

BEFORE THE COMMISSIONER OF  
POLITICAL PRACTICES

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In the Matter of the Ethics Complaint     )  
Against Dave Galt, Director,                )  
Montana Department of Transportation     )     ORDER OF DISMISSAL

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Ryan Seher, Campaign Manager for the Tracy Valazquez for Congress Campaign, filed an ethics complaint against Dave Galt (Galt), Director of the Montana Department of Transportation (MDT), on June 29, 2004. The Valazquez campaign alleges that Galt violated Section 2-2-121(3), Montana Code Annotated (MCA), which, according to the complaint, prohibits a public officer from soliciting "support for or opposition to the nomination or election of a person to public office or political committees organized to support or oppose a candidate or candidates for public office."

The Valazquez campaign's ethics complaint against Galt was part of an omnibus complaint in which the Valazquez campaign alleged Galt had violated a similar prohibition in Montana's Campaign Finance and Practices Act (Section 13-35-226(4), MCA). See the Summary of Facts and Statement of Findings concluding that Galt did not violate the Campaign Finance and Practices laws issued simultaneously with this Order of Dismissal.

MEMORANDUM

The facts applicable to both this ethics complaint and the allegations that Galt violated Section 13-35-226(3) and (4), MCA, of Montana's Campaign Finance and Practices Act are stated in the Summary of Facts and Statement of Findings accompanying this Order of Dismissal. The Valazquez campaign alleges that Galt, as a

public employee and/or a public officer, violated both the Montana Code of Ethics (2-2-121(3), MCA) and the Campaign Finance and Practices Act (13-35-226(4), MCA) by writing a letter to the editor criticizing Tracy Valazquez (Valazquez) and expressing support for Valazquez's opponent, Congressman Dennis Rehberg, in obtaining highway funds for Montana.

Galt's letter to the editor was written at his home, after work hours, on his personal computer, printed on plain white paper on his home printer, and mailed using envelopes and stamps provided personally by Galt. He did not use MDT equipment, supplies, office space, or personnel to prepare or distribute the letter to four of Montana's daily newspapers. Galt did not reference his title as MDT Director or mention MDT in his letter. The opinions expressed in Galt's letter to the editor were his personal opinions and nothing in the letter suggests that Galt intended or attempted to speak on behalf of MDT.

The accompanying Summary of Facts and Statement of Findings concludes that the Valazquez campaign engaged in a selective and incomplete quotation of language from 13-35-226(4), MCA, to allege a violation of the Campaign Finance and Practices Act. The Valazquez campaign resorted to similar misrepresentations of the language in Section 2-2-121(3), MCA, to assert a violation of the Ethics Code. The Valazquez campaign's ethics complaint quotes only a portion of the language applicable to a public employee or a public officer who decides to become involved in political campaigns. The complete text of the Ethics Code provision, which is the basis for the Valazquez campaign's complaint against Mr. Galt is Section 2-2-121(3), MCA, reads as follows:

3) (a) A public officer or public employee may not use public time, facilities, equipment, supplies, personnel or funds to solicit support for or

opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue unless the use is:

(i) authorized by law; or

(ii) properly incidental to another activity required or authorized by law, such as the function of an elected public officer, the officer's staff, or the legislative staff in the normal course of duties.

(b) As used in this subsection (3), "properly incidental to another activity required or authorized by law" does not include any activities related to solicitation of support for or opposition to the nomination or election of a person to public office or political committees organized to support or oppose a candidate or candidates for public office. With respect to ballot issues, properly incidental activities are restricted to the activities of a public officer, the public officer's staff, or legislative staff related to determining the impact of passage or failure of a ballot issue on state or local government operations.

(c) This subsection (3) is not intended to restrict the right of a public officer or public employee to express personal political views.

