

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES

In the Matter of the Complaint)	SUMMARY OF FACTS
Against Russell L. Doty)	AND
)	STATEMENT OF FINDINGS

Brad Molnar filed a complaint alleging that Russell L. Doty violated Montana campaign finance and practices laws when he registered to vote and filed to run for public office in Montana. Molnar contends that Doty was not eligible to run for office as a candidate for the Public Service Commission because he was not a resident of Montana. He alleges that Doty committed the offense of “false swearing,” in violation of Mont. Code Ann. § 45-7-202.

Preliminary Procedural Matters

Doty, who is an attorney, filed several documents in response to the complaint, which he designated as motions to dismiss part of the complaint and an answer to the complaint.¹ The normal practice of the Commissioner is to request the person or entity against whom a campaign finance and practices complaint has been filed to submit a written response to the complaint.

The Commissioner does not require the filing of pleadings, nor does it consider or rule on formal motions. This is because the complaint process is not a formal administrative adjudicative proceeding during which opposing parties present evidence, and in which issues of fact and law are considered and decided.

The Legislature has determined that the Commissioner shall investigate alleged violations of campaign finance and practices laws within the Commissioner’s jurisdiction. Mont. Code Ann. § 13-37-111. The Commissioner has the responsibility to gather the facts pursuant

¹ On page 2 of his “Motion to Dismiss Part of Complaint” Doty contends that the office of the Commissioner of Political Practices (Commissioner) is “part of the Secretary of State’s” office. That is not an accurate description of the relationship between the office of the Commissioner and the office of the Secretary of State. The office of the Commissioner is attached to the office of the Secretary of State for limited administrative purposes only. See Mont. Code Ann. § 2-15-411(2). The office of the Commissioner exercises its functions independently of the office of the Secretary of State.

to an investigation, and to then determine whether there is sufficient evidence to conclude that a law or rule within the Commissioner's jurisdiction has been violated. If the Commissioner determines that there has been a violation, the process described in Mont. Code Ann. §§ 13-37-124 and 125 is followed. An appropriate civil or criminal action may be initiated by either the Commissioner or the local County Attorney. To comply with this legislative directive, the Commissioner has established a procedure described in ARM 44.10.307. As described therein, upon completion of the investigation the Commissioner issues a Summary of Facts and Statement of Findings, after which the Commissioner may take other appropriate action.

SUMMARY OF FACTS

1. Russell L. Doty was the Democratic candidate for a seat on the Public Service Commission, District 2, in the 2004 election. His opponent in the general election was Republican Brad Molnar, the complainant in this matter. Molnar ultimately won the election, and currently serves on the Public Service Commission.

2. Molnar's complaint alleges that when Doty filed as a candidate for the Public Service Commission he was not a legal resident of Montana. The complaint alleges that Doty was not a qualified elector, and if elected he would not be eligible to serve as a member of the Public Service Commission. Molnar contends that when Doty registered to vote in Montana, just prior to filing for office, he used the address of Ed Logan, the chairman of the Yellowstone County Democratic Central Committee, but Doty never intended to live there and in fact never did live at that address. Molnar notes that the telephone number listed on Doty's voter registration card has a Colorado area code. Molnar also alleges that Doty continued to have his mail sent to Denver (where Doty had lived just prior to registering to vote in Montana), that he was still employed in Denver, and that Doty's vehicle was registered in Colorado, all of which he points to as evidence that Doty was not qualified to run for office in Montana. Molnar also alleges that Doty did not intend to become a Montana resident, and in fact intended to return to and live in Colorado if he lost the election.

3. Doty provided detailed and comprehensive information in response to the complaint allegations, and also provided copies of relevant documents addressing the various allegations raised by Molnar.

4. Doty was born in Montana. He attended and graduated from high school in Great Falls. He served one term in the Montana House of Representatives in the late 1960's. Although he attended college in another state, Doty later obtained a Master's degree from the University of Montana in 1970. Doty worked as an attorney for the Montana Public Service Commission in 1975 and 1976, then lived and worked in Minnesota for a number of years prior to moving to Denver, Colorado.

5. On March 22, 2004, Doty worked his last day and retired from his job at the United States Postal Service (USPS) in Denver. He had worked for the USPS in Denver since July, 1995.

6. On March 23, 2004, Doty drove to Billings, Montana. While there he announced his plans to file as a candidate for a seat on the Public Service Commission, in District 2. That night Doty stayed at the Billings residence of Tom Towe, a long-time friend. Doty intended to move in to the residence of Ed Logan the following day, at 1330 Lonesome Pine Lane in Billings. He intended to stay at Logan's residence until he found a place to live in the Billings area.

7. On March 24, 2004, Doty registered to vote in Billings. He signed a voter registration card listing his residence address as "1330 Lonesome Pine Ln, Billings MT 59105." He listed his mailing address as "P.O. Box 1734, Billings, MT 59103." The telephone number listed on the card is 970-371-2254, which was Doty's cell phone number at that time. 970 is the area code for the Denver, Colorado area.

