

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES (COPP)

<p>NADENE L. FALAGAN</p> <p>v.</p> <p>LISA BENNETT (Montana House District 55 candidate)</p>	<p>COPP-2024-CFP-010</p> <p>DECLARATION OF MERIT OF COMPLAINT</p> <p>FINDING OF FACTS SUFFICIENT TO SUPPORT VIOLATIONS</p>
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COMPLAINT

On April 29, 2024, Nadene L. Falagan of Roberts, MT filed a campaign practices complaint against Lisa Bennett, of Roscoe, MT. The complaint alleged that candidate Bennett failed to include the ‘paid for by’ attribution statement on a campaign sign material as required by statute.

ISSUES

“Paid for by” attribution requirements, Montana Code Annotated (MCA) § 13-35-225.

FINDING OF FACTS

The facts necessary for a determination in this matter are as follows:

Finding of Fact No. 1: On March 18, 2024, Lisa Bennett filed a C-1 Statement of Candidate as a candidate seeking election to the Montana House of Representatives, District 55, with COPP. On the C-1, candidate Bennett indicated she was a Republican candidate. (Commissioner’s Records).

Finding of Fact No. 2: On April 29, 2024, COPP received the original signed and notarized copy of this complaint from complainant Falagan. In reviewing the complaint, Commissioner Gallus determined it was merited, as the campaign sign material referenced in the complaint- a sign with specific text of “Lisa Bennett for House District Protecting Our Land & Liberty” did not contain any ‘paid for by’ attribution statement. (Commissioner’s Records).

Finding of Fact No. 3: On May 1, 2024, candidate Bennett contacted Commissioner Gallus directly via email to notify him of an unrelated printed material financed by her campaign that was accidentally sent out without attribution, and that the issue had been remedied by placing “stickers on all my material that didn’t already have an attribution printed.” COPP replied to this email thanking candidate Bennett for notifying the agency of this issue.

On May 1, 2024, via email, COPP also notified candidate Bennett of this formal attribution complaint, providing both a copy of the complaint and written correspondence from Commissioner Gallus explaining that it was merited. The Commissioner’s written correspondence notified candidate Bennett that “You will need to add full attribution messaging to this communication,” the alleged unattributed sign cited in the complaint, “and provide photographic notice to COPP showing this addition has been made” within 2 business days.

(Commissioner's Records).

Finding of Fact No. 4: On May 2, 2024, COPP sent follow-up correspondence to candidate Bennett again notifying her that this formal attribution complaint had been received and that "The full "paid for by" attribution statement does need to be added to the material in the time and manner" required by law. (Commissioner's Records).

Finding of Fact No. 5: On May 6, candidate Bennett contacted COPP first via telephone and then via email message regarding this attribution complaint. During the telephone call, candidate Bennett stated she thought the formal complaint alleged a failure to include attribution on the printed material she had previously notified COPP about and brought into compliance. COPP was able to explain that the complaint- which included a picture of the alleged unattributed material- actually regarded a campaign sign material. Candidate Bennett indicated her belief that the "paid for by" attribution statement was included on all sign materials, and that she would notify COPP of this shortly.

The email message as received by COPP stated "here is a photo of the yard sign attribution. Please confirm receipt" and included a picture of a campaign yard sign material including an attribution statement of "Paid for by Lisa Bennett, PO Box 92, Roscoe, MT". COPP reviewed this response, and determined that the pictured yard sign with attribution was a different material than the allegedly unattributed sign referenced in the complaint. COPP therefore replied to candidate Bennett that:

Lisa, Thanks for sending. That does appear to be a different material than the alleged unattributed material referenced in the formal complaint (pictured on page 3). We do need a written response particular to the material referenced in the complaint.
(Commissioner's Records).

Finding of Fact No. 7: Later on May 6, 2024, candidate Bennett sent a follow-up response to COPP via email message. This follow-up response details what is described as "4x8 sign and the attribution is the same on that as the yard sign and is in the red border bottom right just like the yard sign" and included a picture of another campaign sign with an attribution statement of "Paid for by Lisa Bennett, PO Box 92, Roscoe, MT. COPP reviewed this response, and again determined that the pictured material with attribution was different than the allegedly unattributed sign referenced in the complaint. (Commissioner's Records).

DISCUSSION

Under Montana law "all election communications, electioneering communications, and independent expenditures must clearly and conspicuously include the attribution "paid for by" followed by the name and address of the person who made or financed the expenditure for the communication." Montana Code Annotated (MCA) § 13-35-225(1). In partisan elections, communications must also "state the candidate's party affiliation or include the party symbol", MCA § 13-35-225(2). This complaint references an election communication financed by candidate Lisa Bennett that failed to include the required 'paid for by' attribution statement.

