

BEFORE THE COMMISSIONER OF  
POLITICAL PRACTICES OF THE STATE OF MONTANA

Yancey v. Save Helena Neighborhood Schools  No. COPP 2015-CFP-008	Dismissal of Complaint Against Save Helena Neighborhood Schools  Finding of Sufficient Evidence to Show a Violation of Montana's Campaign Practices Act by All Helena Kids Matter.
Yancey v. All Helena Kids Matter  No. COPP-2015-CFP-009	

On June 10, 2015, Robyn Yancey, a resident of Helena, Montana, filed a complaint against two Helena based ballot issue committees: "Save Helena's Neighborhood Schools" and "All Helena Kids Matter". Ms. Yancey alleged that both committees were in violation of campaign finance laws and specifically alleged:

1. Save Helena's Neighborhood Schools did not attribute who paid for "Save Our Neighborhood School" signs that were posted around the Helena area, and;
2. All Helena Kids Matter failed to properly report the cost of newspaper and radio advertisements.

Both Complaints concerned the June 18, 2015 Helena public school bond issue. For that reason the Commissioner combined the two complaints into this single Decision.

### **SUBSTANTIVE ISSUES ADDRESSED**

The substantive areas of campaign finance law addressed by this decision are: 1) Attribution of certain signs; 2) Reporting and disclosure of expenditures and contributions by political committees.

#### **Introduction**

In 2015 the Trustees of the Helena School District (The Board), placed a \$70 million school bond for voter approval in a June 18, 2015 vote.<sup>1</sup> The 2015 Helena school bond issue was the culmination of a long simmering public debate within the Helena community:

Finding of Fact No. 1: The Helena Public Schools Board of Trustees had been discussing and working on plans to propose a bond concerning Helena area schools (mainly elementary schools) for over seven years prior to the June 2015 school bond vote. During those seven years Members of the Board led or participated in 160 public meeting discussions. Some of these public discussions included an argument that it was financially prudent for the Board to close some neighborhood schools. ([www.bondinfo.helenaschools.org](http://www.bondinfo.helenaschools.org) and Helena Independent Record articles dated June 16, 2015 and June 18, 2015).

Finding of Fact No. 2: On May 9, 2014 an informal group called Save Helena's Neighborhood Schools (SHNS) emerged to speak in opposition to any School Board plan that did not continue to support neighborhood schools. (Investigator's records)

Finding of Fact No. 3: Another informal group ("Friends of Jefferson") also

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<sup>1</sup> The bond vote was a mail ballot vote, meaning that mail ballots returned and collected during a month long voting period would be counted on June 18, 2015.

emerged in May of 2014 to speak in support of one neighborhood school.  
(Investigator's records)

With this background in mind, on June 10, 2015 (a week before the end of the mail ballot voting on the bond) Robyn Yancey filed the complaints addressed in this Decision. Ms. Yancey served as the "manager" of the "Yes for Kids" campaign in support of the passage of the school bond. (Helena Independent Record article dated June 16, 2015).

#### I. Use of 'Save Our Neighborhood School' Sign

The Complaint alleges that particular blue and white signs (a photo of the sign accompanied the complaint) were "posted around Helena" in opposition to the school bond. The photos accompanying the complaint showed a white sign with blue text stating "Save Our Neighborhood Schools". These 'Save Our Neighborhood Schools' signs were posted for viewing by the public next to "No on the Bond" signs, which were attributed to a political committee (See FOF No. 9) organized to oppose the Helena school bond.

Finding of Fact No. 4: The earliest date that the Commissioner's investigator evidence of the blue and white 'Save Our Neighborhood Schools' sign was in a May 13, 2014 Facebook post of Friends of Jefferson. (Investigator's records)

Finding of Fact No. 5: The 'Save Our Neighborhood Schools' signs did not at any time have an attribution as to who paid for the sign. (See photo).

Finding of Fact No. 6: The Save Our Neighborhood signs had one message "save our neighborhood schools" and did not advocate a vote for or against the school bond. (See photo).

Finding of Fact No. 7: A spokesperson for the Save Helena Neighborhood Schools group responded to the complaint and

explained that the design for the 'Save Our Neighborhood Schools' sign was filed with, and made available for the public use, at a local sign shop. The first batch of signs was printed in May of 2014 and no one tracked how many signs were ordered and purchased thereafter because people individually ordered and purchased their own signs. (Response to Complaint).

Under Montana law a bonding vote is a ballot issue. (§13-1-101(17)(a) MCA). A bonding issue becomes a ballot issue "upon certification by the proper official that the legal procedure necessary for its ... placement on the ballot has been completed..." (§13-1-101(17)(b) MCA).<sup>2</sup> On March 25, 2015 the Helena school bond issue was approved by the Lewis and Clark County Election Supervisor for placement on a special election mail ballot. (Investigator's records).

