to fix problems in the sheriff's office. The fact that Doyle publicly announced his choices for undersheriff, thereby risking the public reaction that could

occur if he picked an unqualified, unworthy, or unscrupulous individual to serve as undersheriff, constitutes additional evidence that Doyle did not act knowingly or purposely in publicly announcing his undersheriff choices.

CONCLUSION

Based on the preceding, Jay Doyle did not violate Section 13-35-214(2) or Section 13-35-215(1)(a), MCA.

Dated this 31st day of May, 2011.

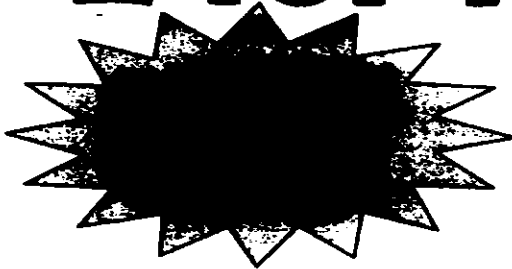


David Gallik
Commissioner

C: Sheriff Jay Doyle
Kenneth Scott

2 for 1 Special

June 8th & Nov. 2



One vote gets you 51 Years of experience in

- ✓ Management Skills
- ✓ Supervisory Expertise
- ✓ Budgeting Knowledge
- ✓ Law Enforcement Experience

JAY
DOYLE

51

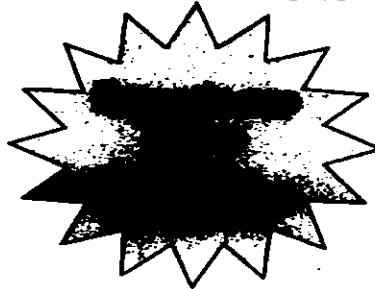
Mike Sargeant

**for
Sheriff**

**Years
Combined**

**as
Under sheriff**

- Detention
- Patrol
- Detective
- Undersheriff
- Management
- Supervision



- Patrol
- Detective
- Undersheriff
- Budgeting
- Management
- Supervision

Tested, Proven, Trusted!

Vote

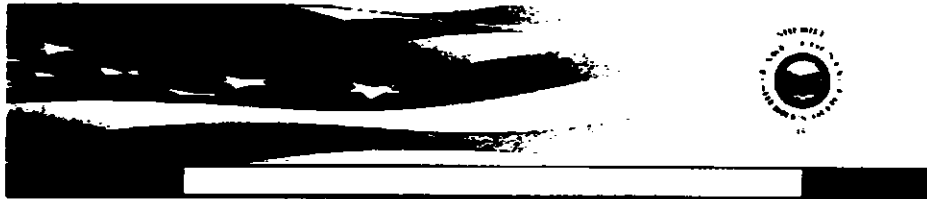
"One candidate who campaigns with ethics does more good for the community than 100 candidates who campaign without ethics." Nathaniel Tabor

Paid for by Jay Doyle for Sheriff, Box 1684, Poleon, MT Gull Printing, Inc.

EXHIBIT 2

http://www.lakecountysheriff.com

8.16.2010 11:47



Vote Jay Doyle For Sheriff



Hello, my name is Jay Doyle. I currently serve as your Undersheriff, second in command to Sheriff Lucky Larson. I was born in Polson in 1964 and spent most of my life in the Mission Valley. I began my career in Law Enforcement in 1986 as a Reserve Deputy and Detention Officer for Lake County. During the last 20 years I have served our community as a Polson city police officer, a patrol deputy, Detective, and Lieutenant Detective. In 1998 I became the first School Resource Officer in Lake County.

In Office:

Many challenges await the next Sheriff of Lake County. Maintaining a staff of well trained, well qualified, professional employees within a fiscally responsible budget is of paramount importance in our current economic climate. I feel strongly that my 20 plus years of law enforcement experience have prepared me to meet these challenges. I have developed a one-year, five-year, and ten-year management plan that details the strategies for each department within the Sheriff's Office in order to accomplish these goals.

In the upcoming months I will be attending several public meetings with civic groups, clubs, social groups, and forums throughout the county. I invite you to attend and allow me to personally share my vision and plans for the Lake County Sheriff's Office in detail as well as answer any questions you may have. If you are unable to attend one of these forums, please feel free to email or call me with your questions or comments. I will be happy to respond at my earliest convenience.

On November 2nd, 2010 you will be asked to cast your vote for the next Lake County Sheriff. I have the experience, expertise and management skills to lead your Sheriff's Office now and into the future. Vote Jay Doyle for Lake County Sheriff.

At Home:

I have been married to my wife Diana for 22 yrs. Diana moved to Ronan with her family in 1968 where she attended Ronan public schools. I have two children who were born at ST. Luke Hospital and attended public school in Polson, and one grandson who lives with his parents in Polson. I have many family members who live throughout the Mission Valley. I have a vested interest in making Lake County the safest place to live for our children, grandchildren, parents and grandparents now and into the future.

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Sincerely,

Jay Doyle

PayPal
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Karey Reynolds Undersheriff

Hello, my name is Karey Reynolds. I was asked by Jay Doyle to consider the position of Undersheriff if he was elected as Sheriff of Lake County. I have accepted Jay's offer, and would be proud to serve the citizens of Lake County as their Undersheriff.

I was raised, and have lived in Lake County for the past 39 years. I graduated from Ronan High School in 1966. I then attended North Idaho College in Coeur d'Alene Idaho and majored in Law Enforcement.

In 1967 I joined the Lake County Sheriff office as a Reserve Officer. I have served as a Detention Officer, Civil Service Officer, part time Police Officer, full time Deputy Sheriff, permanent part time Deputy Sheriff, and a part time Police Officer for the city of Ronan until 2008.



As a Deputy, I served as the resident Deputy of Arise, St Ignatius, then moved to Charlo. My duties included, Patrol, Investigation, Dive Team, SRT Team, Firearms Instructor, Drug Investigation, and Rifle Instructor. I have over 560 hrs of POST qualified instruction, and hold both Basic and Intermediate POST certifications.

In 1991 I married the love of my life, and best friend Darla. We have 2 sons, Rocky and Austin whom we raised in St. Ignatius and then Charlo.

Since 1997 I have been a business owner in Lake County. My dad Kayo Reynolds and I are partners in Ronan Sales & Loan. In 2001 when my dad became well enough from his illness to manage Ronan Sales & Loan, my wife Darla and I started Reynolds Rentals LLC. We started the equipment rental company with tools in our garage, and expanded it over the last nine years into a thriving player in the equipment rental market, serving our local community. This July because of economic factors beyond our control, we decided to close the rental business.

Having both experience in Law Enforcement, and in Small Business, makes me very qualified as Undersheriff for Lake County. I believe that because of these factors, I will be able to help Jay ensure the Sheriff's Office is a fiscally conservative office that will serve the citizens of Lake County, and give them outstanding Law Enforcement services for their tax dollar.

Thank You,

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