Montana law requires an accelerated review ("as soon as practicable") of a campaign practice

complaint alleging an attribution violation. In this matter, COPP staff contacted candidate Bennett on May 1, 2024 - "as soon as practicable"- to provide notification of the attribution deficiency (FOF No. 3). Follow-up notice was provided to candidate Bennett via email on May 2, 2024 (FOF No. 4). COPP then discussed the attribution complaint process with candidate Bennett again on May 6 (FOF No. 5). After speaking via telephone about this complaint, candidate Bennett provided COPP with two (2) separate written responses, each including photo evidence of a campaign sign material that included the "paid for by" attribution statement. However, neither response addressed the specific material referenced in this complaint (FOF Nos. 6, 7). While the sign referenced in the complaint has a specific textual message of "Lisa Bennett For House District Protecting Our Land & Liberty," each sign provided by candidate Bennett in response contains text about "Precinct 16," an element not included on the sign relevant to this complaint. None of the three (3) signs COPP was able to review - the original unattributed sign as included in this complaint, or the two attributed signs provided by candidate Bennett in response - contained candidate Bennett's partisan affiliation as a Republican candidate.

The law governing complaints of failure to properly attribute political communications provides precise directions to the Commissioner:

1. The Commissioner is to immediately assess the merits of the attribution complaint, MCA § 13-35-225(5). The Commissioner found merit to the attribution complaint and hereby memorializes that finding.
2. The Commissioner shall notify the individual of the merit finding, requiring the individual to bring the material into compliance, MCA § 13-35-225(6)(a). In this matter, COPP first notified candidate Bennett of the attribution deficiency via email correspondence on May 1, 2024, and additionally provided follow-up notices via email on May 2 and May 6.
3. The individual financing the material is provided 2 business days to bring the material into attribution compliance, MCA § 13-35-225(6)(a)(i). In this matter, candidate Bennett did not appear to bring the material into compliance by adding the "paid for by" attribution statement as required.

Under Montana law, a candidate who fails to bring material into compliance with Montana's attribution requirements "is subject to a civil penalty pursuant to 13-37-128." MCA § 13-35-225(6)(b). In this case, candidate Bennett failed to bring material into compliance as required.

The sign material referenced in the complaint does not contain either a "paid for by" attribution statement or partisan affiliation as required under MCA § 13-35-225(1)(a) and (2), nor has COPP been provided evidence that either is included or that appropriate remedial action has been taken by candidate Bennett. Even if candidate Bennett had brought the material into compliance - which, again, COPP has no evidence to determine this has been done on the specific sign material referenced in the complaint - it was not done within "2 business days" after candidate Bennett first received notification on May 1, 2024. MCA § 13-35-225(6)(a)(i). Candidate Bennett only provided COPP with a response to this complaint on May 6, after having been

provided a copy three (3) times- first on May 1, then again May 2, then a final time on May 6 (after conclusion of the 2-business day period to bring unattributed material into compliance). Candidate Bennett’s confusion about what specific material was allegedly unattributed cannot excuse this error, as this could have easily and quickly been combatted by reviewing the complaint itself which clearly pictures the unattributed material. *Complaint, 1.*

CONCLUSION

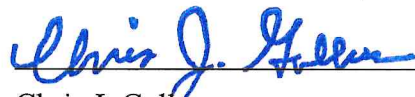
This Commissioner, having been charged to investigate and decide, hereby determines that Lisa Bennett, despite being afforded the opportunity to comply in accordance with MCA § 13-35-225(6)(a)(i), has violated Montana campaign practice law MCA § 13-35-225 and a civil action under MCA § 13-37-128 is justified.

When the commissioner finds sufficient evidence to justify a prosecution, the commissioner notifies the affected county attorney and transfers all relevant information, allowing the county attorney the opportunity to prosecute the offending party. MCA § 13-37-124(1). The county attorney may, at any time, waive the right to prosecute, or may do so by failing to initiate the appropriate action within 30 days, “authorizing the commissioner to initiate the appropriate civil or criminal action.” MCA § 13-37-124(1)(2).

A person who intentionally or negligently violates MCA § 13-35-225 “is liable in a civil action brought by the commissioner or a county attorney. . .for an amount up to \$500 or three times the amount of the unlawful contributions or expenditures, whichever is greater.” MCA § 13-37-128.

Normally, the Commissioner first provides decisions to the parties and then the public on the following day. The Legislature, however, has set very tight timelines on this sort of attribution complaint. Accordingly, the Commissioner provides this decision to the parties and public on the day issued.

DATED this 8th day of May, 2024.



Chris J. Gallus
Commissioner of Political Practices
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