Once the Helena school bond was declared a ballot issue any group (political committee) making an expenditure for or against the school bond (ballot issue) must file a political committee certification with the COPP within 5 days of making an expenditure and report expenditures thereafter. (§13-37-201, 225 MCA.) Because Montana's Campaign Practice Act applies to all Montana elections (including candidate and ballot issue elections), §13-35-225 MCA required attribution of election communication by listing "paid for by" with the name and address of the person who made or financed the election communication.

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<sup>2</sup> The citations in this Decision are to the 2013 Montana code, not the 2015 code, as the 2013 Code was in effect at the time of the June 18, 2015 bond vote. The cite is §13-1-101(6)(a) and (b) under the 2015 code.

The Complaint asserts that the Save Our Neighborhood Schools sign was an election communication requiring attribution. The Commissioner disagrees. The Save Our Neighborhood Schools sign originated well before the bond issue was set for a vote (FOF No. 4) and it communicated a general philosophy (that neighborhood schools should not be consolidated into a centralized school) challenging any contrary policy decisions made by the Board. While some Save Our Neighborhood Schools signs may have been hung adjacent to an All Kids Matter sign (which did advocate a No vote on the bond), there was no part of the Save Our Neighborhood Schools sign (words or design) that altered its original policy or issue purpose. In particular, there was no part of the Save Our Neighborhood Schools signs which mentioned an election or advocated a yes or no vote in an election.<sup>3</sup>

The Commissioner determines that the Save Our Neighborhood Schools signs were policy focused, not election focused, and therefore there was no need to add an attribution to the sign.<sup>4</sup> The failure to attribute Complaint (No. COPP 2015-CFP-008) is dismissed in full.

## II. Advertising by All Helena Kids Matter

The complaint alleges that a political committee formed to oppose the school bond failed to timely report the costs of radio and print ads. The facts necessary to consider this complaint are as follows:

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<sup>3</sup> The Commissioner further notes that 'Save Our Neighborhood Schools' sign does not share the exact name of the complained against political committee. (See FOF No. 2)

<sup>4</sup> Save Our Neighborhood Schools did post a vote "No" advocacy assertion as a Facebook entry in June of 2015. However, by that time the group had registered as a political committee and disclosed the cost of this advocacy.

Finding of Fact No. 8: On May 11, 2015, a Helena group called “All Kids Matter – Vote No on this Facilities Bond” (AKM) submitted a C-2 Statement of Organization form to the COPP to register as a ballot issue committee. The committee listed their treasurer as Darryl James and its purpose “to oppose the Helena School District Facilities bond issue” in the June 18, 2015 election. (Commissioner's records).

Finding of Fact No. 9: On May 12, 2015, All Kids Matter activated a Facebook Page. Throughout the postings, AKM urged voters to vote “NO” on the bond. On May 16, 2015, AKM posted a link to their website on their Facebook page. The website solicited donations and had a proper attribution statement at the bottom of the page. (Commissioner's records).

Finding of Fact No. 10: On May 22, May 24 and May 31, 2015 AKM ran advertisements in the Helena Independent Record newspaper. The advertisements advocated a “NO” vote on the school bond. These advertisements were attributed “Paid for by All Kids Matter – Vote No on This Facilities Bond. 44 North Last Chance Gulch, Suite 20, Helena, Montana, 59601. Darryl James, Treasurer” (Commissioner's records).

Finding of Fact No. 11: During June 4 through 8, 2015 AKM ran two radio advertisements in opposition of the school bond. The radio spots are still publically available on the AKM website and have a proper attribution at the end of each “Paid for by AKM....” (Commissioner's records, AKM response to complaint).

AKM made election expenditures, including print and electronic advertisements, advocating a “No” vote on the Helena School Bond (FOF Nos. 10 and 11). The expenditures were made during a time period when the Helena school bond was a ballot issue, thereby triggering the full reporting and disclosure obligations set out in Montana law.

Under Montana law a political committee, including AKM, must disclose all

“expenditures made” during a campaign (§ 13-37-225 MCA). The Commissioner takes administrative notice that the AKM expenditures were in excess of \$500, thereby triggering (See §13-37-226(4) MCA<sup>5</sup>) the reporting requirements of §13-37-226(3) MCA.<sup>6</sup> Under §13-37-226(3) MCA a ballot committee must report on the 12<sup>th</sup> day “preceding the date on which the election is held” and file a further report within 48 hours of receiving any contribution of \$100 or more between the 17<sup>th</sup> day pre-election and the date of the election.<sup>7</sup>

Finding of Fact No. 12: On June 10, 2015, AKM filed its pre-election C-6 campaign finance report. The report listed campaign contributions and expenses for the period of May 15, 2015 to June 1, 2015. The committee reported \$9,695 from 19 individual contributors and \$2,459 in “in-kind” contributions (\$59 Misc. printing/Facebook and \$2,400 Office staff time). A total of \$3,686 was reported in expenditures for: \$355 to “Real World Design” in Helena for “Logo and yard sign design”; \$1,330 to “Signs Now” in Helena for “Yard sign printing”; \$1,756 to Facebook for “boosting”; \$244 to “Pay Pal” for fees (online donations) (Commissioner's records).

