

BEFORE THE COMMISSIONER OF  
POLITICAL PRACTICES OF THE STATE OF MONTANA

Rhoades v. Winter No. COPP 2018-CFP-053	DISMISSAL
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On October 26, 2018, Quentin Rhoades of Missoula filed a campaign practices complaint against Thomas Winter, also of Missoula. The complaint alleged that candidate Winter failed to report coordinated expenditures from the Montana Democratic Party benefitting his candidacy as in-kind contributions received by his campaign.

**FINDINGS OF FACT**

The foundational facts necessary for this Decision are as follows:

Finding of Fact No. 1: Thomas Winter filed a C-1 Statement of Candidate as a Democratic candidate for House District 96 in Missoula County with the COPP on January 22, 2018. Candidate Winter timely filed all 2018 C-5 campaign finance reports. (Commissioner's Records).

Finding of Fact No. 2: The Montana Democratic Party (MDP) filed an amended C-2 Statement of Organization as a Political Party committee for election year 2018 on January 31, 2018. (Commissioner's Records).

Finding of Fact No. 3: On March 7, 2018, the MDP filed a C-6 committee financial report, dated January 1 through March 2. This report also contained an addendum detailing MDP employee staff time spent for the purpose of supporting candidates. Included within this addendum were eight entries denoting MDP employee

staff time specifically spent supporting candidate Winter, at a cost of \$292.01. (Commissioner's Records).

Finding of Fact No. 4: On May 7, the MDP filed a C-6 committee financial report, dated March 3 through May 1. This report also contained an addendum detailing MDP employee staff time spent for the purpose of supporting candidates. Included within this Addendum were four entries denoting MDP employee staff time specifically spent supporting candidate Winter, at a cost of \$70.00. (Commissioner's Records).

Finding of Fact No. 5: On his C-5 campaign finance report dated January 11 through May 1, candidate Winter did not report receiving in-kind contributions from the MDP. This report was most recently amended and filed on December 3, 2018. (Commissioner's Records).

Finding of Fact No. 6: On May 24, 2018, the MDP filed a C-6 committee financial report, dated May 2 through May 19. This report also contained an addendum detailing MDP employee staff time spent for the purpose of supporting candidates. Included within this addendum were two entries denoting MDP employee staff time specifically spent supporting candidate Winter, at a cost of \$501.58. (Commissioner's Records).

Finding of Fact No. 7: On June 25, 2018, the MDP filed a C-6 committee financial report, dated May 20 through June 20. This report also contained an addendum detailing MDP employee staff time spent for the purpose of supporting candidates. Included within this addendum were four entries denoting MDP employee staff time specifically spent supporting candidate Winter, at a cost of \$1,003.16. (Commissioner's Records).

Finding of Fact No. 8: On his campaign finance report dated May 25 through June 20, candidate Winter did not report receiving in-kind contributions from the MDP. This report was most recently amended and filed on December 3, 2018. (Commissioner's Records).

Finding of Fact No. 9: On October 1, 2018, the MDP filed a C-6 committee financial report, dated June 21 through September 26, 2018. This report also contained an addendum detailing MDP employee staff time spent for the purpose of supporting candidates. Included within this addendum were eighteen entries denoting MDP employee staff time specifically spent supporting candidate Winter, at a cost of \$4,471.68. (Commissioner's Records).

Finding of Fact No. 10: On his C-5 campaign finance report dated June 21 through October 1, candidate Winter did not report receiving in-kind contributions from the MDP. This report was most recently amended and filed on December 3, 2018. (Commissioner's Records).

Finding of Fact No. 11: On October 22, 2018, the MDP filed a C-6 committee financial report, dated September 27 through October 17. This report also contained an addendum detailing MDP employee staff time spent for the purpose of supporting candidates. Included within this addendum were three entries denoting MDP employee staff time specifically spent supporting candidate Winter, at a cost of \$884.85. (Commissioner's Records).

