

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES (COPP)

JASON SASSE v. VAUGN JENKINS	COPP-2023-CFP-019 DISMISSAL
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COMPLAINT

On October 13, 2023, Jason Sasse of Glendive, MT filed a campaign practices complaint against Vaughn Jenkins, also of Glendive. The complaint alleged that candidate Jenkins failed to include the ‘paid for by’ attribution message on a campaign communication as required by Montana law, and that the communication was not reported as a campaign expenditure. I determined that the complaint met the requirements of Admin. R. Mont. (ARM) 44.11.106 and requested a response from Mr. Jenkins pursuant to Mont. Code Ann. (MCA) § 13-37-132. The requested response was provided via two emails on October 16 and 17, 2023. In accordance with Montana law and COPP practices, the complaint and responses are posted for review on the COPP website.

ISSUES

“Paid for by” attribution messaging, MCA § 13-35-225; and filing of campaign finance reports by local candidates, MCA § 13-37-226(5) and ARM 44.11.304.

BACKGROUND

Vaughn Jenkins filed a C-1A Statement of Candidate as a candidate for election to a City Alderman position in the City of Glendive with COPP on September 7, 2023. Under reporting status, candidate Jenkins indicated that his campaign would cumulatively raise and spend less than \$500, therefore exempting his campaign from the requirement to file periodic finance reports with COPP. MCA § 13-37-226(5), ARM 44.11.304(1). As part of his campaign Mr. Jenkins used an electronic sign posted in the window of a Glendive business. The business as well as the sign are owned by Mr. Jenkins.

DISCUSSION

Attribution

Under Montana law “all election communications, electioneering communications, and independent expenditures must clearly and conspicuously include the attribution "paid for by"

Local candidate finance reporting

The complainant additionally alleges that Mr. Jenkins did not report the use of the electronic sign as a campaign expense. Under Montana election law, candidates seeking election to a local office are only required to file campaign finance reports “if the total amount of contributions received or the total amount of funds expended for all elections in a campaign exceeds \$500.” MCA § 13-37-226(5). When filing a Statement of Candidate with COPP, a local candidate may indicate they do not anticipate receiving contributions or making expenditures which total more than \$500 by filing “an affidavit of such intent.” ARM 44.11.304(1). If a local candidate which expected campaign contributions and expenditures to remain under \$500 then receives contributions or makes expenditures in excess of \$500, they must begin filing finance reports with COPP within five business days of this occurrence. ARM 44.11.304(2). Such a candidate must additionally disclose this “material change in information” by amending their Statement of Candidate. *Id.*

Mr. Jenkins, as a candidate seeking election to a municipal office in the City of Glendive, properly qualifies as a local candidate. Additionally, Mr. Jenkins provided notice that campaign contributions received, and expenditures made by his campaign would remain below \$500 on his C-1A Statement of Candidate. *COPP Records.*

In his October 17, 2023, written response, Mr. Jenkins indicated that he has personally owned the electronic sign referenced in this complaint for many years. *Response*, 1. Mr. Jenkins additionally provided that he allows others to utilize it “at no charge.” *Id.* Generally, an electronic sign utilized for campaign purposes, even when owned by the candidate, is certainly something of value meant to support the candidate and therefore is reportable as an in-kind contribution. MCA § 13-1-101(9). If no value is ascribed to the item in question – here Mr. Jenkin’s sign, Montana law requires that it be reported at a “reasonable fair market value.” ARM 44.11.403(4)(b).

COPP has previously considered the use of an electronic sign by the owner of the sign to be reportable as an independent expenditure. *Olsen v. Vallance*, COPP-November 17, 2009. Additionally, it has been held that value “includes a proportional share of “overhead” in any use of “office space, equipment, and supplies.”” *Hagan v. Pinocci*, COPP-2014-CFP-026, quoting *Griffin v. MontPIRG*, COPP-August 2002. These decisions, however, are clearly distinguishable

from the case at hand. In *Olsen*, the electronic sign was a skywriting device which required the use and expense of Mr. Vallance's aircraft to operate and was regularly hired out to the public at a significant cost. Therefore, the cost associated with this sign was easily ascertainable. In the latter case, the value in question was that of a YouTube video. Here, the Commissioner determined that "video equipment, computer hardware, internet access and a computer software program were used to produce or distribute the video" and therefore the video was reportable as a contribution. *Hagan*, 3. Here, the Commissioner also placed relevance on the "production value" and the appearance of an image produced by a non-profit. *Id.*

Unlike Mr. Vallance's skywriting sign, it is difficult to place a value on something normally given away to the public, particularly if the donor suffers no economic detriment. Additionally, the overhead involved in operating an LED sign that has already been depreciated over many years is not comparable to the filming, editing, and subsequent posting of a video "several minutes in length." *Id.*, 2. Importantly, the decision relied on in *Hagan - Griffin v. MontPIRG* was reached in 2002, more than 20 years ago. While the analysis may still be applicable today, the technology referenced, and the price of that technology is no longer relevant. Today, anyone can film and edit a video on their cell phone at virtually no cost. I would not expect a person to calculate the value of the use of their phone, which they certainly use extensively for other purposes, and report it as a contribution. The same applies here. The "overhead" involved in operating a sign that has long been depreciated and used extensively for other purposes is certainly de minimis at most.

I conclude that the 'reasonable fair market value,' of the use of the sign has been determined by the free use offered to the public. Considering the minimal cost of operating an LED sign, the limited reach of such a sign located in Mr. Jenkins store, and the fact that Mr. Jenkins allows others to use the sign for free, it is reasonable to infer that the value of the sign usage is minimal, and certainly in any event, less than \$500.

As neither the complaint nor Mr. Jenkins' response provides any evidence suggesting that Mr. Jenkins received any additional campaign contributions beyond his own in-kind contribution of the use of the sign, Mr. Jenkins remains a candidate whose contributions received are less than \$500. Therefore Mr. Jenkins is specifically exempted from filing campaign finance reports with COPP. MCA § 13-37-226(5) and 44.11.304(1) ARM. Consequently, the allegation that Mr.

Jenkins failed to properly disclose his campaign's use of an electronic sign as a campaign expenditure is dismissed.

CONCLUSION

The only violation of Montana law evidenced by the facts presented is a lack of "paid for by" attribution messaging in accordance with MCA § 13-35-225. This matter has been resolved in accordance with statute and COPP procedures and will not be pursued further. As provided for in § MCA 13-37-124, I have determined prosecution is not justified and therefore this matter will not be referred to the Dawson County Attorney.¹ All other allegations made by the complainant have been considered as described above and are hereby dismissed in full.

Dated this 30th day of April, 2024.



Chris J. Gallus
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¹ For a full discussion of the Commissioner's prosecutorial discretion, see *Montana Freedom Caucus v. Zephyr*, COPP-2023-CFP-010, at 23.