

BEFORE THE COMMISSIONER OF  
POLITICAL PRACTICES

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In the Matter of the Complaint )	<b>SUMMARY OF FACTS</b>
Against Teresa Jacobs )	<b>AND</b>
)	<b>STATEMENT OF FINDINGS</b>

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Rosemary Harrison filed a complaint alleging that Teresa Jacobs and her campaign violated Montana campaign finance and practices laws.

**SUMMARY OF FACTS**

1. Teresa Jacobs was a candidate for a trustee position on the Missoula County Public Schools Board (MCPS Board) in 2005. The complainant, Rosemary Harrison, also ran in the election. At the time of the election Harrison had served as an incumbent trustee for three terms, and had chaired the MCPS Board for the two year period prior to the election.

2. Jacobs was elected as a trustee. Harrison was not elected to serve another term on the Board.

3. Harrison's complaint alleges that a campaign flyer created and distributed by the Jacobs campaign contains false statements in violation of § 13-37-131, MCA, and fails to comply with § 13-35-225, MCA.

4. Prior to the election Jacobs and her campaign created and distributed a campaign flyer that contained certain representations concerning Harrison. The flyer contained two sections with representations about which Harrison complains:

**Failed Leadership**

The Board Chair (Harrison) ignored questions from Trustees and guidance from Montana School Board Association about Open Meeting Laws. Information discussed at critical 2004 budget meetings was not made available 48 hrs. ahead of time.

The statements in the above section are followed by a footnote citing to the following:  
“Multiple meeting agendas, minutes, email (MCPS & MTSBA) and MCAT video Oct. ’03 through March ’04.”

**Questionable Treatment of the Public**

Concerned citizens speaking to the Board about the abrupt closure of their schools were told by the Board Chair that she’s “tired of this Board being spoken about as if we were the worst thing that happened to public education and [as if] the community has the answers.”

The statements in this section are followed by a footnote citing to the following:  
“MCPS official minutes from 4/13/05 Board meeting.”

5. Harrison contends that, contrary to the statements in the Failed Leadership section of the flyer, the MCPS Board was in constant contact with the Montana School Boards Association concerning open meeting laws. She claims that the statement attributed to her in the Questionable Treatment of the Public section of the flyer is inaccurate, because the minutes of the April 13, 2005 MCPS Board meeting (which actually was held on April 12, 2005) had not been published at the time Jacobs’ flyer was distributed. Moreover, Harrison contends, “no such quote was noted” in the minutes of the April 12, 2005 meeting when they were published.

6. In response to the complaint, Jacobs for the most part stands by the representations in the flyer. She contends that the “4/13/05” date cited in the flyer under the Questionable Treatment of the Public section was a typographical error, and that the footnote should have referenced the date “4/13/04.”

7. The Missoula County Public Schools district (MCPS) has adopted policies governing the operation of the MCPS Board, including the following:  
MCPS Policy 1210, “Officers and Their Duties,” states that the Chairperson of the Board:

. . . will strive to keep all Trustees informed regarding correspondence and issues which are brought to his/her attention. The Chair represents the Board to the community.

MCPS Policy 1420, "Agenda Preparation and Format," states:

The preparation of the School Board meeting agenda for regular and special meetings is the responsibility of the Superintendent. The Board Chair shall discuss with the Superintendent, prior to preparation of the agenda, the agenda, thereby setting the agenda. The agenda for regular Board meetings will be prepared and distributed to the Trustees at least two days (48 hours) prior to the day of the Board of Trustees' meeting.

8. The Montana School Boards Association (MTSBA) is a statewide association of public school boards. According to its website, MTSBA "provides access to a wide range of services, including seminars, legislative representation, legal assistance, personnel services, search services, policy development, in-district consulting services, and insurance programs." At the time of the events that form the basis of the complaint, Elizabeth Kaleva was an attorney for MTSBA.

9. Colleen Rogers was a MCPS Board trustee from 2001 to 2004. On several occasions between October, 2003 and February, 2004, Rogers emailed Elizabeth Kaleva with questions regarding proper notice and agenda preparation and distribution for MCPS Board meetings. In an email dated November 4, 2003, Kaleva responded to one of Rogers' questions by stating: ". . . All meetings, whether they be regular, special, committee or subcommittee, need to be noticed like a regular meeting and have an agenda. They also need to have minutes."

