

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

IN THE MATTER OF THE ETHICS	)	FINAL ORDER
COMPLAINT OF BRAD MOLNAR	)	and
AGAINST KEN TOOLE	)	DECISION

Complainant Brad Molnar (Molnar) has filed an ethics complaint against Respondent Ken Toole (Toole), alleging that Toole violated Section 2-2-121, MCA. The facts are not in dispute and the case has been submitted on briefs. Having fully considered the matter, I conclude that Toole did not violate the statute.

BACKGROUND

On October 28, 2010, Molnar filed his complaint against Toole who was running for reelection to the Montana Public Service Commission (PSC). On August 23, 2011, David B. Gallik, who then was the Commissioner of Political Practices, appointed me Deputy Commissioner/Hearing Examiner for this case because he had a conflict of interest. At the scheduling conference held November 29, 2011, the parties agreed that the facts are not in dispute and that the matter could be submitted on briefs. Throughout the proceedings, each party has represented himself.

FACTS

In 2010 Toole was the duly elected Commissioner for PSC District Number Five. On February 6, 2010, Toole sent out a

press release announcing that he was filing for reelection.

Toole established a campaign website <http://www.kentoole.com>. Molnar has submitted five postings from that website. All contain the following links: HOME, WHY I AM RUNNING FOR THE PSC, MEDIA RESOURCES, CALENDAR, CONTACT, DONATE , MONTANA PUBLIC SERVICE COMMISSION. Clicking on the PSC link brought up the entire PSC website including the names of the Commissioners along with their state e-mail addresses and phone numbers. Molnar is the PSC Commissioner for PSC District Number 2.

Each of the postings submitted also has a link at the top of the page captioned "Contribute with Act Blue." One of the postings is titled "Welcome to my website." It contains a request for funds which states, "We need your help. We have put a link to Act Blue on this page so it is easy to become a supporter. Please consider making a contribution today."

Information in the CONTACT link lists Toole's personal P. O. Box and his personal telephone number. There is also a link for e-mailing Toole. One of the other postings shows that his e-mail address was Ken@kentoole.com.

DISCUSSION

Molnar contends that by putting a link to the PSC website in his campaign website Toole violated Section 2-2-121(2) (a) and (3) (a), MCA. Section 2-2-121(2) (a), MCA, states that a public

officer may not "use public time, facilities, equipment, supplies, personnel, or funds for the officer's...private business purposes." There is nothing in the record to show that in 2010 Toole used the PSC website for his private business purposes or even that he was engaged in private business at that time. Thus, Molnar's claim that Toole violated Section 2-2-121 (2) (a), MCA, fails.

Section 2-2-121 (3) (a), MCA, provides that "a public officer...may not use public time, facilities, equipment, supplies, personnel, or funds to solicit support for...the nomination or election of any person to public office." In 2010 Toole was a public officer and he was seeking reelection to a public office. The PSC website is, of course, public property. While a state website could be used to solicit support for a candidate for public office, such a finding requires more than a reference to that website. The term "solicit" has several different meanings. See Webster's College Dictionary, 1996 edition. In this case it means "to try to obtain by earnest plea or application"; or "to make a petition or request for something desired."

Here, there is nothing in the record showing that Toole utilized the PSC website to solicit support for his campaign. The postings from Toole's website submitted by Molnar show that Toole used his own website, not the PSC's, to solicit

contributions and support for his reelection. Specifically, those postings show that potential supporters were asked to contact Toole through his personal telephone, P. O. Box or e-mail address. Based on this record, I conclude that Toole did not violate Section 2-2-121 (3) (a), MCA.

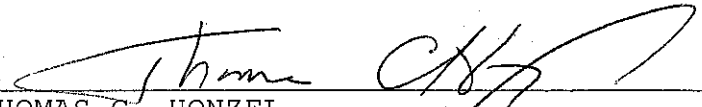
COSTS

Section 2-2-136 (2), MCA, provides in part that "the commissioner may assess costs of the proceeding against the person bringing the charges if the commissioner determines that a violation did not occur." During these proceedings, Toole has represented himself, and it appears that if he incurred any costs, they would be minimal. Therefore, costs will not be assessed against Molnar.

For the foregoing reasons,

IT IS ORDERED that the complaint filed by Brad Molnar against Ken Toole is **DISMISSED**.

DATED this 21st day of February, 2012.


THOMAS C. HONZEL
Deputy Commissioner of Political Practices

NOTICE: This a final decision in a contested case. The parties have the right to seek judicial review of this decision pursuant to the provisions of Sections 2-4-701 through 2-4-711, MCA.

c: Brad Molnar
Ken Toole