

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES (COPP)

HOLLY NOELLE HOVLAND v. DAVID ARENDS	COPP-2023-CFP-025 DECLARATION OF MERIT OF COMPLAINT RESOLUTION OF COMPLAINT BY PROMPT REMEDIAL ACTION BY THE RESPONSIBLE PARTY DISMISSAL OF COMPLAINT
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COMPLAINT

On November 27, 2023, Holly Noelle Hovland of Sunburst, MT filed a campaign practices complaint against David Arends of Conrad. The complaint alleged that candidate Arends failed to include the ‘paid for by’ attribution message on a campaign communication as required.

ISSUES

“Paid for by” attribution requirements, MCA § 13-35-225.

FINDING OF FACTS

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

Finding of Fact No. 1: David Arends of Conrad, MT filed a C-1 Statement of Candidate as a Democratic candidate for election to the Montana House of Representatives, District 18 in Montana’s 2024 elections with COPP on July 18, 2023 (Commissioner’s Records).

Finding of Fact No. 2: On November 27, 2023, COPP received the original signed and notarized copy of this complaint from complainant Hovland. In reviewing the complaint, Commissioner Gallus determined it was merited, as the materials referenced in the complaint- specifically candidate Arends’ campaign website, Facebook page, and a banner supporting his candidacy- did not contain either the ‘paid for by’ attribution message or his partisan affiliation as a Democratic party candidate (Commissioner’s Records).

Finding of Fact No. 3: On November 27, 2023, COPP contacted candidate Arends via email and telephone message to provide notification that this formal attribution complaint had been received. Candidate Arends was informed that the attribution complaint was merited, and that:

You will need to add full attribution messaging and partisan affiliation to unattributed campaign material- including the campaign website, any paid social media posts or advertisements, and the campaign sign specifically referenced in this complaint- and email a photo to COPP showing this addition. Distribution of any unattributed campaign material must be halted until the full ‘paid for by’ attribution message and partisan affiliation is added.

...

If you did not engage in the activity relating to this complaint, I [Commissioner Gallus] would appreciate having any additional information you can provide as to potential parties involved. It is in everyone’s best interest to immediately resolve the situation in the manner described above, and COPP will work with you, or other parties, to get this accomplished.

(Commissioner’s Records).

Finding of Fact No. 4: Also on November 27, 2023, COPP reviewed candidate Arends’ campaign website and Facebook profile. This review confirmed that both candidate Arends’ campaign website and a campaign banner supporting his candidacy did not include either the ‘paid for by’ attribution message or his partisan affiliation as a Democratic party candidate. Candidate Arends’ Facebook profile itself did not appear to have any paid posts or advertisements that would specifically require inclusion of the ‘paid for by’ attribution message or his partisan affiliation (Commissioner’s Records).

Finding of Fact No. 5: On November 28, 2023, COPP was able to speak with candidate Arends via telephone to explain Montana’s ‘paid for by’ attribution requirements, as well as the requirement that partisan affiliation be included on any materials financed by his campaign. During the call, the attribution complaint process outlined under Montana Code Annotated (MCA) § 13-35-225(5) and (6) was outlined, with candidate Arends again being notified that any unattributed material needed to have all ‘paid for by’ messaging and partisan affiliation added before 5:00 that evening for the material to be considered in compliance.

Immediately after this phone conversation, candidate Arends emailed COPP in response to this attribution complaint. This attribution response stated that “I have added the required attribution to our website that appears at the bottom of the page” and included a screenshot image of the campaign website showing an attribution message of “Paid for by the Campaign of David Arends for MT HD 18 Representative, PO Box 1006, Conrad, MT 59425” and a statement indicating his partisan affiliation as “Democratic Party”. It also included a statement that “our campaign Facebook page is...a non-paid site”. Finally, of the unattributed banner the attribution response states “The third issue regarding the banner itself is resolved by removing it from any public circulation. We will destroy it as it would be too difficult to cleanly add the required attribution of declaration of party affiliation and the “Paid for by the Campaign of David Arends for MT HD 18 Representative.” (Commissioner’s Records).