The Valazquez campaign incorrectly states that 2-2-121(3), MCA, prohibits a public officer or a public employee from soliciting support for or opposition to candidates at all times, even when not working. Such an absolute prohibition would clearly raise constitutional issues and is contrary to the text of 2-2-121(3), MCA, when read in its entirety. A public officer or a public employee is only prohibited from soliciting support for or opposition to a candidate if the solicitation involves the use of public time, facilities, equipment, supplies, personnel or funds.

The investigation of the Valazquez campaign's Campaign Finance and Practices complaint establishes that Galt's letter to the editor, if deemed to be a "solicitation," did not involve the use of public (MDT) time, facilities, equipment, supplies, personnel or funds. Furthermore, Section 2-2-121(3)(c), MCA, expressly states that the prohibitions of 2-2-121(3), MCA, are "not intended to restrict the right of a public officer or a public employee to express personal political views." The Valazquez campaign's ethics complaint failed to cite the language of 2-2-121(3)(c), MCA, the language limiting the

prohibitions of 2-2-121(3)(a), MCA, to solicitations at work or using government equipment, office space or personnel, or the other exceptions in 2-2-121(3)(a)(i), (ii) and (b).

Section 2-2-136(1)(b), MCA, specifies that the Commissioner may dismiss an ethics complaint that "does not state a potential violation" of the Ethics Code. The Ethics Code language of 2-2-121(3)(a), MCA, is virtually identical to the language in 13-35-226(4), MCA, of the Campaign Finances and Practices Act. As noted, my investigation of the alleged violations of Section 13-35-226(4), MCA, determined there is no evidence to conclude that Galt's letter to the editor violated Section 13-35-226(4), MCA. My decision in the Campaign Finance and Practices matter leads me to conclude that the ethics complaint against Mr. Galt does not "state a potential violation" of the Code of Ethics.

#### COSTS

This is the second ethics complaint filed by a campaign manager for a candidate in the last four months. See my June 2, 2004 decision *In the Matter of the Complaint of Davison for Governor Against Secretary of State Bob Brown*. It appears that some campaign managers see the filing of ethics complaints as fertile ground for negative campaigns with little consideration of whether the complaint has merit. This tendency by candidates to allow campaign managers to file complaints based on misstatements of applicable statutes or without consulting an attorney is of great concern to the Commissioner and, no doubt, to the targets of such unsubstantiated complaints. Although Valazquez's campaign manager said he consulted an attorney before filing this ethics complaint, Seher would not name the attorney and indicated that he was not

sure the attorney would be representing the Valazquez campaign if it was necessary to hold a contested case hearing in this matter. It is clear the Valazquez campaign complaint was based on a misstatement of both Sections 2-2-121(3) and 13-35-226(4), MCA, and an absence of alleged facts that would constitute a violation of the prohibitions in 2-2-121(3) and 13-35-226(4), MCA. Galt has advised that he defended himself in this matter and that he incurred no costs that could be the subject of an assessment of costs against the Valazquez campaign. See Section 2-2-136(2), MCA. Had Galt incurred any costs that could be assessed under 2-2-136(2), MCA, such an order would have been included in this Order of Dismissal.

#### ORDER OF DISMISSAL

THEREFORE, IT IS HEREBY ORDERED that the complaint alleging that Dave Galt violated Section 2-2-121(3), MCA, is DISMISSED.

DATED this 26<sup>th</sup> day of July, 2004.

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Linda L. Vaughey  
Commissioner

#### NOTICE:

Any party to this proceeding may seek judicial review of this Order as provided in Section 2-2-136(3), MCA, and Title 2, chapter 4, part 7, MCA, of the Montana Administrative Procedure Act.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 26<sup>th</sup> day of July, 2004, the foregoing Order of Dismissal was served on the parties hereto addressed to the parties as follows:

Ryan Seher, Campaign Manager  
Tracy for Congress Campaign  
Post Office Box 88  
Bozeman, MT 59771

Certified U. S. Mail, Postage Prepaid  
Dave Galt  
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Helena, MT 59601

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Mary Baker  
Data and Program Technician  
Commissioner of Political Practices