8. Molnar's complaint alleges that Doty did not fill out the sections on the voter registration card that ask how long the person registering has lived in Montana, Yellowstone County, and the city of residence. According to information provided by the Yellowstone County voter registration clerk, although the voter information cards included spaces for that

information, the information was actually not required nor requested for voters to register at the time Doty registered to vote in 2004.

9. Doty signed the voter registration card under the following printed statement:

I, Russell Doty

Do hereby swear that I am a citizen of the United States and will be at least 18 years of age at the time of the next election. I am not imprisoned for the conviction of a felony and am not adjudicated to be of unsound mind. I will have been a resident of this county for at least 30 days at the time of the next election, and consider this my home. I certify that the information on this affidavit is true and correct.

Although the voter registration card refers to the certification as an "affidavit," there is no requirement that a registering voter's signature be notarized, and Doty's signature on the card was not notarized.

10. On March 24, 2004 Doty also applied for a Montana driver's license and registered his vehicle in Montana. On that date Doty became aware that Ed Logan, who lives at 1330 Lonesome Pine Lane, has a cat and a dog. Since Doty suffers from allergies, he decided he couldn't stay at Logan's house. At Doty's request, Tom Towe let him continue to stay at his house until he found a more permanent residence. Doty never did stay at Logan's residence, due to his allergies. However, Doty did receive some mail at Logan's address, as well as at Doty's post office address.

11. On March 25, 2004 Doty drove to Helena and filed as a candidate for a seat on the Public Service Commission, District 2. He paid the filing fee and filled out and signed a Declaration for Nomination, affirming that he possessed the qualifications prescribed by the Constitution and the laws of Montana for the office of Public Service Commissioner. Doty remained in Helena for a week or so, spending some time speaking with the press and with interest group leaders, and visiting with friends.

12. On April 3, 2004 Doty drove back to Billings and searched for a permanent residence while continuing to stay at the residence of Tom Towe.

13. On April 7 and 8, 2004, Doty purchased a mobile home and had it moved to its present address at 3878 North Tanager Lane in Billings.

14. On April 9, 2004 Doty contacted the office of the Yellowstone County Elections Administrator and advised it of his new address on North Tanager Lane. On the same date Doty drove to Denver to make arrangements to sell his Colorado home and to move his possessions to Montana.

15. On April 22, 2004 Doty drove back to Montana with his possessions and moved into his permanent Billings residence at North Tanager Lane.

16. Doty contends his cell phone number, which was assigned in Colorado, did not properly "roam" in Montana; therefore when he moved into his mobile home at North Tanager Lane he obtained a "land line" telephone and number. He later contacted the county elections office and updated his voter registration information with his land line telephone number.

17. Doty made at least one more trip to Colorado in May, 2004. While there, he spent some time cleaning his Denver house and preparing it for sale. Doty's house in Denver was eventually sold, with a closing date on the sale of July 30, 2004.

18. There is no evidence that Doty engaged in any employment in Colorado after retiring from his position with the United States Postal Service on March 22, 2004.

19. Doty voted absentee in a May, 2004 Billings bond election, because on the date of the election he was traveling out of state.

20. Although Doty made several trips to Colorado after registering to vote and filing for public office in Montana, his intent was to return to Montana and make Montana his state of residence.

STATEMENT OF FINDINGS

The complaint alleges that Doty violated Montana Code Annotated § 45-7-202, a criminal statute prohibiting "false swearing." The statute defines "false swearing," in relevant part, as follows:

(1) A person commits the offense of false swearing if he knowingly makes a false statement under oath or equivalent affirmation or swears or affirms the truth of such a statement previously made when he does not believe the statement to be true”

A person convicted of violating this statute is subject to a fine of up to \$500, imprisonment for up to six months, or both.

An allegation that a person has committed the offense of “false swearing” may be investigated and prosecuted by the office of the Commissioner of Political Practices under the authority granted in Montana Code Annotated § 13-35-207. The complaint alleges that Doty committed the offense of false swearing in two ways: 1) when he filled out and signed a voter registration card representing that he resided at 1330 Lonesome Pine Lane, and 2) when he filed as a candidate for the Public Service Commission, representing that he was a qualified elector. Montana Code Annotated § 13-35-207(1) makes it an offense for a person to falsely represent his or her name or other information required on a registry card and to cause registration with the card. Montana Code Annotated § 13-35-207 (4) makes it an offense for a person to falsely make a declaration or certificate of nomination.

Voter Registration Card

Montana Code Annotated § 13-1-111 establishes the following qualifications for voters in Montana:

- (1) No person may be entitled to vote at elections unless he has the following qualifications:
 - (a) He must be registered as required by law.
 - (b) He must be 18 years of age or older.
 - (c) He must be a resident of the state of Montana and of the county in which he offers to vote for at least 30 days.
 - (d) He must be a citizen of the United States.
- (2) No person convicted of a felony has the right to vote while he is serving a sentence in a penal institution.

(3) No person adjudicated to be of unsound mind has the right to vote, unless he has been restored to capacity as provided by law.

Montana Code Annotated § 13-1-112 sets forth rules for determining the residency of an applicant for voter registration:

For registration, voting, or seeking election to the legislature, the residence of an individual must be determined by the following rules as far as they are applicable:

(1) The residence of an individual is where the individual's habitation is fixed and to which, whenever the individual is absent, the individual has the intention of returning.

