

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES (COPP)

JEFFREY PETERSON JR.	COPP-2023-CFP-012
v.	DISMISSAL
GLENDIVE UNIFIED SCHOOL VIA RHETT COON, FACILITIES DIRECTOR	

COMPLAINT

On August 10, 2023, Charles Jeffrey Peterson Jr. of Glendive, Montana filed the above-named Campaign Finance and Practices complaint against Glendive Unified School, via Rhett Coon, Facilities Director. The complaint alleged that the Glendive Unified School and/or Facilities Director Coon failed to include “paid for by” attribution messaging as required on a communication supporting school bond and levy issues. The complaint further alleged Facilities Director Coon and other unnamed school staff violated Montana election law by supporting the school bond and levy issues while on the job or at the place of employment, as well as potentially using public resources to produce unattributed communications supporting these ballot issues. I determined that the complaint met the requirements of 44.11.106 ARM and requested a response from Mr. Coon pursuant to MCA § 13-37-132. The requested response was provided on August 24, 2023, through Felt Martin PC, counsel for Mr. Coon and Dawson County High School District 1. In accordance with Montana law and COPP practices, the complaint, response, and other materials are posted for review on the COPP website.

ISSUES

The complaint concerns “Paid for by” attribution messaging, Montana Code Annotated (MCA) §13-35-225; and “Unlawful acts of employers and employees”, MCA § 13-35-226(4), particularly as applied to public employees soliciting support for ballot issues.

BACKGROUND

Glendive Unified School (also Glendive Public Schools) is the established school district overseeing Dawson County High School, Washington Middle School, Lincoln Elementary School, and Jefferson Elementary School in Glendive, MT. Mr. Rhett Coon is an employee of

Glendive Public Schools, currently serving as Facilities Director. On August 8, 2023, voters in Dawson County voted on a High School District Building Reserve Levy, as well as a High School District Bond. Montana law considers school levy and bond issue questions submitted to the people at an election to be ‘ballot issues.’ MCA § 13-1-101(6)(a). At a parade on July 4, 2023, flyers were distributed in support of these ballot issues and on July 26, 2023, Rhett Coon led an informational tour of the high school in his capacity as facilities director. This decision first addresses the attribution issue and then considers MCA § 13-35-226(4) – Unlawful acts of employers and employees. Finally, this decision applies this statute to the activities of Mr. Coon.

DISCUSSION

1. Attribution

Although the complainant does not directly allege a violation of MCA § 13-37-225, such an allegation may be inferred by the question “Who printed them? who Paid for the Materials?” [sic] in reference to flyers supporting the Dawson County school ballot issues. *Complaint*, p. 2. Upon receipt of this complaint, COPP reviewed the material at issue and determined this allegation was merited as the material did not appear to include attribution messaging as required under MCA § 13-35-225, which requires all election communications to “clearly and conspicuously include the attribution “paid for by” followed by the name and address of the person who made or financed the expenditure. . .” Accordingly, COPP staff contacted the Glendive Public Schools and Mr. Coon requesting each provide a response to this allegation.

On August 24, 2023, Nyles G. Greer, an attorney with Felt Martin PC, provided a formal written response on behalf of each. The response included a written note from GPS Advocates, a self-described grassroots organization not named in this complaint, accepting responsibility for the production and distribution of the unattributed material. *Response*, p. 5, Exhibit 1. This note also indicated that neither Mr. Coon individually nor the Glendive Public Schools as an entity were directly affiliated with or members of the GPS Advocates group. *Id.*

The unattributed communication this complaint references was the product of GPS Advocates, an entity not affiliated with Glendive Public Schools or Mr. Coon. Having not financed the material, neither was required to attribute it under MCA § 13-35-225. Therefore, I must dismiss the attribution complaint as it pertains to both the Glendive Public Schools and Mr. Coon.

2. Unlawful acts of employers and employees

Next, the complainant directly asserts that Glendive Public Schools and Mr. Coon violated MCA § 13-35-226(4) because “school staff was handing out flyers encouraging patrons to Vote for the upcoming School Bond.” at both the July 4, 2023, parade and “during the pre-bond walkthrough inspection of the facilities.” *Complaint*, p. 2. The complaint also includes a vague assertion that employees of the Glendive Public Schools utilized public time or resources to create and distribute the unattributed communication discussed above. As noted, an outside entity named GPS Advocates has taken responsibility for creating this material so this allegation is not given any further consideration.

