

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES

In the Matter of the Complaint) Against the Montana Republican) State Central Committee)	SUMMARY OF FACTS AND STATEMENT OF FINDINGS
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Dave Gallik filed a complaint alleging that the Montana Republican State Central Committee (MRSCC) violated Mont. Code Ann. § 13-37-131 by misrepresenting his public voting record or other matters that are relevant to the issues of a campaign.

SUMMARY OF FACTS

1. In 2004 Dave Gallik was the Democratic candidate for election to the Montana House of Representatives in House District (HD) 79. His opponent in the election was Republican Lynn Stumberg. Rep. Gallik won the election and currently serves as the representative in HD 79.

2. Rep. Gallik previously served as the representative in former HD 52. Following the adoption of the 2003 Districting and Apportionment Plan part of HD 52 was reconfigured into HD 79.

3. During the 2004 campaign the MRSCC created and mailed out copies of a campaign flier. The front of the flier states: "Trick or Treat . . . Legislative candidate Dave Gallik has some tricks up his sleeve." The left side of the back of the flier contains the following statements:

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The Democrats have already proposed several tax increases, including:

1. Soda Pop Tax (SB 433 2003) ----- \$38 million
The Democrats want to slap an extra 5 cents on each can of pop that you buy – an average of \$160 per family!
2. Bulk-Retail Sales Tax (SB 332 2003) ----- \$62 million
The Democrats are proposing an extra tax on large-inventory retailers – which also happen to be some of Montana’s largest employers. This tax acts as a “hidden sales tax” on low-income Montanans who depend on discount stores.
3. Income/Capital Gains Tax (LC 373 2004) ----- \$74 million
The Democrats plan calls for hiking state income and capital gains taxes. If the Democrats get their way, Montana will have some of the highest income and capital gains tax rates in the nation.
4. Class 8 Business Property Tax (LC 378 2004) ----- \$22 million
Under Democratic leadership, small businesses in Montana can plan on paying at least twice the rate for Class 8 Business Property than they currently do.
5. Business Franchise Tax (LC 374 2004) ----- \$55 million
This new tax would be yet another hindrance to small businesses in Montana, and a retardant to economic growth.

TOTAL TAX BILL: \$221 million

The average family’s share of the Democrats’ \$221 million tax hike: \$960*

*(please make your check payable to “The State of Montana.”)

The right side of the back of the flier contains the following statements:

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Dave Gallik is running as a Democrat for the state legislature, but he's got a hidden agenda he doesn't want you to see.

Gallik's Democratic Party supports massive tax hikes on things like soda-pop and retail sales.

Most Montanans can't afford to pay the taxes Dave Gallik and the Democrats are proposing can you?

Don't get tricked into paying higher taxes.
VOTE REPUBLICAN

4. Rep. Gallik contends that the flier misrepresents his voting record. He points out that he did not vote on or propose any of the bills or bill drafts referenced in the flier.

5. Senate Bill (SB) 433 was introduced by Sen. Don Ryan in the 2003 Montana Legislature. Sen. Ryan is a Democrat. SB 433 would have imposed an excise tax on soft drinks, with the proceeds to be used to fund services for older Montanans, Medicaid services, and student assessment requirements. The bill was considered in the Senate Taxation Committee, and was scheduled for second reading in the Senate. Second reading was indefinitely postponed, and SB 433 missed the deadline for transmittal of revenue bills. Rep. Gallik did not vote on SB 433.

6. SB 332 was introduced by Sen. Ken Toole in the 2003 Montana Legislature. Sen. Toole is a Democrat. SB 332 would have provided for a gross receipts tax on retail sales in excess of \$10 million, as originally proposed, in an individual location. The bill was considered in the Senate Taxation Committee. The bill failed on third reading in the Senate, and missed the deadline for transmittal of revenue bills. Rep. Gallik did not vote on SB 332.

7. LC 373 was introduced as SB 250 by Sen. Jon Ellingson in the 2005 Montana Legislature. Sen. Ellingson is a Democrat. SB 250 would have disallowed, for

the purposes of determining individual income tax capital gains credit, capital gains and losses from sales of publicly traded common stock. The bill was considered and passed in the Senate Taxation Committee. The bill then failed on second reading in the Senate, and missed the deadline for transmittal of revenue bills. Rep. Gallik did not vote on SB 250.

8. On September 10, 2004, LC 378 was requested by Sen. Ellingson for the 2005 Montana Legislature. The bill would have revised business equipment tax. The draft was placed on hold and eventually died in the process. Rep. Gallik did not vote on LC 378.

9. On September 10, 2004, LC 374 was requested by Sen. Ellingson for the 2005 Montana Legislature. The bill would have revised corporate license tax. The draft was placed on hold and eventually died in the process. Rep. Gallik did not vote on LC 374.

10. The MRSCC created between 10 and 15 versions of the flier. Each version referenced the same bills and included the same statements, but included the name of a different Democratic candidate who was running for election. The flier with Rep. Gallik's name on it was distributed in HD 79 (Gallik's district), while the other fliers were distributed in the districts where each respective Democratic candidate was running.

11. Chuck Denowh, Executive Director of the MRSCC, acknowledged that Rep. Gallik did not vote on any of the proposed legislation referenced in the flier. Mr. Denowh stated that the flier was created for the MRSCC based on tax bills that Democrats had proposed in previous sessions. According to Mr. Denowh, the MRSCC was projecting that the same tax proposals would be submitted by Democrats in future sessions of the legislature. Mr. Denowh contends that the flier does not state that the particular Democratic candidate named in the flier proposed or voted on the five bills;

rather, it states that the “Democrats” or the “Democratic Party” proposed the tax measures.

STATEMENT OF FINDINGS

The MRSCC is accused of violating Mont. Code Ann. § 13-37-131(1), 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 establish a violation of this statute, it would be necessary to prove that the MRSCC 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.”

Recently, 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 Mont. Code Ann. § 13-37-131. 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. The flier created by the MRSCC does not include language expressly stating that Rep. Gallik sponsored or proposed any of the legislation described in the flier. The flier states that “the Democrats” and “Gallik’s Democratic Party” proposed the bills or supported the

proposed taxes embodied in the legislation. The flier contains several statements that strongly imply that Rep. Gallik supported the tax proposals, even though he was neither the sponsor of nor voted on any of the bills. The front of the flier begins with the statement that Rep. Gallik “has some tricks up his sleeve.” After listing and describing the five measures that “the Democrats” proposed, the back of the flier states that Rep. Gallik has “a hidden agenda he doesn’t want you to see.” Finally, the flier states that “[m]ost Montanans can’t afford to pay the taxes Dave Gallik and the Democrats are proposing.” This artfully crafted language may well have left the typical reader with the impression that Rep. Gallik, if elected, would support measures similar to those described in the flier. But a violation of Mont. Code Ann. § 13-37-131 must be based on more than statements that only imply or suggest matters, or that may create false impressions. Moreover, as noted above, there must be clear and convincing proof that whoever made the representation subjectively entertained serious doubts as to the truth of the representation. There is insufficient evidence to meet that standard of proof in this case.

CONCLUSION

Based on the preceding Summary of Facts and Statement of Findings, there is insufficient evidence to conclude that the Montana Republican State Central Committee violated Montana campaign finance and practices laws.

DATED this _____ day of May, 2006.

Gordon Higgins
Commissioner