Finding of Fact No. 13: On July 9, 2015, AKM filed its final and closing C-6 campaign finance report. The committee reported \$3,225 from 29 individual contributors and \$2,600 in one “in-kind” contribution (\$2,600 Office staff time). A total of \$9,925 was reported in expenditures for: \$1,765 to “Helena Independent Record” for “Paid advertising”; \$360 to “Signs Now” in Helena for “Yard sign printing”; \$1,538 to Facebook for “boosting”; \$23 to “Pay Pal” for fees (online donations); \$5,000 to “Montana Radio” for “radio spots”; \$1,237 to Nann Parrett of Helena for “Facebook and Website assistance”. (Commissioner's records).

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<sup>5</sup> The citation to the 2015 Code is §13-37-226(3) MCA.

<sup>6</sup> The citation to the 2015 Code is §13-37-226(2) MCA.

<sup>7</sup> The reporting period ends 5 days before the reporting period so the pre-election report is through the 17<sup>th</sup> day pre-election. The 48-hour reports are required starting at that 17<sup>th</sup> day.

The AKM pre-election campaign finance report was due on the 12<sup>th</sup> day pre-election, which was June 6, 2015. It was filed 4 days late on June 10, 2015 (FOF No. 12). The AKM post-election campaign finance report was due on the 20<sup>th</sup> day post- election, which was July 8, 2015. It was filed one day late on July 9, 2015 (FOF No. 13).

Sufficiency Finding No. 1: There are sufficient facts to show that the AKM ballot committee failed to timely file its pre-election and post-election campaign finance reports, as required by Montana law.

The AKM pre-election report did not list any expenses for radio or print ads (FOF No. 12). The AKM post-election report lists \$1,765 in newspaper ad costs. (FOF No. 13). AKM asserts that the post-election disclosure is timely because it did not receive or pay a bill for the ads until June 15, 2015, that date being after the date of the pre-election report.<sup>8</sup>

The Commissioner disagrees. The payment date is not always determinant of the date of reporting as, if that were the case, candidates and ballot issue campaigns would have incentive to contrive to pay late and disclose activity after the fact, thereby depriving the opposing candidate and the public of the transparency that is required by reporting and disclosure laws. Instead, Montana statutes (§13-37-230(1)(f) MCA<sup>9</sup>) require the timely reporting and disclosure of “the amount and nature of debts and obligations owed...”. Montana regulations, at 44.10.535 ARM, add that “[i]f the exact amount of a

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<sup>8</sup> AKM paid \$1,765 on June 15, 2015 for the production of and insertion of ads in the Helena Independent Record.

<sup>9</sup> Codified in the 2015 Montana code as §13-37-232(2)(f) MCA.



debt or obligation is not known, the estimated amount owed shall be reported.”

Past Commissioners have rigorously applied these laws requiring that campaigns “estimate their debts when they are incurred”, not after an election. *Akey v. Clark*, March 26, 1999 (Commissioner Vaughey); because “the public has a right to full disclosure of all debts and estimated debts incurred by a candidate during the appropriate reporting periods.” *Ream v. Bankhead*, September 10, 1999 (Commissioner Vaughey). This reporting of debt covers services, advertisements and campaign expenses in general [*Wilcox v. Raser*, May 26, 2010 (Commissioner Unsworth)] and even the expenses owed musicians (*Hardin v. Ringling* 5, December 17, 2012 (Commissioner Murry)].

This Commissioner has likewise required reporting and disclosure based on the actual or estimated amount of the debt incurred for advertising before the date of a campaign finance report. *Graybill v. Parent Coalition for Accountability in Schools*, COPP-2014-CFP-018 citing to §13-37-230(1)(f) MCA<sup>10</sup>, 44.10.535 ARM, *Akey v. Clark*, *Ream v Bankhead*, *Wilcox v. Raser*, *Hardin v. Ringling* 5.

As applied to AKM the newspaper ads first ran on May 22, 2015 under a schedule of publication (FOF No. 10). AKM could not have run the ads, beginning May 22, without have secured a price for the cost of the ad run. AKM was therefore obligated to report and disclose of the amount of the newspaper ad costs in its pre-election report.

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<sup>10</sup> The citation to the 2015 Code is §13-37-229(1)(f) MCA.