The complaint does not mention, reference, or outline any specific potential violations of MCA § 13-35-226(4) for me to consider against named individuals other than Mr. Coon. As a result of this fact, I may only appropriately consider the alleged violations of MCA § 13-35-226(4) that directly mention Mr. Coon. As Facilities Director for the Glendive Public Schools, Mr. Coon inarguably qualifies as a public employee and is therefore subject to MCA § 13-35-226(4) which specifically states, “A public employee may not solicit support for or opposition to . . .the passage of a ballot issue while on the job or at the place of employment.”¹

While MCA § 13-35-226(4) limits a public employee’s right to expression, as with all limits on expression, it must be interpreted within the parameters of the First Amendment’s free speech protections. The US Supreme Court held definitively that, “a government employee does not relinquish all First Amendment rights otherwise enjoyed by citizens just by reason of his or her employment.” *Keyishian v. Board of Regents of Univ. of State of N.Y.*, 385 U.S. 589, 605-606 (1967). The Montana legislature guarantees this right to public employees by specifying “this section does not restrict the right of a public employee to . . .express political views.” MCA § 13-35-226(4). Consequently, COPP has consistently interpreted this statute in a manner that protects the expression of personal political views by public employees. *See Huntley v. Paxinos*, COPP (2000) and *Seher and Velazques v. Galt*, COPP (2004).

¹ MCA § 2-2-102(4) "Local government" means a county, a consolidated government, an incorporated city or town, a school district, or a special district. (7) "Public employee" means: (a)any temporary or permanent employee of the state;(b)any temporary or permanent employee of a local government;

Prior COPP decisions have considered several factors in order to determine if particular speech is prohibited or allowed by the narrow tailoring of MCA § 13-35-226(4): whether the speaker “solicit[s] support for or opposition to any. . .ballot issue”; whether that speech occurs “on the job or at the place of employment”; whether the speech is “incidental to another activity required or authorized by law”; and finally whether the implicated speech uses public resources.

First, COPP has determined “A public employee can indicate his preference for a candidate, ballot issue, or political committee at work so long as the expression of personal political views does not become solicitation.” *Huntley v. Paxinos*, 9 (2000). *Monforton v. Laslovich* further clarifies, “As a matter of normal statutory interpretation, without solicitation there can be no violation of MCA § 13-35-226(4). COPP-2016-CFP-002 (A).

Montana law only defines solicitation in the criminal code which cannot be readily applied to the facts of this complaint. However, a workable definition is provided by the Code of Federal Regulations governing Federal election law which is applicable to the situation at hand.

[T]o solicit means to ask, request, or recommend, explicitly or implicitly, that another person make a contribution, donation, transfer of funds, or otherwise provide anything of value. 11 CFR § 300.2(m)

‘Support for or opposition to’ is clearly defined in Montana election law:

“[S]upport or oppose”, including any variation on the theme, means; (a) using express words, including but not limited to “vote”, “oppose”, “support”, “elect”, “defeat”, or “reject”, that call for the. . .passage or defeat of the ballot issue or other question submitted to voters in an election. MCA § 13-1-101(54)

Any language or activity which falls within the above definitions may indicate that an employee is soliciting support for or opposing a ballot issue or candidate. However, the Montana legislature specifically limited this constraint on speech to that occurs ‘on the job or at the place of employment.’ COPP has held “[t]his provision of Montana’s Campaign Finance and Practices Act is not an absolute prohibition against a state employee soliciting support for or opposition to a candidate or ballot issue “but only prohibits such solicitation while the employee is “on the job or at the place of employment.” *Galt*, p. 5.

MCA § 13-35-226(4) also specifically notes that “subject to 2-2-121, this section does not restrict the right of a public employee to perform activities properly incidental to another activity required or authorized by law.” COPP recognizes that public employees may, in the

normal course of work, become involved in what onlookers may perceive as “political” activity - the dissemination of facts and information related to candidates or ballot issues up for election - that in reality serves an important public purpose, namely educating and informing the electorate.

In *Griffin v. Roberts*, COPP determined that the creation of informational advertisements regarding ballot issues was “properly incidental” and that Lewis and Clark County employees were consequently engaging in “activities that are not prohibited.” COPP (2009). Similarly, in *Nelson v. City of Billings*, the Commissioner concluded that “a public officer or public employee can present neutral facts and information to electors related to a ballot issue or candidate.” COPP (2016).

