

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

Kary v. Graves and Kary v Hurst No. COPP 2023-CFP-002A and 002B	DECLARATION OF MERIT OF COMPLAINT RESOLUTION OF COMPLAINT BY PROMPT REMEDIAL ACTION BY THE RESPONSIBLE PARTY DISMISSAL OF COMPLAINT
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On April 17, 2023, Doug Kary of Billings, MT filed a campaign practices complaint against David Graves and Brandon Hurst, each of Billings. The complaint alleged that candidates Graves and Hurst failed to include the ‘paid for by’ attribution message on a campaign communication as required.

FINDING OF FACTS

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

Finding of Fact No. 1A: David Graves filed a Declaration for Nomination and Oath of Candidacy as candidate for election to the County Water District of Billings Heights with the Yellowstone County Elections Administrator on January 3, 2023 (Commissioner’s Records).

Finding of Fact No. 1B: Brandon Hurst filed a Declaration for Nomination and Oath of Candidacy as candidate for election to the County Water

District of Billings Heights with the Yellowstone County Elections Administrator on February 6, 2023 (Commissioner's Records).

Finding of Fact No. 2: On April 17, 2023, complainant Doug Kary emailed COPP a scanned copy of a signed and notarized complaint. In reviewing the complaint, Commissioner Gallus determined the allegation that a campaign communication supporting candidates Graves and Hurst did not contain required 'paid for by' attribution messaging was merited (Commissioner's Records).

Finding of Fact No. 3: On April 18, 2023, COPP sent email correspondence to candidates Graves and Hurst notifying them that this formal attribution complaint had been received. Each candidate was informed that the attribution complaint was merited, as the specific campaign communication did not contain the full 'paid for by' attribution message as required. Each candidate was also informed that:

You will need to add full attribution messaging to all copies of this communication remaining in your possession and email a photo to the COPP showing this addition- distribution of any unattributed copies of the communication must be halted until the full 'paid for by' attribution message is added. For any copies of this communication that have already been publicly distributed without inclusion of the full attribution message, COPP would require you provide a written statement that includes a picture of the communication, the full 'paid for by' attribution message required under Mont. Code Ann. §13-35-225(1), the quantity of unattributed communications distributed, and the date or dates unattributed copies of the communication were distributed.

...

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. 3A: On April 18, 2023, COPP spoke with candidate Graves regarding this attribution complaint via telephone. During this conversation, candidate Graves stated that, while he was aware of the specific unattributed campaign communication referenced in the complaint, but that he had no involvement with its financing or distribution (Commissioner's Records).

Finding of Fact No. 4: Also on April 18, 2023, COPP received a telephone call from an individual named Mike Macki. During this conversation, Mr.

Macki explained that the unattributed campaign communication referenced in this complaint was conceived of and executed by members of his neighborhood, himself included, and that neither candidates Graves or Hurst were involved in financing or distributing it. During the call, Mr. Macki himself took responsibility for all monetary costs associated with the communication and explained that lack of 'paid for by' information on the material was an oversight. A follow-up call received by COPP on April 18, 2023 from an individual named Butch Bailey confirmed Mr. Macki's explanation (Commissioner's Records).

Finding of Fact No. 4A: As a follow-up to that morning's phone conversation, on April 18 COPP emailed Mr. Macki additional information pertaining to Montana's 'paid for by' attribution requirements, as well as outlining the remedy process for unattributed material. In this correspondence, COPP notified Mr. Macki that:

As we had discussed on the phone, this material mentioned in the complaint was financed, at least in part, by yourself, independent of candidates Graves and Hurst. The communication would require a full 'paid for by' attribution message identifying the person or persons financing it, 13-35-225(1), MCA, which it currently does not have. You will need to add full attribution messaging to all copies of this communication remaining in your possession and email a photo to the COPP showing this addition- distribution of any unattributed copies of the communication must be halted until the full 'paid for by' attribution message is added. For any copies of this communication that have already been publicly distributed without inclusion of the full attribution message, COPP would require you provide a written statement that includes a picture of the communication, the full 'paid for by' attribution message required under Mont. Code Ann. §13-35-225(1), the quantity of unattributed communications distributed, and the date or dates unattributed copies of the communication were distributed.