Finding of Fact No. 12: On November 1, 2018, the MDP filed a C-6 committee financial report, dated October 18 through October 27. This report also contained an addendum detailing MDP employee staff time spent for the purpose of supporting candidates. Included within this addendum were two entries denoting MDP employee staff time specifically spent supporting candidate Winter, at a cost of \$1,068.05. (Commissioner's Records).

Finding of Fact No. 13: On his C-5 campaign finance report dated October 2 through October 26, candidate Winter did not report receiving in-kind contributions from the MDP. This report was most recently amended and filed on December 3, 2018. (Commissioner's Records).

Finding of Fact No. 14: On November 26, 2018, the MDP filed a C-6 committee financial report, dated October 28 through November 21. This report also contained an addendum detailing MDP employee staff time spent for the purpose of supporting candidates. Included within this addendum were four entries denoting MDP employee staff time specifically spent supporting candidate Winter, at a cost of \$2,136.10. (Commissioner's Records).

Finding of Fact No. 15: On his C-5 campaign finance report dated October 27 through November 24, candidate Winter did not report receiving in-kind contributions from the MDP. This report was most recently amended and filed on December 3, 2018. (Commissioner's Records).

Finding of Fact No. 16: On November 13, 2018, Trent Bolger, the MDP Finance Director, hand delivered a signed and notarized Declaration to the COPP. This Declaration stated that Mr. Bolger "participated in the hearing on COPP rules implementing SB 289.

Among the proposed rules was 44.11.401 A.R.M. governing the definition of a “contribution”. Mr. Bolger also stated that “I expressly asked Commissioner Motl whether he would require both the party and the candidate to report the value of the staff time...Commissioner Motl indicated that if the party would make the report, the candidate would not be required to do so”. (Commissioner’s Records).

Finding of Fact No. 17: On November 14, 2018, candidate Winter, through the Meloy Law Firm, emailed a response to this Complaint to the COPP. This response argued that it was the sole responsibility of the political party to report all staff time spent supporting candidates, and that the candidate did not incur reporting responsibilities when this activity occurred. During the process where 44.11.401, ARM was discussed, the response stated, then-Commissioner Jonathan Motl indicated to the MDP that such staff time would only need to be reported by the party, not the candidate. (Commissioner’s Records).

## **DISCUSSION**

The complaint alleges candidate Winter failed to report in-kind contributions received from the Montana Democratic Party (MDP), in the form of paid staff time spent supporting his campaign, on campaign finance reports.

The MDP properly reported \$10,427.43 in employee/staff wage expenditures spent specifically to support the Winter’s campaign. A review of the Winter C-5 campaign finance reports indicates the campaign did not report receiving in-kind staff contributions from the MDP.

Under Montana campaign financial law, the term Contribution is defined under 13-1-101(9), MCA:

"Contribution" means:

- (i) the receipt by a candidate or a political committee of an advance, gift, loan, conveyance, deposit, payment, or distribution of money or anything of value to support or oppose a candidate or a ballot issue;

(ii) an expenditure, including an in-kind expenditure, that is made in coordination with a candidate or ballot issue committee and is reportable by the candidate or ballot issue committee as a contribution;

(iii) the receipt by a political committee of funds transferred from another political committee; or

(iv) the payment by a person other than a candidate or political committee of compensation for the personal services of another person that are rendered to a candidate or political committee.

(b) "Contribution" does not mean services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or political committee or meals and lodging provided by individuals in their private residences for a candidate or other individual.

A January 8, 2018 conversation with Trent Bolger, then CFO of the MDP, revealed that, while no direct notice is provided to candidates whom MDP staff time is being spent on supporting the campaign, the candidates are aware this activity is occurring. Similarly, Mr. Bolger stated that candidates seek out either their local field office or the main MDP office in Helena for staff support assistance for campaigns.

