

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

3 IN THE MATTER OF THE CIVIL |
4 PENALTY IMPOSED AGAINST
5 **TEAMSTERS UNION LOCAL NO.**
6 **190**

6 **FINDINGS OF FACT, CONCLUSIONS OF LAW, MEMORANDUM OPINION,**
7 **AND ORDER**

9 These informal contested case proceedings were filed before the
10 Commissioner of Political Practices (Commissioner) to consider the appeal of the
11 principal referenced above. Pursuant to the provisions of Montana Code
12 Annotated § 5-7-306, the principal appealed the Commissioner’s assessment of a
13 civil penalty resulting from its late filing of lobbying disclosure reports. The
14 principal filed a written Waiver of Hearing, waiving its right to an in-person hearing
15 and submitted a written statement for the Commissioner’s consideration.

16 Based on the written submissions of the principal, the documents of record
17 in the Commissioner’s file, and the applicable law, the Commissioner makes the
18 following findings of fact, conclusions of law, and order.

19 **FINDINGS OF FACT**

20 1. The Teamsters Union Local No. 190 (Teamsters) is a principal
21 registered with the Commissioner. (File).

22 2. Montana Code Annotated § 5-7-102(15) defines a principal as a
23 “person who employs a lobbyist or a person required to report pursuant to 5-7-
24 208.”

25 3. Montana Code Annotated § 5-7-208 provides the lobbying reporting
26 requirements and filing dates. For the purposes of this matter, subsections (2)(a)
27 and (3)(a) provide that the filing deadlines for the January session-year report and

1 the non-session year-end report are due to the Commissioner's office on February
2 15.

3 4. The second sentence of Montana Code Annotated § 5-7-208 (1)
4 states

5 A principal is subject to the reporting requirements of this section
6 only if the principal makes payments exceeding the amount
7 specified under 5-7-112 to one or more lobbyists during a calendar
8 year.

9 5. Montana Code Annotated § 5-7-112 establishes a monetary
10 threshold of \$2,150 for calendar years 2002 through 2004. The threshold is
11 adjusted according to the consumer price index in the year following a general
12 election.

13 6. Montana Code Annotated § 5-7-208(4) provides that a principal must
14 still file a report even if payments are not made during the reporting periods
15 identified in Finding of Fact 3.

16 7. Montana Code Annotated § 5-7-306, MCA, establishes civil penalties
17 that are assessed against any person who fails to file lobbying disclosure reports
18 within the time required by law.

19 8. On January 9, 2005 the Commissioner sent two memoranda to all
20 principals, including the Teamsters. One memorandum advised principals that a
21 2004 year-end lobbying disclosure report was required to be filed by February 15,
22 2005. The other memorandum advised principals that a lobbying disclosure report
23 covering the month of January 2005 was required to be filed by February 15,
24 2005. Citing the provisions of Montana Code Annotated § 5-7-208(4), each
25 memorandum stated:

26 A report must be filed in this office even though neither lobbying nor
27 incurring of lobbying expenses may have occurred.

(File).

9. The Teamsters filed its January 2005 report on February 15, 2005,

1 but did not file its 2004 year-end report until February 24, 2005. (File).

2 10. On February 22, 2005, the Commissioner sent a letter to Mr. Joe
3 Dwyer, advising him that the Teamsters' 2004 calendar year -end lobbying
4 disclosure report had not been filed and that a civil penalty of \$50 a day would be
5 assessed until the report was received in the Commissioner's office. Since the
6 report was filed six days late, a civil penalty of \$300 was assessed. (File).

7 11. Mr. Dwyer, on behalf of the Teamsters, requested a hearing to
8 contest the civil penalty and provided a statement dated February 24, 2005,
9 describing the circumstances surrounding the late filing of the 2004 year-end
10 report. The Commissioner issued a Notice of Hearing on February 24, 2005,
11 scheduling a hearing on April 28, 2005. The Teamsters filed a written Waiver of
12 Hearing on March 1, 2005. (File).

