

November 25, 2008

John M. Ward
4525 Glass Drive
Helena, MT 59602

Subject: Complaint received May 6, 2008

You filed a complaint alleging that Mike Miller violated campaign finance and practices statutes. Your complaint alleges the violations arose based on a campaign flyer that Miller distributed at a public meeting on April 29, 2008. The flyer urges a vote for Miller, who was your opponent in the 2008 primary election for the Republican nomination in HD 84. The flyer also contains representations regarding your voting record in the 2007 Legislature. Your complaint alleges that some of the representations in the flyer are false, and that the flyer violates certain provisions of § 13-35-225, MCA.

Miller visited my office several days before the complaint was filed to inquire regarding what steps were necessary to bring his campaign materials into compliance with the law. In addition, Miller submitted written responses to the formal complaint.

Miller designed and printed copies of the flyer using his home computer and printer. He attended a public meeting of supporters of Ron Paul on April 29, 2008, during which Miller personally distributed four copies of the flyer. Miller estimated the cost of the four flyers to be 40 cents (10¢ apiece). The flyers included representations regarding Representative John Ward's voting record during the 2007 session of the Montana Legislature. The flyers did not include a reference to the particular vote or votes upon which the voting record information was based. Moreover, the flyers did not include a statement signed by Miller stating that, to the best of his knowledge, the statements regarding Ward's voting record were accurate and true. Therefore, the flyers did not comply with the provisions of, respectively, §§ 13-35-225(3)(a)(i) and 13-35-225(3)(a)(iii), MCA.

The flyers distributed at the April 29, 2008 meeting were also deficient in another respect. § 13-35-225(1) requires communications advocating the success or defeat of a candidate, political party, or ballot issue to include attribution language indicating who paid for the communication. In the case of a candidate, the attribution language must include the name and address of the candidate or the candidate's campaign. While the flyers identified Miller's campaign and his campaign treasurer, and included a telephone contact number, they did not include an address.

Miller discussed his campaign materials with the Commissioner in a personal meeting at the Commissioner's office on May 2, 2008. At that meeting Miller acknowledged that the flyers he distributed at the Ron Paul meeting did not comply with the law, and he assured the Commissioner he would attempt to correct the remaining campaign flyers.

He stated that if he was unable to correct the flyers he would not distribute any more of them. Miller ultimately determined that it was not possible to bring the remaining flyers into compliance, and he therefore did not distribute any additional flyers.

Miller also identified other campaign materials that were not included in the complaint allegations. Miller disclosed that he designed a 4x6" campaign postcard and had copies produced and mailed using the U.S. Postal Service's online "Click2Mail" service. Miller provided records showing that initially 55 postcards were mailed using that service, at a cost of \$20.03. Miller admitted the 55 postcards did not comply with certain provisions of § 13-35-225, MCA. The postcards referred to one of Ward's votes and, like the flyers, did not comply with the requirements of subsections (3)(a)(i) and (3)(a)(iii) of the statute. In addition, the attribution on the postcard was incomplete – it did not include an address for the campaign.

Miller provided evidence establishing that he corrected the postcard so that it was in compliance with § 13-35-225, MCA, that he mailed out copies of the corrected version, and that only 55 of the legally deficient postcards were mailed.

While the complaint does not allege that Miller violated any other campaign finance and practices laws, it does allege that the campaign materials contained misrepresentations regarding Ward's voting record. A review of the representations in the flyer and comparison with Ward's actual voting record on the bills cited discloses that the flyer contains some misrepresentations. When he created the materials Miller relied on information that was provided to him by a third party (a legislator), without confirming the accuracy of that information. Miller stated he assumed that because the information was provided by a legislator it would be accurate.

§ 13-37-131, MCA prohibits a 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 standard of proof required to establish a violation is quite high. (See Matter of the Complaints Against John Vincent, Amended Summary of Facts and Statement of Findings (November 17, 2008).) The facts disclosed in this matter do not support a finding that Miller knowingly made misrepresentations on his campaign materials or that he acted with reckless disregard.

A violation of § 13-35-225, MCA may be prosecuted under § 13-37-128, MCA, which authorizes a court to impose a civil penalty. Although the campaign flyers and postcards produced and distributed by Miller did not comply with the cited provisions of § 13-35-225, MCA, I have determined that a civil penalty action is not warranted given the minimal amount of expense associated with the campaign materials (\$20.43), as well as the limited number of flyers and postcards that were distributed.

Therefore, based on the information presented to me as described in this letter, I am dismissing your complaint. I have been in contact with Mr. Miller, and he has been counseled regarding the requirements of § 13-35-225, MCA.



Dennis Unsworth
Commissioner of Political Practices

copy: Mike Miller