Sufficiency Finding No. 2: There are sufficient facts to show that the AKM ballot committee failed to timely report \$1,765 in expenditures made for newspaper ads, as required by Montana law.

The Commissioner declines to make a comparable finding for the \$5,000 AKM spent on radio ads. The radio ads ran beginning June 4, 2015 (FOF No. 12). June 4 is after the June 1, 2015 cutoff date for listing of expenditures in the pre-election campaign finance report (see above Discussion). In turn, a 48 hour (C-7) campaign finance report is required only for contributions, not for expenditures. (§13-37-226(3)(b) MCA)<sup>11</sup>. This means disclosure for the radio ads cost was timely made in the post-election AKM report. The radio ad cost was reported on the AKM post election report, although the report itself was filed one day late. (FOF No. 13, SF No. 1).

### **ENFORCEMENT OF SUFFICIENCY FINDINGS**

The Commissioner has limited discretion when making the determination as to an unlawful campaign practice. First, the Commissioner cannot avoid, but must act on, an alleged campaign practice violation as the law mandates that the Commissioner (“shall investigate,” *see*, §13-37-111(2)(a), MCA) investigate any alleged violation of campaign practices law. The mandate to investigate is followed by a mandate to take action as the law requires that if there is “sufficient evidence” of a violation the Commissioner must (“shall notify”, *see* §13-37-124, MCA) initiate consideration for prosecution.

This Commissioner, having been charged to investigate and decide, hereby

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<sup>11</sup> The citation to the 2015 Code is §13-37-226(2)(b) MCA.

determines that there is sufficient evidence to show that the AKM ballot committee violated the campaign practice laws identified in this Decision. Having determined that sufficient evidence of a campaign practice violation exists, the next step is to determine whether there are circumstances or explanations that may affect prosecution of the violation and/or the amount of the fine.

The failure to properly disclose and report to the magnitude identified in this Matter cannot be excused by oversight or ignorance. Excusable neglect cannot be applied to oversight or ignorance of the law. See discussion of excusable neglect principles in *Matters of Vincent*, Nos. COPP-2013-CFP-006 and 009.

Likewise, the Commissioner does not accept that failures to file or report can normally be excused as *de minimis*. See discussion of *de minimis* principles in *Matters of Vincent*, Nos. COPP-2013-CFP-006 and 009. In particular, the Commissioner has limited discretion to apply *de minimis* to untimely reporting. Reporting is only valid when it is timely accomplished and any delay demonstrates harm.

Because there is a finding of violation and a determination that *de minimis* and excusable neglect theories are not applicable, civil/criminal prosecution and/or a civil fine is justified (See §13-37-124, MCA). The Commissioner hereby, through this Decision, issues a “sufficient evidence” Finding and Decision justifying civil prosecution of the AKM political committees. Because

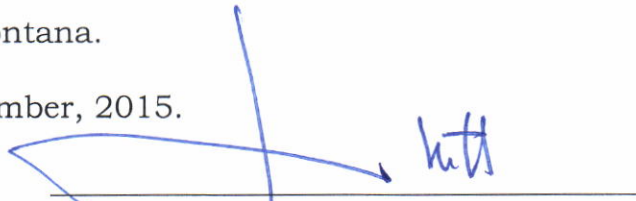
of the nature of the violations (the failure to report and disclose occurred in Lewis and Clark County) this matter is referred to the County Attorney of Lewis and Clark County for his consideration as to prosecution. §13-37-124(1), MCA. Should the County Attorney waive the right to prosecute [§13-37-124(2), MCA] or fail to prosecute within 30 days [§13-37-124(1), MCA] this Matter returns to this Commissioner for possible prosecution. *Id.*

Most of the Matters decided by a Commissioner and referred to the County Attorney are waived back to the Commissioner for his further consideration. Assuming that this Matter is waived back, the Finding and Decision in this Matter does not necessarily lead to civil or criminal prosecution as the Commissioner has discretion [“may then initiate” See §13-37-124(1), MCA] in regard to a legal action. Instead, most of the Matters decided by a Commissioner are resolved by payment of a negotiated fine. In setting that fine the Commissioner will consider matters affecting mitigation, if any. In the event that a fine is not negotiated and the Matter resolved, the Commissioner retains statutory authority to bring a complaint in district court against any person who intentionally or negligently violates any requirement of law, including those of §§ 13-37-226 and 228, MCA. (See 13-37-128, MCA). Full due process is provided to the alleged violator because the district court will consider the matter *de novo*.

Should this Matter not settle the Commissioner reserves his right, upon return of the Finding by the County Attorney, to instigate an enforcement

action on behalf of the people of Montana.

DATED this 23<sup>rd</sup> day of November, 2015.



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