Trustee Rogers forwarded copies of her questions and Kaleva's response to Harrison and to other MCPS Board Trustees. Thereafter Rogers continued to email Kaleva with questions and concerns, but she did not cc MCPS Board Chairperson Harrison or other MCPS Board trustees on those subsequent emails.

10. Minutes from a January 21, 2004 MCPS Board meeting show that Rogers expressed uncertainty "with regard to this meeting as far as Board not receiving an agenda or packet. . . . Would like to be more prepared." There is no indication in the meeting minutes that Harrison addressed Rogers' concerns at that meeting. On that same date Rogers emailed Kaleva and expressed concerns about MCPS Board meetings not being properly noticed or having an agenda prepared.

Kaleva responded to Rogers, stating that MCPS Superintendent Jim Clark had told her that a clerical error resulted in failure to distribute an agenda for the MCPS Board meeting in a timely manner.

11. On January 22, 2004, Kaleva emailed Rogers as follows:

The Bryan decision out of Billings last year made it completely clear that if any information is going to be handed out at the meeting, it needs to be available prior to the meeting. Trustees should have it in hand at least 48 hours before the meeting. If the information is not ready, postpone the meeting. . . . the Board needs to be careful or it will end up on the losing side of an open meetings lawsuit. . . .”

12. On February 2, 2004 Rogers emailed Kaleva stating that there would be no packet of information made available in advance of the MCPS Board’s February 5, 2004 meeting. In an emailed response Kaleva stated that she had been instructed to respond to questions from trustees directly to Superintendent Clark. On February 3, 2004 Clark sent a memo to the MCPS Board, stating:

. . . Under the guidance of MTSBA attorney Elizabeth Kaleva, there will be no printed materials available at the budget work session on February 5. For this and other similar instances, we will be able to post the PowerPoint presentation to the District website following the presentation on February 5 and will be able to provide printed copies following requests from the Board or members of the public.

Copies of materials will normally be available at least 48 hours prior to committee meetings, Board meetings, works sessions, and/or public input sessions. For this week, the 48 hour minimum requirement cannot be met due to the budget team meetings scheduled for Wednesday, February 4. . . .

13. On February 20, 2004, Clark sent another memo to the MCPS Board, stating:

Carol Bellin [another MCPS Board trustee] inquired about agenda preparation and committees. Attached please find copies of existing Board policies 1230 – Board of Trustees Committee, and 1420 – Board of Trustees Agenda Preparation and Format. You may note that, while past practice and the requirements of the Open Meeting Law require that Board members have agendas and information used for decision making in their hands at least 48 hours prior to a given meeting, our existing policy requires that you have such information three days in advance of the meeting. . . .

14. On March 19, 2004 trustee Bellin wrote a letter to Harrison. The letter expressed Bellin's concerns about what she perceived as a flawed procedure by which the MCPS Board developed and approved the MCPS budget. The letter complained that Superintendent Clark was permitted to determine the makeup of two budget teams that worked on the budget, and that meetings that were held by the budget teams "were held in private, without being open to the public, fully noticed or advertised at least 48 hours in advance."

In her letter Bellin expressed concern that individual trustees could be found liable for improper proceedings, and she urged Harrison to use her office as MCPS Board Chairperson to correct the process "for the sake of preventing a more damaging upheaval to our students and staff, . . ."

15. The letter that Bellin wrote to Harrison was forwarded to Kaleva for her review and response. Kaleva sent a letter dated March 22, 2004 to Harrison stating:

Carol [Bellin] is correct that written information that will be relied upon or presented during any regular, special or committee meeting of the Board of Trustees should be available at least 48 hours in advance of that meeting. It is my understanding that the Administration complies with that requirement.

16. On April 23, 2004 Allan Oines and Molly Moody, members of the public, filed a complaint in the District Court of the Fourth Judicial District, naming as defendants MCPS, the MCPS Board, Rosemary Harrison in her capacity as Chairperson of the MCPS Board, and Superintendent Clark.

