

BEFORE THE COMMISSIONER OF  
POLITICAL PRACTICES OF THE STATE OF MONTANA

Metzmaker v. Schuber  No. COPP 2023-CFP-016	DECLARATION OF MERIT OF COMPLAINT  RESOLUTION OF COMPLAINT BY PROMPT REMEDIAL ACTION BY THE RESPONSIBLE PARTY  DISMISSAL OF COMPLAINT
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On October 4, 2023, Jan Metzmaker of Whitefish, MT filed a campaign practices complaint against Nancy Schuber, also of Whitefish. The complaint alleged that candidate Schuber 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. 1: Nancy Schuber filed a C-1A Statement of Candidate as candidate for election to a City Council position in the City of Whitefish with COPP on May 17, 2023 (Commissioner’s Records).

Finding of Fact No. 2: On October 4, 2023, COPP received the original signed and notarized copy of this complaint from complainant Jan Metzmaker. In reviewing the complaint, Commissioner Gallus determined

that a campaign communication supporting candidate Schuber did not contain all required information, specifically the candidate's address, as part of the 'paid for by' attribution messaging, and therefore the complaint was merited (Commissioner's Records).

Finding of Fact No. 3: On October 4, 2023, COPP contacted candidate Schuber via email message to provide notification that this formal attribution complaint had been received. Candidate Schuber 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, and that:

You will need to add full attribution messaging to all copies of alleged unattributed material 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.

...

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: Also on October 4, 2023, COPP spoke with candidate Schuber regarding this attribution complaint via telephone. During this conversation, candidate Schuber stated that the failure to include address with the 'paid for by' attribution message on campaign yard signs was an oversight, and that this information would be added to all copies of the material as soon as possible. (Commissioner's Records).

Finding of Fact No. 4: On October 5, 2023, candidate Schuber emailed COPP four (4) pictures showing that her campaign address of 110 Bay Point Dr., Whitefish, MT<sup>1</sup> had been added to campaign yard signs. It also included a statement that the total number of signs receiving this correction was "14". (Commissioner's Records).

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<sup>1</sup> As shown in the pictures provided by candidate Schuber, the campaign ZIP code of 59937 was only included on one (1) of the four (4) yard sign photos. Failure to include ZIP code with the 'paid for by' attribution message is considered de minimis by this Commissioner, as the street address alone provides "sufficient disclosure regarding who made or financed the communication", 44.11.603(2)(f), ARM

## **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 candidate Schuber that fails to include a complete attribution, specifically “the address of the candidate or the candidate’s campaign”.

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 Schuber immediately after receipt of this complaint to provide notification of the attribution deficiency (FOF Nos. 3, 3A). COPP was able to speak with candidate Schuber regarding Montana’s ‘paid for by’ attribution requirements; on October 5, candidate Schuber provided the agency with relevant attribution messaging that should have been included on each copy of the election communication prior to original distribution, as well as information pertaining to the quantity of communications remedied via addition of the candidate’s address (14) (FOF No. 4).

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 candidate Schuber of the attribution deficiency via telephone and email conversations held on October 4, 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 Schuber provided COPP relevant attribution messaging and quantity information for remedied communications on October 5, 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. Candidate Schuber has met these duties by accepting responsibility for the unattributed material, adding the relevant address information to the material, and providing COPP quantity information for the total number of remedied materials. Candidate Schuber is therefore relieved of a campaign practice violation under Mont. Code Ann. §13-35-225(6). The complaint is dismissed.

As candidate Schuber 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 Flathead 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 5th day of October, 2023.

/s/ Chris J. Gallus

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