

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES

In the Matter of the Complaint) **SUMMARY OF FACTS**
Against Frank Smith) AND
) **STATEMENT OF FINDINGS**

Jonathan Windy Boy filed a complaint alleging that Frank Smith violated the following state campaign laws when he failed to file his 2008 campaign finance reports by the due dates:

- § 13-37-226, MCA, Time for Filing Reports,
- § 13-37-229, MCA, Disclosure of Contributions Received, and
- § 13-37-230, MCA, Disclosure of Expenditures.

SUMMARY OF FACTS

1. Frank Smith and Jonathan Windy Boy, both Democrats, were opposing candidates for Senate District 32 (SD 32) in the June 2008 primary election. There were no Republican candidates. Windy Boy was, at the time, a State Representative. Windy Boy defeated Smith, the incumbent Senator, by a vote of 1476 to 1363.
2. Smith subsequently filed for office as a write-in candidate, campaigning for SD 32 in the November general election. Windy Boy won the seat with 4538 votes; Smith garnered 1081 write-in votes.
3. The complaint, received on October 29, 2008, alleges that Frank Smith violated §§ 13-37-226, 13-37-229, and 13-37-230, MCA by not filing his pre-general campaign finance report.
4. In 2008, the primary election was held on June 3. Montana law required a candidate for the legislature to file a pre-primary election finance report by May 22, 2008, and a post-primary election finance report by June 23, 2008. The reports are filed on form C-5, and are required to be filed with the office of the Commissioner of Political Practices (Commissioner) and the office of the county Clerk and Recorder.
5. Smith filed his pre-primary election campaign finance report with the Commissioner on May 27, 2008, 5 days past the due date. The report covered the reporting period of January 28 to May 17, 2008. Smith filed his pre-primary C-5 with the Roosevelt County Clerk and Recorder on May 23, 2008, which was 1 day past the due date.

6. Smith reported no cash on hand at the beginning of the period, receipts of \$2,450.43, and expenditures of \$2,454.09.
7. Smith filed his post-primary election campaign finance report with the Commissioner on August 1, 2008, which was 38 days past the due date. The report covered the reporting period of May 19 to June 6, 2008. Smith filed his post-primary C-5 with the Roosevelt County Clerk and Recorder on December 1, 2008, which was 161 days past the due date.
8. Smith reported -\$3.66 cash on hand at the beginning of the period (a negative balance), receipts of \$420, and an expenditure total of \$416.34. However, only one expenditure was shown – a loan repayment to himself of \$423.66.
9. In 2008, the general election was held on November 4. Montana law required a candidate for the legislature to file a pre-general election finance report by October 23, 2008, and a post-general election finance report by November 24, 2008. Smith filed his pre-general election campaign finance report with the Commissioner on October 31, 2008, which was 8 days past the due date. The report covered the reporting period of June 10 to October 17, 2008. Smith filed his pre-primary C-5 with the Roosevelt County Clerk and Recorder on October 30, 2008, which was 7 days past the due date.
10. Smith reported no cash on hand at the beginning of the period, receipts of \$2,790, and itemized expenditures that totaled \$2,621.21. In the summary section of that report however, Smith reported an expenditure total of just \$2302.92, a difference of over \$300. This resulted in what appears to be an erroneous reported “Cash in Bank” ending balance of \$487.08.
11. Smith filed his post-general election campaign finance report with the Commissioner on November 19th 2008, prior to the due date. He failed to file his post-general election campaign finance report with the Roosevelt County Clerk and Recorder.
12. Smith reported cash on hand of \$487.08 (see Fact 10), receipts of \$410, and expenditures of \$715.98. He reported a “Cash in Bank” ending balance of \$181.02.
13. Based on reported contributions and expenditures, the “Cash in Bank” ending balance for the general election campaign should have been reported as -\$137.19 (a negative balance).
14. The financial reporting discrepancies and the apparent errors that resulted are unresolved. Despite repeated requests, the Smith campaign failed to provide information requested by the Commissioner’s office to resolve the discrepancies.

STATEMENT OF FINDINGS

§ 13-37-226, MCA establishes deadlines for filing campaign finance reports for various types of candidates and political committees. Subsection (3) establishes deadlines for candidates for state district offices. The statute provides in relevant part:

- (3) Candidates for a state district office, including but not limited to candidates for the legislature, the public service commission, or a district court judge, and political committees that are specifically organized to support or oppose a particular state district candidate or issue shall file reports:
 - (a) on the 12th day preceding the date on which an election is held and within 48 hours after receiving a contribution of \$100 or more if received between the 17th day before the election and the day of the election. The report under this subsection (3)(a) may be made by mail or by electronic communication to the clerk and recorder and the commissioner of political practices.
 - (b) not more than 20 days after the date of the election;
 - ...

As set forth in Facts 5, 7, 9, and 11, Smith's pre-primary election reports were filed five days late with the Commissioner and one day late with the county. His post primary report was filed 38 days late with the Commissioner and 161 days late with the county. Smith's pre-general election report was filed 8 days late with the Commissioner and 7 days late with the county. While Smith's post-general election report was timely filed with the Commissioner, he failed to file a report with the county.

Smith's late filing and failure to file certain campaign finance reports deprived the public of timely disclosure of his campaign activities, thereby frustrating Montana's longstanding commitment to "the full disclosure and reporting of funds used in Montana to support or oppose candidates, political committees, or issues. . ." (Section 1, Chapter 480, Laws of 1975.)

The complaint also alleges that Smith violated §§ 13-37-229, MCA, and 13-37-230, MCA. Those statutes require disclosure of campaign contributions and expenditures, respectively, for all candidates seeking elected office (with certain exceptions not applicable here). Since the reports included significant errors as set forth in Facts 8, 10, 12, and 13, and those errors remain unresolved, to that extent Smith failed to fully disclose the source and disposition of campaign funds, in violation of §§ 13-37-229 and 13-37-230, MCA.

CONCLUSION

Based on the preceding Summary of Facts and Statement of Findings there is substantial evidence to conclude that Frank Smith failed to file election reports within the time provided by Montana law, failed to file a post-general election report with the county, and failed to fully disclose his campaign funding.

DATED this 30th day of December, 2009.



Dennis Unsworth
Commissioner of Political Practices