The complaint alleges that the defendants violated the Open Meetings Law. The complaint claims that on March 24, 2004 the MCPS Board held a special meeting to discuss new, revised, and additional budget information that was not made available to the public prior to the meeting. The complaint alleges that at the meeting MCPS Board Chairperson Harrison did not allow members of the public to comment on a preliminary budget until after the MCPS Board had voted on it. In September, 2004, Harrison and Clark were dismissed from the lawsuit.

17. Harrison contends that she and Superintendent Clark were in constant contact with Lance Melton, Executive Director of the MTSBA, regarding whether the MCPS Board's actions were in compliance with the Open Meetings Law. She claims that some of the MCPS Board members disregarded whatever the Chairperson and the Superintendent did, and that MCPS Board members sometimes "went behind their back" to contact the MTSBA with various questions. According to Harrison, this created a lot of confusion, and led to the decision that all questions for MTSBA needed to go through the Superintendent or the MCPS Board Chairperson.

18. Harrison said Superintendent Clark checked with the MTSBA to determine whether it was permissible to hand out packets with sensitive information after MCPS Board meetings, instead of 48 hours in advance of the meetings. According to Harrison, MTSBA stated that it was acceptable as long as a vote on the matter was not being taken at that meeting. Harrison said that MTSBA advised that if a decision was going to be made at the meeting, then it was necessary to distribute a packet of information 48 hours in advance of the meeting.

19. Lance Melton is the Executive Director of the MTSBA. Although he was hesitant to discuss advice he may have given to Harrison or Clark due to the attorney-client privilege, Melton said he agrees with the written advice that Kaleva provided to trustee Colleen Rogers.

20. The following statement is contained under the "Questionable Treatment of the Public" section of Jacobs' campaign flyer:

Concerned citizens speaking to the Board about the abrupt closure of their schools were told by the Board Chair that she's "tired of this Board being spoken about as if we were the worst thing that happened to public education and [as if] the community has the answers."

In her complaint Harrison states that she "vehemently denies ever having made the second part of the statement, ' . . . as if the community has the answers.'" She also points out that the footnote in the flyer inaccurately cites MCPS Board meeting minutes from April 13, 2005.

Regarding the incorrect date, Jacobs contends that the flyer contains a typographical error, and it should have cited the date April 13, 2004. Jacobs states that it would not have been wise for her to intentionally put the wrong date in the flyer. She claims that after the error was pointed out to her she made hand-written corrections on the remaining flyers that were distributed and had her volunteer do the same. When interviewed for this investigation Harrison stated that she does not contend Jacobs intentionally inserted the incorrect date into the flyer.

21. According to the minutes of the April 13, 2004 MCPS Board meeting, Harrison stated that she was “tired of this Board being spoken about as if it were the worst thing that happened to public education and the community has the answers.” Upon reviewing the minutes during the investigation of this matter, Harrison conceded that she must have made the statement reflected in the minutes.

### **STATEMENT OF FINDINGS**

Harrison claims the flyer created and distributed by Jacobs violates § 13-35-225(3)(a)(iii), MCA, because it fails to include a statement signed by Jacobs attesting to the accuracy of statements made about the other candidate’s voting record. § 13-35-225, MCA, provides in relevant part as follows:

**Election materials not to be anonymous -- statement of accuracy.** (1)  
All communications advocating the success or defeat of a candidate, political party, or ballot issue through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, poster, handbill, bumper sticker, internet website, or other form of general political advertising must clearly and conspicuously include the attribution "paid for by" followed by the name and address of the person who made or financed the expenditure for the communication. When a candidate or a candidate's campaign finances the expenditure, the attribution must be the name and the address of the candidate or the candidate's campaign. In the case of a political committee, the attribution must be the name of the committee, the name of the committee treasurer, and the address of the committee or the committee treasurer.

(2) Communications in a partisan election financed by a candidate or a political committee organized on the candidate's behalf must state the candidate's party affiliation or include the party symbol.