13 12. Mr. Dwyer's written statement indicated that the instructions on the
14 L-5 lobbying disclosure reports require that a principal must file an L-5 if the
15 principal makes or agrees to make payments exceeding the statutory threshold
16 contained in Montana Code Annotated § 5-7-112. Mr. Dwyer states that since the
17 Teamsters did not pay any lobbying expenses in calendar year 2004, he assumed
18 that he and his organization were exempt from the filing requirements. Mr. Dwyer
19 further notes that once the Commissioner's office notified the Teamsters of the
20 delinquent report it was submitted immediately. Mr. Dwyer seeks a waiver of the
21 civil penalty.

22 **CONCLUSIONS OF LAW**

23 1. The Commissioner has jurisdiction over this matter pursuant to
24 Montana Code Annotated §§ 2-4-603, 2-4-604, and 5-7-306, MCA, and proper
25 notice of the hearing was provided as required by law. Montana Code Annotated
26 §2-4-601.

27 2. Montana Code Annotated § 5-7-306, provides:

Civil penalties for delays in filing -- option for hearing -- suspension of penalty.

(1) In addition to any other penalties or remedies established by this chapter, a person who fails to file a report within the time required by this chapter is subject to a civil penalty of \$50 for each working day that the report is late until the report is filed or until the penalties reach a maximum of \$2,500 for each late report.

The person against whom a penalty is assessed may request an informal contested case hearing before the Commissioner. At the hearing, the Commissioner is required to consider any factors or circumstances in mitigation, and may reduce or waive the civil penalty. Montana Code Annotated § 5-7-306(3).

3. Montana Code Annotated § 5-7-208, establishes the filing periods for lobbying disclosure reports. Montana Code Annotated § 5-7-208(2)(a) and (3)(a) provide that the deadline for filing January session-year reports and non-session calendar year-end reports is February 15. Montana Code Annotated § 5-7-208(1) states that a principal is subject to the reporting requirements of the statute only if the principal makes payments in excess of the threshold established in Montana Code Annotated § 5-7-112 during a calendar year. Montana Code Annotated § 5-7-208(4) provides that if payments are not made during the reporting periods provided in subsections (2)(a) and (3)(a), the principal must file a report stating that fact.

4. The Teamsters provided testimony and evidence that established factors and circumstances in mitigation that justify waiver of the civil penalty assessed by the Commissioner. Montana Code Annotated § 5-7-306(3).

MEMORANDUM OPINION

Montana Code Annotated § 5-7-102(15) defines a principal as “a person who employs a lobbyist or a person required to report pursuant to 5-7-208.” Montana Code Annotated § 5-7-208(1) provides:

A principal subject to this chapter shall file with the commissioner a

1 report of payments made for the purpose of lobbying. *A principal is*
2 *subject to the reporting requirements of this section only if the*
3 *principal makes payments exceeding the amount specified under 5-*
4 *7-112 to one or more lobbyists during a calendar year.* (Emphasis
5 added)

6 Montana Code Annotated § 5-7-112 establishes a “payment threshold” of \$2,150
7 for calendar years 2002 through 2004.

8 As noted in Conclusion of Law 3, Montana Code Annotated 5-7-208(4)
9 requires principals to file lobbying reports even if the principal made no payments
10 during a particular reporting period. However, the key language is in the second
11 sentence of Montana Code Annotated § 5-7-208(1) -- a principal is only “subject
12 to” the reporting requirements of the statute if the principal made payments
13 exceeding the statutory threshold amount in a calendar year. Since the Teamsters
14 made no payments for lobbying during calendar year 2004, they were not required
15 to file a 2004 year-end lobbying disclosure report.

16 **ORDER**

17 THEREFORE, IT IS HEREBY ORDERED that the **\$200** civil penalty
18 imposed against the **Teamsters Union Local No. 190** is waived.

19 DATED this _____ of **April, 2005**.

20 _____
21 Gordon Higgins
22 Commissioner

23 **NOTICE:** This is a final decision in a contested case. You have the
24 right to seek judicial review of this decision pursuant to the provisions
25 of Montana Code Annotated §§ 2-4-701 through 2-4-711.

26 **CERTIFICATE OF SERVICE**

27 I hereby certify that I caused a true and accurate copy of the foregoing
FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDER, AND MEMORANDUM

1 OPINION to be mailed to:

2 **Mr. Joe Dwyer**
3 **P.O. Box 50969**
4 **Billings, MT 59105**

5 DATED: _____

6 _____
7 Dulcy L. Hubbert
8 Program Supervisor
9 Commissioner of Political Practices

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27