Had MDP staff time spent supporting candidate Winter had been carried out independently by the MDP, it would have been required to be reported as an independent expenditure on their financial reports. The MDP, however, reported the activity as a typical expenditure, indicating it was not an independent activity. Indeed, both Candidate Winter and the MDP agree personal services and assistance were provided to the Winter campaign in the form of coordinated

staff time activities meant to benefit the campaign<sup>1</sup>. The Commissioner concludes the personal services activity at the center of this matter is considered an in-kind contribution from MDP, received by the Winter campaign. Both the MDP and Winter campaign, however, argue reporting the personal services activity was the responsibility of the MDP alone, not candidate Winter.

*Historical reporting standards for paid political party staff time*

Based on candidate Winter's response, materials provided by the MDP, and a review of current and historical candidate and political party reporting of personal staff time, it appears that confusion exists regarding the proper reporting of paid political party employee staff time meant to support specific candidates for election and who is responsible for disclosure. Winter's response argues that "a candidate is not obliged by the reporting requirements to report party staff time assistance. The MDP, of course, is required to...But nowhere in the rule is a requirement that a candidate do so". The response also stated that, when the rule was first adopted, then-Commissioner Jonathan Motl assured the MDP that it was the responsibility of the party, not the candidate, to report paid

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<sup>1</sup> Candidate Winter's response, written by Peter Michael Meloy of the Meloy Law Firm, argues exclusively that 44.11.401(3) focuses on "reporting requirements for the party, not the candidate". As the response does not in any way, shape, or form deny that the MDP provided assistance to the Winter campaign in a coordinated manner (subsection (ii)) OR through the provision of personal services to the campaign paid for by the MDP (subsection iv), it must be determined that the activity in question meets these definitions and is in fact a contribution. This interpretation is strengthened by the January 8 discussion with Mr. Bolger- there is no conceivable way candidate Winter was not aware the MDP was carrying out activities to support his campaign, and that these activities were in no way coordinated between the MDP and the campaign. If the Winter campaign believes the activities were carried out solely by the MDP independent of his campaign, the response surely would have mentioned this belief. Instead, by focusing the entire response on the argument that candidate Winter was/is exempt from reporting the MDP staff time in question, Mr. Meloy (and by extension, candidate Winter) tacitly endorse the position that these activities do in fact meet the definition of a contribution.

staff time activities provided to a candidate in direct support of their campaign. Similarly, Trent Bolger's Declaration stated that, in the run-up to the formal adoption of 44.11.401, the MDP participated in the process by airing their concerns and was told by Commissioner Motl that if "the party would make the report, the candidate would not be required to do so". Taken together, it seems that, when the rule was first proposed and later adopted, the COPP communicated it to mean that candidates were exempted from reporting the paid services of party staff or employees provided to their campaign as contributions received.

This interpretation has historically gelled with the way COPP Compliance Specialists inspect political party reports when paid staff time supporting specific candidates is involved. While the COPP has consistently enforced all requirements that the party report this activity as an expenditure, the office has not required or enforced reporting by candidates who were the beneficiary of the activity report it as a contribution received. When asked specifically about this in the past, the COPP has responded that only the party needs to include the activity on financial reports (as committee expenditures), and that the receiving candidate does not need to report it as a contribution. In effect, then, the COPP's official position on this matter has always been the interpretation the MDP stated they were given by Commissioner Motl- the party is responsible for reporting the activity, while the candidate is exempt and does not need to report it as a contribution.



In 2021, the Montana legislature passed and Governor Gianforte signed into law, SB224 which revised several Montana campaign finance reporting requirements, including the reporting issue found in this matter. SB 224 included language clarifying that when the political party reports compensation for personal service of another person:

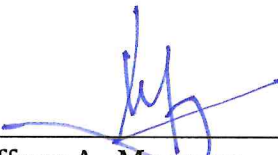
A candidate is not required to report contributions received from a political party committee for compensation of the personal services of another person that are rendered to the candidate if the political party committee reports the amount of contributions made to the candidate in the form of personal services

The allegation is hereby dismissed.

**DECISION**

The Commissioner hereby dismisses the complaint.

DATED this 30<sup>th</sup> day of December 2022.



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