(3) (a) Printed election material described in subsection (1) that includes information about another candidate's voting record must include:

(i) a reference to the particular vote or votes upon which the information is based;

(ii) a disclosure of contrasting votes known to have been made by the candidate on the same issue if closely related in time; and

(iii) a statement, signed as provided in subsection (3)(b), that to the best of the signer's knowledge, the statements made about the other candidate's voting record are accurate and true.

(b) The statement required under subsection (3)(a) must be signed:

(i) by the candidate if the election material was prepared for the candidate or the candidate's political committee and includes information about another candidate's voting record; (Emphasis added).

The flyer does not include information about Harrison's voting record as a MCPS Board trustee. Therefore, § 13-35-225, MCA, does not apply.

Harrison alleges that Jacobs violated § 13-37-131(1), MCA, which provides:

**Misrepresentation of voting record -- political civil libel.** (1) It is unlawful for a person to misrepresent 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 a reckless disregard of whether or not the assertion is false.

To prove a violation of this statute, it would be necessary to prove that Jacobs misrepresented a "matter that is relevant to the issues of the campaign," and either did so "with knowledge that the assertion is false or with a reckless disregard of whether or not the assertion is false."



In the Matter of the Complaint Against Bradley Molnar and John E. Olsen (April 4, 2006), this office discussed in some detail the standard of proof necessary to establish a violation of § 13-37-131, MCA. The original source of the standard is the decision of the United States Supreme Court in *New York Times v. Sullivan*, 376 U.S. 254 (1964). To prove that a person acted with “reckless disregard” in violation of the statute, there must be clear and convincing evidence that the person who made the representation subjectively entertained serious doubts as to the truth of the representation. See *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 334 n. 6 (1974); and *St. Amant v. Thompson*, 390 U.S. 727, 732 (1968). The facts established in this case do not support such a finding.

In her complaint Harrison alleges that Jacobs “purposely, knowingly, [and] maliciously misrepresented” Harrison’s actions as MCPS Board Chairperson and Harrison’s statement quoted in the “Questionable Treatment of the Public” section of the flyer.

Regarding the statement for which the MCPS Board meeting minutes of April 13, 2005 were cited, Jacobs contends that the citation to the 2005 meeting date was an unintentional typographical error. She states that the Board minutes from the April 13, 2004 meeting should have been cited. The minutes for the April 13, 2004 meeting do reflect a statement by Harrison that is virtually identical to the statement attributed to Harrison in Jacobs’ flyer. Jacobs’ contention that she mistakenly cited the 2005 date is credible, and in fact Harrison does not allege that Jacobs purposefully inserted the wrong date.

A review of the other statements in the flyer about which Harrison complains also leads to the conclusion that there is insufficient evidence that Jacobs violated the statute. Several MCPS Board trustees raised concerns about insufficient advance notice for matters that were to be discussed at MCPS Board meetings, and related irregularities in the procedures used by the MCPS Board to develop a budget for the school district.

MTSBA attorney Elizabeth Kaleva responded to several questions from MCPS Board members, emphasizing the importance of providing sufficient advance notice of MCPS Board meetings and urging the MCPS Board to “be careful or it will end up on the losing side of an open meetings lawsuit.”

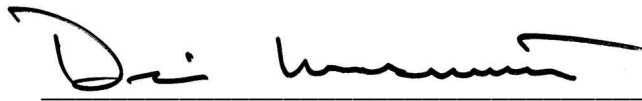
Ultimately two citizens did file a lawsuit against the school district, Superintendent Jim Clark, and Board Chairperson Harrison, alleging violations of the Open Meetings Law. While Harrison and Clark were later dismissed from the lawsuit, clearly there were serious questions concerning whether the MCPS Board had followed all of the requirements of Montana’s Open Meetings Law.

There is insufficient evidence that any of the statements contained in the flyer constitute clear misrepresentations that meet the strict standard of proof established by the United States Supreme Court.

### **CONCLUSION**

Based on the preceding Summary of Facts and Statement of Findings there is insufficient evidence to conclude that Teresa Jacobs and her campaign violated Montana campaign finance and practices laws.

Dated this 15th day of December, 2006.



Dennis Unsworth  
Commissioner