Finally, COPP has held that a public employee “does not relinquish her First Amendment rights by the mere fact that she may be a public official. . .so long as a public officer or employee is not using public time, facilities, equipment, supplies, personnel, or funds.” *AG’s Opinion*, 2005. *Citing Dahl v. Uninsured Employers; Fund*, 1999 MT 168 ¶ 16, 5 Mont. 173, 983 P.2d 363.

In summary, MCA § 13-35-226(4) has consistently been interpreted to protect the expression of purely personal political views by public employees. As long as an employee is not operating in an official capacity or representing their employer, they are free to express their personal opinion as long as the use of public resources is not involved. *See City of Bozeman v. City of Bozeman*, COPP (2018).

3. Activities of Facility Director Rhett Coon

July 4, 2023 - Parade

The complainant alleges Dawson County school employees distributed flyers supporting the school bond issues at a July 4, 2023 parade in which Mr. Coon participated. *Complaint*, p. 2. The complaint does not specifically allege that Mr. Coon handed out these flyers. Mr. Coon confirms that he attended the parade but asserts that he participated solely in his capacity as Glendive Fire Department’s Assistant Fire Chief and did not witness or participate in the distribution of flyers supporting the school ballot issues. *Response*, p. 6, Exhibit 2. However, even if Mr. Coon attended the parade specifically to support the Dawson County school issues, this action would not represent a real or potential violation of MCA § 13-35-226(4) because this activity was neither on the job nor at the place of employment. The parade was conducted on the

public streets of Glendive, rather than any property or buildings owned and operated by the Glendive Public Schools, on a federally and state recognized holiday - Independence Day - rather than during normal work hours. Although there is no indication that Mr. Coon attended the parade in order to support the Dawson County school ballot issues, as he was not “on the job or at the place of employment,” Mr. Coon was fully free to express his personal political views during the Independence Day Parade as he saw fit. Consequently, I dismiss the allegation that Mr. Coon violated MCA § 13-35-226(4) by virtue of his participation in the parade held July 4, 2023.

July 26, 2023 – Tour of Dawson County High School facilities.

The second instance where complainant alleges that Mr. Coon violated MCA § 13-35-226(4) is his participation in a facilities tour hosted on July 26, 2023, by the Glendive Public Schools. Complainant states that “these same flyer’s were also being handed out inside the High School” [sic] and states as evidence that a photograph of Mr. Coon holding such a flyer was published in a local paper on July 29, 2023. *Complaint*, p. 2.

In the response provided on August 24, 2023, Mr. Coon explains that he “led an informative tour of the Dawson County High School to show the community the physical facilities” in his capacity as facility director. *Response*, p. 6, Exhibit 2. The response further adds, “At the start of the tour, someone handed me one of the flyers in question. This was the first I had seen or had handled a flyer...I had no idea or knowledge of where it came from, who created it, or who brought it. It was not part of my presentation for the tour.” *Id.*

Consistent with *Griffin* and *Nelson*, the activity in question in this matter, an informational tour of the Glendive High School’s physical facilities conducted by Mr. Coon, appears to be “properly incidental” to his normal duties as the district’s facilities director. Mr. Coon denies supporting the bond measure during this tour, instead describing its purpose as being purely educational and informative. *Id.* No evidence provided in the complaint causes me to doubt the veracity of Mr. Coon’s assertion that the sole purpose of the tour was for him to present facts and information related to Dawson County High School’s existing physical facilities to attendees.

I also accept the explanation that while Mr. Coon was provided a flyer supporting the bond issue while leading this tour, it was provided to him by another individual attending the

tour without his prior planning, knowledge, or consent, and was not utilized as a formal part or function of the tour. *Id.* Your complaint provides no evidence or reasoning to contradict or otherwise question this explanation. The July 26, 2023, tour of school facilities conducted by Mr. Coon was “properly incidental” to his normal employment duties as facilities director for the Glendive Public Schools and was therefore allowable activity. Accordingly, the allegation that Mr. Coon violated MCA § 13-35-226(4) when conducting a tour of the Dawson County High School facilities on July 26, 2023, is hereby dismissed.

CONCLUSION

No evidence presented by the complainant indicates Mr. Coon was involved in the production or distribution of the unattributed material, or that he promoted the school bond and levy issues on the job or at the place of employment. Accordingly, all allegations made by the complainant have been considered as described above and are dismissed in full.

Dated this 22 day of February, 2024.



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