(Commissioner's Records).

Finding of Fact No. 4B: Later on April 18, 2023, Mr. Macki emailed COPP to provide "a copy of the message with proper attribution notification" and to notify the agency that "approximately 1500 flyers without the proper attribution" had been delivered. Included with this email message was a copy of the campaign communication with an attribution message of "PAID FOR BY MICHAEL L MACKI, 1331 LONGHORN WAY, BILLINGS, MT. 59105. PER MONT. CODE ADD. 13-35-225(6)(a)(i)". In a phone call made to COPP immediately after sending this message, Mr. Macki took sole responsibility for financing this material, and indicated that any future material supporting or opposing candidates for election would include full 'paid for by' attribution messaging (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”, Mont. Code Ann. §13-35-225(1) MCA. This complaint references a copy of an election communication supporting candidates Graves and Hurst that fails to include a complete attribution. COPP would note that, as candidates seeking election to a special district (in this case, the County Water District of Billings Heights), candidates Graves, Hurst, and any political committees organized specifically to support or oppose them are exempted from registering or filing finance reports with COPP under Mont. Code Ann. §13-37-206(2) (FOF Nos. 1A, 1B).¹ Despite this exemption from registration and reporting, Montana’s attribution requirements still apply in full.

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 candidates Graves and Hurst the morning of April 18 to notify them of the attribution deficiency (FOF No. 2). As a result of this outreach, COPP was able to determine that the election communication in

¹ **13-37-206. Exception for certain school districts and certain special districts.** (2) The provisions of this part, except 13-37-216 and 13-37-217, do not apply to a candidate, the candidate's political campaign, or a political committee organized to support or oppose an issue or a candidate if the candidate is running for or the committee's issue involves a unit of local government authorized by law to perform a single function or a limited number of functions, including but not limited to a conservation district, a weed management district, a fire district, a community college district, a hospital district, an irrigation district, a sewer district, a transportation district, a water district, any other special purpose district, or any entity formed by interlocal agreement.

question was not financed by either candidate Graves or candidate Hurst, but instead independently by an individual named Mike Macki (FOF Nos. 3A, 4, 4B). The complaint is therefore dismissed in full as it pertains to candidates Graves and Hurst.

As part of its investigation into this matter, COPP was able to speak with Mike Macki regarding Montana's 'paid for by' attribution requirements and notify him that the election communication he had financed did not contain attribution as required. Shortly after COPP's first conversation with Mike Macki, he was able to provide the agency with relevant attribution messaging that should have been included on each copy of the election communication prior to original distribution, the quantity of unattributed communications distributed (1,500), and acknowledgement that any future copies distributed need to include the full attribution message (FOF Nos. 4, 4A, 4B).

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 the individual who financed the communication, Mike Macki, of the attribution deficiency via telephone and email conversations held on April 18, 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, Mike Macki provided COPP relevant

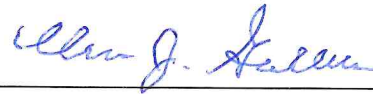
attribution messaging and quantity information for all unattributed communications on April 18, 2023.

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. Mike Macki has met these duties by accepting responsibility for the unattributed material, providing COPP relevant attribution messaging and quantity information for all unattributed communications distributed, and acknowledging that attribution must be included on any future copies of the communication distributed (FOF Nos. 4, 4A, 4B). Mike Macki is therefore relieved of a campaign practice violation under Mont. Code Ann. §13-35-225(6). The complaint is dismissed.

As Mike Macki 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 Yellowstone 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 18th day of April, 2023.



Chris J. Gallus
Commissioner of Political Practices
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