Finding of Fact No. 6: On November 28, 2023, COPP again reviewed candidate Arends’ campaign website. This review confirmed that an attribution message of “Paid for by the

Campaign of David Arends for MT HD 18 Representative, PO Box 1006, Conrad, MT 59425” and a statement indicating his partisan affiliation as “Democratic Party” had been added.

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 certain communications supporting Montana House District 18 candidate David Arends that fails to include either the ‘paid for by’ attribution statement or partisan affiliation required by Montana election law.

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 Arends immediately after receipt of this complaint to provide notification of the attribution deficiency (FOF No. 3). COPP was able to speak with candidate Arends the next day, November 28, regarding Montana’s ‘paid for by’ attribution and partisan affiliation requirements on campaign material (FOF No. 5). Later that day, candidate Arends provided the agency with notification that relevant attribution messaging and partisan affiliation had been added to the campaign website, which COPP was also able to independently confirm (FOF Nos. 5, 6). He also stated that the unattributed campaign banner referenced in this complaint was removed from circulation and would not be utilized further by the campaign, while also providing the relevant attribution message that should have been originally included (FOF No. 5).

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, §13-35-225(5), MCA. 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, §13-35-225(6)(a), MCA. In this matter COPP was able to notify candidate Arends of the attribution deficiency via telephone and email conversations held on November 27 and 28, 2023.
3. The individual financing the material is provided 2 business days to bring the material into attribution compliance, §13-35-225(6)(a)(i), MCA. In this matter, candidate Arends did so by adding a message of “Paid for by the Campaign of David Arends for MT HD 18 Representative, PO Box 1006, Conrad, MT 59425” and a statement indicating his partisan affiliation as “Democratic Party” to the campaign website, and by removing the unattributed campaign banner from circulation.

Under Montana law the individual with an attribution deficiency is relieved of a campaign practice violation, provided he/she promptly carries out the attribution correction. Candidate Arends has met these duties by accepting responsibility for all unattributed material and correcting each as appropriate. Candidate Arends is therefore relieved of a campaign practice violation under Mont. Code Ann. §13-35-225(6). The complaint is dismissed.

The attribution requirements outlined under MCA § 13-35-225 are specific to election communications, electioneering communications, and independent expenditures. Commissioner Mangan, my immediate predecessor, more thoroughly considered social media and how it relates to Montana’s attribution requirements in various Decisions and Dismissals issued by COPP. He consistently determined that unpaid or ‘organic’ posts made using social media are not required to contain the attribution message or partisan affiliation required under MCA § 13-35-225, as by not including an expenditure element they do not qualify as election communications, electioneering communications, or independent expenditures. As examples, see *Bennett v. Vent Missoula* (2017), at pages 2 through 10; *Chadwick v. Rivera* (2020), at pages 7 through 11; and *Republican Attorneys General Association v. Democratic Attorneys General Association and associated DAGA People’s Lawyer Project* (2020), at pages 11 through 18.

In this case, no evidence exists to suggest that candidate Arends paid to promote or distribute any Facebook posts, or that he ran any paid advertisements on that platform. Being solely unpaid, ‘organic’ posts, candidate Arends is not required to include ‘paid for by’ attribution messaging or partisan affiliation on his campaign Facebook page. As has been discussed with candidate Arends, should the campaign engage in paid activity on Facebook in the future (by boosting existing posts, paying specifically to run campaign ads, etc.) that activity will require full compliance with MCA § 13-35-225. In other words, candidate Arends is on notice that any paid social media activity will require inclusion of both the full ‘paid for by’ messaging and partisan affiliation.

As candidate Arends is now fully aware of the requirement for attribution of election communications, no further leniency will be provided regarding further communications. Any subsequent violations will be referred to the Pondera County Attorney pursuant to Mont. Code Ann. §13-37-124, and subject to penalty as provided under Mont. Code Ann. §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 1st day of December, 2023.

/s/ Chris J. Gallus

Chris J. Gallus
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