(2) An individual may not gain or lose a residence while kept involuntarily at any public institution, not necessarily at public expense; as a result of being confined in any prison; or solely as a result of residing on a military reservation.

(3) (a) An individual in the armed forces of the United States may not become a resident solely as a result of being stationed at a military facility in the state.

(b) An individual may not acquire a residence solely as a result of being employed or stationed at a training or other transient camp maintained by the United States within the state.

(c) A member of a reserve component of the United States armed forces who is stationed outside of the state but who has no intent of changing residency retains resident status.

(4) An individual does not lose residence if the individual goes into another state or other district of this state for temporary purposes with the intention of returning, unless the individual exercises the election franchise in the other state or district.

(5) An individual may not gain a residence in a county if the individual comes in for temporary purposes without the intention of making that county the individual's home.

(6) If an individual moves to another state with the intention of making it the individual's residence, the individual loses residence in this state.

(7) The place where an individual's family resides is presumed to be that individual's place of residence. However, an individual who takes up or continues a residence at a place other than where the individual's family resides with the intention of remaining is a resident of the place where the individual resides.

(8) A change of residence may be made only by the act of removal joined with intent to remain in another place.

An application for voter registration must provide the election administrator with the person's current street address. Mont. Code Ann. § 13-2-208. An elector's age and the term of his residence are computed by including the day of the election. Mont. Code Ann. § 13-1-114.

Applying these statutory provisions to the facts in this case, Doty did not knowingly make a false statement when he filled out and signed his voter registration card. At the time he provided the information regarding his residence address, Doty believed he would be staying temporarily at the home of Ed Logan at 1330 Lonesome Pine Lane in Billings – the address on the registration card. When it became apparent to him that he could not stay there due to his allergies, he made alternative arrangements to stay for a longer period of time at the home of Tom Towe. Once he became aware of his permanent residence address several weeks later, Doty promptly contacted the county elections office and advised it of his change of address.

It would have made little sense for Doty to contact the elections office between March 24 and April 9 to advise that he was temporarily staying at Tom Towe's house rather than Ed Logan's house. He knew that wherever he stayed during those early days following his arrival, it was only a temporary arrangement. Doty's primary objective was to find a permanent residence as soon as possible, and he did so only a few weeks after arriving in Montana.

Declaration for Nomination

Article VI, Section 3 of Montana's Constitution establishes qualifications for persons to serve in certain public offices:

Section 3. Qualifications. No person shall be eligible to the office of governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, or auditor unless he is 25 years of age or older at the time of his election. In addition, each shall be a citizen of the United States who has resided within the state two years next preceding his election.

Article IV, Section 4 establishes qualifications for public offices not specifically listed in Section 3 or subject to other provisions of the Constitution:

Section 4. Eligibility for public office. Any qualified elector is eligible to any public office except as otherwise provided in this constitution. The legislature may provide additional qualifications but no person convicted of a felony shall be

eligible to hold office until his final discharge from state supervision.

Article IV, Section 2 defines “qualified elector:”

Section 2. Qualified elector. Any citizen of the United States 18 years of age or older who meets the registration and residence requirements provided by law is a qualified elector unless he is serving a sentence for a felony in a penal institution or is of unsound mind, as determined by a court.

Montana Code Annotated § 69-1-103 provides that the Public Service Commission consists of five members, each of whom must be a qualified elector of the district from which they are elected.

Thus, the only qualifications for a person to serve on the Public Service Commission that are relevant to this case are that the person must be at least 18 years old and a qualified elector of the district from which he or she is elected. The complaint alleges that Doty was not a qualified elector because, at the time he filed as a candidate for the office he was not a resident of Montana.

Mont. Code Ann. § 1-1-215 provides, in relevant part:

Residence -- rules for determining. Every person has, in law, a residence. In determining the place of residence, the following rules are to be observed:

(1) It is the place where a person remains when not called elsewhere for labor or other special or temporary purpose and to which the person returns in seasons of repose.

(2) There may only be one residence. If a person claims a residence within Montana for any purpose, then that location is the person's residence for all purposes unless there is a specific statutory exception.

(3) A residence cannot be lost until another is gained.

...

(6) The residence can be changed only by the union of act and intent.

Doty's actions from the time he first came to Montana in March, 2004 to announce his candidacy, up through the election and after the election demonstrate clearly that his intention was to give up his Colorado residence and become a Montana resident. He retired from a

federal job in Colorado, traveled to Montana and filed as a candidate for public office in Montana, registered to vote in Montana and later voted in Montana, registered his vehicle in Montana, obtained a Montana driver's license, sold his Colorado home and purchased a mobile home in Montana, and moved his possessions from Colorado to Montana.

Based on the foregoing, the facts do not support a conclusion that Doty made a false statement when he signed the Declaration for Nomination as a candidate for the Public Service Commission. He met all the qualifications established by the Montana Constitution and Montana statutes when he signed the Declaration.

CONCLUSION

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

Dated this _____ day of April, 2006.

Gordon Higgins
Commissioner